# Chapter 738

## 1955 REPLACEMENT PART

# Incorporation and Management of Domestic Insurance Companies


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**738.010 Incorporation procedure.** (1) Any 10 or more persons, a majority of whom are residents of this state, desiring to become incorporated as an insurance corporation, may make, sign and acknowledge, before an officer authorized to take acknowledgements of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name, which shall not so nearly resemble the name of an existing corporation as to mislead the public or cause confusion.

(b) The place where its principal office will be located.

(c) The purpose, which shall be restricted to the class or classes of insurance to be undertaken, and the powers necessary and incidental to carrying out such purpose.

(d) The mode and manner in which the corporate powers are to be exercised.

(e) The number, terms of office and manner of electing the directors.

(f) The provisions for meetings and votes of stockholders and members. A stock company shall provide that each stockholder shall have one vote for each share of stock held by him. A company without capital stock shall provide that every policyholder shall be a member and entitled to a vote. A stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital, if any, the number of shares and the par value of each share.

(h) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company.

(2) The incorporators shall file the articles with the insurance commissioner and publish, in a newspaper of general circulation in the state, notice of such filing and of the intention to form a corporation.

(3) They shall then file with the insurance commissioner:

(a) A copy of such notice, verified by the oath of the publisher, or his agent.

(b) Copies of proposed bylaws.

(c) Forms of subscription for capital stock.

(d) Forms of proposed application for membership and for insurance.

(e) All proposed forms of insurance policies, literature and advertisements.

(f) A bond payable to the insurance commissioner and his successors, as trustee, in the sum of $10,000, with sureties, and conditioned upon the faithful accounting to the corporation on completion of its organization and the receipt of its license from the insurance commissioner, or to the stockholders, members, applicants for policies and creditors, or to the trustee, receiver or assignee of the corporation, duly appointed in any proceeding in any court or department of competent jurisdiction in the state, in accordance with their respective rights in case the organization of the corporation is not completed and license is not procured from the insurance commissioner.

(g) An application to have securities registered by qualification under ORS 59.170. [Amended by 1953 c.693 §2]

**738.020 Approval of articles and bond; certificate of registration of securities; permit to solicit subscriptions and complete organization.** (1) The insurance commissioner shall submit the proposed articles and other papers filed with him to the Corporation Commissioner. The Corporation Commissioner shall examine these and, if he finds them in accordance with the law, shall so certify and return them, except the application to have securities registered, to the insurance commissioner. The Corporation Commissioner shall consider the application to have securities registered and, if in order, issue to the incorporators a certificate of registration. The insurance commissioner shall cause the articles and the certificate of the Corporation Commissioner to be recorded in his records and issue to the incorporators a certified copy thereof.

(2) If the insurance commissioner approves the sureties on the bond so filed, or on any like bond substituted therefor, he shall deliver to the incorporators a permit in the name of the corporation, authorizing it to complete its organization.

(3) Upon receiving such permit and the Corporation Commissioner's certificate of registration the corporation shall have authority to solicit subscriptions and payments for capital stock, if a stock corporation, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations prescribed in the General Insurance Law, as may be necessary and proper in completing its organization and qualifying for a license to transact the class or classes of insurance proposed in its articles of incorporation.

(4) A corporation shall not issue policies or enter into contracts of insurance until it

receives a license authorizing it so to do. [Amended by 1953 c.693 §2]

**738.030 Stock subscription solicitors, and agents, to be certified to commissioner.** Except as provided in ORS 738.020, no person shall solicit subscriptions for the capital stock of, or applications for insurance in, any corporation in the process of organization unless he has been thereunto duly authorized by the corporation and a certificate of his authority, signed by a principal officer of the corporation, has been filed with the insurance commissioner. [Amended by 1953 c.693 §2]

**738.040 Stipulations required in subscriptions and applications; disposition of subscribed funds.** (1) Every subscription to the capital stock of a corporation in the process of organization shall contain a stipulation that no sum shall be used for commission, promotion or organization expenses in excess of a stated percent of the amount paid upon the subscription. This stated amount shall not exceed 15 percent.

(2) All sums paid by subscribers in excess of the amount which may be devoted to commission, promotion or organization expense shall be invested in securities in which an insurance company is authorized to invest, or deposited in a bank or trust company in the state until the company has duly procured a licence from the insurance commissioner.

(3) Every subscription for stock and every application for insurance in a corporation made prior to its licensing shall contain a stipulation that the money, securities or evidences of debt advanced by the applicant shall be returned to him without any deduction in case the company fails to complete its organization or procure its license or issue the policy applied for. [Amended by 1953 c.693 §2]

**738.050 Minimum capitalization.** No domestic capital stock corporation is authorized to transact any insurance business unless it maintains at all times:

(1) A paid-up capital of not less than $100,000 and a surplus of $50,000 or more if the corporation has an unrevoked certificate of authority received before May 2, 1955.

(2) A combined paid-up capital and surplus of not less than $500,000 if the corporation received a certificate of authority after May 2, 1955. [Amended by 1955 c.409 §3]

**738.060 Issuance of certificate of authority and license.** If upon examination the insurance commissioner determines that a domestic insurance corporation applying for authority to transact business has in money and other lawful investments the assets, capital and surplus required by law, and that it has complied with all the requirements of law, he shall issue to it a certificate of authority and its first annual license, both showing the classes of business it is authorized to transact. [Amended by 1953 c.693 §2]

**738.070 Commissioner's supervision of corporations in process of organization; organization to be completed within one year.** (1) The insurance commissioner may, personally or through his deputy and assistants, examine into the affairs of any corporation in the process of organization and inspect its books and papers. He may summon and examine under oath any person who is or has been connected with such corporation.

(2) The commissioner may publish any facts which he may deem of interest to those dealing with such corporation.

(3) If the commissioner finds that the corporation has violated the law, or if the corporation does not qualify for a certificate of authority within one year from the date of its permit, he may revoke its permit.

(4) If the commissioner finds that an agent of such corporation has violated the law he may revoke his authority, and he may for such agent's violation revoke the corporation's permit.

(5) The commissioner may renew any corporation's permit or agent's authority which he has revoked. [Amended by 1953 c.693 §2]

**738.080 Expiration of corporate authority for failure to commence business.** If any domestic insurance corporation does not commence to issue policies within two years from the date of making the filing required in ORS 738.010 its corporate powers shall expire. The circuit court upon petition of the commissioner or any person interested may fix by decree the time in which the corporation must settle and close its affairs.

**738.090 Liability of directors and incorporators.** The directors, incorporators, and organizers of any corporation organized under this chapter and those entitled to participation in the profits of such corporation shall be jointly and severally liable for all debts or liabilities of such company until

it has been authorized to make insurance in this state.

**738.100 Corporation's lien on stock for unpaid subscription or premium.** A domestic insurance corporation shall have a lien on every share of capital stock issued by it and all profits and dividends accruing thereon for any unpaid balance of the subscribed price thereof, and also for any debt owed to the corporation by the holder of such stock for premiums.

**738.110 Amending bylaws.** Whenever any domestic insurance corporation amends its bylaws a copy of such amendment shall be filed with the commissioner.

**738.120 Amending articles of incorporation.** (1) The articles of incorporation of a domestic insurance corporation may be amended if:

(a) A majority of the directors authorize the amendment.

(b) Notice of intention to amend articles of incorporation is published once a week for four successive weeks in a newspaper of general circulation in the state.

(c) The holders of two-thirds of the capital stock of a corporation having capital stock give written consent to the amendment; or, two-thirds of the members of a corporation organized without capital stock, present at a regular meeting or at a special meeting called for the purpose, vote for a resolution directing its board of directors to make such amendment.

(d) All requirements of the articles of incorporation relating to amendments are satisfied.

(2) The amendment shall be signed and acknowledged by the president and secretary or like officers of the corporation and, with a copy of the proceedings of the stockholders or members and of the directors, filed with the insurance commissioner.

(3) The insurance commissioner shall submit the amendment and copies of proceedings to the Corporation Commissioner. If the Corporation Commissioner finds that these conform to law he shall return them to the insurance commissioner with his certificate to that effect.

(4) The insurance commissioner or his deputy or examiner shall examine the proceedings and if they conform to law the commissioner shall issue to the corporation a certificate of authority to transact business under the amended articles.

(5) The amendment shall not take effect until the insurance commissioner delivers to the corporation a copy of the amendment certified by him and a copy of the certificate of the Corporation Commissioner. In the case of an amendment providing for a decrease in capital, the insurance commissioner shall not approve the amendment or issue to the corporation his certified copy of such amendment if he is of the opinion that the interests of policyholders or creditors may be prejudiced thereby. [Amended by 1953 c.693 §2]

**738.130 Amendment to decrease capital.** (1) Any domestic insurance corporation having capital stock may amend its articles of incorporation to decrease its capital to an amount justified by its assets and not less than the minimum required for such a corporation.

(2) If a corporation's capital is impaired, an amendment to decrease its capital must be adopted by a vote of the stockholders and approved by two-thirds of the directors.

**738.140 Filing amendments to decrease capital.** Copies of an amendment adopted under subsection (2) of ORS 738.130 certified by the secretary of the corporation under the corporate seal must be filed in the offices of the Corporation Commissioner, the Insurance Commissioner and the clerk of the county in which the corporation's principal office is located, and in the principal office of the company.

**738.150 Issue of new stock certificates upon decrease in capital.** Upon a decrease in capital under ORS 738.130 the directors of a corporation may require each stockholder to surrender his stock certificate in exchange for a new certificate for such proportion of the amount of his original stock as the reduced capital bears to the original capital.

**738.160 Partial distribution of assets upon decrease in capital.** In connection with a decrease in capital under ORS 738.130 a corporation may make any distribution of its assets to its stockholders which does not reduce the surplus of its assets over its liabilities, including its capital, to less than:

(1) $150,000, if the company has an unrevoked certificate of authority received prior to May 2, 1955.

(2) $500,000, if the company received a certificate of authority after May 2, 1955. [Amended by 1955 c.409 §4]

**738.170 Amendment to increase capital; time limitation on completion of capital stock increase.** A domestic insurance corporation having capital stock may amend its articles to increase its capital. Such increase must be subscribed and fully paid up within one year of the date of the amendment unless the commissioner certifies his consent to an extension of such time. Upon a failure to have an increase of capital paid up in the time limited, the commissioner may institute court proceedings against the corporation to oust it from its powers under the amendment that authorized the increase.

**738.180 Qualifications and election of directors and officers.** (1) The affairs of every domestic insurance corporation shall be managed by a board of directors which shall consist of not less than five members. A majority of the board is a quorum.

(2) Directors shall be stockholders, members or policyholders of the corporation and a majority of them shall be residents of the state.

(3) Directors shall be elected in accord with the provisions of the articles of incorporation for such term, not exceeding three years, as the articles prescribe. The annual meeting for the election of directors shall be held at such time as the bylaws may direct. The bylaws may provide for the division of the board into two or three classes and for the election thereof at its annual meetings in such a manner that the members of one class only shall retire and their successors be chosen. The record made by the secretary of the votes, which shall show whether the same were cast in person or by proxy, shall be evidence of any election.

(4) If for any cause the stockholders or members fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose. Notice of such meeting shall be given as provided in paragraph (b) of subsection (1) of ORS 738.120.

(5) The directors shall annually choose, by ballot, a president, who shall be a member of the board, a secretary and such other officers as the bylaws may provide.

(6) Vacancies in any office may be filled by the directors or by the stockholders or members as the bylaws shall prescribe. Vacancies occurring in the board may be filled by the board until the next annual election. At that time the members or stockholders shall elect a person to serve for the unexpired term.

**738.190 Proxies.** A proxy may be authorized in writing to vote the shares of any stockholder at any regular or special stockholders' meeting.

**738.200 Salary and tenure of officers, directors and employes.** (1) No domestic insurance corporation shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument, other than commissions, amounting in any year to more than $5,000, to any person, firm or corporation, unless such payment is first authorized and directed by a vote of two-thirds of the board of directors of such corporation, duly taken and recorded in the minutes of a board meeting.

(2) No such corporation shall make any agreement with any of its officers, trustees or salaried employes, whereby it agrees that for any service rendered or to be rendered, they will receive any salary, compensation or emolument, other than commissions, that will extend beyond a period of five years from the date of such agreement.

**738.210 What business may be transacted.** No domestic insurance corporation shall transact any business other than that specified in its articles of incorporation, except that it may frame and issue policies in other states in accordance with the laws thereof, anything in its articles of incorporation or bylaws to the contrary notwithstanding.

**738.220 Reinsurance of risks.** Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance. With the consent of the commissioner it may reinsure any or all of its risks in another company, and shall receive credit for the reserve on all risks so reinsured.

**738.230 Reinsurance of business of retiring companies.** (1) No domestic insurance company, impaired, insolvent or retiring from business in this state, may reinsure its business until its plan to effect such reinsurance has been submitted to the commissioner and approved by him. No such reinsurance shall be effected in a company not admitted to this state.

(2) In effecting such reinsurance, the reinsuring company shall become liable to the original insured for any loss or damage occurring under the policies reinsured, and shall, within a reasonable time, replace

such policies with its own, or by indorsement thereon acknowledge liability thereunder. In case of cancelation of a reinsured policy the reinsurer shall be liable to the original insured for all return premiums.

**738.240 Authorized investments of minimum capital.** (1) The capital of a domestic insurance corporation required to have a capital, to the extent of the minimum capital required by law, and the assets of a domestic mutual insurance corporation, to the exent of an amount equal to the minimum capital required of a like domestic stock corporation, shall be invested and kept invested as follows:

(a) In bonds or securities which are the direct obligations of the United States or which are secured or guaranteed as to principal and interest by the United States.

(b) In bonds or evidences of indebtedness which are direct obligations of, or secured by the full faith and credit of, any state of the United States or the District of Columbia where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness and which state or district is not in default in the payment of principal or interest on any bonds or other evidences of indebtedness at the date of such investment.

(c) In bonds or evidences of indebtedness which are direct general obligations of any county, incorporated city, incorporated school district or incorporated district in this state where there exists the power to levy taxes for the prompt payment of principal and interest on such bonds or evidences of indebtedness, and which has not defaulted in the payment of principal or interest on any of its bonds or evidences of indebtedness within three years.

(d) In loans secured by first liens on improved unencumbered real property in this state, if such lien does not exceed 50 percent of the appraised value of the property and if the loan is made for a term of five years or less.

(e) In loans secured by first liens on improved unencumbered real property in this state and made in an amount not to exceed 66⅔ percent of the appraised value of the property, if there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the instalment payments are sufficient to repay the loan within a period of not more than 25 years.

(2) Where buildings or other improvements constitute a material part of the value of mortgaged premises, they shall be kept insured against loss or damage by fire in a reasonable amount for the benefit of the mortgagee.

(3) Bonds, securities or other evidences of indebtedness purchased in conformity with subsection (1) of this section shall not be valued above their par value or their current market value.

(4) The limitations and restrictions of paragraph (d) of subsection (1) of this section do not prevent the renewal or extension of any real estate loans which were authorized investments when made and do not apply to real estate loans which are insured under the provisions of title 2 of the National Housing Act by the Federal Housing Administration.

**738.250 Authorized investment of capital and funds in excess of minimum in securities listed in ORS 738.240 or in Canadian obligations.** The residue of the capital in excess of the required minimum and any funds of a domestic stock insurance corporation over and above its capital and any deposit that it may be required to make with the commissioner, and the residue of the assets of a domestic mutual insurance corporation over and above an amount equal to the minimum capital required of a like stock insurance corporation and any deposit required of the mutual company, may be invested:

(1) In any of the securities in which the minimum capital or minimum assets may be invested under ORS 738.240.

(2) In bonds or interest-bearing notes or obligations of the Dominion of Canada or any province of the Dominion of Canada, or for which the faith and credit of the Dominion of Canada or any province of the Dominion of Canada are pledged for the payment of principal and interest.

**738.260 Investments in foreign municipal and school district bonds.** The funds defined in ORS 738.250 may also be invested in bonds or interest-bearing notes or obligations issued under authority of law by any city, city and county, county, municipality, or school district in any state or territory of the United States or in any province of Canada, where there exists the power to

levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness and the issuer or the state, territory or province in which it is located has not, within three years next preceding such investment, defaulted in any payment of principal or interest due upon any legally authorized bond issue.

**738.270 Investments in revenue bonds.** (1) The funds defined in ORS 738.250 may also be invested in bonds or other evidences of indebtedness of any political subdivision, agency, public instrumentality or authority of the United States or any state, territory, county or political subdivision therein, if:

(a) They are payable from revenues or earnings specifically pledged therefor.

(b) The laws authorizing their issuance require that adequate rates be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and principal and interest of the bonds or obligations.

(c) The issuer, and if the issuer is a political subdivision the state, territory or county in which it is located, has not, within three years next preceding such investment defaulted in any payment of principal or interest due upon any legally authorized bond issue.

(2) This section does not authorize investment in obligations payable solely out of special assessments on property benefited by local improvements.

**738.280 Investments in railroad and public utility bonds and debentures.** (1) The funds defined in ORS 738.250 may also be invested in lawfully authorized obligations issued, assumed or guaranteed by any solvent railroad or public utility corporation, or by several such corporations, created or existing under the laws of the United States or of any state, district or territory thereof, or of the Dominion of Canada or any province thereof, which corporation is not organized and chartered for the sole purpose of holding stocks of other corporations and which is not in default as to any payment of principal or interest, and which obligations are qualified under any of the following paragraphs:

(a) Obligations secured by the mortgage of property or the pledge of adequate collateral if, during any three, including the last two, of the five fiscal years next preceding the time of investment, the net earnings of the issuing, assuming or guaranteeing corporations available for fixed charges, as determined in accordance with standard accounting practice, have been not less than the total of its fixed charges for such year on an overall basis and not less than one and one-half times its fixed charges for such year on a priority basis after excluding interest requirements on obligations junior to such issue as to security.

(b) Equipment trust certificates of railroad companies organized under the laws of any state of the United States or of the Dominion of Canada or of any province thereof, payable within 20 years from their date of issue in annual or semiannual instalments beginning not later than the fifth year after such date, and which certificates are a first lien on the specific equipment pledged as security for the payment thereof. They must be either the direct obligations of the railroad companies or be guaranteed by them, or be executed by trustees holding title to the equipment.

(c) Fixed interest-bearing obligations not secured like those described in paragraphs (a) and (b), if the net earnings of the issuing, assuming or guaranteeing corporations available for fixed charges during each of any three, including the last two, of the five fiscal years next preceding the time of investment, as determined in accordance with standard accounting practice, have been not less than one and one-half times the total of its fixed charges for such year, and if the issuing, assuming or guaranteeing corporation pledges that in the event it ever subsequently pledges as security for any indebtedness or obligation any of its property, then such unsecured obligations will be secured ratably with the indebtedness or obligation secured by such pledge.

(2) The amount invested in obligations qualifying under this section in any one issue shall not exceed 10 percent of the outstanding obligations of the issuing corporation or two percent of the admitted assets of the insurance corporation.

**738.290 Investments in bonds and debentures of other private corporations.** The funds defined in ORS 738.250 may also be invested in lawfully authorized fixed interest-bearing obligations issued by any solvent corporation or corporations created or existing under the laws of the United States or of any state, district or territory thereof,

excepting corporations mentioned in ORS 738.280 and corporations organized and chartered for the sole purpose of holding the stock of other corporations, if:

(1) The net earnings of such issuing corporation, available for fixed charges, during each of three, including the last two, of the five years next preceding the time of investment, as determined in accordance with standard accounting practice, have been not less than four times the total of its fixed charges for such years.

(2) In case such obligation is unsecured, the issuing corporation pledges that in the event it ever subsequently pledges as security for any indebtedness or obligation any of its property, then such unsecured obligations will be secured ratably with the indebtedness or obligation secured by such pledge.

(3) The amount invested in any one issue does not exceed 10 percent of the outstanding obligations of the issuing corporation or two percent of the admitted assets of the insurance corporation.

**738.300 Investments in securities issued or secured under certain federal statutes.** The funds defined in ORS 738.250 may also be invested in:

(1) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act.

(2) Farm loan bonds or joint stock and land bank bonds issued by the Federal Land Banks operating under the Federal Farm Loan Act.

(3) Obligations issued pursuant to the provisions of the Federal Home Loan Bank Act.

(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of the National Housing Act.

(5) Bonds or notes secured by mortgage or trust deed guaranteed as to principal by the Administrator of Veterans' Affairs pursuant to the provisions of title III of the Servicemen's Readjustment Act of 1944.

**738.310 Investments in obligations guaranteed by mortgage insurance companies.** The funds defined in ORS 738.250 may also be invested in:

(1) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance.

(2) Mortgage participation certificates issued by a mortgage insurance company under ORS chapter 746.

**738.320 Investments under "prudent man" rule.** (1) The funds defined in ORS 738.250 may also be invested in ways not permitted or not otherwise specifically qualifying under ORS 738.250 to 738.360 if such investments are made by or with the approval of the directors in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(2) The funds so invested shall not exceed in the aggregate the lesser of:

(a) Seven and one-half percent of the corporation's assets.

(b) The excess of its funds over all liabilities including statutory reserves and required minimum capital.

(3) If the commissioner has reason to believe that loans or investments made pursuant to this section are not amply secured or are not yielding an income he may direct the insurer to report to him under oath the amount of such loans or investments, the security therefor and its market value.

**738.330 Investments in other states.** A domestic insurance corporation doing business in other states of the United States or in foreign countries, may invest the funds required to meet its obligations, incurred in such other state or country, and in conformity to the laws thereof, in the same kind of securities of such other states or foreign country that such corporation is by law allowed to invest in in this state.

**738.340 Owning real estate.** (1) Except as an investment under ORS 738.320, a domestic insurance corporation may acquire, hold and convey real estate only for the purposes and in the manner following:

(a) The building in which it has its principal office and the land on which it stands.

(b) Such as was acquired or is requisite for its convenient accommodation in the transaction of its business.

(c) Such as has been mortgaged to it in good faith by way of security for loans or for money due.

(d) Such as has been conveyed to it in satisfaction of antecedent debts.

(e) Such as it has purchased at sales on judgments, decrees or mortgages obtained or made for debts owed to it.

(2) Any real estate specified in subsection (1) of this section which is not necessary for its accommodation in the convenient transaction of its business shall be sold by the corporation and disposed of within five years after it acquired title, or within five years after the property ceased to be necessary for accommodation of its business, unless the corporation procures the certificate of the commissioner that its interests will suffer materially by a forced sale of the property. In the latter event the time for the sale may be extended to such time as the commissioner directs in such certificate.

**738.350 Property acquired for debts.** A domestic insurance corporation may acquire title to any property under the conditions of any mortgage owned by it or by any process in settlement of antecedent debts due it.

**738.360 Investments under prior enactments.** No investment acquired by any domestic insurance corporation prior to July 5, 1947, in conformity with the law existing at the time of such acquisition, shall be deemed to be unlawful by reason of any of the provisions of ORS 738.240 to 738.350.

**738.370 Limitations on investment in own stock and transactions with policyholders, directors and employes.** (1) No part of the capital or funds of any domestic insurance corporation may be invested in or loaned upon its own stock. Neither may any part be loaned to any officer, director or employe. Nor may any part be invested in or loaned upon the stock of any corporation if any officer, director or trustee of the insurance corporation is a stockholder thereof or has any direct, indirect or contingent interest in such proposed investment or loan.

(2) Nothing in ORS 738.240 to 738.400 prevents a policyholder from borrowing on his own policy according to its terms, nor a corporation from advancing or loaning to agents or other employes as required or as is expedient in the conduct of its business.

**738.380 Officers and directors to have no independent interest in corporation's dealings.** (1) All investments, loans and deposits of the funds and securities of, and all purchases on behalf of, and all sales made of the property and effects of, a domestic insurance corporation shall be made in its corporate name.

(2) No officer, director or trustee of a domestic insurance corporation and no agent, attorney or member of a committee having authority in the investment or disposition of its funds shall accept, except for the company, or be the beneficiary of, directly or remotely, any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the corporation. Except in the case of loans on his own policies, no such person shall be pecuniarily interested as borrower, principal, co-principal, agent, attorney or beneficiary in any purchase, sale, loan or investment by the corporation. [Amended by 1953 c.91 §1]

**738.390 Investments to be approved by directors.** No investment, sale or loan may be made until authorized by the board of directors or by a committee thereof charged with the duty of investing or loaning the funds of the corporation. No deposit may be made in a bank or banking institution unless such bank has first been approved as a bank of deposit by the board of directors or by said committee. A vote authorizing such investment, sale or loan, or approving such place of deposit, must be recorded in the books of the corporation before such investment, sale or loan, or deposit, is made.

**738.400 Record of investments required.** (1) At the time of making any investment or loan of the capital or funds of a domestic insurance corporation, other than a loan on a corporation's own policies, a written report shall be made and signed by the officer, director, trustee or acting chairman of the committee of directors or trustees making or authorizing the investment or loan.

(2) The report shall state:

(a) The amount invested or loaned.

(b) A brief description of the securities or property in which such investment or loan is made and the reasonable cash market value thereof.

(c) In the case of a loan, the rate of interest and amount of insurance carried to protect the mortgagee.

(d) In the case of an investment, the rate of interest or annual dividend earned and paid during the five years next preceding.

(e) The name of the attorney who passed upon the transaction and the substance of his report.

(f) The amount of the expense and commission, if any, on the investment or loan and by whom and to whom such was paid.

(3) The report shall be recorded in a book kept by the corporation known as Reports on Loans and Investments. This book shall be at all times open to the inspection of the commissioner or his deputy or any stockholder of the corporation.

**738.410 Dividends.** (1) No domestic insurance corporation shall make any payments in form of dividends or otherwise to its stockholders or policyholders for or on account of any interest in or relation to the corporation as stockholders or policyholders, except for matured claims or other policy obligations and in purchase of surrender values, unless it possesses assets in the amount of such payments in excess of its liabilities including its capital stock liability.

(2) It is unlawful for the officers, directors, trustees or managers to declare or pay any dividends except from the surplus profits arising from its business, estimated and ascertained in accordance with the requirements and provisions of the General Insurance Law.

**738.420 Vouchers for expenditures.** (1) No domestic insurance company shall make any disbursement of $25 or more unless the sum is evidenced by a voucher signed by or on behalf of the person, firm or corporation receiving the money or, if a voucher cannot be obtained, by an affidavit stating the reason for not obtaining the voucher.

(2) The voucher or affidavit shall describe the consideration for the payment. If the payment is for services, the voucher or affidavit shall set forth the services rendered or, if for disbursements, an itemized statement of the disbursements made. If the payment is in connection with any matter pending before any legislature or public body, or before any department or officer of any government, the voucher or affidavit shall describe, in addition, the nature of the matter and of the interest of the company therein.

**738.430 Books and records to reflect condition of company.** A domestic insurance company shall keep its books, records, accounts and vouchers in such manner that the commissioner or his authorized representatives may readily verify its annual statements and ascertain whether the company is solvent and has complied with the law.

**738.440 Demand to make good or to reduce capital when capital is impaired.** (1) Whenever the commissioner finds from any showing or statement made to him or from any examination made by him or his deputy or examiner that the capital of any domestic insurance corporation is impaired or that its assets are insufficient to justify its continuance in business, he shall at once determine the amount of such impairment or deficiency and thereupon issue his written notice and requisition to the corporation. This shall direct the corporation to require its stockholders to make good the amount of the impairment or deficiency with cash or investments authorized by the General Insurance Law or to reduce its capital as provided in ORS 738.130 to 738.150 within 90 days from the service of the notice and requisition.

(2) If the amount of any such impairment or deficiency is not made good or the capital reduced within the time specified in such notice and requisition and proof thereof filed in the office of the commissioner, the corporation shall be deemed insolvent and shall be proceeded against as an insolvent corporation in the manner authorized by ORS 738.450 to 738.500.

**738.450 Suit by commissioner to seize business.** (1) The commissioner may apply to the circuit court, or any judge thereof, in the judicial district in which the principal office of a domestic insurance company is located, for an order directing the company to show cause why the commissioner should not take possession of its property, records and effects and conduct or close its business and for such other relief as the nature of the case and the interest of its policyholders, creditors or stockholders or the public may require. Such application may be made:

(a) If the company is insolvent.

(b) If the company has unlawfully refused to submit its books, papers, accounts or affairs to the reasonable inspection and examination of the commissioner, his deputy or examiner.

(c) If the company has neglected or refused to observe an order issued under ORS 738.440 or 744.480.

(d) If the company has by contract of reinsurance, or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other company, without first having obtained the written approval of the commissioner.

(e) If the company is found upon examination to be in such condition that its further transaction of business would be hazardous to its policyholders, creditors, stockholders or the public.

(f) If the company has wilfully violated its articles of incorporation or any law of the state.

(g) If any trustee, director, manager or officer of the company has unlawfully refused to be examined under oath touching its affairs.

(2) The Attorney General shall represent the commissioner in an application under this section or ORS 738.480.

**738.460 Interlocutory restraining order.** Upon an application being made under ORS 738.450, or any time thereafter, the court or judge may, in its discretion, issue an order restraining the company from the transaction of its business or disposition of its property, records or effects until the further order of the court.

**738.470 Determination of suit.** On the return of an order to show cause made on an application under ORS 738.450, and after a full hearing, the court shall either deny the application, or direct the commissioner forthwith to take possession of the property, records and effects of the company and to retain such possession and conduct the business until a further order is made, or order the liquidation of the business of the company.

**738.480 Restoration of business to company.** If, upon the application of the commissioner or of the company, and after a full hearing, the court finds that the cause for an order made under ORS 738.470 directing seizure has been removed and that the company can properly resume possession of its property, records and effects, and the conduct of the business, it shall make an order to that end.

**738.490 Mode of liquidation.** (1) If a company whose liquidation has been ordered under ORS 738.470 does business in more than one state it shall be liquidated under ORS chapter 751.

(2) If the company does business in this state only it shall be liquidated by and under the direction of the commissioner as follows:

(a) The commissioner may deal with the property, records, effects and business of such company in his own name or in the name of the company as the court may direct. He shall be vested by the operation of law with title to all the property, effects, contracts and rights of action of the company as of the date of the order directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds in any county where property is located in the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such company would have imparted.

(b) In the performance of his duties under this section, the commissioner may appoint under his hand and official seal one or more special deputy commissioners and employ such counsel, clerks and other assistants as may by him be deemed necessary. He may give each of such persons such powers to assist him as he may consider proper. The compensation of such special deputy commissioners, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any company shall be fixed by the commissioner, subject to the approval of the court, and shall, on certificate of the commissioner, be paid out of the funds or assets of the company.

(c) The commissioner may, subject to the approval of the court, make and prescribe such rules and regulations as may be proper for the due and orderly exercise of the authority given him by this section. This paragraph does not apply to the liquidation of mutual fire insurance companies.

**738.500 Dissolution of company.** At any time after the court orders the liquidation of the business of a company, as provided in ORS 738.470, the commissioner may apply for the dissolution of such company. After due notice and hearing and such other procedure as the court deems proper, the company shall be dissolved.

**738.510 Companies organized and licensed under prior laws recognized.** Every domestic insurance company organized and

licensed to transact insurance business in this state on May 21, 1917, hereby is recognized as an existing company, and shall have the right to continue such business under the provisions of the General Insurance Law if such company whose capital and surplus did not meet the requirements of the General Insurance Law conformed to such requirements within four years from January 1, 1918.

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173 170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel