

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW  
YORK

TITLE 11. INSURANCE DEPARTMENT  
CHAPTER III. POLICY AND CERTIFICATE PROVISIONS [FN1]  
SUBCHAPTER B. PROPERTY AND CASUALTY INSURANCE  
PART 72. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Text is current through February 15, 2002, and annotations are current through August 1, 2001.

**Section 72.1 Applicability.**

(a) Section 727(a)(3) of the Business Corporation Law (B.C.L.), section 727(a)(3) of the Not-for-Profit Corporation Law (N-PCL) and section 7024(a)(3) of the Banking Law (B.L.) give a corporation the power to obtain insurance for the purpose of indemnifying its directors and officers in instances in which they may not otherwise be indemnified by the corporation under the provisions of B.C.L. article 7, N-PCL article 7 and B.L. title 7, provided that the contract of insurance indemnifying such corporate directors and officers, or "D&O indemnification policy," includes a retention amount (or deductible) and coinsurance, in a manner acceptable to the Superintendent of Insurance.

(b) No retention amount or coinsurance is required where:

(1) directors or officers may be indemnified by the corporation pursuant to those provisions of B.C.L. article 7, N-PCL article 7 or B.L. title 7, other than those specified in subdivision (a) of this section;

(2) an indemnification policy is issued to, and for, the corporation itself; or

(3) an indemnification policy is issued directly to a director or officer of a corporation.

(c) Retention amounts and coinsurance are both required, in accordance with this Part, for D&O indemnification policies issued to corporations formed under the Insurance Law, Religious Corporations Law, Cooperative Corporations Law, Transportation Corporations Law, or any other law of this State, where provisions of such laws make such corporations subject to B.C.L. section 727 or N-PCL section 727.

(d) A D&O indemnification policy issued to a foreign corporation, if exempt under B.C.L. section 1320 or N-PCL section 1321, need not provide for a retention amount or coinsurance.

**Section 72.2 Retention amounts.**

(a) A D&O indemnification policy issued pursuant to B.C.L. section 727(a)(3), N-PCL section 727(a)(3) or B.L. section 7024(a)(3) shall provide for individual and aggregate retention amounts that are no less than the applicable individual and aggregate amounts, respectively, set forth in section 72.4 of this Part.

(b) In the event that the total of the individual retention amounts, for all directors and officers covered under an indemnification policy who have been found liable or who have been included in a settlement, exceeds the applicable aggregate contained in the policy, then the minimum individual retention amount chargeable to each such director or officer shall be the applicable aggregate limit divided by that total, but the minimum individual retention amount shall in no event be reduced below 75 percent of the amount set forth in section 72.4 of this Part.

**Section 72.3 Coinsurance.**

(a) A D&O indemnification policy issued pursuant to B.C.L. section 727(a)(3), N-PCL section 727(a)(3) or B.L. section 7024(a)(3) shall make each director or officer a coinsurer of any net (less retention amount) loss, for the first \$1,000,000 of coverage, to an extent no less than the applicable percentage set forth in section 72.4 of this Part.

(b) A D&O indemnification policy may provide that the director or officer shall be a coinsurer of the loss, in an amount or proportion to be agreed upon between the insurer and the corporation, for that part of a net loss exceeding \$1,000,000.

**Section 72.4 Minimum schedule.**

Type of corporation	Minimum coinsurance percentage		
	Minimum retention amounts		
	Individual	Aggregate	
(a) For corporations subject to the B.L. or B.C.L. (including insurance corporations, transportation corporations, etc. and with:			
(1) assets greater than \$20,000,000:	\$5,000	\$50,000	0.5%
(2) assets greater than \$10,000,000 up to \$20,000,000:	4,000	40,000	0.4%
(3) assets greater than \$5,000,000 up to \$10,000,000:	3,000	30,000	0.3%
(4) assets of \$5,000,000 or less:	2,000	20,000	0.2%
(b) Corporations subject to the Cooperative Corporations Law:	100	1,000	0.1%
(c) Corporations subject to the Religious Corporations Law:	100	1,000	0.1%
(d) Corporations subject to the N-PCL	100	1,000	0.1%