

31A-27a-511 Assessments.

- (1) As soon as practicable but not more than four years from the day on which an order of receivership of an insurer issuing assessable policies is entered, the receiver shall make a report to the receivership court setting forth:
 - (a) the reasonable value of the assets of the insurer;
 - (b) the insurer's probable total liabilities;
 - (c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
 - (d) a recommendation as to:
 - (i) whether or not an assessment should be made; and
 - (ii) what amount of assessment.
- (2)
 - (a) Upon the basis of the report provided in Subsection (1), including any supplement or amendment to the report, the receivership court may approve, solely on application by the receiver, one or more assessments against all members of the insurer who are subject to assessment.
 - (b) An order approving an assessment under this Subsection (2) shall provide instructions regarding:
 - (i) notice of the assessment;
 - (ii) deadlines for payment; and
 - (iii) other instructions to the receiver for collection of the assessment.
- (3) Subject to any applicable legal limit on an ability to assess and with due regard given to assessments that cannot be collected economically, the aggregate assessment shall be for the amount by which the sum of the following exceeds the value of existing assets:
 - (a) probable liabilities;
 - (b) the expenses of administration; and
 - (c) the estimated cost of collection of the assessment.
- (4)
 - (a) After levy of an assessment under Subsection (2), the receiver shall petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment for the failure to pay the assessment should not be entered.
 - (b) At least 20 days before the return day of the order to show cause described in Subsection (4) (a), the receiver shall give notice of the order to show cause by:
 - (i) publication or by first-class mail to each member liable on the assessment mailed to the member's last-known address as it appears on the insurer's records; or
 - (ii) such other method of notification as the receivership court may direct.
 - (c) Failure of the member or subscriber to receive the notice of the assessment or of the order to show cause either within the time specified in the order or at all, is no defense in a proceeding to collect the assessment.
- (5) If a member does not appear and serve verified objections upon the receiver on or before the return day of the order to show cause under Subsection (4):
 - (a) the receivership court shall make an order adjudging the member liable for the sum of:
 - (i) the amount of the assessment against the member pursuant to Subsection (4); and
 - (ii) the costs; and
 - (b) the receiver has a judgment against the member for the amount described in Subsection (5) (a).

- (6) If on or before the return day in the order to show cause described in Subsection (4) the member appears and serves verified objections on the receiver, the receivership court may:
 - (a)
 - (i) hear and determine the matter; or
 - (ii) appoint a referee to hear the matter; and
 - (b) make such order as the facts warrant.
- (7) The receiver may enforce an order or collect a judgment under Subsection (5) by any lawful means.
- (8) An assessment of a subscriber or member of an insurer made by the receiver is prima facie correct if it is pursuant to the order of receivership court:
 - (a) fixing the aggregate amount of the assessment against all members or subscribers; and
 - (b) approving the classification and formula made by the receiver under this section.
- (9) A claim filed by an assessee who fails to pay an assessment, after the conclusion of a legal action by the assessee objecting to the assessment, is considered a late filed claim under Section 31A-27a-701.

Enacted by Chapter 309, 2007 General Session