

**31A-28-114 Miscellaneous provisions.**

- (1) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.
- (2)
  - (a) The board of directors shall keep a record of a meeting of the board of directors to discuss the activities of the association in carrying out its powers and duties under Section 31A-28-108.
  - (b) A record of the association with respect to an impaired or insolvent insurer may not be disclosed before the earlier of:
    - (i) the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer;
    - (ii) the termination of the impairment or insolvency of the insurer; or
    - (iii) upon the order of a court of competent jurisdiction.
  - (c) Nothing in this Subsection (2) limits the duty of the association to render a report of its activities under Section 31A-28-115.
- (3)
  - (a) For the purpose of carrying out its obligations under this part, the association is considered to be a creditor of an impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Subsection 31A-28-108(14).
  - (b) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue the covered policies and pay the contractual obligations of the impaired or insolvent insurer as required by this part.
  - (c) As used in this Subsection (3), assets attributable to covered policies are that proportion of the assets which the reserves that should have been established for covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
- (4)
  - (a) As a creditor of the impaired or insolvent insurer under Subsection (3) and consistent with Section 31A-27a-701, the association and any other similar association are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse the association and any other similar association.
  - (b) If, within 180 days of a final determination of insolvency of an insurer by the receivership court, the receiver has not made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to the guaranty associations having obligations because of the insolvency, the association is entitled to make application to the receivership court for approval of the association's proposal for disbursement of these assets.
- (5)
  - (a) Before the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including:
    - (i) the association;
    - (ii) the shareholders;
    - (iii) policyowners of the insolvent insurer; and
    - (iv) any other party with a bona fide interest in making an equitable distribution of the ownership rights of the insolvent insurer.
  - (b) In making a determination under Subsection (5)(a), the court shall consider the welfare of the policyowners of the continuing or successor insurer.
  - (c) A distribution to any stockholder of an impaired or insolvent insurer may not be made until and unless the total amount of valid claims of the association with interest has been fully

recovered by the association for funds expended in carrying out its powers and duties under Section 31A-28-108 with respect to the insurer.

Amended by Chapter 292, 2010 General Session