

1 **SHARE CERTIFICATES IN LAND COMPANIES**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: Jack R. Draxler

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Uniform Commercial Code to address issues related to land
10 company share certificates that are lost, destroyed, or wrongfully taken.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ addresses the application of the investment securities provisions of the Uniform
15 Commercial Code to land companies;
- 16 ▶ establishes procedures for land company share certificates that are lost, destroyed,
17 or wrongfully taken; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **70A-8-101**, as last amended by Laws of Utah 2011, Chapter 311

26 **70A-8-303**, as last amended by Laws of Utah 2011, Chapter 311

27 **70A-8-405**, as last amended by Laws of Utah 2011, Chapter 311



28 **70A-8-406**, as last amended by Laws of Utah 2011, Chapter 311
29 **70A-8-409**, as last amended by Laws of Utah 2011, Chapter 311
30 **70A-8-409.1**, as enacted by Laws of Utah 2011, Chapter 311

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **70A-8-101** is amended to read:

34 **70A-8-101. Definitions.**

35 (1) As used in this chapter:

36 (a) "Adverse claim" means a claim that a claimant has a property interest in a financial
37 asset and that it is a violation of the rights of the claimant for another person to hold, transfer,
38 or deal with the financial asset.

39 (b) "Bearer form," as applied to a certificated security, means a form in which the
40 security is payable to the bearer of the security certificate according to its terms but not by
41 reason of an indorsement.

42 (c) "Broker" means a person defined as a broker or dealer under the federal securities
43 laws, but without excluding a bank acting in that capacity.

44 (d) "Certificated security" means a security that is represented by a certificate.

45 (e) "Clearing corporation" means:

- 46 (i) a person that is registered as a "clearing agency" under the federal securities laws;
47 (ii) a federal reserve bank; or
48 (iii) any other person that provides clearance or settlement services with respect to
49 financial assets that would require it to register as a clearing agency under the federal securities
50 laws but for an exclusion or exemption from the registration requirement, if its activities as a
51 clearing corporation, including promulgation of rules, are subject to regulation by a federal or
52 state governmental authority.

53 (f) "Communicate" means to:

- 54 (i) send a signed writing; or
55 (ii) transmit information by any mechanism agreed upon by the persons transmitting
56 and receiving the information.

57 (g) "Entitlement holder" means a person identified in the records of a securities
58 intermediary as the person having a security entitlement against the securities intermediary. If

59 a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that
60 person is the entitlement holder.

61 (h) "Entitlement order" means a notification communicated to a securities intermediary
62 directing transfer or redemption of a financial asset to which the entitlement holder has a
63 security entitlement.

64 (i) (i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:

65 (A) a security;

66 (B) an obligation of a person or a share, participation, or other interest in a person or in
67 property or an enterprise of a person, which is or is of a type, dealt in or traded on financial
68 markets, or which is recognized in any area in which it is issued or dealt in as a medium for
69 investment; or

70 (C) any property that is held by a securities intermediary for another person in a
71 securities account if that securities intermediary has expressly agreed with the other person that
72 the property is to be treated as a financial asset under this chapter.

73 (ii) As context requires, "financial asset" means either the interest itself or the means
74 by which a person's claim to it is evidenced, including a certificated or uncertificated security, a
75 security certificate, or a security entitlement.

76 (j) "Good faith," for purposes of the obligation of good faith in the performance or
77 enforcement of contracts or duties within this chapter, means honesty in fact and the
78 observance of reasonable commercial standards of fair dealing.

79 (k) "Indorsement" means a signature that alone or accompanied by other words is made
80 on a security certificate in registered form or on a separate document for the purpose of
81 assigning, transferring, or redeeming the security or granting a power to assign, transfer, or
82 redeem it.

83 (l) "Instruction" means a notification communicated to the issuer of an uncertificated
84 security which directs that the transfer of the security be registered or that the security be
85 redeemed.

86 (m) "Land company" means a mutual benefit corporation, as defined in Section
87 16-6a-102, that bases the use of the corporation's land on issued share ownership.

88 [~~m~~] (n) "Registered form," as applied to a certificated security, means a form in
89 which:

90 (i) the security certificate specifies a person entitled to the security; and
91 (ii) a transfer of the security may be registered upon books maintained for that purpose
92 by or on behalf of the issuer, or the security certificate so states.

93 ~~(n)~~ (o) "Securities intermediary" means:

94 (i) a clearing corporation; or
95 (ii) a person, including a bank or broker, that in the ordinary course of its business
96 maintains securities accounts for others and is acting in that capacity.

97 ~~(o)~~ (p) "Security," except as otherwise provided in Section 70A-8-102, means an
98 obligation of an issuer or a share, participation, or other interest in an issuer or in property or an
99 enterprise of an issuer that:

100 (i) is represented by a security certificate in bearer or registered form, or the transfer of
101 which may be registered upon books maintained for that purpose by or on behalf of the issuer;

102 (ii) is one of a class or series or by its terms is divisible into a class or series of shares,
103 participations, interests, or obligations; and

104 (iii) (A) is, or is of a type, dealt in or traded on securities exchanges or securities
105 markets; or

106 (B) is a medium for investment and by its terms expressly provides that it is a security
107 governed by this chapter.

108 ~~(p)~~ (q) "Security certificate" means a certificate representing a security.

109 ~~(q)~~ (r) "Security entitlement" means the rights and property interest of an entitlement
110 holder with respect to a financial asset specified in Part 5, Security Entitlements.

111 ~~(r)~~ (s) "Uncertificated security" means a security that is not represented by a
112 certificate.

113 ~~(s)~~ (t) "Water company" is as defined in Section 16-4-102.

114 (2) Other definitions applying to this chapter and the sections in which they appear are:

115 (a) "Appropriate person," Section 70A-8-106.

116 (b) "Control," Section 70A-8-105.

117 (c) "Delivery," Section 70A-8-301.

118 (d) "Investment company security," Section 70A-8-102.

119 (e) "Issuer," Section 70A-8-201.

120 (f) "Overissue," Section 70A-8-210.

121 (g) "Protected purchaser," Section 70A-8-303.

122 (h) "Securities account," Section 70A-8-501.

123 (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains
124 general definitions and principles of construction and interpretation applicable throughout this
125 chapter.

126 (4) The characterization of a person, business, or transaction for purposes of this
127 chapter does not determine the characterization of the person, business, or transaction for
128 purposes of any other law, regulation, or rule.

129 Section 2. Section **70A-8-303** is amended to read:

130 **70A-8-303. Protected purchaser.**

131 (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security,
132 or of an interest in the security, who:

133 (a) (i) gives value;

134 (ii) does not have notice of an adverse claim to the security; and

135 (iii) obtains control of the security; or

136 (b) for a security issued by a land company or a water company, pays, or whose
137 predecessors in interest paid, an assessment levied by the land company or the water company
138 in accordance with Title 16, Chapter 4, Share Assessment Act, against the security at least once
139 within the five-year period immediately preceding the date it is determined whether the
140 purchaser is a protected purchaser.

141 (2) In addition to acquiring the rights of a purchaser, a protected purchaser acquires the
142 purchaser's interest in the certificated or uncertificated security free of any adverse claim.

143 Section 3. Section **70A-8-405** is amended to read:

144 **70A-8-405. Replacement of lost, destroyed, or wrongfully taken security**
145 **certificate.**

146 (1) If an owner of a certificated security, whether in registered or bearer form, claims
147 that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new
148 certificate if the owner:

149 (a) requests that a new certificate be issued before the issuer has notice that the
150 certificate has been acquired by a protected purchaser;

151 (b) files with the issuer a sufficient indemnity bond; and

152 (c) satisfies other reasonable requirements imposed by the issuer.

153 (2) (a) If, after the issue of a new certificate, a protected purchaser of the original
154 certificate presents it for registration of transfer, the issuer shall register the transfer unless an
155 overissue would result.

156 (b) If an overissue would result from registration of transfer, the issuer's liability is
157 governed by Section 70A-8-210.

158 (c) In addition to any rights on the indemnity bond, an issuer may recover the new
159 certificate from a person to whom it was issued or any person taking under that person, except
160 a protected purchaser.

161 (3) On and after July 1, 2011, this section does not apply to the replacement of a lost,
162 destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1
163 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water
164 company.

165 (4) On and after May 8, 2012, this section does not apply to the replacement of a lost,
166 destroyed, or wrongfully taken share certificate of a land company. Section 70A-8-409.1
167 governs the replacement of a lost, destroyed, or wrongfully taken share certificate of a land
168 company.

169 Section 4. Section **70A-8-406** is amended to read:

170 **70A-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken**
171 **security certificate.**

172 (1) If a security certificate has been lost, apparently destroyed, or wrongfully taken, and
173 the owner fails to notify the issuer of that fact within the reasonable time after the owner has
174 notice of it and the issuer registers a transfer of the security before receiving notification, the
175 owner may not assert against the issuer a claim for registering the transfer under Section
176 70A-8-404 or a claim to a new security certificate under Section 70A-8-405.

177 (2) On and after July 1, 2011, Subsection (1) does not apply to the replacement of a
178 lost, destroyed, or wrongfully taken share certificate of a water company. Section 70A-8-409.1
179 governs replacement of a lost, destroyed, or wrongfully taken share certificate of a water
180 company.

181 (3) On and after May 8, 2012, Subsection (1) does not apply to the replacement of a
182 lost, destroyed, or wrongfully taken share certificate of a land company. Section 70A-8-409.1

183 governs the replacement of a lost, destroyed, or wrongfully taken share certificate of a land
 184 company.

185 Section 5. Section **70A-8-409** is amended to read:

186 **70A-8-409. Application to water or land companies.**

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

189 Section 6. Section **70A-8-409.1** is amended to read:

190 **70A-8-409.1. Replacement of lost, destroyed, or wrongfully taken share**
 191 **certificate of a land company or a water company.**

192 (1) For purposes of this section:

193 (a) "Affected share" means the share represented by a share certificate that is lost,
 194 destroyed, or wrongfully taken.

195 (b) "Company" means a land company or a water company.

196 ~~(b)~~ (c) "Distribution area" means:

197 (i) for a water company, the geographic area where the water company distributes
 198 water[.]; or

199 (ii) for a land company, the geographic area owned by the land company.

200 ~~(c)~~ (d) "Original share certificate" means a share certificate that is alleged to be lost,
 201 destroyed, or wrongfully taken.

202 ~~(d)~~ (e) "Person" means:

203 (i) an individual;

204 (ii) a corporation;

205 (iii) a business entity;

206 (iv) a political subdivision of the state, including a municipality;

207 (v) an agency of the state; or

208 (vi) an agency of the federal government.

209 ~~(e)~~ (f) "Replacement share certificate" means a share certificate issued to replace a
 210 share certificate that is lost, destroyed, or wrongfully taken.

211 ~~(f)~~ (g) "Share certificate" means a certificated share of stock in a ~~[water]~~ company.

212 (2) (a) ~~[On and after July 1, 2011, this]~~ This section applies to the replacement of a
 213 lost, destroyed, or wrongfully taken share certificate.

214 (b) Unless the articles of incorporation or bylaws of a [water] company address the
215 replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the
216 replacement of a lost, destroyed, or wrongfully taken share certificate.

217 (3) A [water] company shall issue a replacement share certificate to a person claiming
218 to be the owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the
219 original share certificate on the records of the [water] company, if:

220 (a) the person represents to the [water] company that the original share certificate is
221 lost, destroyed, or wrongfully taken;

222 (b) (i) (A) the person is the registered owner of the affected share; and

223 (B) before the [water] company receives notice that the share certificate has been
224 acquired by a protected purchaser, the person requests that a replacement share certificate be
225 issued; or

226 (ii) (A) the person is not the registered owner of the affected share; and

227 (B) the person establishes ownership of the affected share, including by presenting to
228 the [water] company written documentation that demonstrates to the reasonable satisfaction of
229 the [water] company that the person is the rightful owner of the affected share through
230 purchase, gift, inheritance, foreclosure, bankruptcy, or reorganization;

231 (c) the assessments to which the affected share is subject are paid current;

232 (d) except as provided in Subsection (5), the person files with the [water] company a
233 sufficient indemnity bond or other security acceptable to the [water] company; and

234 (e) the person satisfies any other reasonable requirement imposed by the [water]
235 company, including the payment of a reasonable transfer fee.

236 (4) (a) If after a replacement share certificate is issued a protected purchaser of the
237 original share certificate presents the original share certificate for registration of transfer, the
238 [water] company shall register the transfer unless an overissue would result.

239 (b) If an overissue would result when there is a registration of transfer of an original
240 share certificate, a [water] company may recover the replacement share certificate from the
241 person to whom it is issued, or any person taking under that person, except a protected
242 purchaser.

243 (c) If a [water] company elects to follow the procedures of Subsection (5), to assert an
244 ownership interest in the affected share, a protected purchaser shall file a written notice of

245 objection within the 60-day period described in Subsection (5)(d). A protected purchaser's
246 failure to file a written notice of objection within the 60-day period eliminates any claim of the
247 protected purchaser.

248 (5) As an alternative to requiring an indemnity bond or other acceptable security under
249 Subsection (3)(d), a [water] company is considered to have followed a fair and reasonable
250 procedure without the necessity of a written policy or bylaw otherwise required by Section
251 16-6a-609, if the [water] company follows the following procedure:

252 (a) The [water] company shall publish written notice at least once a week for three
253 consecutive weeks:

254 (i) (A) in a newspaper of general circulation in the area that reasonably includes the
255 distribution area of the [water] company; and

256 (B) as required in Section 45-1-101;

257 (ii) with at least seven days between each publication date under Subsection
258 (5)(a)(i)(A); and

259 (iii) beginning no later than 20 days after submission of the request to issue the
260 replacement share certificate.

261 (b) The [water] company shall post written notice in at least three conspicuous places
262 within the distribution area of the [water] company.

263 (c) No later than 20 days after the day on which the [water] company receives a request
264 to issue a replacement share certificate, the [water] company shall mail written notice:

265 (i) to the last known address of the owner of the affected share shown on the records of
266 the [water] company;

267 (ii) if a [water] company maintains a record of who pays annual assessments, to any
268 person who, within the five-year period immediately preceding the day the written notice is
269 mailed, pays an assessment levied against the affected share; and

270 (iii) to any person that has notified the [water] company in writing of an interest in the
271 affected share, including a financial institution.

272 (d) A notice required under Subsections (5)(a) through (c) shall:

273 (i) identify the person who is requesting that a replacement share certificate be issued;

274 (ii) state that an interested person may file a written notice of objection with the [water]
275 company; and

276 (iii) state that unless a written notice of objection to the issuance of a replacement share
277 certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A),
278 including a written notice of objection from a protected purchaser:

279 (A) a replacement share certificate will be issued to the person requesting that the
280 replacement share certificate be issued; and

281 (B) the original share certificate will be permanently canceled on the records of the
282 [water] company.

283 (e) A notice of objection under Subsection (5)(d) shall:

284 (i) state the basis for objecting to the claim of ownership of the affected share;

285 (ii) identify a person that the objecting person believes has a stronger claim of
286 ownership to the affected share; and

287 (iii) be accompanied by written evidence that reasonably documents the basis of the
288 objection to the claim of ownership.

289 (f) If the [water] company receives a notice of objection within the 60-day period
290 described in Subsection (5)(d), the [water] company may review the disputed claim and:

291 (i) deny in writing the objection to the claim of ownership and issue a replacement
292 share certificate to the person requesting the replacement share certificate;

293 (ii) accept in writing a claim of ownership asserted by a notice of objection and issue a
294 replacement share certificate to the person the objecting person asserts owns the affected share;

295 (iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule
296 22, joining the persons claiming an interest in the affected share and depositing a replacement
297 share certificate with the court; or

298 (iv) require the persons claiming an interest in the affected share to resolve the
299 ownership dispute.

300 (g) Upon receipt, the [water] company shall act in accordance with:

301 (i) a written agreement acceptable to the [water] company among the persons who
302 claim interest in the affected share; or

303 (ii) a court order declaring ownership in the affected share.

304 (h) The following are entitled to receive from a nonprevailing person the costs for
305 resolution of a dispute under this Subsection (5), including reasonable attorney fees when
306 attorney fees are necessary:

- 307 (i) a prevailing person; and
- 308 (ii) the [water] company, if the [water] company acts in good faith.
- 309 (i) The person requesting that a replacement share certificate be issued shall reimburse
- 310 the [water] company for the costs reasonably incurred by the [water] company under this
- 311 Subsection (5) that are not paid under this Subsection (5)(i) including:
- 312 (i) legal and other professional fees; and
- 313 (ii) costs incurred by the [water] company in response to a notice of objection.
- 314 (j) A [water] company shall comply with this Subsection (5) before issuance of a
- 315 replacement share certificate:
- 316 (i) upon request from the person requesting a replacement share certificate be issued;
- 317 and
- 318 (ii) if the person requesting the replacement share certificate provides indemnification
- 319 satisfactory to the [water] company against liability and costs of proceeding under this
- 320 Subsection (5).
- 321 (k) A determination made under this Subsection (5) is considered to be a final and
- 322 conclusive determination of ownership of a disputed replacement share certificate.
- 323 (6) (a) A [water] company shall:
- 324 (i) make a decision to approve or deny the issuance of a replacement share certificate in
- 325 writing; and
- 326 (ii) deliver the written decision to:
- 327 (A) the person requesting a replacement share certificate be issued;
- 328 (B) a person who files a notice of objection under Subsection (5); and
- 329 (C) any other person the [water] company determines is involved in the request for a
- 330 replacement share certificate.
- 331 (b) A decision of a [water] company described in Subsection (6)(a) is subject to de
- 332 novo judicial review in the district court in which the [water] company has its principal place
- 333 of business.
- 334 (c) A person may not seek judicial review under Subsection (6)(b) more than 30 days
- 335 after the day on which the written decision is delivered under Subsection (6)(a). If no action
- 336 for judicial review is filed within the 30-day period, absent fraud, the issuance of a replacement
- 337 share certificate or the decision to not issue a replacement share certificate is final and

338 conclusive evidence of ownership of the affected share.

339 (d) (i) In a judicial action brought under this Subsection (6), the prevailing person as
340 determined by court order, is entitled to payment by a nonprevailing person of:

341 (A) the costs of successfully defending its ownership claim; and

342 (B) reasonable attorney fees.

343 (ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be
344 granted against a [water] company if the [water] company acts in good faith.

Legislative Review Note
as of 2-27-12 3:21 PM

Office of Legislative Research and General Counsel