

31A-27a-510 Setoffs.

- (1)
 - (a) A mutual debt or mutual credit shall be set off and the balance only allowed or paid:
 - (i) whether arising out of one or more contracts between the insurer and another person in connection with an action or proceeding under this chapter; and
 - (ii) except as provided in Subsection (2) and Sections 31A-27a-513 and 31A-27a-514.
 - (b) An obligation arising out of the termination of a life, disability income, or long-term care reinsurance contract pursuant to Section 31A-27a-513 may be set off against other debts and credits arising out of a contract between the insurer and the reinsurer.
- (2)
 - (a) A setoff is not allowed after the commencement of a delinquency proceeding under this chapter in favor of any person if:
 - (i) the claim against the insurer is disallowed;
 - (ii) the claim against the insurer is purchased by or transferred to the person:
 - (A) on or after the day on which the receivership petition is filed; or
 - (B) within 120 days preceding the day on which the receivership petition is filed;
 - (iii) the obligation of the insurer is owed to an affiliate or entity other than the person, absent written assignment of the obligation made more than 120 days before the day on which the petition for receivership is filed;
 - (iv) the obligation of the person is owed to an affiliate or entity other than the insurer, absent written assignment of the obligation made more than 120 days before the day on which the petition for receivership is filed;
 - (v) the obligation of the person is:
 - (A) to pay:
 - (I) an assessment levied against a member or subscriber of the insurer; or
 - (II) a balance upon a subscription to the capital stock of the insurer; or
 - (B) in any other way in the nature of a capital contribution;
 - (vi) an obligation between the person and the insurer arises out of a transaction by which either the person or the insurer:
 - (A) assumes a risk or obligation from the other party; and
 - (B) then cedes back to that party substantially the same risk or obligation;
 - (vii) the obligation of the person arises out of an avoidance action taken by the receiver; or
 - (viii) the obligation of the insured is for the payment of earned premiums or retrospectively rated earned premiums in accordance with Section 31A-27a-514.
 - (b) Notwithstanding Subsection (2)(a)(vi), the receiver may permit a setoff if, in the receiver's discretion, a setoff is appropriate because of specific circumstances relating to a transaction.
- (3) The receiver may avoid pursuant to Sections 31A-27a-504, 31A-27a-506, and 31A-27a-507 and subject to defenses under those sections, a setoff that occurs before the commencement of the delinquency proceeding under this chapter if the setoff would otherwise be disallowed pursuant to Subsection (2).

Enacted by Chapter 309, 2007 General Session