

## **Part 4**

### **Registration**

#### **70A-8-401 Duty of issuer to register transfer.**

- (1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:
  - (a) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;
  - (b) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;
  - (c) reasonable assurance is given that the indorsement or instruction is genuine and authorized as provided in Section 70A-8-402;
  - (d) any applicable law relating to the collection of taxes has been complied with;
  - (e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 70A-8-204;
  - (f) a demand that the issuer not register transfer has not become effective under Section 70A-8-403, or the issuer has complied with Subsection 70A-8-403(2) but no legal process or indemnity bond is obtained as provided in Subsection 70A-8-403(4); and
  - (g) the transfer is in fact rightful or is to a protected purchaser.
- (2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

Repealed and Re-enacted by Chapter 204, 1996 General Session

#### **70A-8-402 Assurance that indorsement or instruction is effective.**

- (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:
  - (a) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;
  - (b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
  - (c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to Subsection 70A-8-106(1)(d) or (1)(e), appropriate evidence of appointment or incumbency;
  - (d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
  - (e) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.
- (2) An issuer may elect to require reasonable assurance beyond that specified in this section.
- (3) In this section:
  - (a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.
  - (b) "Appropriate evidence of appointment or incumbency" means:

- (i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or
- (ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-403 Demand that issuer not register transfer.**

- (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.
- (2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to:
  - (a) the person who initiated the demand at the address provided in the demand; and
  - (b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:
    - (i) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;
    - (ii) a demand that the issuer not register transfer had previously been received; and
    - (iii) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.
- (3) The period described in Subsection (2)(b)(iii) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.
- (4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:
  - (a) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or
  - (b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.
- (5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-404 Wrongful registration.**

- (1) Except as otherwise provided in Section 70A-8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:
  - (a) pursuant to an ineffective indorsement or instruction;
  - (b) after a demand that the issuer not register transfer became effective under Subsection 70A-8-403(1) and the issuer did not comply with Subsection 70A-8-403(2);
  - (c) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or
  - (d) by an issuer acting in collusion with the wrongdoer.
- (2) An issuer that is liable for wrongful registration of transfer under Subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 70A-8-210.
- (3) Except as otherwise provided in Subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-405 Replacement of lost, destroyed, or wrongfully taken security certificate.**

- (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:
  - (a) requests that a new certificate be issued before the issuer has notice that the certificate has been acquired by a protected purchaser;
  - (b) files with the issuer a sufficient indemnity bond; and
  - (c) satisfies other reasonable requirements imposed by the issuer.
- (2)
  - (a) If, after the issue of a new certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result.
  - (b) If an overissue would result from registration of transfer, the issuer's liability is governed by Section 70A-8-210.
  - (c) In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.
- (3) On and after July 1, 2011, this section does not apply to the replacement of a lost, destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water company.
- (4) On and after May 8, 2012, this section does not apply to the replacement of a lost, destroyed, or wrongfully taken share certificate of a land company. Section 70A-8-409.1 governs the replacement of a lost, destroyed, or wrongfully taken share certificate of a land company.

Amended by Chapter 386, 2012 General Session

**70A-8-406 Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.**

- (1) If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within the reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 70A-8-404 or a claim to a new security certificate under Section 70A-8-405.
- (2) On and after July 1, 2011, Subsection (1) does not apply to the replacement of a lost, destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water company.
- (3) On and after May 8, 2012, Subsection (1) does not apply to the replacement of a lost, destroyed, or wrongfully taken share certificate of a land company. Section 70A-8-409.1 governs the replacement of a lost, destroyed, or wrongfully taken share certificate of a land company.

Amended by Chapter 386, 2012 General Session

**70A-8-407 Authenticating trustee, transfer agent, and registrar.**

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

Repealed and Re-enacted by Chapter 204, 1996 General Session

**70A-8-409 Application to land or water companies.**

The procedures of this chapter apply to shares of stock in a land company or a water company.

Amended by Chapter 386, 2012 General Session

**70A-8-409.1 Replacement of lost, destroyed, or wrongfully taken share certificate of a land company or a water company.**

- (1) As used in this section:
  - (a) "Affected share" means the share represented by a share certificate that is lost, destroyed, or wrongfully taken.
  - (b) "Company" means a land company or a water company.
  - (c) "Distribution area" means:
    - (i) for a water company, the geographic area where the water company distributes water; or
    - (ii) for a land company, the geographic area owned by the land company.
  - (d) "Original share certificate" means a share certificate that is alleged to be lost, destroyed, or wrongfully taken.
  - (e) "Person" means:
    - (i) an individual;
    - (ii) a corporation;
    - (iii) a business entity;

- (iv) a political subdivision of the state, including a municipality;
  - (v) an agency of the state; or
  - (vi) an agency of the federal government.
  - (f) "Replacement share certificate" means a share certificate issued to replace a share certificate that is lost, destroyed, or wrongfully taken.
  - (g) "Share certificate" means a certificated share of stock in a company.
- (2)
- (a) This section applies to the replacement of a lost, destroyed, or wrongfully taken share certificate.
  - (b) Unless the articles of incorporation or bylaws of a company address the replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the replacement of a lost, destroyed, or wrongfully taken share certificate.
- (3) A company shall issue a replacement share certificate to a person claiming to be the owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the original share certificate on the records of the company, if:
- (a) the person represents to the company that the original share certificate is lost, destroyed, or wrongfully taken;
  - (b)
    - (i)
      - (A) the person is the registered owner of the affected share; and
      - (B) before the company receives notice that the share certificate has been acquired by a protected purchaser, the person requests that a replacement share certificate be issued;or
    - (ii)
      - (A) the person is not the registered owner of the affected share; and
      - (B) the person establishes ownership of the affected share, including by presenting to the company written documentation that demonstrates to the reasonable satisfaction of the company that the person is the rightful owner of the affected share through purchase, gift, inheritance, foreclosure, bankruptcy, or reorganization;
  - (c) the assessments to which the affected share is subject are paid current;
  - (d) except as provided in Subsection (5), the person files with the company a sufficient indemnity bond or other security acceptable to the company; and
  - (e) the person satisfies any other reasonable requirement imposed by the company, including the payment of a reasonable transfer fee.
- (4)
- (a) If after a replacement share certificate is issued a protected purchaser of the original share certificate presents the original share certificate for registration of transfer, the company shall register the transfer unless an overissue would result.
  - (b) If an overissue would result when there is a registration of transfer of an original share certificate, a company may recover the replacement share certificate from the person to whom it is issued, or any person taking under that person, except a protected purchaser.
  - (c) If a company elects to follow the procedures of Subsection (5), to assert an ownership interest in the affected share, a protected purchaser shall file a written notice of objection within the 60-day period described in Subsection (5)(d). A protected purchaser's failure to file a written notice of objection within the 60-day period eliminates any claim of the protected purchaser.
- (5) As an alternative to requiring an indemnity bond or other acceptable security under Subsection (3)(d), a company is considered to have followed a fair and reasonable procedure without the

necessity of a written policy or bylaw otherwise required by Section 16-6a-609, if the company follows the following procedure:

- (a) The company shall publish written notice at least once a week for three consecutive weeks:
  - (i)
    - (A) in a newspaper of general circulation in the area that reasonably includes the distribution area of the company; and
    - (B) as required in Section 45-1-101;
  - (ii) with at least seven days between each publication date under Subsection (5)(a)(i)(A); and
  - (iii) beginning no later than 20 days after submission of the request to issue the replacement share certificate.
- (b) The company shall post written notice in at least three conspicuous places within the distribution area of the company.
- (c) No later than 20 days after the day on which the company receives a request to issue a replacement share certificate, the company shall mail written notice:
  - (i) to the last known address of the owner of the affected share shown on the records of the company;
  - (ii) if a company maintains a record of who pays annual assessments, to any person who, within the five-year period immediately preceding the day the written notice is mailed, pays an assessment levied against the affected share; and
  - (iii) to any person that has notified the company in writing of an interest in the affected share, including a financial institution.
- (d) A notice required under Subsections (5)(a) through (c) shall:
  - (i) identify the person who is requesting that a replacement share certificate be issued;
  - (ii) state that an interested person may file a written notice of objection with the company; and
  - (iii) state that unless a written notice of objection to the issuance of a replacement share certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A), including a written notice of objection from a protected purchaser:
    - (A) a replacement share certificate will be issued to the person requesting that the replacement share certificate be issued; and
    - (B) the original share certificate will be permanently canceled on the records of the company.
- (e) A notice of objection under Subsection (5)(d) shall:
  - (i) state the basis for objecting to the claim of ownership of the affected share;
  - (ii) identify a person that the objecting person believes has a stronger claim of ownership to the affected share; and
  - (iii) be accompanied by written evidence that reasonably documents the basis of the objection to the claim of ownership.
- (f) If the company receives a notice of objection within the 60-day period described in Subsection (5)(d), the company may review the disputed claim and:
  - (i) deny in writing the objection to the claim of ownership and issue a replacement share certificate to the person requesting the replacement share certificate;
  - (ii) accept in writing a claim of ownership asserted by a notice of objection and issue a replacement share certificate to the person the objecting person asserts owns the affected share;
  - (iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule 22, joining the persons claiming an interest in the affected share and depositing a replacement share certificate with the court; or
  - (iv) require the persons claiming an interest in the affected share to resolve the ownership dispute.

- (g) Upon receipt, the company shall act in accordance with:
    - (i) a written agreement acceptable to the company among the persons who claim interest in the affected share; or
    - (ii) a court order declaring ownership in the affected share.
  - (h) The following are entitled to receive from a nonprevailing person the costs for resolution of a dispute under this Subsection (5), including reasonable attorney fees when attorney fees are necessary:
    - (i) a prevailing person; and
    - (ii) the company, if the company acts in good faith.
  - (i) The person requesting that a replacement share certificate be issued shall reimburse the company for the costs reasonably incurred by the company under this Subsection (5) that are not paid under this Subsection (5)(i) including:
    - (i) legal and other professional fees; and
    - (ii) costs incurred by the company in response to a notice of objection.
  - (j) A company shall comply with this Subsection (5) before issuance of a replacement share certificate:
    - (i) upon request from the person requesting a replacement share certificate be issued; and
    - (ii) if the person requesting the replacement share certificate provides indemnification satisfactory to the company against liability and costs of proceeding under this Subsection (5).
  - (k) A determination made under this Subsection (5) is considered to be a final and conclusive determination of ownership of a disputed replacement share certificate.
- (6)
- (a) A company shall:
    - (i) make a decision to approve or deny the issuance of a replacement share certificate in writing; and
    - (ii) deliver the written decision to:
      - (A) the person requesting a replacement share certificate be issued;
      - (B) a person who files a notice of objection under Subsection (5); and
      - (C) any other person the company determines is involved in the request for a replacement share certificate.
  - (b) A person may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against a company for judicial review of a decision by the company under Subsection (6)(a).
  - (c)
    - (i) A person may not seek judicial review under Subsection (6)(b) more than 30 days after the day on which the written decision is delivered under Subsection (6)(a).
    - (ii) If no action for judicial review is filed within the 30-day period, absent fraud, the issuance of a replacement share certificate or the decision to not issue a replacement share certificate is final and conclusive evidence of ownership of the affected share.
  - (d)
    - (i) In a judicial action brought under this Subsection (6), the prevailing person as determined by court order, is entitled to payment by a nonprevailing person of:
      - (A) the costs of successfully defending its ownership claim; and
      - (B) reasonable attorney fees.
    - (ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be granted against a company if the company acts in good faith.

Amended by Chapter 401, 2023 General Session