

Article - Insurance

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§9-407.1.

(a) At any time within 180 days after the date of an order of liquidation, the Corporation may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the Corporation, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Corporation.

(b) Any assumption under subsection (a) of this section is effective as of the date of the order of liquidation.

(c) The election shall be effected by the Corporation or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(d) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available on request to the Corporation or to the National Organization of Life and Health Insurance Guaranty Associations on its behalf as soon as possible after commencement of formal delinquency proceedings:

(1) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether the contracts should be assumed; and

(2) notices of any defaults under the reinsurance contracts or any known event or condition that, with the passage of time, could become a default under the reinsurance contracts.

(e) (1) This subsection applies to reinsurance contracts assumed by the Corporation.

(2) The Corporation is responsible for all unpaid premiums due under a reinsurance contract assumed by the Corporation for periods both before and after the date of the order of liquidation, and is responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the Corporation.

(3) The Corporation may charge policies or annuities covered in part by the Corporation, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Corporation and shall provide notice and an accounting of these charges to the liquidator.

(4) The Corporation is entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods

after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Corporation, if on receipt of any amounts payable, the Corporation is obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(i) the amount received by the Corporation; and

(ii) the excess of the amount received by the Corporation over the amount equal to the benefits paid by the Corporation on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(f) (1) (i) Within 30 days after the Corporation's election, the Corporation and each reinsurer under contracts assumed by the Corporation shall calculate the net balance due to or from the Corporation under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Corporation.

(ii) The calculation under subparagraph (i) of this paragraph shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date.

(2) Within 5 days after the completion of the calculation under paragraph (1) of this subsection, the reinsurer shall pay the receiver any amounts due for losses or events before the date of the order of liquidation, subject to any setoff for premiums unpaid for periods before the date, and the Corporation or reinsurer shall pay any remaining balance due the other, in each case.

(3) Any disputes over the amounts due to either the Corporation or the reinsurer shall be resolved by arbitration under the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law.

(4) If the receiver has received any amounts due to the Corporation under subsection (e)(4) of this section, the receiver shall remit those amounts to the Corporation as promptly as practicable.

(g) If the Corporation or receiver, on the Corporation's behalf, within 60 days after the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the Corporation, the reinsurer is not entitled to:

(1) terminate the reinsurance contracts for failure to pay premiums for the reinsurance contracts that relate to policies or annuities covered, in whole or in part, by the Corporation; or

(2) set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Corporation, against amounts due the Corporation.

(h) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until 180 days after the date of the order of liquidation:

(1) (i) neither the Corporation nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Corporation has the right to assume under subsections (a) through (g) of this section, whether for periods before or after the date of the order of liquidation; and

(ii) the reinsurer, the receiver, and the Corporation shall, to the extent practicable, provide each other data and records reasonably requested; and

(2) if the Corporation has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subsections (a) through (g) of this section.

(i) If the Corporation does not elect to assume a reinsurance contract by the election date under subsections (a) through (g) of this section, the Corporation shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(j) When policies or annuities, or covered obligations with respect to policies or annuities, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Corporation, in the case of contracts assumed under subsections (a) through (g) of this section, if:

(1) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred does not cover any new policies of insurance or annuities in addition to those transferred;

(2) the obligations described in subsections (a) through (g) of this section no longer apply with respect to matters arising after the effective date of the transfer; and

(3) notice is given in writing, return receipt requested, by the transferring party to the affected reinsurer at least 30 days before the effective date of the transfer.

(k) (1) The provisions of this section supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person.

(2) The receiver remains entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods before the date of the order of liquidation, subject to applicable setoff provisions.

(l) (1) Except as otherwise provided in this section, this section does not alter or modify the terms and conditions of any reinsurance contract.

(2) This section does not:

(i) abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract;

(ii) give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(iii) limit or affect the Corporation's rights as a creditor of the estate against the assets of the estate; or

(iv) apply to reinsurance agreements covering property or casualty risks.

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