

UPDATE REGARDING IMPLEMENTATION OF PLANS OF LIQUIDATION FOR THE HOW COMPANIES

THE FOLLOWING SUMMARY OF HISTORICAL AND CURRENT DEVELOPMENTS PROVIDES AN OVERVIEW OF INFORMATION REGARDING THE RECEIVERSHIP AFFAIRS OF HOW INSURANCE COMPANY, A RISK RETENTION GROUP, HOME OWNERS WARRANTY CORPORATION, AND HOME WARRANTY CORPORATION (COLLECTIVELY, THE "HOW COMPANIES"). ALFRED W. GROSS, VIRGINIA COMMISSIONER OF INSURANCE, AS DEPUTY RECEIVER OF THE HOW COMPANIES (THE "DEPUTY RECEIVER") RESERVES THE RIGHT TO PROVIDE UPDATED AND NEW INFORMATION THAT MAY AFFECT THE INTERESTS OF THE HOW COMPANIES. **NOTHING HEREIN CONSTITUTES A BINDING LEGAL STATEMENT BY THE RECEIVER, THE DEPUTY RECEIVER, OR THEIR REPRESENTATIVES. NOR ARE THE STATEMENTS CONTAINED HEREIN INTENDED AS COMPLETE LEGAL DESCRIPTIONS OF THE EVENTS OR MATTERS TO WHICH THEY RELATE. THE MATERIAL PROVIDED HEREIN IS OFFERED ONLY FOR THE PURPOSE OF GENERAL INFORMATION. FOR FULL LEGAL INFORMATION, INTERESTED PARTIES SHOULD REVIEW THE SOURCE DOCUMENTS AND APPLICABLE LEGAL AUTHORITIES.**

On October 14, 1994, the Circuit Court for the City of Richmond entered its [Final Order Appointing Receiver for Rehabilitation or Liquidation](#) (the "Receivership Order") which appointed the State Corporation Commission of the Commonwealth of Virginia (the "Commission") as Receiver (the "Receiver"), Steven T. Foster, the Commissioner of Insurance of the Commonwealth of Virginia as Deputy Receiver, and Patrick H. Cantilo as Special Deputy Receiver (the "Special Deputy Receiver"), and authorized and directed them to administer the business and affairs of HOW Insurance Company, a Risk Retention Group ("HOWIC"), Home Owners Warranty Corporation ("HOW"), and Home Warranty Corporation ("HWC") (collectively, the "HOW Companies"), and to do all acts necessary or appropriate for the rehabilitation or liquidation of the HOW Companies. On May 1, 1996, by Order of the Commission, Alfred W. Gross succeeded Steven T. Foster as Commissioner of Insurance and Deputy Receiver of the HOW Companies. As a result of the receivership, the affairs and business of the HOW Companies are administered by the Receiver, the Deputy Receiver, and the Special Deputy Receiver, who are vested with all the powers and authority expressed or implied under the provisions of title 38.2, chapter 15 of the Virginia Code.

The HOW Companies marketed a home warranty insurance program pursuant to which were issued hundreds of thousands of builder liability insurance policies and home owner warranty certificates providing coverage generally for ten years to homes throughout the United States, with the exception of Alaska. However, none of those policies or certificates remain in effect.

In the Receivership Order, the Circuit Court of the City of Richmond found that the HOW Companies were in a hazardous financial condition. An audit of the HOW Companies as of December 31, 1994, indicated that their liabilities exceeded their admitted assets. HOWIC separately, and the HOW Companies collectively, were insolvent.

Deputy Receiver has managed the affairs of the HOW Companies with the principal intent of protecting their insureds, warranty certificate holders, and creditors. Upon inception of receivership proceedings, the Deputy Receiver was advised by consulting actuaries and other consultants that he could not safely pay more than 40% of amounts approved for covered claims without creating a danger that improper preferences would result from the inability, as the receivership progressed, to pay later claimants the same percentage of their approved claims as was paid to earlier claimants. As management of the HOW Companies in receivership continued, it became possible, gradually, to increase this percentage of covered claims safely payable, first to 50% in January 1996, then to 60% in December 1998, then to 70% in August 1999, and finally to 100% in November 2000, by [directive](#) of the Deputy Receiver in each instance. In each instance, the Deputy Receiver was advised that the financial affairs of the HOW Companies had improved sufficiently, and that payment of the increased percentage to claimants would not create an unreasonable risk that later claimants might be paid a lower percentage. Moreover, in each instance, claimants having previously received a lower percentage were now paid the difference unless they had been otherwise compensated.

Pursuant to the Receivership Order and applicable Virginia law, the Deputy Receiver and Special Deputy Receiver have devoted their efforts to marshaling the assets and discharging the liabilities of the HOW Companies. As a result, HOWIC has returned to solvency in that its admitted assets exceed its liabilities.

Despite HOWIC's and the HOW Companies' return to solvency, the Deputy Receiver has determined, and the Commission has agreed, that efforts to rehabilitate the HOW Companies would be useless, and that an order of liquidation should be entered pursuant to VA. CODE ANN. § 38.21519.B.

On November 30, 2004, the Deputy Receiver filed his Application for Orders Setting Hearing on Plans of Liquidation for HOW Insurance Company, a Risk Retention Group, Home Owners Warranty Corporation, and Home Warranty Corporation, Establishing Response Date, Approving Plans of Liquidation, Approving Claims Bar Date, and Related Matters ("Liquidation Application"). The Liquidation Application discussed the financial condition of the HOW Companies and provided the Plans of Liquidation for the HOW Companies as [Exhibit A](#) to the Liquidation Application. The Plans of Liquidation include a HOWIC Plan of Liquidation and a HOW/HWC Plan of Liquidation, which is to be implemented upon the completion of the HOWIC Plan of Liquidation. The Deputy Receiver also provided a Residual Assets Allocation Memorandum as [Exhibit A.1](#) to the Liquidation Application which discussed the methodology for allocating among builders who were insured under unexpired HOWIC insurance policies on the date the Receivership Order was entered (the "Builder Distributees") the assets remaining (the "Residual Assets") after satisfaction of the costs and expenses of administration, and all liabilities of higher priority. A hearing on the Liquidation Application was held May 17, 2005.

On June 13, 2005, the Commission entered its [Order Approving Plans of Liquidation](#) ("Liquidation Order"). The Commission found that further efforts to rehabilitate the HOW Companies would be useless and that they should be liquidated according to the Plans of Liquidation, subject to the Commission's modifications to the distribution of Residual Assets to Builder Distributees. Effectively, 25% of the Residual Assets are to be allocated among Builder Distributees on a per capita basis (the fixed component), and 75% are to be allocated among such builders in proportion to the attributed contribution to profitability (the variable component), which principally compared payments by such builders to the HOW Companies against payments by the HOW Companies to or on behalf of such builders. The Deputy Receiver was also to adopt a directive implementing the HOWIC Plan of Liquidation and later the HOW/HWC Plan of Liquidation. The rights, interests, and contingent claims of all builders, policyholders, certificate holders, and creditors of the HOW Companies were also fixed as of the date of the Liquidation Order. Presuming they meet the necessary criteria, former members of HWC are entitled to a refund of capital contributions vested pursuant to the terms of their builder agreements. HOW Companies' owners entitled to receive any Residual Assets upon dissolution will do so in accordance with the Plans of Liquidation as modified. The Deputy Receiver was also authorized to issue a directive establishing a period for filing proofs of claims ("POCs") against the HOW Companies including a Bar Date on which the filing period is to end. **IT IS IMPORTANT TO NOTE THAT THESE PLANS ARE DESIGNED AND INTENDED TO MINIMIZE THE BURDEN UPON PROSPECTIVE RECIPIENTS OR DISTRIBUTEES. THE NECESSARY CALCULATIONS WILL BE MADE BY THE DEPUTY RECEIVER FROM DATA AVAILABLE TO HIM FROM THE COMPANIES' FILES. IT IS NOT NECESSARY THAT ELIGIBLE BUILDERS SUBMIT ADDITIONAL DATA UNLESS REQUESTED TO DO SO. IT IS ALSO NOT NECESSARY THAT ELIGIBLE BUILDERS ENGAGE COUNSEL OR OTHER REPRESENTATIVES IN ORDER TO VERIFY ELIGIBILITY, RECEIVE A DISTRIBUTION, OR PROVIDE UPDATED CONTACT AND OTHER INFORMATION, THOUGH THEY MAY DO SO AT THEIR OWN EXPENSE IF THEY SO DESIRE.**

On June 12, 2008, the Deputy Receiver issued his [Seventh Directive of Deputy Receiver \(Implementing the HOWIC Plan of Liquidation\)](#) ("Seventh Directive"). In it he provides an overview of the HOWIC Plan of Liquidation and establishes the period for filing POCs against the HOW Companies. The filing period began July 12, 2008, and the deadline for filing or the Bar Date is six months after this period begins—January 12, 2009. Mail and published notice of the Bar Date was provided to all interested parties prior to the commencement of the filing period.

Further, in order to file a POC, a claimant must use the provided [POC form](#) or a substantially similar form with the same required information (unless the claim is exempt, discussed further below) after carefully reviewing the related [POC instructions](#). The POC form must be fully completed, notarized, and provide the necessary documentation to substantiate the claim. Pursuant to the Seventh Directive, a POC must be received by the January 12, 2009 Bar Date to be considered timely-filed. It is advisable to keep a copy of the POC and proof of its timely mailing and/or receipt. All claims not exempt from the Bar Date which are not timely-filed will be precluded from sharing in the assets of the HOW Companies' estate in any manner until the timely-filed approved claims of all other creditors have been paid in full. **IT IS NOT NECESSARY THAT CLAIMANTS ENGAGE COUNSEL OR OTHER REPRESENTATIVES IN ORDER TO SUBMIT A CLAIM, THOUGH THEY MAY DO SO AT THEIR OWN EXPENSE IF THEY SO DESIRE.**

The only claims exempt from the Bar Date are: (1) claims that have previously been approved, resolved, or paid by the Deputy Receiver ("approved" or "resolved" claims are those approved in writing by the Deputy Receiver, settled pursuant to a written settlement agreement between the Deputy Receiver and the claimant, or adjudicated by a final and binding determination of the Commission, Circuit Court of Virginia, Supreme Court of Virginia, or other court of competent jurisdiction); (2) proper administrative expenses claims; (3) claims by builders for loss reserve deposits or release of letters of credit; and (4) claims by builders for a share of the Residual Assets of the HOW Companies. The Deputy Receiver will notify all builders eligible for a distribution; therefore, an eligible builder need not take any action to receive a distribution. Moreover, a builder can determine its eligibility/percentage simply by sending a letter request to the Deputy Receiver. Currently, the amount of residual assets that can be distributed is unknown, and will not be fully known until the end of the liquidation process for the HOW Companies. The manner in which such distributions are calculated is governed by the Commission's Liquidation Order.