

**Superseded 1/1/2019**

**31A-28-105 Definitions.**

As used in this part:

- (1) "Association" means the Utah Life and Health Insurance Guaranty Association continued under Section 31A-28-106.
- (2)
  - (a) "Authorized assessment" or "authorized," when used in the context of assessments, means that the board of directors passed a resolution whereby an assessment will be called immediately or in the future from member insurers for an amount set forth in the resolution.
  - (b) An assessment is authorized when the resolution is passed.
- (3) "Benefit plan" means a specific benefit plan of:
  - (a) employees;
  - (b) a union; or
  - (c) an association of natural persons.
- (4)
  - (a) "Called assessment" or "called," when used in the context of assessments, means that the association issued a notice to member insurers requiring that an authorized assessment be paid within the time frame set forth in the notice.
  - (b) All or part of an authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
- (5) "Cash surrender value" means the cash surrender value without reduction for an outstanding policy loan or surrender charge.
- (6) "Contractual obligation" means an obligation under any of the following for which coverage is provided under Section 31A-28-103:
  - (a) a policy or contract;
  - (b) a certificate under a group policy or contract; or
  - (c) a portion of a policy or contract.
- (7) "Coverage date" means the date on which the association becomes responsible for the obligations of a member insurer.
- (8) "Covered policy" means any of the following for which coverage is provided in Section 31A-28-103:
  - (a) a policy or contract; or
  - (b) a portion of a policy or contract.
- (9)
  - (a) "Covered portion" means:
    - (i) for a covered policy that has a cash surrender value, a fraction calculated with:
      - (A) the numerator being the lesser of:
        - (I)
          - (Aa) \$200,000 for a life insurance policy; and
          - (Bb) \$250,000 for a covered policy that is not a life insurance policy; or
        - (II) the cash surrender value of the policy; and
      - (B) the denominator being the cash surrender value of the policy; and
    - (ii) for a covered policy that does not have a cash surrender value, a fraction calculated with:
      - (A) the numerator being the lesser of:
        - (I)
          - (Aa) \$200,000 for a life insurance policy; or
          - (Bb) \$250,000 for a covered policy that is not a life insurance policy; or
        - (II) the policy's minimum statutory reserve; and

- (B) the denominator being the policy's minimum statutory reserve.
- (b) The cash surrender value and the minimum statutory reserve are determined as of the coverage date in accordance with the exclusions in Subsection 31A-28-103(2)(b)(iii).
- (10) "Extra-contractual claim" includes a claim relating to:
  - (a) bad faith in the payment of a claim;
  - (b) punitive or exemplary damages; or
  - (c) attorney fees and costs.
- (11) "Impaired insurer" means a member insurer that is not an insolvent insurer and:
  - (a) is considered by the commissioner to be hazardous pursuant to this title; or
  - (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (12) "Insolvent insurer" means a member insurer that is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
- (13)
  - (a) "Member insurer" means an insurer that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 31A-28-103.
  - (b) "Member insurer" includes an insurer whose license or certificate of authority in this state may have been:
    - (i) suspended;
    - (ii) revoked;
    - (iii) not renewed; or
    - (iv) voluntarily withdrawn.
  - (c) "Member insurer" does not include:
    - (i) a for-profit or nonprofit:
      - (A) hospital;
      - (B) hospital service organization; or
      - (C) medical service organization;
    - (ii) a health maintenance organization;
    - (iii) a fraternal benefit society;
    - (iv) a mandatory state pooling plan;
    - (v) a mutual assessment company or other person that operates on an assessment basis;
    - (vi) an insurance exchange;
    - (vii) an organization described in Subsection 31A-22-1305(2); or
    - (viii) an entity similar to an entity described in Subsections (13)(c)(i) through (vii).
- (14) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor to Moody's Investors Service, Inc.
- (15)
  - (a) "Owner" of a policy or contract, "policy owner," or "contract owner" means a person who:
    - (i) is identified as the legal owner under the terms of the policy or contract; or
    - (ii) is otherwise vested with legal title to the policy or contract through a valid assignment:
      - (A) completed in accordance with the terms of the policy or contract; and
      - (B) properly recorded as the owner on the books of the insurer.
  - (b) "Owner," "policy owner," or "contract owner" does not include a person with only a beneficial interest in a policy or contract.
- (16) "Person" means:
  - (a) an individual;
  - (b) a corporation;
  - (c) a limited liability company;

- (d) a partnership;
  - (e) an association;
  - (f) a governmental body or entity;
  - (g) a trust; or
  - (h) a voluntary organization.
- (17) "Plan sponsor" means:
- (a) the employer, in the case of a benefit plan established or maintained by a single employer;
  - (b) the employee organization, in the case of a benefit plan established or maintained by an employee organization; or
  - (c) the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain a benefit plan, in the case of a benefit plan established or maintained by:
    - (i) two or more employers; or
    - (ii) jointly by:
      - (A) one or more employers; and
      - (B) one or more employee organizations.
- (18)
- (a) "Premiums" means an amount or consideration received on covered policies or contracts, less:
    - (i) returned:
      - (A) premiums;
      - (B) considerations; and
      - (C) deposits; and
    - (ii) dividends and experience credits.
  - (b)
    - (i) "Premiums" does not include an amount or consideration received for:
      - (A) a policy or contract for which coverage is not provided under Subsection 31A-28-103(2); or
      - (B) the portion of a policy or contract for which coverage is not provided under Subsection 31A-28-103(2).
    - (ii) Notwithstanding Subsection (18)(b)(i), an assessable premium may not be reduced on account of:
      - (A) Subsection 31A-28-103(2)(b)(iii) relating to interest limitations; and
      - (B) Subsection 31A-28-103(3) relating to limitations for:
        - (I) one individual;
        - (II) any one participant; and
        - (III) any one contract owner.
  - (c) "Premiums" does not include premiums in excess of \$5,000,000:
    - (i) on an unallocated annuity contract not issued under a governmental retirement plan established under Section 401, 403(b), or 457, Internal Revenue Code; or
    - (ii) for multiple nongroup policies of life insurance owned by one owner:
      - (A) whether the policy owner is an individual, firm, corporation, or other person;
      - (B) whether the persons insured are officers, managers, employees, or other persons; and
      - (C) regardless of the number of policies or contracts held by the owner.
- (19)
- (a) Except as provided in Subsection (19)(b), "principal place of business" of a plan sponsor or a person other than a natural person means the single state:

- (i) in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function; and
- (ii) determined by the association in its reasonable judgment by considering the following factors:
  - (A) the state in which the primary executive and administrative headquarters of the entity are located;
  - (B) the state in which the principal office of the chief executive officer of the entity is located;
  - (C) the state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;
  - (D) the state in which the executive or management committee of the board of directors, or similar governing person, of the entity conducts the majority of its meetings;
  - (E) the state from which the management of the overall operations of the entity is directed; and
  - (F) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors described in Subsections (19)(a)(ii)(A) through (E).
- (b) Notwithstanding Subsection (19)(a), in the case of a plan sponsor, if more than 50% of the participants in the benefit plan are employed in a single state, the state where more than 50% of the participants are employed is considered to be the principal place of business of the plan sponsor.
- (c)
  - (i) The principal place of business of a plan sponsor of a benefit plan described in Subsection (3) is considered to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.
  - (ii) If for a benefit plan described in Subsection (3) there is not a specific or clear designation of a principal place of business under Subsection (19)(c)(i), the principal place of business is considered to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan.
- (20) "Receiver" means, as the context requires:
  - (a) a rehabilitator;
  - (b) a liquidator;
  - (c) an ancillary receiver; or
  - (d) a conservator.
- (21) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.
- (22)
  - (a) "Resident" means a person:
    - (i) to whom a contractual obligation is owed; and
    - (ii) who resides in this state on the earlier of the date a member insurer is an:
      - (A) impaired insurer; or
      - (B) insolvent insurer.
  - (b) A person may be a resident of only one state, which in the case of a person other than a natural person is where its principal place of business is located.
  - (c) A citizen of the United States that is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar

to the association created by this part, is considered a resident of the state of domicile of the insurer that issued the policy or contract.

(23) "State" means:

- (a) a state;
- (b) the District of Columbia;
- (c) Puerto Rico; and
- (d) a United States possession, territory, or protectorate.

(24) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for personal injury suffered by the plaintiff or other claimant.

(25) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a policy or contract for:

- (a) life;
- (b) accident and health; or
- (c) annuity.

(26) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.