

CHAPTER 65A

FIRE AND RELATED INSURANCE

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65A.16 GUARANTY SURPLUS AND SPECIAL RESERVE FUND.

Any insurance company organized under the laws of this state authorized to transact a fire insurance business may create the funds herein provided for, to be known and designated as the guaranty surplus fund and the special reserve fund, and may avail itself of the provisions of sections 65A.16 to 65A.24, upon complying with the requirements thereof.

History: 1997 c 7 art 1 s 19

65A.17 ACTION OF STOCKHOLDERS FILED WITH COMMISSIONER.

Any such insurance company, desiring to create such funds, may do so if such action is authorized by its stockholders, upon the adoption of a resolution to that effect by its board of directors at a regular meeting of the board, or at any special meeting called for that purpose, and filing with the commissioner a copy thereof, declaring the intention of the company to create these funds and to do business under the provisions of sections 65A.16 to 65A.24; and, as soon after the filing of a copy of the resolution as convenient, the commissioner shall make, or cause to be made, an examination of the company, and shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by the company at the date of the examination, the whole or any part of which, under the provisions of sections 65A.16 to 65A.24, may be equally divided between and set apart to constitute guaranty surplus and special reserve funds, which certificate shall be recorded in the department of commerce.

History: 1997 c 7 art 1 s 19

65A.18 DIVIDENDS DECLARED OUT OF SURPLUS PROFITS.

After the date of filing any such resolution with the commissioner, the company shall not make or declare or pay in any form any dividend upon its capital stock, exceeding eight percent per annum thereupon and six percent per annum upon the surplus funds to be formed hereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000; and any part of the surplus profits of the company above this annual dividend may be equally divided between and set apart to constitute the guaranty surplus fund and the special reserve fund, which funds shall be held and used as hereinafter provided, and not otherwise. Any company doing business under sections 65A.16 to 65A.24, whose guaranty surplus fund and special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000, may, from time to time, declare dividends out of its surplus profits in such amounts as its board of directors may prescribe, subject only to the limitation that the payment of these dividends shall not deplete its capital, nor reduce the aggregate amount of the guaranty surplus and special reserve funds to an amount less than the amount of its capital stock, or if its capital stock exceeds \$2,000,000, to an amount less than \$2,000,000; and, subject to the further limitation that no dividends exceeding ten percent upon the capital stock shall be declared in any year if the payment thereof would reduce the aggregate amount of all surplus funds, including guaranty surplus and special reserve funds, below an amount equal to 30 percent of its unearned premiums. Any company doing business under sections 65A.16 to 65A.24, which shall declare or pay any dividend contrary to the provisions herein contained, shall be liable to be proceeded against under chapter 60B for its dissolution.

History: 1997 c 7 art 1 s 19

65A.19 EXAMINATION.

When the company shall notify the commissioner that it has fulfilled the requirements already expressed in sections 65A.16 to 65A.24, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock or amount to the sum of \$2,000,000, the commissioner shall make an examination of the company and make a certificate of the result thereof, and file the same in the commissioner's office and, if the commissioner shall find that the combined funds shall equal the capital stock of the company or amount to the sum of \$2,000,000, thereafter the company may continue, out of any subsequent profits of its business, to add to these funds; provided, that when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund.

History: 1997 c 7 art 1 s 19

65A.22 INVESTMENT OF SPECIAL RESERVE FUND.

The special reserve fund shall be invested according to existing laws relating to investments of capital by fire insurance companies and shall be deposited, from time to time, as the same shall accumulate and be invested, with the commissioner in accordance with section 60A.10, subdivision 4, who shall permit the company depositing the same to change these deposits by substituting for those withdrawn others of equal amount and value, and to collect and receive the interest or dividends upon these securities as the same may accrue; and this fund shall not be regarded as any part of the assets in possession of the company, so as to be or render the same liable for any claim for loss by fire, or otherwise, except as provided in sections 65A.16 to 65A.24.

History: 1997 c 7 art 1 s 19

65A.23 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK.

(1) When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65A.16 to 65A.24, and of its surplus funds, other than the special reserve fund, the company shall notify the commissioner of the fact, who shall then make, or cause to be made, an examination of the company, and issue a certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets, and upon the commissioner's issuing this certificate, in duplicate, one copy to be given to the company and one to be recorded in the department of commerce, the special reserve fund shall be immediately held to protect all policyholders of the company, other than such as are claimants upon it at the date of the certificate, and the special reserve fund, together with other assets, certified by the commissioner as equal in value to the amount of the unearned premiums of the company, to be ascertained, as hereinbefore provided, shall constitute the capital and assets of the company for the protection of policyholders, other than these claimants, and for the further conduct of its business, and any official certificate of the commissioner, herein provided for, shall be binding and conclusive upon all parties interested in the company, whether as stockholders, creditors, or policyholders, and upon the payment to claimants who are such at the date of the certificate, of the full amount of the capital of the company and of its guaranty surplus fund and of its assets at that date, excepting only the special reserve fund and an amount of its assets equal to the liability of the company for unearned premiums, as so certified by such commissioner of commerce, the company shall be forever discharged from any and all further liability to these claimants, and to each of them, and the commissioner shall, after issuing a certificate, upon the demand of the company, transfer to it all such securities as shall have been deposited by the company as a special reserve fund and, if the amount of this special reserve fund be less than 50 percent of the full amount of the capital of the company, if the capital be \$2,000,000, or less, or if the amount of the special reserve fund be less than \$1,000,000, if the capital be over \$2,000,000, a requisition shall be issued by the commissioner upon the stockholders, to make up the capital to that proportion of its full amount, not exceeding \$1,000,000; provided, that any capital so impaired shall be made up at least to the sum of \$100,000, and in case the company, after this requisition, shall fail to make up its capital at least to the sum of \$100,000, as therein directed, the special reserve fund shall still be held as security and liable for any and all losses occurring upon policies of the company.

(2) If, after this application of the special reserve fund and requisition on the stockholders, the par value of outstanding shares of stock shall exceed the new amount of capital so established, outstanding shares, to the amount of the excess, shall be surrendered by the stockholders pro rata.

(3) The company shall, in its annual statement to the commissioner, set forth the amount of the special reserve fund and of its guaranty surplus fund.

(4) If, in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest or dividends payable under the provisions of sections 65A.16 to 65A.24 to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall make no additions to the special reserve fund until the guaranty surplus fund is equal to the special reserve fund.

(5) The policy registers, insurance maps, books of record, and other books in use by the company in its business, and its policy and other blanks, office furniture, fixtures, and supplies are not to be considered as assets, but shall be held by the company for its use in the protection of its policyholders.

(6) If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65A.16 to 65A.24, have been deposited with the commissioner, the commissioner shall retain of these securities an amount equal to one-half of what amount the commissioner shall so hold thereof in excess of a sum equal to such one-half of such capital stock if the capital be \$2,000,000, or less, or in excess of \$3,000,000 if the capital be over \$2,000,000, and the commissioner shall transfer the balance thereof to the company, as herein provided, and the amount so transferred to the company shall, from the time of the transfer, provided the amount thereof shall not be less than \$100,000, constitute the capital stock of the company for the further conduct of its business, as hereinbefore provided, and the securities so retained shall be regarded as the special reserve fund of the company, to which additions may be made, as herein provided, and shall be held in the same manner, and for the same purpose, and under the same conditions, as the original special reserve fund of the company was held. The provisions of this section, providing for discharge of the company from further liability to existing claimants upon application to the payment of such claims of its capital, surplus, and assets, excepting the special reserve fund, and an amount equal to the liability for unearned premiums, shall not be construed to relieve the stockholders of the corporation from any liability imposed by the constitution of this state.

History: 1997 c 7 art 1 s 19

65A.24 STOCKHOLDERS TO MAKE UP IMPAIRMENT.

If, at any time after the special reserve fund shall have been accumulated by any company, the directors of the company shall present evidence satisfactory to the commissioner that the capital of the company has become impaired, the commissioner shall order the directors to call upon the stockholders to make up this impairment, and the board of directors may thereupon require the necessary payment by the stockholders to make good the whole of the impairment, or they may apply for that purpose the whole or any part of the special reserve fund and require of the stockholders payment of such amount as may be necessary to make up the balance of the impairment not made up out of the special reserve fund. The stock of every stockholder shall be pledged and liable for the amount assessed to make up the impairment, either in whole or in part, and in case any stockholder refuses to pay the assessment, the stock standing in that person's name may be sold at public auction, after 30 days notice, in such manner as the directors may provide. If the board of directors elect to make good the impairment, or any part thereof, out of the special reserve fund, the commissioner shall, upon request of the board, transfer to the company so much of the special reserve fund as is necessary for the purpose. No company doing business under sections 65A.16 to 65A.24 shall insure any larger amount upon any single risk than is permitted by law to a company possessing the same amount of capital, irrespective of the fund provided for in sections 65A.16 to 65A.24.

History: 1997 c 7 art 1 s 19

65A.296 PROOF OF LOSS.

Subdivision 1. **Notice from insurer.** After receiving written notice of a claim by an insured on a homeowner's insurance policy, the insurer may notify the insured that the insurer may deny the claim unless a completed proof of loss is received by the insurer within 60 days of the date on which the written notice under this subdivision was received by the insured. The notice given by the insurer must be sent by certified mail, return receipt requested, and must include a proof of loss form to be completed by the insured together with accompanying instructions for completing the form. The proof of loss form and the accompanying instructions must meet the readability standards of chapter 72C.

[For text of subs 2 to 4, see M.S.1996]

History: 1997 c 77 s 1

65A.50 TRUST OR ESCROW ACCOUNTS; INSURED REAL PROPERTY FIRE OR EXPLOSION LOSS PROCEEDS.

[For text of subd 1, see M.S.1996]

Subd. 2. **Partial withholding from settlement payments; notice.** Except as otherwise provided in this section, with respect to insured real property located in a municipality which has elected to apply this section as provided in subdivision 12, when a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss to the insured real property, an insurer shall withhold from payment 25 percent of the actual cash value of the insured real property at the time of the loss or 25 percent of the final settlement, whichever is less. At the time that 25 percent of the settlement or judgment is withheld, the insurer shall give notice of the withholding to the treasurer of the municipality in which the insured real property is located, to the insured, and to any mortgagee having an existing lien or liens against the insured real property, if the mortgagee is named on the policy. In the case of a judgment, notice shall also be provided to the court in which judgment was entered. The notice shall include all of the following:

- (1) the identity and address of the insurer;
- (2) the name and address of each policyholder, including any mortgagee;
- (3) location of the insured real property;
- (4) the date of loss, policy number, and claim number;
- (5) the amount of money withheld;
- (6) a statement that the municipality may have the withheld amount paid into a trust or escrow account established for the purposes of this section if it shows cause, pursuant to subdivision 3, within 30 days that the money should be withheld to protect the public health and safety, otherwise the withheld amount shall be paid to the insured at the expiration of 30 days; and
- (7) an explanation of the provisions of this section and a verbatim reproduction of subdivision 16.

Subd. 3. **Escrow procedure.** In order for a municipality to escrow the amount withheld by the insurer, and to retain that amount, the following procedure shall be used.

(a) An affidavit prepared by the chief fire official or another authorized representative of the municipality designated by the governing body of the municipality that the damaged insured structure violates existing named health and safety standards requiring the escrow of the withheld amount as surety for the repair, replacement, or removal of the damaged structure shall constitute cause for the escrowing of the withheld amount.

(b) In the case of a settlement, the affidavit shall be sent to the insurer, the insured, and any mortgagees. Upon receipt of the affidavit, the insurer shall forward the withheld amount to the treasurer of the municipality and shall provide notice of the forwarding to the insured and any mortgagees.

(c) In the case of a judgment, the affidavit shall be sent to the insurer, the insured, any mortgagees, and the court in which the judgment was entered. Upon receipt of the affidavit, the insurer shall forward the withheld amount to the treasurer of the municipality and shall provide notice of the forwarding to the insured, any mortgagees, and the court in which judgment was entered.

[For text of subs 4 to 7, see M.S.1996]

Subd. 8. Use of retained proceeds. If with respect to a loss, reasonable proof is not received by or shown to a fire official or another authorized representative of the municipality designated by the governing body of the municipality within 45 days after the policy proceeds portion was received by the treasurer, the municipality shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the municipality. If, before the lapse of the 45 days after the proceeds portion was received by the treasurer, the municipality has secured, repaired, or demolished the damaged or destroyed structure under chapter 299F or 463 or other applicable law or ordinance, once the 45 days lapse, the municipality may release the special assessment placed on the property, if any, and reimburse itself from the retained funds. No more than 15 percent of the policy proceeds used by the municipality under this subdivision may be attributed to the municipality's administrative expenses, which must be directly related to the actions authorized under this subdivision. Any unused portion of the retained proceeds shall be returned to the insured.

[For text of subs 9 to 12, see M.S.1996]

Subd. 13. Retention on list. (a) A municipality shall remain on the list until a written request for deletion has been received by the commissioner, or until the municipality has failed to comply with paragraph (b), and the amended list has been prepared pursuant to this subdivision.

(b) Municipalities on the list shall report every two years to the commissioner in writing regarding the extent of the municipality's use of this section and the effect of this section on arson fires in that municipality. The report must be filed with the commissioner no later than 90 days after the two-year anniversary of the municipality's placement on the list and thereafter no later than 90 days after each subsequent two-year period. If the commissioner has not received a report required under this paragraph, the commissioner shall promptly provide the municipality a written reminder notice. If the commissioner has not received the report within 30 days after providing the written notice, the municipality shall be treated as having made a written request for deletion under paragraph (a).

[For text of subs 14 and 15, see M.S.1996]

Subd. 16. Exceptions to withholding requirements. The withholding requirements of this section do not apply if all of the following occur:

(1) within 30 days after agreement on a final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair as described in subdivision 7;

(2) the insured consents to the payment of funds directly to the contractor performing the repair services. Funds released under this clause may be forwarded only to a contractor performing the repair services on the insured property; and

(3) on receipt of the contract to repair, the insurer gives notice to the municipality in which the property is situated that there will not be a withholding under this section because of the repair contract.

Subd. 17. Demolition costs or debris removal costs as part of final settlement; withholding. If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold one of the following sums, whichever sum is the largest, and shall pay that sum in accordance with this section:

- (1) the agreed cost of demolition or debris removal;
- (2) 25 percent of the actual cash value of the insured real property at the time of loss; or
- (3) 25 percent of the final settlement of the insured real property claim.

History: 1997 c 47 s 1-5; 1997 c 77 s 2