

## **CHAPTER 26.1-13 COUNTY MUTUAL INSURANCE COMPANIES**

**26.1-13-01. County mutual insurance company - Organization.** A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than thirty counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure. A county mutual insurance company organized under this chapter shall maintain a surplus of at least fifty thousand dollars.

**26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required.** Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. Upon a showing of good cause, the territory of operations of the merged company may exceed thirty counties. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.
2. The name of the city in or near which the business office of the company is to be located.
3. The intended duration of the company, which is perpetual.

**26.1-13-03. County mutual company has perpetual existence.** Every county mutual insurance company has perpetual existence. If the articles of incorporation of any company show that the existence of the company is other than perpetual, the articles may be amended in the manner provided by law so as to extend the term of existence of the corporation to show that it is perpetual.

**26.1-13-04. Certificate of compliance.** After articles of incorporation have been approved and filed, the commissioner shall deliver to the persons filing the articles a certificate to the effect that the county mutual insurance company has complied with all of the requirements of law. The certificate constitutes the authority of the company to commence business and issue policies. A certified copy of the articles and the certificate may be used for or against the company with the same effect as the original and are conclusive evidence of the fact of the organization of the company as of the date of the certificate.

**26.1-13-05. Bylaws - Contents.** A county mutual insurance company may make bylaws, not inconsistent with the constitution or laws of this state, necessary to provide for the management of its affairs in accordance with this chapter and to prescribe the duties of its officers and fix their compensation. Bylaws may be repealed or amended in the manner provided in this chapter.

**26.1-13-06. Amendment of articles or bylaws.** The articles of incorporation of a county mutual insurance company may be amended, and its bylaws adopted, amended, or

repealed, at any annual meeting of the company, or at any special meeting called for that purpose, by the affirmative vote of two-thirds of the members voting on the proposition.

**26.1-13-07. Directors - Number - Election - Powers and duties.** The general management of the business of a county mutual insurance company must be vested in a board of directors consisting of not less than five members nor more than fifteen members. The members of the board must be elected by the members of the company at the annual meeting in the manner provided by the bylaws of the company and, if it is not otherwise provided, by ballot. As nearly as may be, one-third of the members of the first board must be elected for one year, one-third for two years, and one-third for three years, and in all elections subsequent thereto, except in the case of elections to fill vacancies on the board, members must be elected for terms of three years. Each director holds office until a successor is elected and qualified. In the election of the members of the first board, each incorporator is entitled to one vote, and at every subsequent election each member of the company is entitled to one vote. The board may exercise the usual powers and shall perform the usual duties of a board of directors of a corporation generally.

**26.1-13-08. Officers - Election - Bond.** The board of directors shall elect a president and a vice president from the board and shall select a secretary and a treasurer who may or may not be members of the company. The offices of secretary and of treasurer may be held by one person. The secretary and the treasurer shall give bonds to the company for the faithful performance of their respective duties in any amounts prescribed by the board. Each officer holds office for one year and until a successor is elected and qualified.

**26.1-13-09. Membership in county mutual company - Limitation on right to be director.** Any person owning property within the limits of the territory within which a county mutual insurance company is authorized to transact business may become a member of the company and entitled to all of the rights and privileges appertaining thereto by insuring therein. A person who does not reside within the territorial limits may not become a director of the company.

**26.1-13-10. Members of county mutual company - Policyholders - Notice of meetings.** Every person insured by a county mutual insurance company is a member while the policy is in force. The member is entitled to one vote only and must be notified of the time and place of the holding of the meetings of the company by written notice thereof or by an imprint on the face of each policy, receipt, or certificate of renewal, as follows:

The assured is hereby notified that by virtue of this policy the assured is a member of the \_\_\_\_\_ mutual insurance company, and that the annual meetings of the company are held at its home office on the \_\_\_\_\_ day of \_\_\_\_\_ in each year at \_\_\_\_\_ o'clock.

When the blanks in the notice are properly filled, the notice is sufficient.

**26.1-13-11. Annual meeting - Quorum.** The annual meeting of a county mutual insurance company must be held on the second Thursday in March in each year unless it is provided otherwise in the bylaws of the company. Twenty members constitute a quorum for the transaction of business at an annual meeting.

**26.1-13-12. General powers, liabilities, and duties of county mutual company - Office - Name - Limitations.** A county mutual insurance company possesses the powers and is subject to the liabilities and duties of other insurance companies, except that:

1. The principal office of the company must be located within the company's approved territory of operation.
2. When the company is organized by the residents of a single county, the name of the county together with the word "county" must be embraced in the corporate name of the company.

3. Any company organized under this chapter for mutual protection against loss or damage by tornadoes, windstorms, cyclones, hail, except upon growing crops, and any hazard upon any risk upon livestock, only, may operate and issue policies in all of the counties of the state, but in all other matters is regulated and limited by this chapter.

**26.1-13-13. Applicability of general insurance laws.** In all respects not specifically provided for in this chapter, county mutual insurance companies are subject to the provisions of this title relating to insurance companies generally.

**26.1-13-14. County mutual company - Insurance authority.** A county mutual insurance company may insure against loss or damage by fire, lightning, cyclone, windstorm, tornado, hail, except upon growing crops, any hazard upon any risk upon livestock, explosion, except the explosion of steam boilers and flywheels, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke to the property of the insured, theft, vandalism, malicious mischief, water damage and freezing, collision and overturn of farm machinery, collapse of buildings, glass breakage, the additional living expenses incurred over and above normal living costs in cases of damage, the removal of debris, the cost of repairing or replacing homes or living residences, or all such forms of insurance.

**26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable.** A county mutual insurance company may not insure any property beyond the company's authorized territory of operation except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state unless the policy issued provides coverage as specified under sections 26.1-13-14 and 26.1-13-16 within the platted limits of any incorporated city in this state on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof and on no more than four residential rental units of each policyholder.

The company may insure all property located outside of incorporated cities within the limits of the territory comprised in the formation of the company. Policies issued on property located within the platted limits of any incorporated city with a population over ten thousand are limited to covering the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof and no more than four residential rental units of each policyholder and must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency. A company may not exceed twenty-five percent of the company's gross written premiums of the previous year for the gross written premiums in cities with a population over ten thousand.

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

**26.1-13-16. Liability insurance contracts - Limitations.** Any county mutual insurance company may make insurance contracts against loss, expense, or liability by reason of bodily injury or death by accident, disability, sickness, or disease suffered by others for which the insured may be liable or may have assumed liability, except no liability insurance contracts against any or all loss or expense resulting from the ownership, maintenance, or use of any motor vehicle normally operated, intended to be operated, or designed for use, upon any highway, road, or street in this state, may be made.

**26.1-13-17. Classification of property for insurance purposes.** A county mutual insurance company may classify the property insured by the policies at the time of issuance under different rates corresponding, as nearly as may be, to the greater or lesser risk from fire or lightning and loss which may attach to each of the buildings insured.

**26.1-13-18. Maximum amount of insurance on single risk.** The maximum amount of insurance which a county mutual insurance company may retain on a single risk other than under a liability insurance contract, after deduction of applicable reinsurance, may not exceed ten percent of the admitted assets of the company or thirty thousand dollars, whichever is the larger amount. The maximum amount of insurance which a county mutual insurance company may retain on a single risk under a liability insurance contract may not exceed one percent of the surplus maintained by the company.

**26.1-13-19. Reinsurance of excessive losses.** Except as otherwise provided in sections 26.1-02-20 and 26.1-02-22, any county mutual insurance company may reinsure in a single contract, with other county mutual insurance companies, against excessive losses on all insurance contracts written. The reinsurance contracts may provide:

1. That whenever the total losses per dollar of insurance in force of any county mutual insurance company joining the contract exceeds the average total losses per dollar of insurance in force of all county mutual insurance companies joining the contract, the excessive loss or a portion thereof must be paid to the county mutual insurance company or companies suffering the excessive loss by the companies having a lower than average loss ratio; and
2. That the payments by individual companies suffering a lower than average loss ratio must be prorated according to a formula based upon the total dollars of insurance in force of any participating company as compared to the total dollars of insurance in force of all participating companies suffering a lower than average loss ratio.

The payments by any single company may not be greater than that sum which would bring the loss ratio per dollar of insurance in force of the company up to the average loss per dollar of insurance in force of all participating companies.

**26.1-13-20. Designation of attorney in fact - Assessments.** Companies participating in a reinsurance contract shall designate an attorney in fact who shall calculate the average loss per dollar of insurance in force for each participating company and the average loss per dollar of insurance in force of all participating companies at regular intervals. The attorney in fact shall also prorate and assess the excessive losses against the participating companies in the manner provided in section 26.1-13-19 and collect the assessments and pay them over to the companies suffering the excessive losses. The participating companies may pay the assessments out of reserves or a company may assess its individual members in the manner provided for other ordinary losses. Each participating company shall pay an agreed advance premium sufficient to pay all administrative expenses of the attorney in fact.

**26.1-13-21. Supervision by commissioner.** The commissioner has full power of supervision over all reinsurance contracts executed under sections 26.1-13-19 and 26.1-13-20.

**26.1-13-22. Insured to give undertaking to pay pro rata share of losses - Cash payment or premium required.** Every person insured by a county mutual insurance company shall give an undertaking, bearing the date the policy was issued, binding the person, the person's heirs and assigns, to pay to the company the person's pro rata share of all losses or damages as specified in sections 26.1-13-14 and 26.1-13-16 which may be sustained by any member. The undertaking must be filed with the secretary in the office of the company before the issuance of the policy and must remain on file in the office except when it is required to be produced as evidence in court. The person also, at the time of receiving the insurance, shall pay in cash the percentage or any reasonable sum named in the policy as may be required by the rules and bylaws of the company, or pay premiums as provided in section 26.1-13-25.

**26.1-13-23. Loss - Notice - Adjustment - Arbitration - Finality of determination of board of adjustment - Powers of board.** Every member of a county mutual insurance company who sustains loss or damage by fire, lightning, or cyclone shall notify the secretary of the company, or the president in the absence of the secretary, immediately after the loss is sustained. That officer shall ascertain the amount of the loss and shall cause the amount of the

loss to be adjusted in the manner provided in the bylaws of the company, or the officer forthwith shall convene the board of directors of the company, and, the board shall appoint a committee of not more than three members of the company to ascertain and adjust the amount of the loss. If the parties are unable to agree upon the amount of the damage, the claimant and the company each shall choose a disinterested party, to constitute a board of arbitration to settle the loss. If the parties cannot agree, they shall choose a third party to act with them. The board of arbitration may examine witnesses and shall determine all matters in dispute, and the decision of the board is final. Any officer or member of the company, while acting as an adjuster, and the members of any board of arbitration appointed pursuant to this section may subpoena and examine witnesses, administer oaths, and take acknowledgments while acting in that capacity.

**26.1-13-24. Assessments for payment of losses and expenses.** When the amount of any loss has been determined, if it appears that the amount of loss exceeds the amount of cash funds of the company applicable to the payment of the loss, the president shall convene the board of directors of the company, and the board shall make an assessment, in an amount at least sufficient to pay the loss, and must apportion the assessment among the members of the company proportionately to the amount of insurance severally carried by them in the company. If a quorum of the members of the board of directors is not present at the meeting, the secretary shall enter that fact and the names of the directors present upon the secretary's journal, and the president, secretary, and treasurer shall proceed to estimate the rate percent of assessment necessary to cover the loss and the expense incurred by the company in connection therewith, and to assess the rate upon all of the insured members of the company. An assessment made by the officers under this section is a valid assessment and must be collected as though it had been made by the board of directors in the regular manner. If an assessment is not collected when due and the amount actually collected is insufficient to pay the losses or expenses of the company, a second assessment must be made, and subsequent assessments must be made from time to time, in the manner provided in this section, upon the policyholders who have paid their previous assessments, until a sufficient amount is collected to pay in full all of the losses and expenses of the company.

**26.1-13-25. Permanent expense and loss fund - Assessment or premiums - Delinquent loss assessments credited.** The board of directors of a county mutual insurance company may levy and collect an assessment or may charge premiums on its policies for the purpose of providing funds for the payment of the current expenses of the company or for the purpose of establishing a permanent loss fund. The fund may not exceed four percent of the amount of insurance in force in the company, except that when a company writes a combined policy of fire and windstorm insurance, it may maintain a permanent loss fund not to exceed eight percent of the amount of insurance in force in the company. Assessments levied for the purposes specified in this section must be collected as assessments made for the payment of current losses are collected. If a delinquent loss assessment is collected after other assessments to cover the loss have been collected, the amount collected on the delinquent loss assessment must be added to the permanent loss fund.

**26.1-13-26. Notice of assessment - Extension of time of payment of assessment.** The secretary of a county mutual insurance company, whenever any assessment has been completed, shall notify every member of the company by letter sent to the member's last-known post-office address, postage prepaid, by a notice stating:

1. The amount of the assessment.
2. The purpose for which the assessment was made.
3. If the assessment was made for the purpose of paying specified losses, the amount of each loss.
4. The sum due from the member as the member's share of the assessment.
5. The time, not less than thirty days nor more than sixty days after the date of the notice, when, and the person to whom, payment must be made.

The board of directors may grant an extension not exceeding sixty days for the payment of the assessment if in its judgment it is in the best interests of the company to do so.

**26.1-13-27. Collection of assessments - Suits against directors - Suits against company to recover losses.** Suits may be brought against any member of a county mutual insurance company who neglects or refuses to pay any assessment made upon the member under this chapter. Any director of the company who willfully refuses or neglects to perform the duties imposed upon the director by this chapter is liable in an individual capacity to any person sustaining loss thereby. A civil action may be brought against the company by any member for losses sustained if payment is withheld after losses have become payable.

**26.1-13-28. Borrowing of money authorized - Repayment from assessments.** The board of directors of a county mutual insurance company, in its discretion, may borrow money for the payment of unpaid losses. Any money borrowed must be repaid from moneys collected from the next ensuing assessment levied in accordance with this chapter.

**26.1-13-29. Withdrawal from membership.** Any member of a county mutual insurance company may withdraw from membership at any time while the company continues to transact the business for which it was organized if, by withdrawal, the number of members remaining in the company will not be reduced below the original number of incorporators, or the assets of the company will not be reduced below the amount at the time of incorporation. In order to withdraw, a member shall surrender the policy for cancellation; give written notice of withdrawal to the secretary of the company; and pay the member's share of all claims then existing against the company.

**26.1-13-30. Cancellation of policies.** A county mutual insurance company at any time may terminate or cancel any policy issued by it by giving the insured not less than five days' written notice of the termination or cancellation of the policy and returning to the insured pro rata any unearned premium which the insured may have paid to the company.

**26.1-13-31. County mutual fire and lightning companies may form reinsurance company.** Any number, not less than five, of county mutual fire and lightning insurance companies organized under this chapter may form a corporation for the purpose of reinsuring the fire, lightning, and extended coverage and other risks of its members permitted to be written under this chapter on the mutual plan.

**26.1-13-32. Articles of incorporation and bylaws of mutual reinsurance company - Contents.** The articles of incorporation of a reinsurance company organized under section 26.1-13-31 must state:

1. The name of the company, which must include the words "mutual reinsurance company".
2. The purpose for which the company is organized.
3. The location of its principal place of business, which must be within this state.
4. The number of directors of the company, which may not be less than five nor more than thirteen.
5. The names and places of residence of the persons who are to serve as directors of the company until the election and qualification of their successors.
6. The term of its corporate existence, which may be perpetual.

The articles may set forth any other provisions permitted under the provisions of the general law governing profit corporations or permitted in the case of a county mutual insurance company. The bylaws of the company must contain the provisions for its government and the conduct of its business as are permitted in the case of a county mutual insurance company.

**26.1-13-33. Articles and bylaws of mutual reinsurance company - Certificate of authority - Right to do business.** The articles of incorporation and bylaws of a mutual reinsurance company formed under section 26.1-13-31 must be submitted for approval to the commissioner. If the articles and bylaws are found to conform with this chapter and not inconsistent with the constitution or laws of this state, the commissioner shall approve the articles and bylaws and they must be filed in the office of the secretary of state. A certified copy of the articles and bylaws then must be filed with the commissioner, and a copy must be delivered to the members of the company. The commissioner shall issue a certificate to the effect that the company has complied with the requirements of law. The certificate is the company's authority to commence business and issue policies. A certified copy of the articles and the certificate may be used for or against the company with the same effect as the originals and is conclusive evidence of the organization of the company as of the date of the certificate.

**26.1-13-34. Annual statement to be furnished to members of county mutual company or of mutual reinsurance company.** The secretary of each county mutual insurance company and of each mutual reinsurance company formed under this chapter shall prepare and submit to the members of the company, at each annual meeting, a copy of the annual statement required to be filed with the commissioner under section 26.1-03-07.

**26.1-13-35. County mutual insurance company - Reports to commissioner.** Each county mutual insurance company shall file an annual report with the commissioner no later than March first of each year which must be verified by at least two principal officers of the company and which must cover the preceding calendar year. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter. The reports must be on forms prescribed by the commissioner. The commissioner may also require a company that operates in more than twenty counties to file audited financial statements as deemed necessary.