

**5/205.1. Policyholder collateral, deductible reimbursements, and other policyholder obligations**

§ 205.1. Policyholder collateral, deductible reimbursements, and other policyholder obligations.

(a) Any collateral held by, for the benefit of, or assigned to the insurer or the Director as rehabilitator or liquidator to secure the obligations of a policyholder under a deductible agreement shall not be considered an asset of the estate and shall be maintained and administered by the Director as rehabilitator or liquidator as provided in this Section and notwithstanding any other provision of law or contract to the contrary.

(b) If the collateral is being held by, for the benefit of, or assigned to the insurer or subsequently the Director as rehabilitator or liquidator to secure obligations under a deductible agreement with a policyholder, subject to the provisions of this Section, the collateral shall be used to secure the policyholder's obligation to fund or reimburse claims payment within the agreed deductible amount.

(c) If a claim that is subject to a deductible agreement and secured by collateral is not covered by any guaranty association or the Illinois Insurance Guaranty Fund and the policyholder is unwilling or unable to take over the handling and payment of the non-covered claims, the Director as rehabilitator or liquidator shall adjust and pay the non-covered claims utilizing the collateral but only to the extent the available collateral after allocation under subsection (d), is sufficient to pay all outstanding and anticipated claims. If the collateral is exhausted and the insured is not able to provide funds to pay the remaining claims within the deductible after all reasonable means of collection against the insured have been exhausted, the Director's obligation to pay such claims from the collateral as the rehabilitator or liquidator terminates, and the remaining claims shall be claims against the insurer's estate subject to complying with other provisions in this Article for the filing and allowance of such claims. When the liquidator determines that the collateral is insufficient to pay all additional and anticipated claims, the liquidator may file a plan for equitably allocating the collateral among claimants, subject to court approval.

(d) To the extent that the Director as rehabilitator or liquidator is holding collateral provided by a policyholder that was obtained to secure a deductible agreement and to secure other obligations of the policyholder to pay the insurer, directly or indirectly, amounts that become assets of the estate, such as reinsurance obligations under a captive reinsurance program or adjustable premium obligations under a retrospectively rated insurance policy where the premium due is subject to adjustment based upon actual loss experience, the Director as rehabilitator or liquidator shall equitably allocate the collateral among such obligations and administer the collateral allocated to the deductible agreement pursuant to this Section. With respect to the collateral allocated to obligations under the deductible agreement, if the collateral secured reimbursement obligations under more than one line of insurance, then the collateral shall be equitably allocated among the various lines based upon the estimated ultimate exposure within the deductible amount for each line. The Director as rehabilitator or liquidator shall inform the

guaranty association or the Illinois Insurance Guaranty Fund that is or may be obligated for claims against the insurer of the method and details of all the foregoing allocations.

(e) Regardless of whether there is collateral, if the insurer has contractually agreed to allow the policyholder to fund its own claims within the deductible amount pursuant to a deductible agreement, either through the policyholder's own administration of its claims or through the policyholder providing funds directly to a third party administrator who administers the claims, the Director as rehabilitator or liquidator shall allow such funding arrangement to continue and, where applicable, will enforce such arrangements to the fullest extent possible. The funding of such claims by the policyholder within the deductible amount will act as a bar to any claim for such amount in the liquidation proceeding, including but not limited to any such claim by the policyholder or the third party claimant. The funding will extinguish both the obligation, if any, of any guaranty association or the Illinois Insurance Guaranty Fund to pay such claims within the deductible amount, as well as the obligations, if any, of the policyholder or third party administrator to reimburse the guaranty association or the Illinois Insurance Guaranty Fund. No charge of any kind shall be made by the Director as rehabilitator or liquidator against any guaranty association or the Illinois Insurance Guaranty Fund on the basis of the policyholder funding of claims payment made pursuant to the mechanism set forth in this subsection.

(f) If the insurer has not contractually agreed to allow the policyholder to fund its own claims within the deductible amount, to the extent a guaranty association or the Illinois Insurance Guaranty Fund is required by applicable state law to pay any claims for which the insurer would be or would have been entitled to reimbursement from the policyholder under the terms of the deductible agreement and to the extent the claims have not been paid by a policyholder or third party, the Director as rehabilitator or liquidator shall promptly bill the policyholder for such reimbursement and the policyholder will be obligated to pay such amount to the Director as rehabilitator or liquidator for the benefit of the guaranty association or the Illinois Insurance Guaranty Fund that paid such claims. Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the deductible agreement, shall be a defense to the policyholder's reimbursement obligation under the deductible agreement. When the policyholder reimbursements are collected, the Director as rehabilitator or liquidator shall promptly reimburse the guaranty association or the Illinois Insurance Guaranty Fund for claims paid that were subject to the deductible. If the policyholder fails to pay the amounts due within 60 days after such bill for such reimbursements is due, the Director as rehabilitator or liquidator shall use the collateral to the extent necessary to reimburse the guaranty association or the Illinois Insurance Guaranty Fund, and, at the same time, may pursue other collections efforts against the policyholder. If more than one guaranty association or the Illinois Insurance Guaranty Fund has a claim against the same collateral and the available collateral (after allocation under subsection (d)), along with billing and collection efforts, are together insufficient to pay each guaranty association or the Illinois Insurance Guaranty Fund in full, then the Director as rehabilitator or liquidator will prorate payments to each guaranty association or the Illinois Insurance Guaranty Fund based upon the relationship the amount of claims each guaranty association or the Illinois Insurance Guaranty Fund has paid bears to the total of all claims paid by such guaranty association or the Illinois Insurance Guaranty Fund.

(g) Director's duties and powers as rehabilitator or liquidator.

(1) The Director as rehabilitator or liquidator is entitled to deduct from reimbursements owed to guaranty associations or the Illinois Insurance Guaranty Fund or collateral to be returned to a policyholder reasonable actual expenses incurred in fulfilling the responsibilities under this provision, not to exceed 3% of the collateral or the total deductible reimbursements actually collected by the Director as rehabilitator or liquidator.

(2) With respect to claim payments made by any guaranty association or the Illinois Insurance Guaranty Fund, the Director as rehabilitator or liquidator shall promptly provide the court, with a copy to the guaranty associations or the Illinois Insurance Guaranty Fund, with a complete report of the Director's deductible billing and collection activities as rehabilitator or liquidator including copies of the policyholder billings when rendered, the reimbursements collected, the available amounts and use of collateral for each policyholder, and any pro-ration of payments when it occurs. If the Director as rehabilitator or liquidator fails to make a good faith effort within 120 days of receipt of claims payment reports to collect reimbursements due from a policyholder under a deductible agreement based on claim payments made by one or more guaranty associations or the Illinois Insurance Guaranty Fund, then after such 120 day period such guaranty associations or the Illinois Insurance Guaranty Fund may pursue collection from the policyholders directly on the same basis as the Director as rehabilitator or liquidator, and with the same rights and remedies, and will report any amounts so collected from each policyholder to the Director as rehabilitator or liquidator. To the extent that guaranty associations or the Illinois Insurance Guaranty Fund pay claims within the deductible amount, but are not reimbursed by either the Director as rehabilitator, liquidator, or conservator under this Section or by policyholder payments from the guaranty associations' or the Illinois Insurance Guaranty Fund's own collection efforts, the guaranty association or the Illinois Insurance Guaranty Fund shall have a claim in the insolvent insurer's estate for such unreimbursed claims payments.

(3) The Director as rehabilitator or liquidator shall periodically adjust the collateral being held as the claims subject to the deductible agreement are run-off, provided that adequate collateral is maintained to secure the entire estimated ultimate obligation of the policyholder plus a reasonable safety factor, and the Director as rehabilitator or liquidator shall not be required to adjust the collateral more than once a year. The guaranty associations or the Illinois Insurance Guaranty Fund shall be informed of all such collateral reviews, including but not limited to the basis for the adjustment. Once all claims covered by the collateral have been paid and the Director as rehabilitator or liquidator is satisfied that no new claims can be presented, the Director as rehabilitator or liquidator will release any remaining collateral to the policyholder.

(h) The Illinois Circuit Court having jurisdiction over the liquidation proceedings shall have jurisdiction to resolve disputes arising under this provision.

(i) Nothing in this Section is intended to limit or adversely affect any right the guaranty associations or the Illinois Insurance Guaranty Fund may have under applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by such guaranty associations or the Illinois Insurance Guaranty Fund under policies of the insolvent insurer, or for related expenses the guaranty associations or the Illinois Insurance Guaranty Fund

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(j) This Section applies to all receivership proceedings under Article XIII that either (1) commence on or after the effective date of this amendatory Act of the 93rd General Assembly or (2) are on file or open on the effective date of this amendatory Act of the 93rd General Assembly and in which an Order of Liquidation is entered on or after May 1, 2004. However, this Section applies to rehabilitation proceedings only to the extent that guaranty associations are required to pay claims and does not apply to receivership proceedings in which only an order of conservation has been entered.

(k) For purposes of this Section, a "deductible agreement" is any combination of one or more policies, endorsements, contracts, or security agreements, which provide for the policyholder to bear the risk of loss within a specified amount per claim or occurrence covered under a policy of insurance, and may be subject to the aggregate limit of policyholder reimbursement obligations. This Section shall not apply to first party claims, or to claims funded by a guaranty association or the Illinois Insurance Guaranty Fund in excess of the deductible unless subsection (e) above applies. The term "non-covered claim" shall mean a claim that is subject to a deductible agreement and is not covered by a guaranty association or the Illinois Insurance Guaranty Fund.