

# WEST VIRGINIA CODE: §33-10-1

## §33-10-1. Definitions.

For the purpose of this article, the following definitions shall apply:

(a) "Impairment" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the insurer's annual statement, the assets of an insurer are less than the sum of all of its liabilities and required reserves including any minimum capital or surplus or both required of that insurer by this chapter so as to maintain its authority to transact the kinds of business or insurance it is so authorized to transact.

(b) "Insolvency" or "insolvent" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the insurer's annual statement, the assets of the insurer are less than the sum of all of its liabilities and required reserves.

(c) "Insurer" means any person, firm, corporation, association or aggregation of persons doing an insurance business and which is or has been subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the commissioner or the equivalent insurance supervisory official of another state. For purposes of this article, all persons, corporations, associations or entities to whom this article applies and which are subject to delinquency proceedings commenced in this state shall be considered "insurers".

(d) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer and any summary proceeding under section thirty-six of this article. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(e) "State" means any state, district or territory of the United States.

(f) "Foreign country" means any other jurisdiction not in any state.

(g) "Domiciliary state" means the state in which an insurer is incorporated or organized, or in the case of an alien insurer as defined in section eight, article one of this chapter, the state in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States or its state of entry.

(h) "Ancillary state" means any state other than a domiciliary state.

(i) "Reciprocal state" means any state other than this state in which in substance and effect

the provisions of the uniform insurers liquidation act, as defined in section twenty-one of this article, are in force, and in which provisions are in force requiring that the Insurance Commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(j) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons and as to such specifically encumbered property, the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in more than a single state shall be considered general assets.

(k) "Preferred claim" means any claim with respect to which the terms of this article accord priority of payments from the general assets of the insurer.

(l) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(m) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(n) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

(o) "Guaranty association" means the West Virginia insurance guaranty association created by article twenty-six of this chapter, the West Virginia life and health insurance guaranty association act created by article twenty-six-a of this chapter and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers.

(p) "Foreign guaranty association" means any entities now in existence in or hereafter created by the Legislature of any other state that are similar to the entities described in subsection (o) of this section.

(q) "Surplus" means the amount by which an insurer's assets exceeds its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the insurer's annual statement.

(r) "Affiliate" or a person "affiliated with" a specific person means a person that, directly or

indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the person specified.

(s) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not, in fact, exist.

(t) "Transfer" means the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.