**Section 1070.40 Disposition of Security**

a) For purposes of this Section, the following definitions shall apply:

"Claim" − a demand for something rightfully or allegedly due.

"Claimant" − person or persons making claim.

"Default" − failure to make a payment when due.

"Department" − Department of Driver Services within the Office of the Secretary of State.

"Discharged in Bankruptcy" − a legal order for release from a debt or debts.

"Installment Agreement" − agreement to pay debt in payments pursuant to Section 7-208 of the Illinois Safety and Family Financial Responsibility Law.

"Judgment Creditor" − person who is owed money due to a court judgment in the person's favor.

"Proper Notice" − notice provided by, but not limited to any of the following: Petition in Bankruptcy; Notice of Meeting of Creditors; Schedule A-3 of Schedule of Creditors; Trustee Report of No Assets; Discharge of Bankruptcy; Notice of Automatic Stay; Chapter 13 Wage Earner Plan.

"Release" − to give up or surrender a claim.

"Security" − deposit made to satisfy any potential judgment or judgments for money damages following an accident as provided in Section 7-201 of the Illinois Safety and Family Financial Responsibility Law.

b) If a person has security deposited with the Department and the Department subsequently receives proper notice that the person has filed a petition for bankruptcy, then the Department shall forward the posted security directly to the bankruptcy court for disbursement during the normal course of the bankruptcy proceedings, and so provide notification to the debtor.

c) If a person has security deposited with the Department and the claim for which the security was deposited has been discharged in bankruptcy without proper notice having been provided the Department, then upon application by the depositor, the security shall be refunded to the depositor if the Department receives documentation representing that the claim for which the security was deposited has been discharged, or the bankruptcy court's order of discharge listing the discharged parties and claim.

d) A person posting a security who wishes to have the security released to a party or parties other than himself/herself shall provide to the Department a notarized letter directing payment to the claimants. The person who is to receive the deposit shall send to the Department a notarized release for the amount of the deposit before payment will be made.

e) A security deposit shall be released by the Department after the Department receives a court order directing payment as provided in Section 7-214 of the Illinois Safety and Family Financial Responsibility Law [625 ILCS 5/7-214].

f) If a security deposit is refunded because a person enters into an installment agreement and that person later defaults, the Department shall suspend that person's driving privileges and/or registration until the original amount of security is redeposited or the other requirements set forth in Section 7-208(c) of the Illinois Safety and Family Financial Responsibility Law are met.

g) A security deposit shall be refunded if the Department receives a notice of rescind of certification from the Illinois Department of Transportation, or an order of exoneration from the Secretary of State's Department of Administrative Hearings.

h) A security deposit shall also be refunded if the Department receives a certified court order indicating the security deposit should be refunded because the judgment has been satisfied, the case has been dismissed, or the party posting the security is not liable.

i) A security deposit shall be refunded if no legal action has been taken within 2 years after the date of the suspension or upon the expiration of the applicable statute of limitations, whichever occurs first, and the Department receives a notarized affidavit from the person depositing the security stating that to the best of the person's knowledge, the person has not been or is not being sued. To verify this, the Department shall send the claimant a letter and give the claimant 2 weeks to respond. If the claimant responds that a lawsuit has not been filed or does not respond, the Department shall close the case and refund the security deposit. If the interested party responds with a copy of the summons and complaint indicating court action has been initiated within 2 years from the date of the suspension, the security shall not be refunded to the depositor.

j) Upon application by a judgment creditor seeking to obtain a security deposit, the Department shall notify the party who deposited the security or that party's authorized representative of the receipt of the unsatisfied judgment and that the security deposited shall be used toward satisfying the judgment, unless thence notified within 14 days by the party who deposited the security that the judgment has otherwise been satisfied. If no adequate response is obtained from the person who has deposited security, then the Department shall release the deposit to the judgment creditor or the judgment creditor's authorized representative upon receipt of a certified full or partial satisfaction of judgment.

k) If the security deposit so released pursuant to an unsatisfied judgment received by the Department only comprises a partial satisfaction of judgment, the remainder shall be paid by the driver or party posting the deposit or the driver shall be suspended. The driver's driving privileges and vehicle registration shall not be restored until proof of satisfaction of judgment is submitted to the Department and future proof of financial responsibility is filed for judgments in the amount of $500 or more.

l) A surety bond shall be terminated if no legal action has been taken within 2 years after the date of a suspension, or upon the expiration of the applicable statute of limitations, if the Department receives from a person a letter for termination of a surety bond stating that to the best of that person's knowledge the person has not been or is not being sued. To verify this the Department shall send the claimant a letter and give the claimant 2 weeks to respond. If the claimant responds that a lawsuit has not been filed or does not respond, the Department shall terminate the surety bond. If the interested party responds with a copy of the summons and complaint indicating court action has been initiated within 2 years from the date of the suspension, the surety bond shall not be terminated.

m) If a judgment creditor wishes to obtain a payment from a surety bond to satisfy a judgment, the judgment creditor shall notify the Safety and Financial Responsibility Section of the Department. The Department shall send a letter to the party who purchased the surety bond and the party's authorized representative informing the party that the surety bond shall be used toward satisfying the judgment if the party does not otherwise satisfy the judgment and notify the Department within 14 days after the procedure used to satisfy the judgment. A copy of the letter shall also be sent to the judgment creditor, the judgment creditor's authorized representative, and the surety company. The Department shall thereafter make a demand on the surety company for the bond and send a copy of the letter to the judgment creditor and the judgment creditor's authorized representative. If the surety bond only comprises partial satisfaction of judgment, the remainder shall be paid by the driver or the person who posted the surety bond or the driver's license and/or registration shall be suspended. The driver's driving privileges and/or vehicle registration shall not be restored until proof of satisfaction of judgment is submitted to the Department and future proof of financial responsibility is filed for judgments in the amount of $500 or more.

n) *If, after releasing security to a judgment debtor or claimant, the balance of the security posted with the Secretary is $5 or less, the balance shall be transferred to the General Revenue Fund. The Secretary will compile a list of all security amounts of $5 or less annually in July and will certify that amount to the State Comptroller. As soon as possible after receiving the certification, the State Comptroller shall order transferred, and the State Treasurer shall transfer, the amount certified to the General Revenue Fund.* [625 ILCS 5/7-214]

(Source: Amended at 46 Ill. Reg. 4091, effective February 25, 2022)