

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