

## Part 2 Qualified Assets

### **31A-17-201 Qualified assets.**

- (1) Except as provided under Subsections (3) and (4), only the qualified assets listed in Subsection (2) may be used in determining the financial condition of an insurer, except to the extent an insurer has shown to the commissioner that the insurer has excess surplus, as defined in Section 31A-1-301.
- (2) For purposes of Subsection (1), "qualified assets" means:
  - (a) any of the following acquired or held in accordance with Sections 31A-18-105 and 31A-18-106:
    - (i) an investment;
    - (ii) a security;
    - (iii) property; or
    - (iv) a loan;
  - (b) the income due and accrued on an asset listed in Subsection (2)(a);
  - (c) assets other than an asset listed in Subsection (2)(a) that are determined to be admitted in the Accounting Practices and Procedures Manual, published by the National Association of Insurance Commissioners; and
  - (d) other assets authorized by the commissioner by rule.
- (3)
  - (a) Subject to Subsection (5) and even if the assets could not otherwise be counted under this chapter, assets acquired in the bona fide enforcement of creditors' rights may be counted for the purposes of Subsection (1) and Sections 31A-18-105 and 31A-18-106:
    - (i) for five years after the acquisition of the assets if the assets are real property; and
    - (ii) for one year if the assets are not real property.
  - (b)
    - (i) The commissioner may allow reasonable extensions of the periods described in Subsection (3)(a), if disposal of the assets within the periods given is not possible without substantial loss.
    - (ii) Extensions under Subsection (3)(b)(i) may not, as to any particular asset, exceed a total of five years.
- (4) Subject to Subsection (5), and even though under this chapter the assets could not otherwise be counted, assets acquired in connection with mergers, consolidations, or bulk reinsurance, or as a dividend or distribution of assets, may be counted for the same purposes, in the same manner, and for the same periods as assets acquired under Subsection (3).
- (5) Assets described under Subsection (3) or (4) may not be counted for the purposes of Subsection (1), except to the extent they are counted as assets in determining insurer solvency under the laws of the state of domicile of the creditor or acquired insurer.

Amended by Chapter 252, 2003 General Session

### **31A-17-202 Status of assets that are not "qualified assets."**

- (1)
  - (a) Except as provided in Subsection (1)(b), if an insurer owns assets that are not qualified assets under Section 31A-17-201, the assets shall be disregarded in determining and reporting the financial condition of the insurer.

(b) An insurer may invest its funds in investments that are permitted under Section 31A-18-105 but in excess of the limits under Sections 31A-18-103 and 31A-18-106 or other assets approved by the commissioner and these assets may be recognized and reported in the financial condition of the insurer to the extent the insurer has excess surplus, as defined under Section 31A-1-301.

(2) Insurers bear the burden of establishing the extent to which they have excess surplus.

Amended by Chapter 131, 1999 General Session

**31A-17-203 Encumbering of assets.**

(1) No domestic insurer may pledge, hypothecate, or otherwise encumber its assets to secure the debt, guaranty, or obligation of any other person. This prohibition does not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business.

(2) No domestic insurer may pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus, without the prior written consent of the commissioner.

(3) The commissioner may grant a domestic insurer an exception to Subsection (2) for a reinsurance agreement which may cause assets of the domestic insurer to be held, deposited, pledged, hypothecated, or otherwise encumbered in an amount in excess of capital and surplus to secure, offset, protect, or meet reserves or liabilities of the insurer that are established, incurred, or required under the provisions of the reinsurance agreement. The domestic insurer shall first file with the commissioner a written request for this exception, accompanied by a copy of the proposed reinsurance agreement and specifically stating its purpose and the reasons the exception should be granted.

(4) Any person that accepts a pledge, hypothecation, or encumbrance of any asset of an insurer not in accordance with the terms and limitations of this section is considered to have accepted that asset subject to a superior, preferential, and perfected lien in favor of owners, beneficiaries, assignees, certificate holders, or third party claimants or beneficiaries of any insurance benefit or right arising out of and within the coverage of any insurance policy issued by the insurer. The commissioner may bring or participate in an action in any court of competent jurisdiction to protect the interests of insureds or claimants under this section.

Enacted by Chapter 204, 1986 General Session