

Part 7 Distributions

31A-27a-701 Priority of distribution.

- (1)
 - (a) The priority of payment of distributions on unsecured claims shall be in accordance with the order in which each class of claim is set forth in this section except as provided in Section 31A-27a-702.
 - (b) All claims in each class shall be paid in full or adequate funds retained for the claim's payment before a member of the next class receives payment.
 - (c) All claims within a class shall be paid substantially the same percentage.
 - (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may not be established within a class.
 - (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.
- (2) The order of distribution of claims shall be as follows:
 - (a) a Class 1 claim, which:
 - (i) is a cost or expense of administration expressly approved or ratified by the liquidator, including the following:
 - (A) the actual and necessary costs of preserving or recovering the property of the insurer;
 - (B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;
 - (C) a necessary filing fee;
 - (D) the fees and mileage payable to a witness;
 - (E) an unsecured loan obtained by the receiver, which:
 - (I) unless its terms otherwise provide, has priority over all other costs of administration; and
 - (II) absent agreement to the contrary, shares pro rata with all other claims described in this Subsection (2)(a)(i)(E); and
 - (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and
 - (ii) except as expressly approved by the receiver, excludes any expense arising from a duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a Class 7 claim;
 - (b) a Class 2 claim, which:
 - (i) is a reasonable expense of a guaranty association, including overhead, salaries, or other general administrative expenses allocable to the receivership such as:
 - (A) an administrative or claims handling expense;
 - (B) an expense in connection with arrangements for ongoing coverage; and
 - (C) in the case of a property and casualty guaranty association, a loss adjustment expense, including:
 - (I) an adjusting or other expense; and
 - (II) a defense or cost containment expense; and
 - (ii) excludes an expense incurred in the performance of duties under Section 31A-28-112 or similar duties under the statute governing a similar organization in another state;
 - (c) a Class 3 claim, which:
 - (i) is:
 - (A) a claim under a policy of insurance including a third party claim;

- (B) a claim under an annuity contract or funding agreement;
- (C) a claim under a nonassessable policy for unearned premium;
- (D) a claim of an obligee and, subject to the discretion of the receiver, a completion contractor under a surety bond or surety undertaking, except for:
 - (I) a bail bond;
 - (II) a mortgage guaranty;
 - (III) a financial guaranty; or
 - (IV) other form of insurance offering protection against investment risk or warranties;
- (E) a claim by a principal under a surety bond or surety undertaking for wrongful dissipation of collateral by the insurer or its agents;
- (F) an indemnity payment on:
 - (I) a covered claim; or
 - (II) a payment for the continuation of coverage made by an entity responsible for the payment of a claim or continuation of coverage of an insolvent health maintenance organization;
- (G) a claim for unearned premium;
- (H) a claim incurred during the extension of coverage provided for in Sections 31A-27a-402 and 31A-27a-403; or
- (I) all other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including:
 - (I) an indemnity payment on covered claims; and
 - (II) in the case of a life and health guaranty association, a claim:
 - (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities incurred on behalf of a covered claim or covered obligation of the insurer; and
 - (Bb) for the funds needed to reinsure the obligations described under this Subsection (2)(c)(i)(I)(II) with a solvent insurer; and
- (ii) notwithstanding any other provision of this chapter, excludes the following which shall be paid under Class 7, except as provided in this section:
 - (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
 - (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant to a claims made policy after:
 - (I) the expiration date of the policy;
 - (II) the policy is replaced by the insured;
 - (III) the policy is canceled at the insured's request; or
 - (IV) the policy is canceled as provided in this chapter;
 - (C) an obligation to an insurer, insurance pool, or underwriting association and the insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is the named insured;
 - (D) an amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, which shall be paid as a claim in Class 9;
 - (E) a tort claim of any kind against the insurer;
 - (F) a claim against the insurer for bad faith or wrongful settlement practices; and
 - (G) a claim of a guaranty association for assessments not paid by the insurer, which claims shall be paid as claims in Class 7; and
- (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium claim on a policy, other than a reinsurance agreement;

- (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risk or warranties;
 - (e) a Class 5 claim, which is a claim of the federal government not included in Class 3 or 4;
 - (f) a Class 6 claim, which is a debt due an employee for services or benefits:
 - (i) to the extent that the expense:
 - (A) does not exceed the lesser of:
 - (I) \$5,000; or
 - (II) two months' salary; and
 - (B) represents payment for services performed within one year before the day on which the initial order of receivership is issued; and
 - (ii) which priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees;
 - (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1 through 6, including:
 - (i) a claim under a reinsurance contract;
 - (ii) a claim of a guaranty association for an assessment not paid by the insurer; and
 - (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8 through 13;
 - (h) subject to Subsection (3), a Class 8 claim, which is:
 - (i) a claim of a state or local government, except a claim specifically classified elsewhere in this section; or
 - (ii) a claim for services rendered and expenses incurred in opposing a formal delinquency proceeding;
 - (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures, unless expressly covered under the terms of a policy of insurance;
 - (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;
 - (k) subject to Subsection (4), a Class 11 claim, which is:
 - (i) a surplus note;
 - (ii) a capital note;
 - (iii) a contribution note;
 - (iv) a similar obligation;
 - (v) a premium refund on an assessable policy; or
 - (vi) any other claim specifically assigned to this class;
 - (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court; and
 - (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or other owner arising out of:
 - (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity; and
 - (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.
- (3) To prove a claim described in Class 8, the claimant shall show that:
- (a) the insurer that is the subject of the delinquency proceeding incurred the fee or expense on the basis of the insurer's best knowledge, information, and belief:
 - (i) formed after reasonable inquiry indicating opposition is in the best interests of the insurer;
 - (ii) that is well grounded in fact; and
 - (iii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(b) opposition is not pursued for any improper purpose, such as to harass, to cause unnecessary delay, or to cause needless increase in the cost of the litigation.

- (4)
- (a) A claim in Class 11 is subject to a subordination agreement related to other claims in Class 11 that exist before the entry of a liquidation order.
 - (b) A claim in Class 13 is subject to a subordination agreement, related to other claims in Class 13 that exist before the entry of a liquidation order.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-702 Health maintenance organization claims.

- (1) In the liquidation of a health maintenance organization, a claim for uncovered expenditures has priority over a Class 3 claim as provided for in Section 31A-27a-701.
- (2) A claim other than one described in Subsection (1) shall follow the priority of distribution outlined in Section 31A-27a-701.

Enacted by Chapter 309, 2007 General Session

31A-27a-703 Partial and final distributions of assets.

- (1)
 - (a) With the approval of the receivership court, a liquidator may declare and pay:
 - (i) one or more partial distributions on claims as those claims are allowed; and
 - (ii) a final distribution.
 - (b) All claims allowed within a priority class shall be paid at substantially the same percentage.
 - (c) A distribution under this section to a guaranty association is not an advance under Section 31A-27a-704.
- (2) In determining the percentage of distributions to be paid on a claim, the liquidator may consider:
 - (a) the estimated value of the insurer's property, including estimated reinsurance recoverables in connection with the insurer's estimated liabilities for:
 - (i) unpaid losses and loss expenses; and
 - (ii) incurred but not reported losses and loss expenses; and
 - (b) the estimated value of the insurer's liabilities, including estimated liabilities for:
 - (i) unpaid losses and loss expenses; and
 - (ii) incurred but not reported losses and loss expenses.
- (3) Distribution of property in kind may be made at valuations set by agreement:
 - (a) between the liquidator and the creditor; and
 - (b) as approved by the receivership court.
- (4)
 - (a) Notwithstanding Subsection (1) and Part 6, Claims, the liquidator may pay benefits under a workers' compensation policy after the day on which the liquidation order is entered if:
 - (i) there is an acceptance of liability by the insurer, and no bona fide dispute exists;
 - (ii) payment is commenced before the entry of the liquidation order; and
 - (iii) future or past indemnity or medical payments are due.
 - (b) A claim payment under this Subsection (4) may continue until the applicable guaranty association:
 - (i) assumes responsibility for the claim payments; or
 - (ii) determines the claim is not a covered claim under its guaranty association law.

- (c) A claim payment or related expense made under this Subsection (4) may be treated as early access distribution under Section 31A-27a-704 in accordance with an agreement with the guaranty association responsible for the payment.

Enacted by Chapter 309, 2007 General Session

31A-27a-704 Early access disbursements.

- (1) As used in this section, "distributable assets" means general assets of the liquidation estate less:
 - (a) amounts reserved, to the extent necessary and appropriate, for the entire Subsection 31A-27a-701(2)(a) expenses of the liquidation through and after the liquidation's closure; and
 - (b) to the extent necessary and appropriate, reserves for distributions on claims other than those of an affected guaranty association falling within the priority classes of claims established in Subsection 31A-27a-701(2)(c).
- (2)
 - (a) An early access payment to an affected guaranty association shall be made:
 - (i) as soon as possible after the day on which a liquidation order is entered;
 - (ii) as frequently as possible after the first early access payment, but at least annually if there are distributable assets available to be distributed to the affected guaranty association; and
 - (iii) in an amount consistent with this section.
 - (b) An amount advanced to an affected guaranty association pursuant to this section shall be accounted for as an advance against distributions to be made under Section 31A-27a-703.
 - (c)
 - (i) Subject to Subsection (2)(c)(ii), if sufficient distributable assets are available, amounts advanced need not be limited to the claims and expenses paid to date by the affected guaranty association.
 - (ii) Notwithstanding Subsection (2)(c)(i), the liquidator may not distribute distributable assets to an affected guaranty association in excess of the anticipated entire claims of the affected guaranty association falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and 31A-27a-701(2)(c).
- (3)
 - (a) Within 180 days after the day on which an order of liquidation is entered by the receivership court, and at least annually after that date, the liquidator shall:
 - (i) apply to the receivership court for approval to make early access payments out of the general assets of the insurer to an affected guaranty association having an obligation arising in connection with the liquidation; or
 - (ii) report that the liquidator has determined that there are no distributable assets at that time based on financial reporting as required in Section 31A-27a-117.
 - (b) The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.
- (4) Within 60 days after the day on which the receivership court approves an application under Subsection (3), the liquidator shall make an early access payment to an affected guaranty association as indicated in the approved application.
- (5)
 - (a) Notice of each application for early access payments, or of a report required pursuant to this section, shall be given in accordance with Section 31A-27a-107 to the affected guaranty associations.

- (b) Notwithstanding Section 31A-27a-107, the liquidator shall provide the affected guaranty associations described in Subsection (5)(a) with at least 30 days actual notice of the filing of the application with a complete copy of the application before any action by the receivership court.
- (c) An affected guaranty association may:
 - (i) request additional information from the liquidator, who may not unreasonably deny the request; and
 - (ii) object as provided in Section 31A-27a-107 to:
 - (A) any part of each application; or
 - (B) any report filed by the liquidator pursuant to this section.
- (6) In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time of the application, provide at a minimum:
 - (a) to the extent necessary and appropriate, the amount reserved for:
 - (i) the entire expenses of the liquidation through and after the liquidation's closure; and
 - (ii) distributions on claims falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and (2)(c);
 - (b) the calculation of distributable assets;
 - (c) the amount and method of equitable allocation of early access payments to each affected guaranty association; and
 - (d) the most recent financial information filed with the receivership court by the liquidator.
- (7)
 - (a) Each affected guaranty association that receives a payment pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay:
 - (i) a claim of a secured creditor; or
 - (ii) a claim falling within the priority classes of claims established in Subsection 31A-27a-701(2)(a), (2)(b), or (2)(c).
 - (b) A bond may not be required of an affected guaranty association.
- (8) Without the consent of an affected guaranty association or an order of the receivership court, the liquidator may not offset the amount to be disbursed to the affected guaranty association by the amount of any special deposit, any other statutory deposit, or any asset of the insolvent insurer held in that state unless the affected guaranty association actually receives the deposit or asset.

Enacted by Chapter 309, 2007 General Session

31A-27a-705 Unclaimed and withheld funds.

- (1)
 - (a) If any funds of the receivership estate remain unclaimed after the final distribution under Section 31A-27a-703, the funds shall be placed in a segregated unclaimed funds account held by the commissioner.
 - (b) If the owner of any of the funds described in Subsection (1)(a) presents proof of ownership satisfactory to the commissioner within two years after the day on which the delinquency proceeding terminates, the commissioner shall remit the funds to the owner.
 - (c) The interest earned on funds held in the unclaimed funds account may be used to pay any administrative costs related to the handling or return of unclaimed funds.
- (2)

- (a) If any amounts held in the unclaimed funds account remain unclaimed for two years after the day on which the delinquency proceeding terminates, the commissioner may file a motion for an order directing the disposition of the funds in the court in which the delinquency proceeding was pending.
- (b) Any costs incurred in connection with the motion made under this Subsection (2) may be paid from the unclaimed funds account.
- (c) A motion under this Subsection (2) shall identify:
 - (i) the name of the insurer;
 - (ii) the names and last-known addresses of the one or more persons entitled to the unclaimed funds, if known; and
 - (iii) the amount of the funds.
- (d) Notice of the motion shall be given as directed by the court.
- (e) Upon a finding by the court that the funds have not been claimed within two years after the day on which the delinquency proceeding terminates:
 - (i) the court shall order that a claim for unclaimed funds, and any interest earned on the claim that has not been expended under Subsection (1), is abandoned; and
 - (ii) the funds shall be disbursed under one of the following methods, the amounts may be:
 - (A) deposited in the general receivership expense account under Subsection (3);
 - (B) transferred to the state treasurer and deposited into the General Fund; or
 - (C)
 - (I) used to reopen the receivership in accordance with Section 31A-27a-803; and
 - (II) distributed to the known claimants with approved claims.
- (3) The commissioner may establish an account for the following purposes:
 - (a) to pay general expenses related to the administration of receiverships; or
 - (b) to advance funds to a receivership that does not have sufficient cash to pay its operating expenses.
- (4) Any advance to a receivership estate under Subsection (3)(b) may be treated:
 - (a) as a claim under Section 31A-27a-701 as may be agreed at the time the advance is made; or
 - (b) in the absence of an agreement described in Subsection (4)(a), in a priority determined to be appropriate by the receivership court.
- (5) If the commissioner determines at any time that the funds in the account created in Subsection (3) exceed the amount required, the commissioner may transfer the funds or any part of the funds to the state treasurer, and the transferred funds shall be deposited into the General Fund.

Enacted by Chapter 309, 2007 General Session