

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FL**

State of Florida, ex rel., the  
Florida Department of Financial  
Services,

Relator,

**CASE NO.:**

v.

Sensible Home Warranty, LLC.,

Respondent

\_\_\_\_\_/

**PETITION FOR ORDER TO APPOINT THE FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES AS ANCILLARY RECEIVER FOR PURPOSES OF  
LIQUIDATION, INJUNCTION AND NOTICE OF AUTOMATIC STAY**

The Florida Department of Financial Services (hereinafter “Department”) through its undersigned counsel, hereby applies to this Court to sections 631.031, 631.061, and 631.091, Florida Statutes, for the entry of an Order appointing the Department as Ancillary Receiver of Sensible Home Warranty, LLC (“Respondent” or “SHW”) for purposes of liquidation. In support thereof, the Department states as follows:

1. This Court has jurisdiction pursuant to section 631.021(1) and venue is proper pursuant to section 631.021(2), Florida Statutes.

2. Sections 631.071, .091, .131, and 631.152, Florida Statutes, authorize the Department to apply to this Court for the entry of an Order appointing it as Ancillary Receiver of a foreign insurer for purposes of liquidation upon the appointment of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer in the domiciliary state of such insurer.

3. Respondent is a foreign insurer domiciled in Nevada that is authorized to transact the business of insurance in the State of Florida.

4. On September 24, 2014, the State of Nevada Commissioner of Insurance issued an Order Setting Liquidation Procedures, Case No. 14.0359. A copy of the Order is attached as Exhibit A.

5. Upon information and belief, the Respondent has sufficient assets in this state to justify the appointment of an Ancillary Receiver. Specifically, the Office of Insurance Regulation (“Office”) has identified two surety bonds belonging to SHW that amount to \$150,000.00. In addition, the Department of Financial Services maintains a statutory deposit of not less than \$25,000. There may be other special deposits, assets, claims, or property in this state to further justify the appointment of an ancillary receiver pursuant to section 631.091, Florida Statutes.

6. Additionally, the Office has identified the following potential claims and/or claimants against SHW:

- 383 Florida consumers with open policies who may have unearned premium claims
- 200 Florida businesses which provided services to SHW’s Florida policyholders and may be owed money by SHW as general creditors of the company
- 130 complaints from Florida residents as filed with the Better Business Bureau, which may also result in claims against the company.

In addition, the Office itself has a claim against SHW totaling \$3,602.50 relating to the special examination required to review the SHW financial situation.

7. Neither the Office nor the State of Nevada has received sufficient records from SHW to adjudicate the unpaid claims of Florida policyholders.

8. It may be necessary to obtain additional records of the Respondent in order to adjudicate the covered claims of Florida policyholders, pursuant to section 631.152, Florida Statutes.

9. Establishing this ancillary receivership provides the best opportunity to protect the interests of the Florida policyholders, creditors, other claimants, and the public. Receivership proceedings are in equity.

**WHEREFORE**, the Florida Department of Financial Services respectfully moves this Court for an Order immediately appointing the Florida Department of Financial Services as Ancillary Receiver of Sensible Home Warranty (SHW) and directing it to:

A. Take immediate possession of all property, assets and estate and all other property of every kind whatsoever and located in this state belonging to Respondent pursuant to sections 631.111 and 631.152, Florida Statutes, including but not limited to; offices maintained by Respondent, rights of action, books, papers, electronic records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, however titled, whether in the custody, possession, or control of Respondent or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents or affiliates and all real property of Respondent, whether in the possession of Respondent or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents or affiliates, or other persons.

B. Liquidate the business and assets of Respondent located in this State, including but not limited to, funds held by Respondent's agents, subagents, producing agents, brokers,

solicitors, service representatives or others under agency contracts of otherwise which are due and unpaid to Respondent, including premiums, unearned commissions, agents' balances, agents' reserve funds, and subrogation recoveries.

C. Directing that any officer, director, manager, trustee, agent, accountant, actuary, adjuster, employee, or independent contractor of Respondent and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of Respondent to fully cooperate with the Department as required by section 631.391, Florida Statutes.

D. Employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the Respondent in the possession of the Receiver or coming into its possession.

E. Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

F. Not defend or accept service of process on legal actions wherein Respondent, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to the order, without authorization of this Court; except, however in actions where Respondent is a nominal party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of Respondent, the Receiver may file appropriate pleadings in its discretion.

G. Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.

H. Collect all debts which are economically feasible to collect which are due and owing to Respondent.

I. Deposit funds and maintain bank accounts in accordance with section 631.221, Florida Statutes.

J. Take possession of all of Respondent's securities and certificates of deposit on deposit with the Florida Department of Financial Services, Bureau of Collateral Management or any other deposit found in this state, and convert to cash as much as may be necessary, in its judgment, to pay the expenses of the administration of this receivership.

K. Negotiate and settle subrogation claims and Final Judgments without further order of this Court.

L. Sell any salvage recovered property without further order of this Court.

M. The Receiver shall be vested with all powers, authorities, and rights, express and implied, by the provisions of Part I, Chapter 631, Florida Statutes.

N. Apply to this Court for further instructions in the discharge of its duties as the Receiver deems necessary.

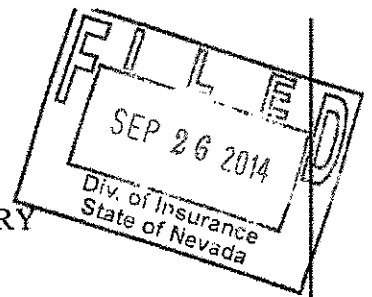
**AND FURTHER**, moves this Court for entry of an order appointing the Florida Department of Financial Services as Ancillary Receiver for Sensible Home Warranty, LLC, substantially in the form of the proposed order attached to this Application as Exhibit B.

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**RESPECTFULLY SUBMITTED** on this 2nd day of February 2, 2015.

/s/ Helena Cruz Sánchez  
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STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE



IN THE MATTER OF

CAUSE NO. 14.0359

**SENSIBLE HOME WARRANTY,  
LLC.,**

**ORDER SETTING LIQUIDATION  
PROCEDURES**

**Respondent.**

WHEREAS SENSIBLE HOME WARRANTY ("Sensible") is a service contract provider domiciled in the State of Nevada, certificate of registration number 113841;

WHEREAS the State of Nevada, Department of Business and Industry, Division of Insurance ("Division") received an excessive number of consumer complaints against Sensible and, as a result, on March 17, 2014, the Division required Sensible to submit a proposed confidential corrective action plan for approval to resolve the consumer complaints;

WHEREAS, on April 23, 2014, Sensible submitted a proposed corrective action plan as required by the Division, but its content was insufficient to receive final approval by the Division, and the Division continued to receive consumer complaints about Sensible;

WHEREAS, on May 5, 2014, the Division informed Sensible that its proposed corrective action plan was not approved, that the Division would contact Sensible to discuss the deficiencies in said plan, and that the Division continued to receive complaints against Sensible;

WHEREAS Sensible became completely unresponsive in resolving outstanding consumer complaints, in providing other pertinent information requested by the Division, and in responding to Division inquiries regarding Sensible's proposed corrective action plan or status;

WHEREAS Sensible changed the information on its website to indicate that it had gone out of business;

WHEREAS, on May 28, 2014, the Division suspended Sensible's certificate of registration number 113841;

WHEREAS there are numerous consumers who currently have service contracts with Sensible, some with claims that Sensible has failed to pay;

WHEREAS the Commissioner of Insurance ("Commissioner") has the authority to

1 WHEREAS the Commissioner of Insurance ("Commissioner") has the authority to  
2 regulate service contract providers pursuant to NRS 679B.120 and NRS 690C.120;


3 WHEREAS the Commissioner has an obligation to protect those consumers who have  
4 purchased service contracts pursuant to NRS 679A.140; and

5 WHEREAS there is good cause in the premises.

6 NOW, THEREFORE, THE FOLLOWING IS HEREBY ORDERED:

- 7
- 8 1. The Division shall execute against the bond, held on behalf of the people of the State of  
9 Nevada and hold its proceeds in trust for the payment of claims filed against Sensible by  
10 consumers who have purchased service contracts and vendors who have provided  
services and/or repairs pursuant to the service contracts (referred to collectively herein  
as "aggrieved parties").
  - 11 2. The Division shall prepare a "Proof of Claim Form" for aggrieved parties seeking  
12 payment of claim(s) to fill out and file with the Division by the deadline established in  
this Order. The Division shall also prepare a "Proof of Claim Form Instructions" to aid  
13 aggrieved parties in filling out and filing a Proof of Claim Form with the Division.
  - 14 3. The Division shall provide written notice of this Order, the Proof of Claim Form and the  
15 Proof of Claim Form Instructions to any aggrieved party who has filed a complaint with  
the Division against Sensible.
  - 16 4. The Division shall provide notice of the existence of this Order, the Proof of Claim  
17 Form and the Proof of Claim Form Instructions by publication in each county of the  
State of Nevada in the manner prescribed by NRCP 4(e)(1).
  - 18 5. The deadline for an aggrieved party to file a Proof of Claim Form is six (6) months from  
19 the date of this Order. A completed Proof of Claim Form must include supporting  
documentation.
  - 20 6. After the deadline for filing a Proof of Claim Form, the Division shall evaluate all Proof  
21 of Claim Forms received to determine if the individual alleged claims are legitimate,  
verified, and timely. At the conclusion of its evaluation of the claims, the Division shall  
22 submit a written request for disbursement to the Commissioner of Insurance identifying  
the claims to be granted, denied, or modified, along with documentation to support the  
Division's position of the individual claims.
  - 23 7. In the event that the dollar amount of the legitimate, verified, and timely claims exceeds  
24 the amount of the funds held by the Division in trust to pay such claims, the Division  
shall file a motion requesting the Commissioner of Insurance to provide a priority of  
25 claims for payment.

26 DATED this 27<sup>th</sup> day of September, 2014.

27  
28   
SCOTT J. KIDDER  
Commissioner of Insurance



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State of Florida, ex rel., the  
Florida Department of Financial  
Services,

Relator,

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Sensible Home Warranty, LLC.,

Respondent

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**ORDER APPOINTING THE FLORIDA DEPARTMENT OF FINANCIAL  
SERVICES AS ANCILLARY RECEIVER AND NOTICE OF AUTOMATIC STAY**

**THIS CAUSE** was considered on the petition of the Florida Department of Financial Services (hereinafter “Department” or “Ancillary Receiver”) for entry of an order appointing the Department as Ancillary Receiver for Sensible Home Warranty, LLC (“SHW”). This Court having reviewed the pleadings of record, and being otherwise being fully informed in the premises finds that:

1. This Court has jurisdiction over this matter pursuant to section 631.021(1), and venue is proper pursuant to section 631.021(2), Florida Statutes.
2. Sections 631.091, .131(2), and .152, Florida Statutes, authorize the Department to petition this Court for entry of an order appointing the Department Ancillary Receiver for a foreign insurer upon the appointment of a liquidator in the domiciliary state of such insurer.
3. SHW is domiciled in Nevada. The State of Nevada Commissioner of Insurance issued an order for the purpose of setting liquidation procedures on September 24, 2014.

4. Upon information and belief, there are sufficient assets located in this state and there may be other assets to justify the appointment of an Ancillary Receiver pursuant to section 631.152, Florida Statutes.

5. Placing SHW into ancillary receivership is further justified in order to obtain records of SHW to adjudicate the covered claims of Florida policyholders.

**THEREFORE, IT IS ORDERED AND ADJUDGED** as follows:

6. The Department's application for appointment as Ancillary Receiver is hereby granted.

7. The Department is hereby appointed as Ancillary Receiver of SHW effective immediately.

8. The Ancillary Receiver shall be authorized and directed to:

A. Take immediate possession of all property, assets and estate and all other property of every kind whatsoever and located in this state belonging to SHW pursuant to 631.111 and 631.152, Florida Statutes, including but not limited to; offices maintained by SHW, rights of action, books, papers, electronic records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, however titled, whether in the custody, possession, or control of SHW or its officers, directors, shareholders, trustees, employees, consultants, attorneys, agents or affiliates and all real property of SHW, whether in the possession of SHW or its officers, directors, shareholders, trustees, employees, consultants, attorneys, accountants, actuaries agents or affiliates, or other persons.

B. Take possession of all of SHW's securities and certificates of deposit on deposit with the Florida Department of Financial Services or any other assets found in this state, and

convert to cash as much as may be necessary, in its judgment, to pay the expenses of the administration of this receivership.

C. Liquidate the business and assets of SHW located in this State, including but not limited to, funds held by SHW's agents, subagents, producing agents, brokers, solicitors, service representatives or others under agency contracts of otherwise which are due and unpaid to SHW, including premiums, unearned commissions, agents' balances, agents' reserve funds, and subrogation recoveries.

D. Directing that any officer, director, manager, trustee, agent, accountant, actuary, adjuster, employee, or independent contractor of SHW and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of SHW, including the Bureau of Collateral Management, to fully cooperate with the Department as required by section 631.391, Florida Statutes.

E. Employ and authorize the compensation of legal counsel, actuaries, accountants, clerks, consultants, and such assistants as it deems necessary, purchase or lease personal or real property as it deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of the SHW in the possession of the Receiver or coming into its possession.

F. Reimburse such employees, from the funds of this receivership, for their actual necessary and reasonable expenses incurred while traveling on the business of this receivership.

G. Not defend or accept service of process on legal actions wherein SHW, the Receiver, or the insured is a party defendant, commenced either prior to or subsequent to the order, without authorization of this Court; except, however in actions where SHW is a nominal

party, as in certain foreclosure actions, and the action does not affect a claim against or adversely affect the assets of SHW, the Receiver may file appropriate pleadings in its discretion.

H. Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this receivership proceeding.

I. Collect all debts which are economically feasible to collect which are due and owing to SHW.

J. Deposit funds and maintain bank accounts in accordance with section 631.221, Florida Statutes.

K. Submit a plan to this Court within 60 days for providing notice to potential claimants of SHW.

L. Negotiate and settle subrogation claims and Final Judgments without further order of this Court.

M. Sell any salvage recovered property without further order of this Court.

N. Give notice of this proceeding to SHW's agents pursuant to section 631.341, Florida statutes, and to its insureds, if any.

O. Apply to this Court for further instructions in the discharge of its duties as the Receiver deems necessary.

**IT IS FURTHER ORDERED AND DIRECTED:**

9. Title to all property, real or personal, all contracts, rights of action and all books and records of SHW, located within the State, is vested in the Ancillary Receiver pursuant to sections 631.11 and 631.141, Florida Statutes.

10. All agents, brokers or other persons having sold policies of insurance and/or collected premiums on behalf of the SHW shall be required to account for and pay all premiums

and commissions unearned due to cancellation of policies by the Order or in the normal course of business owed to the SHW directly to Ancillary Receiver within 30 days of demand by the Ancillary Receiver or appear before this Court to show cause, if any they may have, as to why they shall not be required to account to the Ancillary Receiver or be held in contempt of Court for violation of the provisions of the Order. No agent, broker, premium finance company or other person shall use premium monies owed to the SHW for refund of unearned premium or for any purpose other than payment to the Ancillary Receiver.

11. Any bank, savings and loan association, or other financial institution which has on deposit, in its possession, custody or control any funds, accounts and any other assets of SHW, shall be required to immediately transfer title, custody and control of all such funds, accounts and other assets to the Ancillary Receiver. The Ancillary Receiver shall be authorized to change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall be permitted to exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Ancillary Receiver's control without the permission of this Court.

12. Any data processing service, which has custody or control of any data processing information and records including but not limited to source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to SHW shall transfer custody and control of such records to the Ancillary Receiver. The Ancillary Receiver shall be authorized to compensate any such entity for the actual use of hardware and software which the Ancillary Receiver finds to be necessary to this proceeding.

Compensation shall be based upon the monthly rate provided for in contracts or leases with SHW which was in effect when this proceeding was instituted, or based upon such contract as may be negotiated by the Ancillary Receiver, for the actual time such equipment and software is used by the Ancillary Receiver.

13. The United States Postal Service shall be directed to provide any information requested by the Ancillary Receiver regarding SHW and to handle future deliveries of SHW's mail as directed by the Ancillary Receiver.

14. All claims shall be filed with the Ancillary Receiver on or before 12:01 a.m., on the date six months from the entry of this Order, or be forever barred, and all such claims shall be filed on proof of claim forms prepared by the Ancillary Receiver.

15. Any person, firm, corporation or other entity having notice of the Order that fails to abide by its terms is directed to appear before this Court to show good cause, if any they may have, as to why they shall not be held in contempt of Court for violation of the provisions of this Order.

16. The Receiver shall be vested with all powers, authorities, and rights, express and implied, by the provisions of Part I, Chapter 631, Florida Statutes.

### **CONTINUATION OF INVESTIGATION**

17. The Ancillary Receiver shall be authorized to conduct an investigation as authorized by section 631.391, Florida Statutes, of SHW and its affiliates, as defined above, to uncover and make fully available to the Court the true state of SHW's financial affairs. In furtherance of this investigation, SHW and its affiliates shall be required to make all books, documents, accounts, records, and affairs, which either belong to or pertain to SHW, available for full, free and unhindered inspection and examination by the Ancillary Receiver during

normal business hours (8:00 a.m. to 5:00 p.m.) Monday through Friday, from the date of the Order. SHW and the above specified entities shall be required to cooperate with the Ancillary Receiver to the fullest extent required by section 631.391, Florida Statutes. Such cooperation shall include, but not be limited to, the taking of oral testimony under oath of SHW's officers, directors, managers, trustees, agents, accountants, actuaries, adjusters, employees, or independent contractors of SHW, its affiliates and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of SHW in both their official, representative and individual capacities and the production of all documents that are calculated to disclose the true state of SHW's affairs.

#### **NOTICE OF AUTOMATIC STAY**

18. Notice is hereby given that, pursuant to section 631.041(1), Florida Statutes, the filing of the Department's initial petition herein operates as an automatic stay applicable to all persons and entities, other than the Ancillary Receiver, which shall be permanent and survive the entry of this order, and which prohibits:

A. The commencement or continuation of judicial, administrative or other action or proceeding against the insurer or against its assets or any part thereof;

B. The enforcement of judgment against the insurer or an affiliate, provided that such affiliate is owned by or constitutes an asset of SHW, obtained either before or after the commencement of the delinquency proceeding;

C. Any act to obtain possession of property of the insurer;

D. Any act to create, perfect or enforce a lien against property of the insurer, except a secured claim as defined in section 631.011(21), Florida Statutes, which may proceed under 631.191, Florida Statutes, after the order of liquidation is entered;

E. Any action to collect, assess or recover a claim against the insurer, except claims as provided for under Chapter 631;

F. The set-off or offset of any debt owing to the insurer except offsets as provided in section 631.281, Florida Statutes.

19. All Sheriffs and all law enforcement officials of the state shall cooperate with and assist the Ancillary Receiver in the implementation of this Order.

20. This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time shall be deemed appropriate.

21. The SHW is ordered into liquidation, effective this date.

**DONE and ORDERED** in Chambers at the Leon County Courthouse in Tallahassee, Florida this \_\_\_\_ day of February, 2015.

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CIRCUIT COURT JUDGE