

**38-11-205 Subrogation.**

- (1)
  - (a)
    - (i) The state, on behalf of the fund, has the right of subrogation only to the extent of payments made from the fund.
    - (ii) Upon payment from the fund to a claimant, any payment to the claimant that was the basis of the claimant's claim against the fund shall be assigned to the fund for the enforcement of subrogation rights by the attorney general.
    - (iii) A claimant's judgment or bankruptcy claim against the nonpaying party shall be automatically assigned to the state, to the extent paid by the fund on a particular residence, upon the state's filing of the director's order of payment of claim with the appropriate court.
  - (b) The state's right of subrogation under Subsection (1)(a) has priority over any rights of the qualified beneficiary under the judgment or any civil penalties imposed.
  - (c) The state shall be awarded attorney's fees and court costs incurred in recovering claims paid from the fund.
- (2)
  - (a) The attorney general shall enforce all subrogation claims and may contract with private attorneys as necessary to adequately enforce subrogation claims.
  - (b)
    - (i) In addition to the subrogation claims the attorney general may seek a civil fine of \$5,000 per residence for failure to reimburse the Residence Lien Recovery Fund within 90 days after any disbursement from the fund resulting from the registrant's failure to pay qualified beneficiaries under this chapter.
    - (ii) All claims under the judgment have priority over the civil penalty.
- (3) The attorney general may charge the fund for costs incurred by the attorney general under this chapter.

Amended by Chapter 193, 1999 General Session