

40-3633. Mutual debts and mutual credits; setoff; accounting statements; debts currently due and payable. (a) Mutual debts or mutual credits whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this act, shall be setoff and the balance only shall be allowed or paid, except as provided in subsections (b) and (c) of this section.

(b) No setoff, except as provided in K.S.A. 40-3602, and amendments thereto, shall be allowed in favor of any person where:

(1) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(2) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(3) the obligation of the insurer is owed to an affiliate of such person, or any other entity or association other than the person;

(4) the obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;

(5) the obligations of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(6) the obligations between the person and the insurer arise out of transactions where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(c) The receiver shall provide persons with accounting statements identifying debts which are currently due and payable. Accounts currently due and payable as identified by such accounting statements shall be promptly paid to the receiver. However, persons making such payments may setoff against such payments mutual credits currently due and payable by the insurer and may assert setoff of mutual credits which become due and payable from the insurer in the future. Notwithstanding K.S.A. 40-3641, the receiver shall promptly and fully refund to the extent of the person's prior payments any mutual credits so asserted that may become due and payable to the person by the insurer.

(d) This section shall apply to all contracts entered into, renewed, extended or amended on or after the effective date of this act.

History: L. 1991, ch. 125, § 29; July 1.