

31A-27a-612 Administration of deductible policies and insured collateral.

(1) As used in this section:

- (a) "Collateral" means any of the following that secures an insured's obligation to pay or to reimburse the insurer for deductible claim payments and to reimburse or pay to the insurer other secured obligations:
 - (i) cash;
 - (ii) a letter of credit of the insured;
 - (iii) a surety bond posted by the insured; or
 - (iv) any other form of security posted by the insured.
- (b) "Deductible claim" means a claim, including a loss or allocated loss adjustment expense, under a deductible policy within the insured's obligation to pay a portion of a claim or claim expense that the insurer is obligated to pay to a person other than the insured by the deductible policy or by operation of law.
- (c)
 - (i) "Deductible limit" means a limit on an amount to be paid or reimbursed by the insured under a deductible policy that is equal to or greater than \$5,000.
 - (ii) A deductible limit may be any amount of the risk exposure before the insurer agrees to become liable for the insurance risk without a right of recoupment from the insured for the insurer's payment of claims or expenses related to a claim under the deductible policy.
- (d)
 - (i) "Deductible policy" means any combination of one or more policies, endorsements, contracts, or security agreements in which the insured agrees with the insurer to:
 - (A) pay directly:
 - (I) the initial portion of a claim under the policy, endorsement, contract, or agreement up to a specified dollar amount; or
 - (II) the expenses related to a claim; or
 - (B) reimburse the insurer for the insurer's payment of:
 - (I) a claim under the policy, endorsement, contract, or agreement up to a specified dollar amount; or
 - (II) the expenses related to a claim.
 - (ii) "Deductible policy" includes a policy, endorsement, contract, or agreement that contains an aggregate limit on the insured's liability for all deductible claims in addition to a deductible limit for each claim.
 - (iii) "Deductible policy" does not include:
 - (A) a policy, endorsement, contract, or agreement that provides that the initial portion of a covered claim shall be self-insured and the insurer has no payment obligation within the self-insured retention;
 - (B) a policy, endorsement, contract, or agreement that provides for retrospectively rated premium payments by the insured; or
 - (C) a reinsurance arrangement or agreement.
- (e) "Other secured obligation" means an obligation, such as a reinsurance or retrospective premium obligation, that is:
 - (i) payable by the insured to the insurer; and
 - (ii) secured by collateral that also secures a deductible obligation.
- (f) "Uncovered claim" means a deductible claim that is secured by collateral but that:
 - (i) is not defined as a covered claim under any relevant guaranty association statute;
 - (ii) the insured fails to fund or pay; and
 - (iii) is filed with the receiver pursuant to the receivership proof of claim process.

- (2)
- (a) If an insurer agrees to allow an insured to fund or pay deductible claims directly or through a third party administrator, except as prohibited by applicable workers' compensation insurance law:
 - (i) the insured shall fulfill the insured's obligations notwithstanding a delinquency proceeding; and
 - (ii) the receiver shall allow the funding or payment agreements to continue notwithstanding a delinquency proceeding.
 - (b) To the extent the insured funds or pays a deductible claim, the insured's funding or payment of a deductible claim:
 - (i) bars any deductible claim in a delinquency proceeding including a claim by the insured or third party claimant; and
 - (ii) extinguishes the obligation, if any, of the receiver or an affected guaranty association to pay the deductible claim.
 - (c) The insured is responsible for providing timely notice to the receiver and to all affected guaranty associations for any claim that may exceed the deductible limit.
 - (d) A charge of any kind may not be made against a receiver or an affected guaranty association on the basis of an insured's funding or payment of a deductible claim.
 - (e) The failure of an insured to fulfill the insured's obligation pursuant to a funding agreement entitles the following to the full benefit of all collateral and other rights of recovery and reimbursement under the other provisions of this section:
 - (i) the receiver that pays a deductible claim; or
 - (ii) pursuant to Subsection (6)(b), an affected guaranty association that pays a deductible claim.
- (3) Any reimbursement owed to an insurer under a deductible policy issued by an insurer subject to a delinquency proceeding shall be administered as follows:
- (a)
 - (i) A reimbursement from an insured for the payment of a deductible claim is a general asset of the estate to the extent that:
 - (A) the insolvent insurer is owed reimbursement for deductible payments made before the entry of a final order of liquidation; or
 - (B) the receiver is owed reimbursement for a deductible payment.
 - (ii) The receiver shall determine if a reimbursement is a general asset of the estate in accordance with this section.
 - (b) The receiver shall bill an insured for reimbursement of a deductible claim:
 - (i) paid by the insurer before the commencement of delinquency proceedings;
 - (ii) paid by an affected guaranty association upon receipt of notice of a reimbursable payment; or
 - (iii) paid or allowed by the receiver.
 - (c) The receiver may take all commercially reasonable actions necessary to collect a reimbursement owed if the insured does not make payment within:
 - (i) the time specified in the deductible policy; or
 - (ii) within 60 days after the day of billing if no time is specified in the deductible policy.
 - (d) The following is not a defense to the insured's reimbursement obligation under a deductible policy:
 - (i) the insolvency of the insurer;
 - (ii) the insurer's inability to perform any of the insurer's obligations under a deductible policy; or
 - (iii) an allegation of improper handling or payment of a deductible claim by:
 - (A) the insurer;

- (B) the receiver;
 - (C) an affected guaranty association; or
 - (D) any combination of Subsections (3)(d)(iii)(A) through (C).
- (4) The receiver shall adjust and pay uncovered claims as provided in Subsection (5). The receiver's obligation under this Subsection (4) terminates once all available collateral is exhausted. Once all available collateral is exhausted, any unpaid uncovered claims shall continue to be handled as a proof of claim in the receivership estate.
- (5)
- (a)
 - (i) Except where a deductible policy or other agreement conflicts with this section, any collateral held by an insurer subject to a delinquency proceeding under this chapter held under a deductible policy issued by the insurer, held for other secured obligations, or held under both shall be maintained and administered in accordance with:
 - (A) the deductible policy;
 - (B) any applicable security agreement;
 - (C) any agreement regarding other secured obligations; or
 - (D) any applicable combination of the deductible policy and other agreement.
 - (ii) This Subsection (5) applies to collateral regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer under a deductible policy, agreement, or other secured obligation.
 - (b)
 - (i) Subject to this Subsection (5), collateral shall be used to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations under Subsection (8).
 - (ii) Collateral shall be considered as property of the receivership estate solely for the purpose of the receiver administering and handling the collateral.
 - (iii) Collateral may not be considered as a general asset of the estate, except as provided in Subsections (5)(c) and (8).
 - (c)
 - (i) Subject to Subsection (5)(c)(ii), collateral held to secure the insured's performance of obligations is a general asset of the estate to the extent that:
 - (A) the insurer pays or has paid a deductible claim before the day on which a final order of liquidation is entered and the deductible is not reimbursed by the insured;
 - (B) the receiver pays or has paid a deductible claim; or
 - (C) the insured fails to pay or reimburse to the insurer other secured obligations to the extent the payment or reimbursement is due or payable before the day on which a final order of liquidation is entered and remains unpaid.
 - (ii) The receiver shall determine the extent that collateral described in this Subsection (5)(c) is a general asset.
 - (d) The receiver shall draw down collateral to the extent necessary if the insured fails to:
 - (i) perform the insured's funding or payment obligations under any deductible policy;
 - (ii) pay deductible reimbursements within:
 - (A) the time specified in the deductible policy; or
 - (B) 60 days after the date of the billing if no time is specified in the deductible policy;
 - (iii) timely fund any other secured obligation; or
 - (iv) timely pay expenses defined in Subsection (8).
 - (e)

- (i) The receiver shall first apply or reserve collateral to the insured's obligations referenced in Subsections (5)(c)(i)(A) and (C).
 - (ii) The receiver shall use any collateral remaining after the application of Subsection (5)(e)(i) to:
 - (A) reimburse deductible claims submitted by an affected guaranty association;
 - (B) adjust and pay uncovered claims allowed by the liquidator;
 - (C) pay other secured obligations of the insured that become due and payable after the date of liquidation; or
 - (D) pay expenses as defined in Subsection (8).
 - (iii) The receiver shall:
 - (A) use collateral under Subsection (5)(e)(ii) in the order that the deductible claims or charges against the collateral listed in Subsection (5)(e)(ii) are received and accepted by the receiver; and
 - (B) continue until all valid deductible claims or charges are fully reimbursed or paid or the collateral is exhausted.
 - (iv) If there are amounts payable or reimbursable under this Subsection (5)(e) and the receiver for any reason has been precluded from drawing the collateral, the receiver may establish a reserve against the collateral for those amounts. Only the collateral exceeding the reserve shall be considered remaining collateral under this Subsection (5)(e).
 - (f) Once all claims, other secured obligations, or expenses under Subsection (8) covered by collateral have been paid and the receiver is satisfied that no new claims, other secured obligations, or expenses under Subsection (5)(e) may be presented, the receiver shall release any remaining collateral to the insured in accordance with the deductible policy or agreement relating to other secured obligations.
- (6) To the extent an affected guaranty association pays a deductible claim for which the insurer would have been entitled to reimbursement from the insured, the following provisions apply:
- (a)
 - (i) When an affected guaranty association pays a deductible claim, the affected guaranty association shall report the claim to the receiver.
 - (ii) The receiver shall collect from the insured all deductible amounts due as reimbursement. Subject to Subsection (8), when the insured reimbursements are collected, the receiver shall reimburse the affected guaranty association for deductible claims.
 - (iii) A reimbursement paid to the affected guaranty association pursuant to this Subsection (6)(a) may not be treated as a distribution under Section 31A-27a-703 or as an early access payment under Section 31A-27a-704.
 - (iv) If an affected guaranty association pays a deductible claim that is also subject to reimbursement under statutory net worth provisions, the affected guaranty association shall:
 - (A) bill the insured directly;
 - (B) notify the insurer of the payment; and
 - (C) notify the receiver of any receipt of a reimbursement under net worth provisions, which shall be credited against the insured's deductible reimbursement obligations to the extent that the reimbursement applies to deductible claims.
 - (b)
 - (i) This Subsection (6)(b) applies if:
 - (A) the receiver declines to seek reimbursement from the insured or from any available collateral;
 - (B) the receiver is unsuccessful in obtaining reimbursement from the insured or from any available collateral; or

- (C) the receiver fails to take available commercially reasonable actions to collect a reimbursement owed.
 - (ii) The receiver shall notify an affected guaranty association if the receiver declines to seek or is unsuccessful in obtaining reimbursement from the insured or from any available collateral.
 - (iii) If a condition described in Subsection (6)(b)(i) exists, notwithstanding whether the affected guaranty association receives the notice required by Subsection (6)(b)(ii), an affected guaranty association:
 - (A) may, after notice to the receiver, collect a reimbursement due from the insured for the deductible claims the affected guaranty association has paid:
 - (I) on the same basis as the receiver; and
 - (II) with the same rights and remedies; and
 - (B) shall report any amounts collected under Subsection (6)(b)(iii)(A) from each insured to the receiver.
 - (iv) The receiver shall provide an affected guaranty association with available information needed to collect a reimbursement due from the insured.
 - (v) When an affected guaranty association undertakes to collect reimbursements from the insured, the affected guaranty association shall notify all other guaranty associations who have paid deductible claims on behalf of the same insured that this action is being taken.
 - (vi) An amount collected by the affected guaranty association pursuant to this Subsection (6)(b) may not be treated as a distribution under Section 31A-27a-703 or as an early access payment under Section 31A-27a-704.
 - (vii) An affected guaranty association may net an expense incurred in collecting a reimbursement against that reimbursement.
 - (c) The receiver shall provide any affected guaranty associations with periodic reports concerning the receiver's activities in discharging responsibilities under this section, which shall include an accounting for the receiver's deductible billing and collection activities.
 - (d) To the extent that an affected guaranty association pays a deductible claim that is not reimbursed either from collateral or by insured payments, the affected guaranty association has a claim for those amounts in the delinquency proceeding. Any claim by an affected guaranty association shall be reduced by reimbursed or unreimbursed expenses described in Subsection (8) incurred by the receiver.
 - (e)
 - (i) If any collateral is held under a deductible policy at the time the receiver files an application to terminate the delinquency proceeding, and it appears that an additional deductible claim may be payable by an affected guaranty association under the deductible policy, the receiver shall:
 - (A) transfer to an affected guaranty association the portion of the collateral that is reasonably estimated to be necessary to pay the deductible claim; and
 - (B) release any remaining portion of the collateral to the insured.
 - (ii) An affected guaranty association shall handle any collateral transferred from the receiver as provided in this section.
 - (f) Nothing in this Subsection (6) limits any rights of the receiver or an affected guaranty association under applicable statutory law to obtain reimbursement from an insured for a claims payment made by the affected guaranty association under a policy of the insurer or for the affected guaranty association's related expenses.
- (7)
- (a) The receiver shall periodically adjust the collateral being held using accepted actuarial principles and practices.

- (b) The receiver may impose a discretionary safety margin for collateral maintained.
 - (c) The receiver may not be required to review collateral more than once a year.
 - (d) The receiver shall inform any affected guaranty association and the insured of any collateral reviews, including the basis for any proposed adjustment.
- (8) The receiver may do the following in relation to reasonable expenses incurred in fulfilling the receiver's responsibilities under this section:
- (a) deduct the expense from reimbursements;
 - (b) deduct the expense from the collateral; or
 - (c) recover the expense through billings to the insured.
- (9)
- (a) A receiver shall meet the receiver's obligations under this section in a timely manner.
 - (b) If an affected guaranty association believes that a receiver is not meeting an obligation under this section in a timely manner, upon motion by an affected guaranty association, a receivership court may grant relief to the affected guaranty association if the receivership court finds that the receiver is not meeting an obligation under this section in a timely manner.
- (10) This section modifies Subsection 31A-22-1010(2)(b) to the extent necessary to permit an insured to participate in the payment of the insurance claims and losses by reimbursement of a receiver or affected guaranty association as provided in this section.

Enacted by Chapter 309, 2007 General Session