

## **Part 5 Corporate Reorganization**

### **31A-5-501 Merger of subsidiary corporation.**

The merger of subsidiary insurance corporations is subject to the provisions of Chapter 16, Insurance Holding Companies. In addition, the merger procedures outlined under Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to the mergers of subsidiary insurance corporations. For the purposes of this section, if the surviving corporation owns at least 80% of the outstanding shares of each class of the corporation to be merged into the surviving corporation, the procedures of Section 16-10a-1104, including no requirement of shareholder approval, may be used.

Amended by Chapter 277, 1992 General Session

### **31A-5-502 Merger and consolidation of stock insurance corporations.**

Any two or more stock insurance corporations may merge or consolidate, under the procedures set forth under Title 16, Chapter 10a, Utah Revised Business Corporation Act. All mergers are subject to the provisions of Chapter 16, Insurance Holding Companies.

Amended by Chapter 277, 1992 General Session

### **31A-5-503 Merger and consolidation of mutuals.**

Any two or more mutuals may merge or consolidate, under the procedures set forth under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act. All mergers of mutuals are subject to Chapter 16, Insurance Holding Companies.

Amended by Chapter 300, 2000 General Session

### **31A-5-504 Voluntary dissolution of domestic insurance corporations.**

- (1)
  - (a) Except as otherwise modified by this section, a domestic stock insurance corporation may dissolve under Sections 16-10a-1401 through 16-10a-1409 and Section 16-10a-1440.
  - (b) Except as otherwise modified by this section, a domestic mutual insurance corporation may dissolve under Sections 16-6a-1401 through 16-6a-1409 and Section 16-6a-1419.
- (2)
  - (a) At least 60 days prior to the submission to shareholders or policyholders of any proposed voluntary dissolution of an insurance corporation, the plan of dissolution shall be filed with the commissioner.
  - (b) The commissioner may require the submission of any information in addition to the plan of dissolution that will establish:
    - (i) the financial condition of the corporation; or
    - (ii) other facts relevant to the proposed dissolution.
  - (c) If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin an examination of the corporation.
  - (d) The commissioner shall approve the dissolution unless the commissioner finds, after a hearing, that the corporation:
    - (i) is insolvent; or

- (ii) may become insolvent in the process of dissolution.
- (e) Upon approval, the corporation may:
  - (i) transfer all of its obligations under insurance policies to other insurers approved by the commissioner; and
  - (ii) after the transfers described in Subsection (2)(e)(i), dissolve under Subsection (1).
- (f) If the commissioner disapproves the dissolution, the commissioner shall petition the court for a liquidation under Section 31A-27a-207.
- (3) During the dissolution under Subsection (1), the corporation may apply to the commissioner to have the dissolution continued under the commissioner's supervision. After receiving this application, the commissioner shall apply to the court for a liquidation under Section 31A-27a-207.
- (4) If the corporation revokes the voluntary dissolution proceedings under Section 16-6a-1404 or 16-10a-1404, the corporation shall file a copy of the revocation of voluntary dissolution proceedings with the commissioner.
- (5) In distributing the assets in the dissolution of a nonlife mutual, Section 31A-27a-705 applies.
- (6)
  - (a) No remedy available to or against the corporation, its directors, officers, or shareholders is taken away or impaired if an action or other proceeding is brought within two years after dissolution for any right or claim existing, or any liability incurred, prior to the voluntary dissolution under this section.
  - (b) The action or proceeding described in Subsection (6)(a) may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers may take appropriate corporate or other action to protect the remedy, right, or claim.
  - (c) A corporation which is dissolved by the expiration of its period of duration may amend its articles of incorporation during the two years to provide for perpetual existence.
- (7) During the voluntary dissolution of a domestic insurance corporation under this section, its corporate existence continues to allow the winding up of the corporation's affairs regarding any property and assets not distributed or otherwise disposed of prior to dissolution. To effect that purpose, the corporation may:
  - (a) sell or otherwise dispose of the property and assets;
  - (b) sue and be sued;
  - (c) contract; and
  - (d) exercise all other necessary powers.

Amended by Chapter 309, 2007 General Session

**31A-5-505 Conversion of a domestic stock corporation into a mutual.**

A domestic stock corporation may be converted into a domestic mutual as follows:

- (1) The board shall adopt a plan of conversion. After adopting the plan, no additional shares of capital stock may be issued, except that the board may continue to issue stock options under existing contracts, and holders of outstanding options may continue to exercise these options until the conversion is completed under Subsection (5).
- (2)
  - (a) The plan of conversion shall provide for the corporation's purchase of all of its outstanding capital stock. The purchase price shall either be specified in the plan or be determined under a formula specified in the plan, for cash, specified debt securities to be issued by the mutual corporation, or both. All holders of capital stock of the same class have the same rights under the plan. Shareholders may be given an election to take all or a portion of the price

in the specified debt securities. Debt securities may be of any class authorized for mutual corporations under Subsection 31A-5-305(2).

- (b) The plan shall provide an equitable procedure for valuing contractual obligations of the stock corporation, including those relating to stock options, which options terminate on the date of conversion and are subject to being extinguished under Subsection (5)(b).
- (3) No conversion may be effected unless the plan of conversion is approved by the commissioner under Chapter 16, Insurance Holding Companies.
- (4) After the commissioner approves the plan of conversion, it shall be submitted to the shareholders for approval by the affirmative vote of a majority of each class of shares entitled to vote. Only shareholders of record on the date of the board's action under Subsection (1) may vote.
- (5)
  - (a) If the shareholders approve the plan of conversion under Subsection (4), the commissioner shall issue a new certificate of authority and the board shall then implement the plan of conversion. The issuance of the certificate is the conversion of the corporation to a mutual. The corporation is no longer a stock corporation. The mutual is considered as having been organized at the time the converted stock corporation was organized.
  - (b) Any contractual obligation inconsistent with the nature of a mutual, including any obligation to issue or to redeem stock options, terminates upon the conversion under Subsection (5)(a), without compensation other than provided under Subsection (2)(b), unless the obligation was legally binding before July 1, 1986.
- (6) The corporation may not pay any person, in connection with the proposed conversion, compensation other than regular salaries to existing personnel and compensation for clerical and mailing expenses. With the commissioner's approval, the corporation in connection with the proposed conversion may pay reasonable printing costs and legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries and fringe benefits of any Insurance Department staff members involved, shall be paid by the corporation being converted.

Enacted by Chapter 242, 1985 General Session

**31A-5-506 Conversion of a domestic mutual into a stock corporation.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a domestic mutual may be converted into a domestic stock corporation under Subsections (2) through (11).
  - (b) A domestic mutual that is affiliated with other mutuals may not be converted into a stock corporation, unless all the affiliated mutuals are converted at the same time, or the commissioner finds that the interests of the policyholders of the remaining mutuals can be permanently protected by limitations on the corporate powers of the new stock corporation or on its authority to do business, or otherwise.
- (2) The board shall pass a resolution stating that the conversion is in the best interests of the policyholders. The resolution shall specify the reasons for and the purposes of the proposed conversion, and how the conversion is expected to benefit policyholders.
- (3)
  - (a) Chapter 16, Insurance Holding Companies, applies to the conversion of a domestic mutual into a stock corporation. In addition, the commissioner shall order the examination and appraisal of the corporation, unless the commissioner finds that:
    - (i) the resolution is defective upon its face; or

- (ii) the basis or the purposes of the proposed conversion are contrary to law, to the interests of the policyholders, or to the public.
- (b) The commissioner shall examine the company and all of its controlled affiliates under Section 31A-2-203 to determine their financial condition and whether they are operating in accordance with law.
- (c) The commissioner shall appoint an appraisal committee, consisting of at least three qualified and disinterested persons with differing expertise, to determine the value of the corporation on the date of the resolution required by Subsection (2). Members of the appraisal committee shall receive reasonable compensation and shall be reimbursed for reasonable expenses in discharging their duties. They may employ consultants to advise them on technical problems of the appraisal, if necessary. The appraisal committee shall consider the assets and liabilities of the corporation, adjusting liabilities to take account of:
  - (i) the amounts of any reserves in excess of or below realistic estimates;
  - (ii) the value of the marketing organization;
  - (iii) the value of goodwill;
  - (iv) the going-concern value; and
  - (v) any other factor having an influence on the value of the corporation.
- (4) When the examination and appraisal reports have been made to the commissioner, the commissioner shall make copies available to the board. The board shall then prepare and adopt by resolution a plan of conversion. The plan shall be consistent with Subsections (4)(a) through (e) and shall state how the requirements of those subsections are satisfied.
  - (a) The plan of conversion shall state the number of shares proposed to be authorized for the new stock corporation, their par value, if any, and the price per share at which they will be offered to policyholders. The price per share may not exceed 1/2 of the median equitable share of all policyholders under Subsection (4)(b).
  - (b)
    - (i) When an insurer has the type of policies with no investment value to the policyholders, each person who has been a policyholder and has paid premiums within five years prior to the resolution under Subsection (2) is entitled, without additional payment, to as much common stock of the new stock corporation as that person's equitable share of the value of the converting corporation will purchase. The equitable share is determined by the ratio which the net premium that person has paid to the corporation during the five years immediately preceding the resolution required by Subsection (2) bears to the total net premiums received by the corporation during the same period. The net premium is the gross premium less the return premium and dividends paid. If the equitable share would only purchase a fraction of a share of stock, the policyholder has the option of either receiving the value of the fractional share in cash or purchasing a full share by paying the balance in cash.
    - (ii) When an insurer has the type of policies with specifically attributable investment value to the policyholders, each policyholder is entitled, without additional payment, to as much common stock of the new stock corporation as the policyholder's investment value in the converting corporation will purchase, determined by the proportion of the policyholder's investment value to the aggregate investment values of all policyholders. If the policyholder's share would only purchase a fraction of a share of stock, the policyholder has the option of either receiving the value of the fractional share in cash or purchasing a full share by paying the balance in cash.
  - (c) A written offer shall be sent to each policyholder indicating the policyholder's individual equitable share and the terms upon which the policyholder may subscribe for stock.

- (d) Common shares may not be subscribed by or issued to persons other than policyholders, until all subscriptions by the policyholders have been filled. After those subscriptions have been filled, any new issue of stock for five years after the conversion shall first be offered to the persons who have become shareholders under Subsection (4)(b) in proportion to their interests under Subsection (4)(b).
- (e) A policyholder in a nonlife mutual may not receive a distribution of shares valued under Subsection (4)(b)(i), which distribution is greater than the amount the policyholder is entitled to under Section 31A-27a-701. Any excess over the policyholder's entitlement under Section 31A-27a-701 shall be distributed in accordance with Section 31A-27a-705.
- (5) The plan of conversion shall be submitted to the commissioner for approval, together with:
  - (a) the proposed articles and bylaws of the new stock corporation which comply with Section 31A-5-203;
  - (b) any information specified under Subsection 31A-5-204(2), which the commissioner reasonably requires; and
  - (c) a projection of the planned or anticipated financial situation of the new corporation for five years after the conversion.
- (6) The commissioner shall then hold a hearing. The notice of the hearing shall be mailed to each person who was a policyholder of the corporation on the date of the resolution required by Subsection (2). This notice shall include a copy of the plan of conversion and any comments the commissioner considers necessary to adequately inform the policyholders.
- (7) The commissioner shall approve the plan of conversion unless the commissioner finds that the plan violates the law or is contrary to the interests of policyholders or the public.
- (8) After approval under Subsection (7), the conversion plan shall be submitted to a vote of:
  - (a) for mutuals subject to Subsection (4)(b)(i), those persons who were policyholders of the mutual on the date of the resolution required by Subsection (2); or
  - (b) for mutuals subject to Subsection (4)(b)(ii), those persons who had investment values in their policies as of the date of the resolution required by Subsection (2).
- (9) If the policyholders approve the conversion under Subsection (8), the commissioner shall issue a new certificate of authority. The issuance of the certificate is the conversion of the mutual to a stock corporation. This stock corporation is considered as being organized at the time the converted mutual was organized. Subject to the plan of conversion, the directors, officers, agents, and employees of the mutual shall continue in their same positions with the stock corporation.
- (10) In the proposed conversion, the corporation may not pay any person compensation other than regular salaries to existing personnel and compensation for clerical and mailing expenses. With the commissioner's approval, the corporation may pay, at reasonable rates, for printing costs and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any department staff members involved, shall be paid by the corporation being converted.
- (11) The commissioner's approval of the plan of conversion satisfies the registration requirement of Section 31A-5-302.

Amended by Chapter 309, 2007 General Session

**31A-5-507 Conversion of assessable to nonassessable and nonassessable to assessable mutuals.**

- (1) When an assessable mutual accumulates enough surplus to satisfy the financial requirements for the operation of a nonassessable mutual, it may apply for a certificate of authority

authorizing it to sell nonassessable policies. The commissioner shall issue a certificate of authority designating it a nonassessable mutual, if he finds that the applicant satisfies the requirements of the law and that the issuance of nonassessable policies will not endanger the interests of its insureds or the public. Policies issued after the issuance of this certificate of authority are nonassessable. Existing policies remain in effect and are nonassessable.

- (2) A nonassessable mutual may apply to the commissioner for a certificate of authority designating it an assessable mutual. The commissioner shall issue the certificate if the law permits the corporation to issue assessable policies and if he finds that the conversion will not endanger the interests of insureds or the public. All policies issued after conversion are assessable, unless otherwise provided by contract.

Enacted by Chapter 242, 1985 General Session

**31A-5-508 Transfer of business or assets.**

- (1) In the sale, lease, exchange, or mortgage of assets with or without shareholder action, and concerning the rights of dissenting shareholders in those transactions, Sections 16-10a-1201, 16-10a-1202, 16-10a-1320 through 16-10a-1328, 16-10a-1330, and 16-10a-1331 apply to stock corporations. In the sale, lease, exchange, or mortgage of assets, Section 16-6a-1201 applies to mutuals.
- (2) Chapter 16, Insurance Holding Companies, applies to:
  - (a) the sale of a domestic insurer's assets or book of business, other than in the ordinary course of business; or
  - (b) the insurer entering into contracts of reinsurance which have substantially the same effect as a merger.

Amended by Chapter 300, 2000 General Session

**31A-5-509 Conversion of a domestic mutual life insurance company into a fraternal.**

A domestic mutual life insurance company may be converted into a fraternal under Chapter 9, Insurance Fraternal, in the following manner:

- (1) The board of directors of the company shall adopt a plan of conversion stating:
  - (a) the basis for and the purposes of the proposed action;
  - (b) the proposed articles and bylaws for the new fraternal; and
  - (c) the proposed procedure and estimated expenses for implementing the conversion.
- (2) The plan shall be filed with the commissioner for approval, together with the information under Subsection 31A-9-205(2) required by the commissioner. The commissioner shall approve the plan unless he finds, after a hearing, that:
  - (a) the conversion would be contrary to the law;
  - (b) the new fraternal would not satisfy the requirements for a certificate of authority under Section 31A-5-212 as incorporated by Section 31A-9-210; or
  - (c) the plan would be contrary to the interests of the policyholders or the public.
- (3) After being approved by the commissioner, the plan shall be submitted to the policyholders for their approval.
- (4) A copy of the plan adopted by the policyholders shall be filed with the commissioner, with a statement indicating the number and percentages of policyholders voting, the method of voting, and the number of votes cast in favor of the plan.
- (5) If all requirements of the law are met, the commissioner shall issue a certificate of authority for the new fraternal. Upon this issuance, the mutual ceases its legal existence and the corporate

existence of the new fraternal begins. The new fraternal is considered as having been incorporated on the date the converted mutual was incorporated. The new fraternal has all of the assets and is liable for all of the obligations of the converted mutual. The commissioner may grant a fraternal an adjustment period, not to exceed one year, for compliance with the requirements of Chapter 9, Insurance Fraternal. The commissioner's extension shall specify the extent to which particular provisions of Chapter 9, Insurance Fraternal, do not apply.

Amended by Chapter 204, 1986 General Session