

RCW 48.13.480 Safeguarding securities—Insurance company's

securities—Written agreement with custodian—Required terms. (1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.

(2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:

(a) Securities certificates held by the custodian shall be held separate from the securities certificates of the custodian and all of its customers;

(b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and the name of the clearing corporation; and if the securities are held by an agent, the records shall also identify the name of the agent;

(c) All custodied securities that are registered shall be registered in the name of the company or in the name of the nominee of the company or in the name of the custodian or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee;

(d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except custodied securities used to meet the deposit requirements;

(e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. Confirmation of all transfers shall be provided to the insurance company in hard copy or electronic format. In addition, the custodian shall be required to furnish, no less than monthly, the insurance company with reports of various holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper format;

(f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company, and a representative of an appropriate regulatory body shall be entitled to examine, on the premise of the custodian, the custodian's records relating to the custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company;

(g) The custodian and its agents shall be required to send to the insurance company:

(i) All reports that they receive from a clearing corporation on their respective systems of internal accounting control; and

(ii) Reports prepared by outside auditors on the custodians or its agents internal accounting control of custodied securities that the insurance company may reasonably request;

(h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company;

(i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits;

(j) A national bank, state bank, or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that the protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the securities investor protection corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and whether the amount of coverage is adequate;

(k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees or agents, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction;

(l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in (k) of this subsection, the custodian shall promptly replace the securities of the value thereof and the value of any loss of rights or privileges resulting from the loss of securities;

(m) The custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not, including existing wars), revolution, insurrection, riot, civil commotion, accident, fire, explosion, labor stoppage and strikes, laws, regulations, orders, or other acts of any governmental authority, which are beyond its reasonable control;

(n) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent is subject to regulation under the laws of a jurisdiction that are different from the laws of the jurisdiction that regulates the custodian, the commissioner may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian;

(o) The custodian shall provide written notification to the office of the insurance commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the commissioner within three business days of the withdrawal of one hundred percent of the account assets. [2008 c 234 s 7.]