

## RESIDENTIAL SERVICE CONTRACTS

### **523C.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Commissioner*" means the commissioner of insurance.
2. "*Custodial account*" means an account established by agreement between a licensed service company and a custodian under section 523C.5.
3. "*Custodial agreement*" means an agreement entered into between a licensed service company and a custodian under section 523C.5.
4. "*Custodian*" means an institution meeting the requirements established by the commissioner which institution has entered into a custodial agreement or reserve account agreement with a licensed service company.
5. "*Depository*" means an institution designated by the commissioner as an authorized custodian for purposes of sections 523C.5 and 523C.11.
6. "*Licensed service company*" means a service company which is licensed by the commission pursuant to this chapter.
7. "*Record*" means the same as defined in section 516E.1.
8. "*Reserve account agreement*" means an agreement entered into between a licensed service company and a depository under section 523C.11.
9. "*Residential service contract*" means a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.
10. "*Service company*" means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

83 Acts, ch 87, § 2; 88 Acts, ch 1112, § 703; 2000 Acts, ch 1147, §28

### **523C.2 License required.**

A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation or other form of organization approved by the commissioner by rule and is a licensed service company.

83 Acts, ch 87, § 3; 93 Acts, ch 60, §7

### **523C.3 Application for license.**

1. Application for a license as a service company shall be made to and filed with the commissioner on forms approved by the commissioner and shall include all of the following information:

- a. The name and principal address of the applicant.

*b.* The state of incorporation of the applicant.

*c.* The name and address of the applicant's registered agent for service of process within Iowa.

2. The application shall be accompanied by all of the following:

*a.* A certificate of good standing for the applicant issued by the secretary of state and dated not more than thirty days prior to the date of the application.

*b.* A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.

*c.* A copy of the most recent financial statement, including balance sheets and related statements of income, of the applicant, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant and dated not more than twelve months prior to the date of the application.

*d.* An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 523C.6.

*e.* A license fee in the amount of two hundred fifty dollars.

3. If the application contains the required information and is accompanied by the items set forth in subsection 2, and if the net worth requirements of section 523C.6 are satisfied, as evidenced by the audited financial statements, the commissioner shall issue the license. If the form of application is not properly completed or if the required accompanying documents are not furnished or in proper form, the commissioner shall not issue the license and shall give the applicant written notice of the grounds for not issuing the license. A notice of license denial shall be accompanied by a refund of fifty percent of the fee submitted with the application.

83 Acts, ch 87, § 4; 88 Acts, ch 1112, § 704; 92 Acts, ch 1078, § 2

#### **523C.4 License expiration and renewal.**

Each license issued under this chapter shall expire on June 30 next following the date of issuance. If the service company maintains in force the surety bond described in section 523C.5 and if its license is not subject to or under suspension or revocation under section 523C.9, its license shall be renewed by the commissioner upon receipt by the commissioner on or before the expiration date of a renewal application accompanied by the items required by section 523C.3, subsection 2, paragraphs "b", "c", "d", and "e", and section 523C.15. If the commissioner denies renewal of the license, the denial shall be in writing setting forth the grounds for denial and shall be accompanied by a refund of fifty percent of the license renewal fee.

83 Acts, ch 87, § 5

#### **523C.5 Required bond, cash deposit, or custodial account.**

1. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents or establish a custodial account in the amount of one hundred thousand dollars at an authorized depository. The bond or custodial account shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding chapter 17A, if a bond or custodial account is canceled for any reason

and a new bond or notice that a new custodial account has been established in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond or custodial account ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 523C.3.

The bond or custodial account posted by a service company pursuant to this section shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond or custodial account shall be released.

The commissioner may by rule designate institutions authorized to act as a depository under this section and establish requirements for custodians, custodial agreements, custodial accounts, or the method of valuing noncash assets held in a custodial account which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

2. In lieu of the bond or custodial account required by this section, the service company may deposit with the treasurer of state a cash deposit in the same amount. The treasurer of state shall not refund a deposit until sixty days after the service company has ceased doing business in this state, a bond has been filed with the commissioner which complies with this section, or a custodial account is established which complies with this section.

83 Acts, ch 87, § 6; 88 Acts, ch 1112, § 705; 92 Acts, ch 1078, § 3

#### **523C.6 Net worth requirement.**

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

83 Acts, ch 87, § 7; 88 Acts, ch 1112, § 706; 92 Acts, ch 1078, § 4; 99 Acts, ch 166, §12

#### **523C.7 Filing of forms of contract fee.**

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

*a.* Be written in nontechnical, readily understood language, using words with common and everyday meanings.

*b.* Clearly, conspicuously, and plainly specify all of the following:

- (1) The services to be performed by the service company, and the terms and conditions of performance.
- (2) The fee, if any, to be charged for a service call.
- (3) Each of the systems, appliances, and components covered by the contract.
- (4) Any exclusions and limitations respecting the extent of coverage.
- (5) The period during which the contract will remain in effect.
- (6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.
- (7) The following statement: "The issuer of this contract is subject to regulation by the insurance division of the department of commerce of the state of Iowa. Complaints which are not settled by the issuer may be sent to the insurance division."

*c.* Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

*d.* Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

*e.* Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

4. To the extent necessary to administer the provisions of this chapter, the commissioner may, after notice and hearing, institute a residential service contract form approval or form review fee. If the commissioner establishes a fee, the amount of the fee shall be set by rule adopted pursuant to chapter 17A. The fee may be by dollar amount or based upon a percentage of the sale value of the contract. However, the fee shall not exceed fifty thousand dollars.

5. A complete copy of the terms of the residential service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the residential service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

83 Acts, ch 87, § 8; 87 Acts, ch 234, §434; 98 Acts, ch 1189, §21; 2000 Acts, ch 1147, §29

### **523C.8 Rebates and commissions.**

1. Except as provided in subsection 2, a service company shall not pay a commission or any other consideration to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

2. This section does not prohibit any of the following:

*a.* The payment of an override commission or marketing fee to an employee or commission sales agent who

is a marketing or sales representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a company or organization which is entitled to share in any real estate commission generated by the underlying real property transaction.

b. Fees, payments, or reimbursements for a bona fide inspection, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

83 Acts, ch 87, § 9; 92 Acts, ch 1078, § 5; 93 Acts, ch 60, §8; 99 Acts, ch 166, §13

### **523C.8A Issuance of residential service contract without consideration prohibited.**

1. Except as provided in subsection 2, furnishing a residential service contract to any person without charge for the applicable contract fees constitutes a violation of this chapter. A residential service contract providing for listing period coverage shall not be issued or delivered unless it provides for consideration for such coverage. The consideration may consist of a bona fide promise to pay the applicable residential service contract fees at the close of the sale. However, if a contract is subsequently canceled as a result of the failure to close such a sale, including such failure due to cancellation, expiration, or other termination of any real estate listing agreement on the residence, the residential service contract holder shall pay to the service company, at the time of cancellation of the residential service contract, the lesser of the actual costs of such service or a pro rata portion of the applicable annual residential service contract fees based on the number of days the residential service contract remained in effect, together with administrative costs incurred by the service company as a result of the cancellation.

2. a. Notwithstanding subsection 1, a service company may offer a residential service contract providing for listing period coverage for consideration which consists of both of the following:

(1) The contract holder's bona fide promise to pay, upon the close of sale, the applicable residential service contract fees for coverage of the residence for at least one year from the close of sale.

(2) Actual payment of the costs of any and all services performed under the residential service contract during the term of the listing period coverage by the contract holder to the service contractor.

b. Upon the close of sale and actual payment of the contract fees referred to in paragraph "a", subparagraph (1), the service company shall reimburse the listing period coverage contract holder for all legitimate service costs incurred and paid under the residential service contract during the term of the listing period coverage with offset only for any deductible or service call fees remaining due and payable with respect to service performed under the residential service contract during the term of the listing period coverage.

3. For purposes of this section:

a. "*Close of sale*" means the time an interest in, or title to, a home to which the interest or title attaches is sold or transferred.

b. "*Listing period coverage*" means coverage provided prior to the close of sale.

93 Acts, ch 60, §9

### **523C.9 Suspension or revocation of license.**

1. In addition to the license revocation provisions of section 523C.5, the commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

a. The service company violated a lawful order of the commission or any provision of this chapter.

b. The service company failed to pay any final judgment rendered against it in this state within sixty days after the judgment became final.

c. The service company has without just cause refused to perform or negligently or incompetently performed services required to be performed under its residential service contracts and the refusal, or negligent or incompetent performance has occurred with such frequency, as the commissioner determines, as to indicate the general business practices of the service company.

d. The service company violated section 523C.13.

e. The service company failed to maintain the net worth required by section 523C.6.

f. The service company failed to maintain the reserve account required by section 523C.11.

g. The service company failed to maintain its corporate certificate of good standing with the secretary of state.

2. If the license of a service company is terminated under section 523C.5 because of failure to maintain bond, the commissioner shall give written notice of termination to the service company. The notice shall include the effective date of the termination.

83 Acts, ch 87, § 10

#### **523C.10 Rules.**

The commissioner may adopt rules under chapter 17A to implement this chapter.

83 Acts, ch 87, § 11

#### **523C.11 Reserve account.**

1. A service company shall maintain in an independent depository a reserve account consisting of unencumbered assets in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued and outstanding in this state, if any, less actual expenditures for services rendered under those contracts. The assets shall be held in the form of cash or marketable securities.

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository and, upon request, shall produce documents and records which the commissioner determines are necessary to verify the value and safety of the assets of the reserve account.

3. The commissioner may by rule designate institutions authorized to act as a depository under this section and may establish requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

4. For purposes of this section, "*aggregate annual fees*" does not include the annual fees collected on residential service contracts for which the service company has purchased contractual liability insurance

which demonstrates to the satisfaction of the commissioner that one hundred percent of the service company's claim exposure related to such service contracts is covered by the insurance. The contractual liability insurance must be obtained from an insurer authorized to do business in this state and shall contain the following provisions:

- a. If the service company is unable to fulfill its obligations under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to the persons making claims under the contracts.
- b. The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.
- c. The insurer shall not cancel or refuse to renew the policy unless sixty days' written notice has been given to the commissioner by the insurer before the date of the cancellation or nonrenewal.

83 Acts, ch 87, § 12; 88 Acts, ch 1112, § 707, 708; 92 Acts, ch 1078, § 6

### **523C.12 Optional examination.**

The commissioner or a designee of the commissioner may make an examination of the books and records of a service company, including copies of contracts and records of claims and expenditures, and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

83 Acts, ch 87, § 13; 94 Acts, ch 1031, § 18

### **523C.13 Prohibited acts or practices penalty.**

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner may order any or all of the following:

1. Payment of a civil penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this section, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if it finds the violations of this section were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such fine to the employer and not such person.
2. Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

83 Acts, ch 87, § 14; 92 Acts, ch 1078, § 7

### **523C.14 Rate review.**

Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

**523C.15 Annual report.**

A licensed service company shall file with the commissioner an annual report within ninety days of the close of its fiscal year. The annual report shall be in a form prescribed by the commissioner and contain all of the following:

1. A current financial statement including a balance sheet and statement of operations prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.
2. The number of residential service contracts issued during the preceding fiscal year, the number canceled or expired during the year, the number in effect at year end and the amount of residential service contract fees received.
3. Any other information relating to the performance and solvency of the residential service company required by the commissioner.

**523C.16 Exclusions.**

This chapter does not apply to any of the following:

1. A performance guarantee given by a builder of a residence or the manufacturer or seller or lessor of residential property if no identifiable charge is made for the guarantee.
2. A service contract, guarantee or warranty between a residential customer and a service company which will perform the work itself and not through subcontractors for the service, repair or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems.
3. A contract between a service company and a person who actually performs the maintenance, repairs, or replacements of structural components, or appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems, if someone other than the service company actually performs these functions.
4. A service contract, guarantee or warranty issued by a retail merchant to a retail customer, guaranteeing or warranting the repair, service or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems sold by said retail merchant.
5. A service contract, guarantee, or warranty issued by a manufacturer, third party, or retail company, covering the repair, maintenance, or replacement of individual appliances and other individual items of merchandise marketed and sold by a retail company, in the ordinary course of business.

**523C.17 Lending institutions, service companies, and insurance companies.**

A bank, savings and loan association, insurance company, or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A service company or an insurer, either directly or indirectly, as a part of any real property transaction in which a residential service contract will be issued, purchased, or acquired, shall not require that a residential service contract be issued, purchased, or acquired in conjunction with or as a condition precedent to the issuance, purchase, or acquisition, by any person, of a policy of insurance. A lending institution shall not sell a residential service contract to a

borrower unless the borrower signs an affidavit acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 523C.13.

83 Acts, ch 87, § 18; 93 Acts, ch 60, §10

### **523C.18 Violations.**

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

92 Acts, ch 1078, § 8

### **523C.19 Cease and desist orders.**

1. Upon the commissioner's determination that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

2. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this section may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section.

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

92 Acts, ch 1078, § 9; 2000 Acts, ch 1147, §30; 2000 Acts, ch 1232, §82

### **523C.20 Consent to service of process.**

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment of the commissioner of insurance as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if served personally.

93 Acts, ch 60, §11

### **523C.21 Service of process.**

The commissioner shall be the agent for service of process upon a service company.

94 Acts, ch 1031, §19

### **523C.22 Claim procedures.**

A service company shall promptly provide a written explanation to the residential customer, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the residential service contract.

94 Acts, ch 1031, §20

### **523C.23 Investigations and subpoenas.**

1. *a.* In enforcing this chapter, the commissioner may conduct a public or private investigation in order to do any of the following:

(1) Determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter.

(2) Aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

*b.* In carrying out this subsection, the commissioner may do all of the following:

(1) Conduct the investigation within or outside of this state.

(2) Require or allow a person to file a statement in writing regarding the facts or circumstances concerning a matter to be investigated. The commissioner may require that the statement be made under oath.

(3) Apply to the district court for the issuance of an order requiring a person's appearance before the commissioner or the attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. The failure to obey an order under this subsection constitutes contempt of court.

*c.* Information obtained in the course of an investigation is confidential as provided in section 22.7. However, upon a determination that disclosure of the information is necessary or appropriate in the public interest or for the protection of consumers, the commissioner may do any of the following:

(1) Share information obtained during the course of the investigation with another regulatory authority or government agency.

(2) Publish information obtained during the course of the investigation which concerns a violation of this chapter or a rule or order under this chapter.

2. Except as provided in section 523C.19, a proceeding instituted under this chapter shall be conducted pursuant to chapter 17A and rules adopted by the commissioner pursuant to chapter 17A.

3. In an investigation or proceeding conducted under this chapter, the commissioner or any designee of the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the commissioner deems relevant or material to the inquiry.

4. A person is not excused from attending and testifying or from producing a document or record before the commissioner or in obedience to a subpoena of the commissioner or an officer designated by the commissioner, or in a proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due

to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

2000 Acts, ch 1147, §31