

**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