

Superseded 7/1/2024

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

- (1) For purposes of 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 decision of a company described in Subsection (6)(a) is subject to de novo judicial review in the district court in which the company has its principal place of business.
- (c) 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). 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 386, 2012 General Session