§ 7302. Conversion of stock life insurance companies into mutual companies. (a) A domestic stock life insurance company may become a mutual life insurance company, whether or not its policyholders have become entitled to vote for directors pursuant to section four thousand two hundred twelve of this chapter or the former insurance law, and to that end may formulate and carry out a plan for the acquisition of its outstanding shares, as follows:

(1) Such plan shall have been adopted by a vote of a majority of the directors of the company.

(2) Such plan shall have been approved by a vote of shareholders representing a majority of the outstanding shares at a meeting called for that purpose.

(3) Such plan shall have been approved by the vote of a majority of the policyholders eligible to vote who vote at a meeting called for that purpose. Any policyholder who holds life insurance in such company in an amount at least equal to one thousand dollars or an equivalent thereto as hereinafter provided and whose insurance is then in force and has been in force for at least one year prior to such shareholders' meeting, shall be eligible to vote thereat, either in person or by proxy or by mail. The aforementioned reference to life insurance in an amount at least equal to one thousand dollars shall be deemed to include, as equivalent thereto, an annuity contract which at normal date of maturity requires the payment of one hundred dollars or more annually, a pure endowment contract for the principal sum of one thousand dollars or more, and a policy of accident or health insurance requiring the payment of a premium of not less than twenty-five dollars annually. In the case of every policy or contract of group insurance or group annuity contract, issued by such company, the employer, or other person, firm, corporation or association to whom or in whose name the master policy shall have been issued and held, shall be deemed one policyholder within the meaning of this paragraph. Notice of such meeting shall be given by mailing such notice from the home office of such company at least thirty days prior to such meeting, in a sealed envelope, postage prepaid, addressed to each policyholder at his last known post office address. Such meeting shall be conducted in such manner as may be provided for in such plan, with the approval of the superintendent. The superintendent shall supervise and direct the methods and procedure of such meeting

and, to conduct the voting, shall appoint an adequate number of inspectors who shall have power to determine all questions concerning the validity and verification of the ballots, the qualifications of the voters and the canvass of the vote. Such inspectors, or any one thereof designated by the superintendent, shall certify to the superintendent and to such company the result of such vote, under such rules as shall be prescribed by the superintendent. All necessary expenses incurred by the superintendent or incurred with his approval by the inspectors appointed by him shall be paid by such company upon the certificate of the superintendent.

(4) Such plan may specify the purchase price to be paid by such company for its shares, and in such case the price so specified shall be adhered to. If such plan does not specify the price to be paid for such shares, the company shall first obtain the approval of the superintendent for every payment made for the acquisition of any shares.

(5) The plan shall name three trustees authorized to receive shares of the company and hold them in trust for all policyholders until the conversion process has been completed. The plan shall provide a method for filling vacancies among the trustees.

(6) The plan shall have been submitted to the superintendent and approved as conforming to the requirements of this chapter and as not prejudicial to the policyholders of the company or to the insuring public. Before approving any such plan or any such payment, the superintendent shall be satisfied, by such investigation as he may make or by such evidence as he may require, that such company, after deducting the aggregate sum appropriated by such plan for the acquisition of any or all of its shares, and in the case of any payment not fixed by such plan, after deducting also the amount of such payment, will be possessed of admitted assets in an amount equal to the sum of:

(A) its entire liabilities, including the net values of its outstanding contracts computed in accordance with the provisions of this chapter,

(B) the minimum surplus prescribed by this chapter for mutual life insurance companies organized to do the same kinds of business, and

(C) an additional contingent surplus deemed by the superintendent necessary to protect the company's policyholders and the insuring public, in view of the past experience of such company, the character of

its assets, its present management, and its probable future earnings.

(7) No change shall be made in any such plan, adopted and approved as aforesaid, except upon the formulation, adoption and approval of a new plan in accordance with the foregoing requirements.

(8) In pursuance of any such plan to convert a domestic stock life insurance company into a mutual life insurance company, such company shall have power, and shall be privileged, to acquire any of its shares by gift, bequest, or purchase. Until all of its outstanding shares are acquired, any shares so acquired shall be taken and held in trust for all the policyholders of such company, by the trustees named in such plan. Before undertaking any of the duties of the appointment each trustee shall file with the company an acceptance of the appointment and a declaration that he will faithfully discharge his duties as trustee, subscribed and affirmed by him as true under the penalties of perjury. All shares held by the trustees shall be deemed admitted assets of the company at their par value. The trustees shall have power to vote any shares so acquired at all corporate meetings at which shareholders have the right to vote. All dividends and other sums received by such trustees on the shares acquired by them, after paying the necessary expenses of the trust, shall be immediately repaid to such company for the benefit of all who are or may become policyholders of such company and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by such company, apportionable as a part of such surplus among such policyholders. The provisions of section six hundred twenty-one of the business corporation law and of section 9-1.1 of the estates, powers and trusts law shall not apply to the trust hereinbefore authorized.

(b) (1) Whenever:

(A) a plan adopted and approved in accordance with subsection (a) of this section shall have been in effect for more than ten years,

(B) the company shall have acquired and transferred to the trustees under the plan at least ninety percent of its outstanding shares,

(C) the plan itself contains no provision for the compulsory completion of the mutualization of the company inconsistent with the terms of subsection (a) hereof, the directors by a vote of a majority may offer to acquire by purchase all of the shares of the company not theretofore acquired under the plan, at a specified price, uniform as to

class and series of shares, which the company considers to be their fair value as of the date of making such offer. Before such offer shall be made, it shall be submitted to the superintendent for approval. Before approving any such offer the superintendent shall be satisfied, by such investigation as he may make or by such evidence as he may require, that the offer complies with the requirements of this chapter, that such acquisition of such shares pursuant to such offer will not be prejudicial to the policyholders of the company and that such company, after deducting the sum required to acquire such shares at the price stated in such offer, or any lesser price agreeable to shareholders, will be possessed of admitted assets in an amount equal to the sum of:

(i) its entire liabilities, including the net values of all outstanding contracts computed in accordance with the provisions of this chapter;

(ii) the minimum surplus prescribed by this chapter for mutual life insurance companies organized to do the same kind or kinds of business; and

(iii) such additional contingent surplus based upon the past experience of such company, its assets, its present management and its probable future earnings as the superintendent deems necessary to protect its policyholders.

(2) If the offer is approved by the superintendent, the company may make a written offer, by registered mail, to each shareholder whose shares have not theretofore been acquired by the company under the plan or otherwise, to acquire all his shares at the specified price if accepted in writing within thirty days after the mailing of such offer. Such offer shall be accompanied by a copy of this subsection and by the most current available balance sheet of the company, which shall be as of a date not earlier than twelve months before the mailing of such offer, and a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet. Any shareholder accepting such offer within the thirty day period shall, within sixty days after his acceptance, transfer his shares and surrender the certificates representing such shares, to the company and shall thereupon be paid the offered price. All such shares shall be assigned to the trustees referred to in paragraph five of subsection (a) hereof and held by them as shares acquired pursuant to the plan.

(3) Each shareholder who does not accept such offer to acquire his shares within such thirty day period shall within thirty days after the expiration of such period apply to the supreme court, at any special term thereof held in the district in which is situated the county in which the company making the offer has its principal place of business, upon at least eight days' notice to such company, for the appointment of three disinterested persons to appraise the value of his shares as of the date of making such offer, and the court shall appoint such appraisers and designate the time and place of their first meeting, with such directions in respect to their proceedings as shall be deemed proper. The court may fill any vacancies in the board of appraisers occurring by refusal to hold such office or neglect to act. The appraisers shall meet at the time and place designated and, after being duly sworn, shall hear the parties, faithfully and fairly discharge their duties, estimate and certify in writing the fair value of such shares as of the date of the offer, and deliver one copy of such certificate to such company and another to each such shareholder. Within twenty days after such delivery any party to the appraisal proceedings may apply to the supreme court, at any such special term thereof upon at least eight days' notice to all the parties to such appraisal proceedings and to the superintendent, for approval of the report of the board of appraisers. The court, after hearing the parties and the superintendent, may approve the report and the value of the shares as stated therein, or may itself, upon the evidence and proceedings before the appraisers, determine the fair value of the shares as of the date of such offer, or may refer the matter back to the same appraisers or other appraisers to be so appointed by the court, to proceed in the same manner. Whenever the court shall approve or determine the fair value of such shares, it may also determine the terms of payment thereof by the company. The charges and expenses of the appraisers, after approval by the court, shall be paid by the company. Upon any such order approving or determining the value of the shares and the method of the payment thereof becoming final and from which no appeal is pending, or when the time to appeal therefrom has expired, each shareholder party to the proceeding shall transfer his shares and surrender the certificates representing such shares to the company and the company shall make payment therefor as provided in such order. Any shares so acquired by

the company shall be assigned and transferred to the trustees and held by them as shares acquired pursuant to the plan.

(4) Any shareholder who does not make application to the court in the manner and within the time prescribed in paragraph three hereof shall be deemed to have accepted the offer referred to in paragraph two hereof, effective, however, upon the expiration of the time prescribed in paragraph three hereof for making such an application and such shareholder's time for accepting such offer shall, for that purpose only, be deemed to have been extended accordingly.

(5) Any offer to acquire shares made pursuant to this subsection shall, except as otherwise provided in paragraphs two and four hereof limiting the time for acceptance at the offered price, be irrevocable until all proceedings upon such offer provided by this subsection have been completed or all shares have otherwise been earlier acquired by the company.

(6) Upon application by the company or by any aggrieved shareholder, and upon at least eight days' notice to all persons to be affected thereby and to the superintendent, the supreme court, at any special term thereof held in the district in which is situated the county in which the company has its principal place of business, may make any order appropriate in the circumstances to implement or enforce the provisions of this subsection. If any proceeding in respect of any of the shares shall have been commenced pursuant to paragraph three hereof, all subsequent applications pursuant to this subsection shall be made or transferred to, and be heard and determined by, the court in which such proceeding has been commenced.

(c) When all of the outstanding shares of the company have been acquired, they shall be retired and cancelled, and thereupon the company shall become a mutual life insurance company without shares.