

## **CHAPTER 26.1-12.1 MUTUAL INSURANCE COMPANY REORGANIZATION**

### **26.1-12.1-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the insurance commissioner.
2. "Domestic mutual insurance company" or "mutual insurance company" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.
3. "Domestic mutual insurance holding company" or "mutual insurance holding company" means a company formed under section 26.1-12.1-02.
4. "Eligible member" means a policyholder whose policy is in force as of the record date or member as defined under the bylaws or articles of incorporation of the reorganizing insurer. Unless otherwise provided in the reorganization plan, a person insured under a certificate issued under a group policy is not an eligible member.
5. "Foreign mutual insurance company" means a mutual insurance company incorporated under the laws of another state.
6. "Foreign mutual insurance holding company" means a company formed under provisions of the laws of another state similar to those contained in this chapter.
7. "Membership interest" means all interests of eligible members of the reorganizing insurer, including rights to vote and to participate in any distribution of surplus, whether or not incident to the company's liquidation. It does not include the contractual rights remaining with the reorganized insurance company.
8. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to this chapter.
9. "Policy" means a policy or contract of insurance issued by a mutual insurance company, including an annuity contract.
10. "Record date" means the date the reorganizing insurer's board of directors adopts a plan of reorganization or some other date specified as the record date in the plan of reorganization and approved by the commissioner.
11. "Reorganization" means any plan or transaction described in section 26.1-12.1-02, 26.1-12.1-03, 26.1-12.1-15, 26.1-12.1-16, or 26.1-12.1-17, or any change in the reorganized insurer's articles of incorporation or bylaws which is a material change to the plan of reorganization filed and approved by the commissioner affecting the ability of the reorganizing insurer to meet the standards described in section 26.1-12.1-06.
12. "Reorganized insurance company" means a mutual insurance company that has completed a reorganization to a stock company that is subject to this chapter. A domestic or foreign mutual insurance company that has completed a reorganization to a stock company may retain the word "mutual" in its name so long as it is clearly identified with its name that it is a stock insurance subsidiary of a domestic or foreign mutual insurance holding company.
13. "Reorganizing insurer" means a mutual insurance company, whether domestic or foreign, seeking to participate, or participating, in a merger or other reorganization as defined in this chapter.

### **26.1-12.1-02. Mutual insurance holding company - Formation.**

A domestic mutual insurance company, upon approval of the commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurer as a stock insurance company. The commissioner, if satisfied the reorganization meets the standards set forth in section 26.1-12.1-06, may approve the proposed plan of reorganization or may require as a condition of approval the modification of the proposed plan of reorganization as the commissioner finds necessary for the plan to meet the standards of section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual insurance holding company and the reorganized insurer according to this section and chapter 26.1-10 to assure that policyholders' and members' interests are protected.

All of the initial shares of the capital stock of the reorganized insurer must be issued to the mutual insurance holding company or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer must be converted into membership interests in the mutual insurance holding company. Policyholders of the reorganizing insurance company must become members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company and the articles of incorporation and bylaws of the reorganized insurance company as approved by the commissioner. The mutual insurance holding company, directly or indirectly through an intermediate stock holding company, must control at all times a majority of the voting shares of the capital stock of the reorganized insurance company but this does not prohibit any future demutualization or other conversion.

#### **26.1-12.1-03. Mutual insurance holding company - Merger.**

A domestic mutual insurance company, upon the approval of the commissioner, may reorganize by merging its policyholders' member interests into a mutual insurance holding company formed according to section 26.1-12.1-02 and continuing the corporate existence of the reorganizing insurer as a stock insurance company subsidiary of the mutual insurance holding company. The commissioner, if satisfied that the reorganization meets the standards in section 26.1-12.1-06, may approve the proposed merger or may require as a condition of approval the modification of the proposed merger as the commissioner finds necessary for the merger to meet the standards in section 26.1-12.1-06. The commissioner shall retain jurisdiction over the mutual insurance holding company and the reorganized insurer organized according to this section to assure that the policyholders' and members' interests are protected.

All of the initial shares of the capital stock of the reorganized insurance company must be issued to the mutual insurance holding company, or to an intermediate stock holding company that is wholly owned by the mutual insurance holding company. The membership interests of the policyholders of the reorganizing insurer must be converted into membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company must become members of the mutual insurance holding company according to the articles of incorporation and bylaws of the mutual insurance holding company. A merger as contemplated by this section is not subject to chapter 26.1-07.

#### **26.1-12.1-04. Plan of reorganization - Contents.**

No insurer authorized to do business in this state may take part in a reorganization unless the reorganization has first been approved by the commissioner in accordance with this chapter. A reorganizing insurer shall file a plan of reorganization consistent with the requirements of this section, approved by the affirmative vote of a majority of its board of directors, for review and approval by the commissioner. The plan must include:

1. A description of the nature and content, or a copy, of the annual report and financial statement to be sent to each eligible member.
2. An analysis of the benefits and risks attendant to the proposed reorganization, including the rationale for the reorganization and analysis of the comparative benefits and risks to the reorganizing insurer of the reorganization.
3. Information sufficient to demonstrate the financial condition of the reorganizing insurer will not be affected adversely upon reorganization.
4. Information demonstrating that the reorganization will:
  - a. Establish a mutual insurance holding company with at least one stock insurance company subsidiary, the majority of whose shares must be owned, either directly or through an intermediate stock holding company, by the mutual insurance holding company;
  - b. Ensure immediate membership in the mutual insurance holding company of all existing eligible members of the reorganizing mutual insurance company;
  - c. Describe a plan providing for membership interest of future policyholders;
  - d. Include a copy of the proposed mutual insurance holding company's articles of incorporation and bylaws specifying all membership rights;

- e. Include a copy of the articles of incorporation and bylaws of the reorganizing insurer, any proposed insurance company subsidiary, or intermediate holding company subsidiary; and
  - f. Describe the number of members of the board of directors of the mutual insurance holding company required to be policyholders.
5. Information demonstrating that upon an insolvency involving a stock insurance company subsidiary of the mutual insurance holding company that resulted from the reorganization, the assets of the mutual holding company will be available to satisfy the policyholder obligations of the stock insurance company.
  6. Information describing the mutual insurance holding company's general plans regarding whether any accumulation or prospective accumulation of earnings by the mutual insurance holding company which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary will inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

**26.1-12.1-05. Retention of experts.**

The commissioner may retain, at the reorganizing insurer's reasonable expense, any qualified experts if the commissioner determines that staff not otherwise a part of the commissioner's staff is necessary to assist in reviewing the plan.

**26.1-12.1-06. Hearing by commissioner - General duties.**

The commissioner shall conduct a public hearing regarding a proposed reorganization plan within sixty days after submission of a completed plan of reorganization to the commissioner, unless the commissioner and reorganizing insurer agree to extend the sixty days or unless the commissioner and the reorganizing insurer, based upon the facts and circumstances of the transaction, agree that a hearing may be waived. If a hearing is held, the commissioner shall give the reorganizing insurer at least twenty days' notice of the hearing. At the hearing, the reorganizing insurer, its policyholders, and any other person whose interests may be affected by the proposed reorganization may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and comments according to the procedure for contested cases under chapter 28-32. The commissioner, in making the determination as to a plan of reorganization under this chapter, shall consider whether:

1. The reorganizing insurer's surplus in regard to policyholders following a plan of reorganization is reasonable in relation to the reorganizing insurer's outstanding liabilities and adequate to its financial needs;
2. Under a plan of reorganization that materially affects the membership interest of eligible members in the reorganizing insurer, the eligible members will receive a membership interest in a mutual holding company commensurate with an equitable share of the value of the reorganizing insurer;
3. After the reorganization, the reorganized insurance company will be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it was licensed before the reorganization; and
4. The plan of the reorganization is fair, reasonable, and equitable to the policyholders of the reorganizing insurer.

**26.1-12.1-07. Action by commissioner.**

Within sixty days after the conclusion of the public hearing, or within the sixty days after filing the plan of reorganization if by mutual agreement the hearing is waived, unless there is a mutual agreement by the commissioner and the reorganizing insurer to extend such time, the commissioner shall enter findings of fact, conclusions of law, and an order either approving, conditionally approving, or disapproving the plan. An approval or conditional approval of a plan of reorganization expires if the reorganization is not completed within one hundred eighty days after the approval or conditional approval, unless the time period is extended by the commissioner upon a showing of good cause.

#### **26.1-12.1-08. Notice to eligible members.**

Following approval or conditional approval of the plan by the commissioner, all eligible members shall be given notice of a regular or special meeting of the policyholders called for the purpose of considering the plan and any corporate action that is a part of, or is reasonably attendant to, the accomplishment of the plan. A copy of the plan or a summary of the plan must accompany the notice. A notice approved by the commissioner must be mailed to each eligible member's last-known address, as shown on the reorganizing insurer's records, within forty-five days of the commissioner's approval of the plan, unless the commissioner directs an earlier date for mailing. The meeting to vote upon a plan of reorganization must be set for a date no less than forty-five days after the date when the notice of the meeting is mailed by the reorganizing insurer, unless the commissioner directs an earlier date for the meeting. If the meeting to vote upon the plan of reorganization is held coincident with the reorganizing insurer's annual meeting of policyholders or members, only one combined notice of meeting is required. If the reorganizing insurer complies substantially and in good faith with the notice requirements of this section, the reorganizing insurer's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

#### **26.1-12.1-09. Approval by eligible members.**

The plan of reorganization must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members. Eligible members may vote in person or by proxy. The form of any proxy along with a copy or summary of the plan which accompanied the notice to eligible members must be filed with and approved by the commissioner. The number of votes each eligible member may cast must be determined by the reorganizing domestic mutual insurance company's bylaws. If the bylaws are silent, each eligible member may cast one vote. The plan must be approved as follows:

1. In the case of formation of a mutual insurance holding company under section 26.1-12.1-02, the reorganization plan must be approved by the affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing domestic mutual insurance company; and
2. In the case of a merger under section 26.1-12.1-03, the reorganization plan must be approved by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing domestic mutual insurance company and by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged, provided that the vote of the eligible members of the mutual insurance holding company may not be required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

#### **26.1-12.1-10. Applicability of certain provisions.**

A mutual insurance holding company is deemed to be an insurer subject to chapter 26.1-06.1 and is automatically a mandatory party to any proceeding under that chapter involving an insurance company that, as a result of a reorganization according to section 26.1-12.1-02 or 26.1-12.1-03, is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 26.1-06.1 involving the reorganized insurance company, the assets of the mutual insurance holding company are considered to be the assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company may not dissolve or liquidate without the approval of the commissioner or as ordered by the district court according to chapter 26.1-06.1. Chapter 26.1-12.2 is not applicable to a reorganization or merger accomplished under this chapter.

#### **26.1-12.1-11. Membership interest.**

A membership interest in a domestic mutual insurance holding company does not constitute a security as defined in section 10-04-02. No member of a mutual insurance holding company

may transfer or pledge membership in the mutual insurance holding company or any right arising from the membership except as attendant to the valid transfer or assignment of the member's policy in any reorganized insurer which gave rise to the member's membership interest. A member of a mutual insurance holding company is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the reorganized insurer. No assessment of any kind may be imposed upon the members of a mutual insurance holding company by the directors or members, or because of any liability of any company owned or controlled by the mutual insurance holding company, or because of any act, debt, or liability of the reorganized company. A member's interest in the mutual insurance holding company automatically terminates upon cancellation, nonrenewal, expiration, or termination of the member's policy in any reorganized company which gave rise to the member's membership interest.

**26.1-12.1-12. Sale of stock and payment of dividends.**

No solicitation for the sale of any of the stock of the reorganized insurer, or of an intermediate stock holding company of the mutual insurance holding company, may be made without the commissioner's prior written approval. Dividends and other distributions to the shareholders or members of the reorganized mutual insurance company or of an intermediate stock holding company may not be made except in compliance with sections 26.1-10-05 and 26.1-10-05.1.

**26.1-12.1-13. Incorporation.**

A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company must be incorporated under chapter 10-33. The articles of incorporation of the mutual insurance holding company are subject to approval of the commissioner in the same manner as those of an insurance company.

**26.1-12.1-14. Applicability.**

This chapter does not apply to any mutual insurance company that was formerly organized as a nonprofit health service corporation.

**26.1-12.1-15. Foreign mutual insurance holding company - Reorganization.**

A domestic mutual insurance company may reorganize with a foreign mutual insurance holding company that is created or exists under the laws of another state by complying with chapter 26.1-12.1. The commissioner may waive any provision of chapter 26.1-12.1 if the commissioner determines the provision to be unnecessary for the protection of eligible members.

A plan of reorganization under this section must comply with the requirements and standards of section 26.1-12.1-06 and be approved by the eligible members of the domestic mutual insurance company as a reorganizing insurer in accordance with subsection 1 of section 26.1-12.1-09. A domestic mutual insurance company seeking to reorganize under this section may at the same time redomesticate to another state by complying with section 26.1-05-07.3 and the applicable requirements of the state to which it seeks to transfer domicile.

**26.1-12.1-16. Existing domestic mutual insurance holding company - Reorganization.**

An existing domestic mutual insurance holding company, with the prior approval of the commissioner pursuant to, and under the provisions of section 26.1-12.1-06, may:

1. Acquire direct or indirect ownership of a foreign mutual insurance company as a reorganizing insurer in compliance with the laws of its state of domicile; and
2. Grant membership interest and equity rights in the domestic mutual insurance holding company to eligible members of a foreign mutual insurance company as a reorganizing insurer that merges with a direct or indirect domestic or foreign subsidiary of the domestic mutual insurance holding company, or is otherwise acquired by the domestic mutual insurance holding company.

The commissioner shall consider the fairness of the terms and conditions of the transaction, whether the interests of the eligible members of the domestic mutual insurance holding

company that is a party to the transaction are protected in accordance with this chapter. A plan of reorganization under this section must be approved by the eligible members of the domestic mutual insurance holding company in accordance with subsection 2 of section 26.1-12.1-09.

**26.1-12.1-17. Concurrent reorganization - Domestic or foreign.**

The concurrent reorganization of a domestic mutual insurance company with one or more mutual insurance companies, whether domestic or foreign, into a single mutual insurance holding company structure, whether domestic or foreign, may be accomplished by a joint application and a joint plan of reorganization and may be approved by complying with the requirements and standards of section 26.1-12.1-06 by the commissioner following a hearing as provided for in this chapter. The commissioner may allow such other procedures to avoid unnecessary or duplicative costs and efforts in satisfying the requirements of this chapter and effectuating the reorganization.