

## **Part 4 Management of Insurance Corporations**

### **31A-5-401 Principal office and registered agent.**

Each domestic insurance corporation shall have its principal office and place of business in this state. By order, the commissioner may exempt a corporation from this requirement, in which case it is subject to the requirement of Section 31A-14-204. The location of a domestic insurance corporation's principal office and the existence of a registered agent are governed by Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 364, 2008 General Session

### **31A-5-401.1 Definitions.**

As used in this Part 4, Management of Insurance Corporations:

- (1) "Voting members of mutuals" and "voting members" mean persons entitled to vote at annual or special meetings of the members of a mutual, as set forth in the articles of incorporation or amendments to the articles.
- (2) Voting members of mutuals and voting members do not necessarily include policyholders of the mutual, if the articles of incorporation or amendments to the articles of incorporation so provide, and if the articles of incorporation or amendments have been approved by the commissioner after a hearing.

Amended by Chapter 90, 2004 General Session

### **31A-5-402 Shareholders' meetings.**

- (1) Sections 16-10a-701, 16-10a-702, 16-10a-705, 16-10a-721, 16-10a-724, 16-10a-726, and 16-10a-728 apply to the meetings, notices, quorums, and voting of stock corporations. Except where a greater percentage is required or allowed under this title, the articles of incorporation of domestic insurers may not require more than 50% of the shares represented for the approval of an action requiring shareholder approval.
- (2) Sections 16-10a-707 and 16-10a-720 apply to the closing of transfer books, the fixing of the record date, and the voting lists of stock corporations.
- (3) Section 16-10a-731 applies to stock corporations. The transfer of shares to a voting trust does not preclude the trustor, or trustee, from being subject to Chapter 16, Insurance Holding Companies.

Amended by Chapter 277, 1992 General Session

### **31A-5-403 Corruption in shareholders' meetings.**

No person may, in connection with any meeting of shareholders, members, or policyholders of an insurer, buy or sell a vote or proxy for money or any other thing of value, or engage in any corrupt or dishonest practice in connection with the conduct of the shareholders' meeting.

Enacted by Chapter 242, 1985 General Session

### **31A-5-404 Communications to shareholders, policyholders, and voting members -- Commissioner's attendance at meetings.**

- (1)
  - (a) Sections 16-10a-1601 through 16-10a-1604 apply to the books and records and their inspection by shareholders of stock corporations. Section 16-6a-1602 applies to the books and records and inspection rights of policyholders or voting members of mutuals. However, the inspection of the records of the names and addresses of policyholders or voting members of mutuals is permitted only to communicate with other policyholders or voting members regarding the nomination and election of candidates for the board, or for other corporate matters which may be submitted to a vote of the policyholders or voting members. No person may, directly or indirectly, use any information obtained in an inspection for any other purpose.
  - (b) Any books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.
  - (c) Any provision of this chapter or of any articles or bylaws of a mutual, which requires keeping a record of the names and addresses of policyholders entitled to vote or voting members, is complied with by keeping a record of the names of policyholders or voting members and the names and addresses of insureds or persons paying premiums. This provision requires mailing or sending of notices, reports, proposals, ballots, or other materials to policyholders or voting members of record.
- (2) Subject to Subsection (4), the commissioner may by rule prescribe that copies of specified classes of communications circulated generally by a corporation to shareholders, policyholders, or voting members be communicated to the commissioner at the same time.
- (3) Subject to Subsection (4), the commissioner may attend any shareholders', policyholders', or voting members' meeting as an observer.
- (4) Subsection (3) and, so far as it relates to communications to shareholders, Subsection (2) do not apply to stock corporations whose voting shares are owned by a single person, or whose shareholders are either members of the board or are explicitly represented on it.

Amended by Chapter 300, 2000 General Session

**31A-5-405 Meetings of mutuals and mutual policyholders' and members' voting rights.**

- (1)
  - (a) Subject to this section, Sections 16-6a-701, 16-6a-702, 16-6a-704, and 16-6a-714 apply to the meetings of members, the notice, and the voting in mutuals.
  - (b) Subject to this section and Section 31A-5-409, Section 16-6a-711 applies to the voting of members of mutuals.
- (2)
  - (a) Policyholders or voting members in all mutuals have the right to vote on:
    - (i) conversion;
    - (ii) voluntary dissolution;
    - (iii) amendment of the articles; and
    - (iv) the election of directors except public directors appointed in accordance with Subsections 31A-5-409(1) and (2).
  - (b) The mutual may adopt reasonable provisions in its bylaws to determine:
    - (i) which individual among joint policyholders may exercise a voting right; and
    - (ii) how to deal with cases where the same individual is one of several joint policyholders in various policies.

- (c) The articles of any mutual may give the policyholders or voting members additional voting rights. These articles may require a greater percentage of affirmative votes to approve an action than the statutes require.
- (3)
  - (a) The articles or bylaws shall contain rules governing voting procedures and voting eligibility consistent with Subsection (1).
  - (b) An amendment to a rule described in this Subsection (3) is not effective until at least 30 days after the rule has been filed with the commissioner.
- (4)
  - (a) The articles or bylaws may provide for regular or special meetings of the policyholders or voting members, and, if meetings are not provided for, then mail elections shall be provided for in lieu of elections at meetings.
  - (b) Notice of the time and place of regular meetings or elections shall be given to each policyholder or voting member in a reasonable manner as the commissioner approves or requires. Changes may be made by written notice mailed, properly addressed, and stamped, to the last-known address of all policyholders or voting members.
- (5)
  - (a) The articles may provide that representatives or delegates selected by the policyholders or voting members shall be from specific geographical districts or defined classes of policyholders or voting members, as determined on a reasonable basis.
  - (b) After the representative assembly has been selected by the policyholder or voting members, the assembly or the respective classes of policyholders or voting members may choose replacements for members unable to complete their terms, if the articles provide for their replacement.
  - (c) The vote of a person holding a valid proxy is treated as the vote of the policyholders or voting members who gave the proxy.

Amended by Chapter 308, 2002 General Session

**31A-5-407 Board of directors.**

- (1) Subject to this section, Sections 16-10a-801 through 16-10a-803, 16-10a-805, and 16-10a-811 apply to the board of directors of a stock corporation and Sections 16-6a-802 and 16-6a-805 apply to the governing board and trustees of mutuals.
- (2) A majority of the directors shall be residents of this state unless the commissioner is satisfied that the corporation's financial condition, management, and other circumstances give assurance that the interests of insureds and the public will not be endangered by the majority being nonresidents.
- (3) Employees and agents of a corporation that receive more than 10% of their income from the corporation, and persons related to any of them within the second degree by blood or marriage, if directors, are considered "inside directors." Inside directors may not constitute a majority of the corporation's board.
- (4) Subsections (2) and (3) and the required number of directors for committees under Subsection 31A-5-412(1) do not apply to an insurance subsidiary authorized under Subsection 31A-5-218(1), nor to a stock insurance corporation, more than 50% of whose outstanding shares entitled to vote are owned or controlled by a single person or all of whose voting shareholders are either members of or are individually represented on the board.
- (5) If the directors of a corporation are divided into classes by the articles or the bylaws, no class may contain fewer than one-third of the total number of directors. Subject to this requirement,

Section 16-10a-804 applies to the classification of directors of stock corporations. When classes of trustees or directors are provided in a mutual corporation, the terms of office of the several classes need not be uniform.

- (6) The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility, except as authorized by Section 31A-5-412.
- (7) Section 16-10a-824 applies to the determination of a quorum of directors of a stock corporation and Section 16-6a-816 applies to the determination of a quorum of trustees for a mutual, except as specifically provided otherwise in this title.
- (8)
  - (a) Sections 16-10a-820 and 16-10a-821 apply to the meetings and action without a meeting of the board of directors of stock corporations.
  - (b) Sections 16-6a-812 through 16-6a-819 apply to the meetings and notice of mutuals.
- (9) Sections 16-10a-1601 through 16-10a-1604 apply to stock corporations and Section 16-6a-1602 applies to mutuals regarding the examination of books and records of these entities.

Amended by Chapter 300, 2000 General Session

**31A-5-408 Election and removal of directors and officers of stock corporations.**

- (1) Sections 16-10a-721, 16-10a-724, and 16-10a-728 apply to the voting of shares of a stock corporation.
- (2) At each annual meeting of shareholders, the shareholders shall elect directors to hold office until the next succeeding annual election, except as provided under Subsection (3) or (4). Each director shall hold office for the term for which he is elected and until his successor is elected and qualified, if qualification is required.
- (3) Sections 16-10a-808 and 16-10a-832 apply to removal of directors and officers of a stock corporation.
- (4) Each director shall be subject to election at least once every three years.
- (5) A vacancy in the board of directors may be filled by the affirmative vote of a majority of the remaining directors even though the number of remaining directors is less than a quorum. The director elected through this process shall serve only until the next regular shareholders meeting at which a director's election may be held.

Amended by Chapter 277, 1992 General Session

**31A-5-409 Selection and removal of directors and officers of mutuals.**

- (1) The articles or bylaws of a mutual shall state:
  - (a) the number of directors of the mutual including the directors that are:
    - (i) appointed as public directors under this Subsection (1) and Subsection (2); or
    - (ii) elected under Subsection (3);
  - (b) the number of directors of the mutual that may be appointed as public directors; and
  - (c) the plan that specifies the manner in which:
    - (i) a public director is to be appointed; and
    - (ii) a director who is not a public director is to be elected.
- (2)
  - (a) The plan for the appointment of public directors specified in Subsection (1) shall assure true public representation on the board.

- (b) A person appointed as a public director shall have insurance business or other business or professional experience that qualifies that person to serve responsibly and impartially as a director.
  - (c) A public director may be an uncompensated member of the board of directors.
  - (d) Notwithstanding Subsection (2)(c), a public director shall meet the qualifications of Subsection (2)(b).
- (3)
- (a) A director who is not a public director shall be elected by:
    - (i) the policyholders; or
    - (ii) voting members.
  - (b) If the directors who are not public directors are divided into classes, one class shall be elected:
    - (i) at least every four years; and
    - (ii) for a term not exceeding six years.
- (4) A director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.
- (5) Subject to Subsections (1) through (4), Section 16-6a-810 applies to vacancies on the governing board.

Amended by Chapter 308, 2002 General Session

**31A-5-410 Supervision of management changes.**

- (1)
- (a) Immediately after the selection of a person as a director or principal officer, the insurer shall report to the commissioner:
    - (i) the name of the person selected as a director or principal officer of a corporation; and
    - (ii) pertinent biographical and other data that the commissioner requires by rule.
  - (b) For five years after the initial issuance of a certificate of authority to a corporation, the commissioner may, within 30 days after receipt of a report under Subsection (1)(a), disapprove any person selected who fails to satisfy the commissioner that the person:
    - (i) is trustworthy; and
    - (ii) has the competence and experience necessary to discharge that person's responsibilities.
- (2)
- (a) Whenever a director or principal officer of a corporation is removed under a provision listed in Subsection (2)(b), the insurer shall immediately report to the commissioner:
    - (i) the removal; and
    - (ii) a statement of the reasons for the removal.
  - (b) Subsection (2)(a) applies to a removal under:
    - (i) Subsection 16-6a-820(4);
    - (ii) Section 16-10a-808;
    - (iii) Section 16-10a-832; and
    - (iv) Subsection 31A-5-409(4).
- (3) The commissioner may order the removal of a director or officer if the commissioner finds, after a hearing, that:
- (a) a director or officer:
    - (i) is incompetent;
    - (ii) untrustworthy;
    - (iii) is not qualified under Section 31A-5-409; or

- (iv) has wilfully violated:
  - (A) this title;
  - (B) a rule adopted under Subsection 31A-2-201(3); or
  - (C) an order issued under Subsection 31A-2-201(4); and
- (b) the circumstances described in Subsection (3)(a) endangers the interests of:
  - (i) insureds; or
  - (ii) the public.

Amended by Chapter 308, 2002 General Session

**31A-5-411 Continuity of management in emergencies.**

- (1) If an emergency is caused by an attack on the United States or by a nuclear or other disaster which makes it impracticable for a corporation to conduct its business in strict accord with applicable provisions of law, its articles, bylaws, or its charter, this section facilitates the continued operation of a domestic insurance corporation.
- (2) The board of any corporation may adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws. These bylaws shall operate during a national emergency. Notwithstanding any different provisions in the regular bylaws, the applicable statutes, or the corporation's articles or charter, these emergency bylaws may make any provision that is reasonably necessary for operation during the emergency.
- (3) If the board of a corporation has not adopted emergency bylaws, the following provisions are effective in a national emergency:
  - (a) Three directors constitute a quorum for the transaction of business at all meetings of the board.
  - (b) A vacancy on the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.
  - (c)
    - (i) If there are no surviving directors, but at least three officers of the corporation survive, the three officers with the longest term of service become the directors and possess all of the powers of the previous board and the powers that are granted under this section. The emergency board may elect other directors by a majority vote.
    - (ii) If there are not three surviving officers, the commissioner shall appoint three natural persons, including any surviving officers, as directors. They shall possess all of the powers of the previous board and any powers granted under this section. The emergency board may elect other directors by majority vote.
- (4) The board of a corporation may, by resolution adopted by the board, provide that in the event of a national emergency and in the event of the death or incapacity of specified officers of the corporation, those officers shall be succeeded by the persons described in a succession list. The list may name persons or position titles. It shall establish the order of priority, successors in office, and it may prescribe the conditions for exercise of the powers of the office.
- (5) The board of a corporation may, by resolution, provide that in a national emergency the home office or principal place of business is a location named in the resolution. The resolution may provide for alternate locations and establish an order of preference.

Enacted by Chapter 242, 1985 General Session

**31A-5-412 Committees of directors.**

- (1)

- (a) If provided for in the articles or bylaws of a corporation, the board, by resolution adopted by a majority of the full board, may designate one or more committees.
  - (b) A committee designated under this Subsection (1) shall consist of three or more directors serving at the pleasure of the board.
  - (c) The board may designate one or more directors as alternate members of a committee to substitute for an absent member at any meeting of the committee.
  - (d) The designation of a committee and delegation of authority to the committee does not relieve the board or a director of responsibility imposed by law upon the board or director.
- (2)
- (a)
    - (i) Except for a corporation described under Subsection 31A-5-407(4), a corporation shall have an audit committee.
    - (ii) A corporation's entire board constitutes the audit committee if the corporation:
      - (A) is described under Subsection 31A-5-407(4); and
      - (B) does not have an audit committee that complies with this Subsection (2).
  - (b) If a corporation is required to have an audit committee under Subsection (2)(a), a member of the audit committee may not be an inside director as defined under Subsection 31A-5-407(3).
  - (c) An audit committee shall maintain an overview of the audit activities, systems, and staff of the company and of the activities of the outside auditors, in order to advise the board on the adequacy of fiscal control.
  - (d) A corporation shall give an audit committee direct and private access to company data and personnel as that committee considers necessary.
  - (e) An audit committee may meet privately with the outside directors as the audit committee sees fit.
  - (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules pertaining to audit committee requirements similar to those outlined in the Annual Financial Reporting Model Regulation of the National Association of Insurance Commissioners.
- (3)
- (a) When the board is not in session, a committee may exercise the powers of the board in the management of the business and affairs of the corporation to the extent authorized in the resolution or in the articles or bylaws, except action regarding:
    - (i) compensation or indemnification of a person who is:
      - (A) a director;
      - (B) a principal officer; or
      - (C) one of the three most highly paid employees;
    - (ii) benefits or payments requiring shareholder or policyholder approval;
    - (iii) approval of a contract requiring board approval under Section 31A-5-414;
    - (iv) approval of a transaction in which a director has a material interest adverse to the corporation;
    - (v) amendment of the articles or bylaws;
    - (vi) merger or consolidation under Section 31A-5-501, 31A-5-502, or 31A-5-503;
    - (vii) conversion under Section 31A-5-505, 31A-5-506, 31A-5-507, or 31A-5-509;
    - (viii) voluntary dissolution under Section 31A-5-504;
    - (ix) transfer of business or assets under Section 31A-5-508;
    - (x) any other decision requiring shareholder or policyholder approval;
    - (xi) amendment or repeal of an action taken by the full board, which by its terms is not subject to amendment or repeal by a committee;

- (xii) dividends or other distributions to shareholders, policyholders, or voting members other than in the routine implementation of a policy determination of the full board;
  - (xiii) selection of a principal officer; and
  - (xiv) filling a vacancy on the board or on a committee created under Subsection (1), except that the articles or bylaws may provide for a temporary appointment to fill a vacancy on the board or a committee.
- (b) A temporary appointment provided for in Subsection (3)(a)(xiv) may last only until the end of the next board meeting.
- (4) The full board shall review a transaction in which an officer has a material financial interest adverse to the corporation at the next board meeting after the transaction.

Amended by Chapter 349, 2009 General Session

**31A-5-413 Interlocking directorates and other relationships.**

Any person who is simultaneously an officer or director of more than one insurer shall, upon the commissioner's request, disclose all conflicts of interest arising from holding those positions simultaneously. This disclosure shall be given to the directors of the insurers and to the commissioner within 15 working days after receipt of the commissioner's request.

Amended by Chapter 204, 1986 General Session

**31A-5-414 Transactions in which directors and others are interested.**

- (1) Any material transaction between an insurance corporation and one or more of its directors or officers, or between an insurance corporation and any other person in which one or more of its directors or officers or any person controlling the corporation has a material interest, is voidable by the corporation unless all the following exist:
- (a) At the time the transaction is entered into it is fair to the interests of the corporation.
  - (b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the board or by the shareholders.
  - (c) The transaction has been reported to the commissioner immediately after approval by the board or the shareholders.
- (2) A director, whose interest or status makes the transaction subject to this section, may be counted in determining a quorum for a board meeting approving a transaction under Subsection (1)(b), but may not vote. Approval requires the affirmative vote of a majority of those present.
- (3) The commissioner may by rule exempt certain types of transactions from the reporting requirement of Subsection (1)(c). The commissioner has standing to bring an action on behalf of an insurer to have a contract in violation of Subsection (1) declared void. Such an action shall be brought in the Third Judicial District Court for Salt Lake County.

Enacted by Chapter 242, 1985 General Session

**31A-5-415 Officers', directors', and employees' liability and indemnification.**

- (1) Section 16-10a-841 applies to the liabilities of directors of a stock corporation. Subsection 16-6a-825(3) applies to loans to trustees and officers of a mutual. A director who votes for or assents to a violation of Subsection 16-6a-825(3) or Section 16-10a-842 is jointly and severally liable to the corporation for any loss on the distribution.
- (2) Title 16, Chapter 10a, Part 9, Indemnification, applies to stock and mutual corporations, but no indemnification may be paid until 30 or more days after sending a notice to the commissioner

of the full details of the proposed indemnification. The commissioner may bring an action in Third Judicial District Court for Salt Lake County to have such indemnification enjoined. The court may enjoin the indemnification to the extent it would render the insurer in a hazardous condition, or exacerbate an existing financially hazardous condition.

Amended by Chapter 300, 2000 General Session

**31A-5-416 Compensation of director, officer, employee, person with investment authority, or others.**

- (1) Subject to this section, Subsections 16-10a-302(11) and (12) apply to:
  - (a) a stock corporation; and
  - (b) a mutual corporation.
- (2) Shareholders' approval is required:
  - (a) of any benefit or payment to a director or officer for services rendered to a stock corporation more than 90 days before the agreement or decision to give the benefit or make the payment, unless the benefit or payment is made under a plan approved by the shareholders; and
  - (b) for a new pension plan, profit-sharing plan, stock option plan, or an amendment to an existing plan which, so far as it pertains to any director or officer, substantially increases the financial burden on the stock corporation.
- (3) An action taken by the board of a mutual on the compensation of officers, directors, or employees, other than setting individual salaries or standards for salaries of classes of employees, shall be reported to the commissioner within 30 days.
- (4) The annual statement of a stock or mutual corporation shall include the amount of all direct and indirect remuneration for services, including retirement and other deferred compensation benefits and stock options paid each year:
  - (a) for the benefit of each of the following whose remuneration exceeds an amount established by the commissioner by rule:
    - (i) a director;
    - (ii) an officer; or
    - (iii) an employee;
  - (b) for all directors and officers as a group; and
  - (c)
    - (i) for the five most highly compensated officers;
    - (ii) for the five most highly compensated directors; and
    - (iii) for the five most highly compensated employees.
- (5) An arrangement for compensation or other employment benefits for any director, officer, or employee with decision-making power may not be made if it would:
  - (a) measure the compensation or other benefits in whole or in part by any criteria that would create a financial inducement to act contrary to the best interests of the stock or mutual corporation; or
  - (b) have a tendency to make the stock or mutual corporation depend for continuance or soundness of operation upon the continuation of any director, officer, or employee in the person's position of director, officer, or employee.
- (6) Except for the insurer, a person having any authority in the investment or disposition of the funds of a domestic insurer may not:
  - (a) accept any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer; or
  - (b) be financially interested in the investment or disposition of funds in any capacity.

- (7) Unless the commissioner, acting in the corporation's best interests, orders otherwise, if an order of rehabilitation or liquidation is issued under Section 31A-27a-301 or Section 31A-27a-401, the contractual obligations of the insurer for unperformed services of any director, principal officer, or person performing similar functions or having similar powers are terminated. This Subsection (7) does not apply to obligations vested before July 1, 1986.

Amended by Chapter 307, 2007 General Session

Amended by Chapter 309, 2007 General Session

**31A-5-417 Exclusive management and exclusive agency contracts.**

- (1) No domestic insurer may enter into a contract that grants or surrenders the control and management of the insurer, unless the commissioner gives express approval of the contract. Such contracts, once approved, may not be amended without the commissioner's approval. Any contracts between a domestic reciprocal insurer, which insurers are governed under this chapter as any other mutual, and the insurer's attorney-in-fact are subject to this subsection.
- (2) Unless the contract is filed and approved by the commissioner, no domestic insurer may enter into a contract granting, or allowing a person to have the exclusive or dominant right to produce the entire insurance business for the insurer. This type of contract is considered approved, unless disapproved by the commissioner within 30 days after filing. If disapproved, the commissioner shall notify the insurer in writing of the grounds of the disapproval.
- (3) The commissioner may not approve any contract under Subsection (1) or (2) that:
- (a) subjects the insurer to excessive charges for expenses or commissions;
  - (b) vests any control in a person over the general affairs of the insurer to the exclusion of its board of directors or officers;
  - (c) extends for an unreasonable length of time; or
  - (d) contains other inequitable provisions or provisions that may jeopardize the security of policyholders.

Enacted by Chapter 242, 1985 General Session

**31A-5-418 Dividends and other distributions.**

- (1) Subject to the requirements of Section 16-10a-842 and Subsection 31A-16-106(2), a stock corporation may make distributions under Section 16-10a-640 if all the following conditions are satisfied:
- (a) A dividend may not be paid that would reduce the insurer's total adjusted capital below the insurer's company action level RBC as defined in Subsection 31A-17-601(8)(b).
  - (b) Except as to excess surplus, or unless the commissioner issues an order allowing otherwise, a dividend may not be paid that exceeds the insurer's net gain from operations or net income for the period ending December 31 of the preceding year.
- (2) Title 67, Chapter 4a, Unclaimed Property Act, applies to unclaimed dividends and distributions in insurance corporations.

Amended by Chapter 116, 2001 General Session

**31A-5-420 Payment of dividends by mutual insurers.**

- (1) When it is in the best interests of the company, the directors of a domestic mutual insurer shall declare, apportion, and pay to its members dividends from its net savings and earnings.

- (2) The insurer shall make a reasonable classification of its participating policies and its assumed risks. No dividend shall be paid that is inequitable, unfairly discriminates between classifications of insurance contracts, or unfairly discriminates between policies within the same classification.
- (3) Unless stated in the policy, no dividend, otherwise earned, shall be contingent upon the payment of the renewal premium on any policy.
- (4) Subsection (1) may not be construed to require an insurer determined by the United States Internal Revenue Service to be a nonprofit organization to pay a dividend in a manner which would jeopardize that status.

Enacted by Chapter 242, 1985 General Session