

VERMONT LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

PLAN OF OPERATION

As amended on April 18, 1974, September 13, 1984, April 18, 1985, May 14, 1992, May 20, 1993, May 19, 1994, May 20, 1999, May 24, 2002, and May 13, 2005

Article 1. Plan of Operation

This plan of operation shall become effective upon written approval of the Commissioner of Banking and Insurance. All section references herein shall be to Chapter 112, Title 8 Vermont Statutes Annotated.

Article 2. Board of Directors

A. There shall be a Board of Directors (hereinafter sometimes referred to as Board) in accordance with the provisions of Section 4157.

1. The Board shall consist of not less than five nor more than nine representatives of member insurers divided into three classes as nearly equal as possible. Any member of the Board may designate an alternative representative from the same company to serve from time to time in the place or stead of the actual elected representative.
2. In order to provide for staggered terms, the first Board to be elected by member insurers shall be divided into three classes. There shall be three directors of the first class who shall serve for three years, three directors of the second class who shall serve for two years, and two directors of the third class who shall serve for one year. Thereafter, each class of directors shall be elected for a term of three years. Each director shall hold office for the term for which he is elected and until his successor shall have been duly elected and qualified or until his death or resignation.
3. Upon the election of the Board, or replacement of a Board member, the Association shall notify the Commissioner and request his written approval of election or replacement of the Board.
4. The Board shall be elected at the first annual meeting and succeeding Directors at subsequent annual meetings as provided herein. Each member insurer shall be entitled to cast one vote for each dollar of premium written as defined in Section 4155(9) for the preceding calendar year for the kinds of insurance specified in Section 4153. Each member insurer shall be permitted to cast such votes in person or by proxy.

5. The members elected to the Board shall:
 - a. Elect a Chairman from among their members, a Secretary, a Treasurer and such other officers as they deem necessary.
 - b. Appoint, from among their members, a nominating committee. Such committee shall select a nominee to succeed each board member whose term expires at the annual meeting. Such nominees shall be made known to the member insurers at least 30 days prior to the annual meeting. Other nominees may be submitted to the Board, but not less than 15 days prior to the annual meeting, upon the petition of ten insurers.
 - c. In the event there is more than one nominee for each vacancy, the Board shall make the names of said nominees known to member insurers at least 15 days prior to the annual meeting. In the event there is not more than one nominee for each vacancy, the Secretary shall cast one ballot for each such nominee.
 - d. Appoint an audit committee which shall consist of at least two members. The audit committee shall recommend selection of the independent outside auditor and facilitate the annual audit of the Association by an independent outside auditor; it shall also review and provide recommendations regarding any financial or operational review of the Association by independent outside auditors or the Department.
 - e. The previously elected Board members shall serve until their successors have been duly elected and qualified to serve.
6. Vacancies occurring on the Board between annual meetings shall be filled by the Board with the approval of the Commissioner. Insofar as practicable, each such vacancy shall be filled with a representative of the same member insurer represented by the previous Board member. Vacancies occurring in elective offices between annual meetings shall be filled by the Board. Such appointees shall serve until the next succeeding annual meeting at which time a director or officer, as the case may be, shall be elected to serve for the unexpired term of the retired or resigned director or officer.
7. The Board of Directors may appoint an Executive Committee consisting of not less than two members of the Board of Directors, including the Chairman, to perform such duties not inconsistent with this Plan of Operation as the Board of Directors may assign to it and such other duties as are customarily exercised by such a committee. The Executive Committee shall have and exercise all the authority of the Board of Directors in the interim between meetings thereof, with the limitation that

it may not remove directors, make assessments, or amend the Plan of Operation. The Executive Committee shall report its actions at each ensuing special or regular meeting of the Board of Directors.

- B. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a majority of the Board present at a meeting at which a quorum is present shall be the acts of the Board.
Any action by the Board may be taken without a meeting if a written consent thereto is signed by all the Directors and filed with the records of the Directors' meetings. Such consent shall be treated as a vote of the Directors for all purposes.

Members of the Board of Directors and members of any committee designated by the Board of Directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting in such a manner shall constitute presence in person at such meeting.

- C. The Board shall hold its annual meeting at the association offices on the third Friday in the month of May, unless the Board Chairman, upon proper notice, shall designate some other date or place. At each meeting the Board shall:

1. Review the Plan of Operation and submit any amendments it may deem appropriate to the membership. Such amendments shall be adopted upon approval of the Commissioner unless disapproved within 30 days by member insurers transacting at least 40 percent of the total premiums written as defined in Section 4155(9) for the kinds of insurance specified under Section 4153.
2. Review each outstanding contract with servicing facilities and make any necessary corrections, improvements or additions.
3. Review operating expenses and covered claims' costs and determine if an assessment, or a refund of a prior assessment would be appropriate and, if so, the amount thereof. The Board shall levy any such assessment or make any such refund in accordance with Section 4159. The Board may waive the collection from or refund to a member insurer when the amount thereof is less than \$25.00.
4. Review, consider and act on any other matters it may deem appropriate.

- D. The Board shall hold regular meetings at such time and place and with such frequency as it deems proper, but it shall hold a meeting promptly after receiving notice from the Commissioner of the impairment of any member insurer. At such meetings or at any subsequent meetings the Board shall consider and decide:

1. What method or methods, as permitted under Section 4158 shall be adopted to pay and discharge covered claims of the impaired insurer for each of the three categories of kinds of insurance as identified in Section 4153, but in no event shall an impaired insurer be appointed as a servicing facility. If the Board decides to contract with a servicing facility, the Board shall seek to secure the receiver's, liquidator's or statutory successor's participation in such contract to assist the Association in the performance of its legally imposed duties. The Association shall pursue all recoveries permitted to the impaired insurer.
2. What immediate action, if any, should be taken to assure the proper retention of the records of the impaired insurer necessary to the prompt, economical handling by the Association of covered claims. In this effort the Board, or a designated servicing facility, shall work with the receiver, liquidator or statutory successor and seek his approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the impaired insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law.
3. What persons should be hired by the Association to implement and carry out the directives of the Board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who would have such authority as is properly delegated to him by the Board. Such person shall be knowledgeable about insurance matters, conversant with the law as it relates to covered policies of insurance and administratively capable of implementing the Board's directives. Such persons may include attorneys at law, actuaries, accountants, claims personnel and such other specialists or persons whose advice or assistance is deemed by the Board to be necessary to the discharge of its duties imposed by law. The Board may agree to compensate such persons so as to best serve the interest of the Association and the public.
4. To what extent and in what manner the Board shall review and contest settlements and releases or judgments, orders, decisions, verdicts and findings to which the impaired insurer or its insureds were parties in accordance with Section 4158.
5. Consider and decide what assessment, if any, should be levied, whether any refund should be made to a member insurer, and consider and decide whether any assessment shall be deferred or abated. If such assessment, refund, deferral or abatement shall be determined to be appropriate, such actions shall be in accordance with the requirements specified in the appropriate item or items in Section 4159. The Board may waive the collection from or the refund to a member insurer when the amount thereof is less than \$25.00.

6. Take all steps permitted by law, and deemed necessary, to protect the Association's rights as pertaining to the impaired member insurer and its policyholder, and any other matters it may deem appropriate.
- E. The Board may schedule such other regular meetings as it may deem appropriate. Special meetings of the Board may be called by the Chairman, and shall be called at the request of any two Board members. Not less than 15 days written notice shall be given to each Board member of the time, place and purpose or purposes of any special meeting. Any Board member not present may consent in writing to any specific action taken by the Board. Any action approved by the required number of Board members at such special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at a regular meeting of the Board. At such special meeting the Board may consider and decide any matter it may deem appropriate.
- F. Members of the Board shall serve without compensation, but they may be reimbursed for reasonable travel expenses, upon submission of a statement thereof.

Article 3. Operations

- A. The official address of the Association shall be the address of the Chairman, c/o One National Life Drive, Montpelier, Vermont unless otherwise designated by the Board.
- B. The Board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed on the Association. The Board may use the mailing address of such persons, firm or corporation as the official office address of the Association. Such persons, firms or corporations shall keep such records of their activities as may be required by the Board.
- C. The Board may open one or more bank accounts for use in Association business. Reasonable delegation of the deposit and withdrawal authority to such accounts for the Association business may be made consistent with prudent fiscal policy. The Board may borrow money from any person or organization including a member insurer, or from an appointed servicing facility as the Board may deem appropriate.
- D. In order to effectuate the purposes set forth in Section 4162 concerning the prevention of impairments, the Board of Directors may develop procedures for discovering and reporting any member insurer that may be in an impaired financial condition which is hazardous to the interest of the policyholders of such insurer or to the public interest. No such reports shall be considered public documents, but shall be made available for the examination of the Commissioner or his designated assistant. The Board of Directors may review the Insurance

Code and appropriate regulations with a view towards making recommendations to the Commissioner for the improved and more certain detection and prevention of member insurer impairments.

- E. The Board may levy assessments of not less than \$25.00 as may from time to time become necessary to cover the reasonable cost of administering the Association.
- F. The Board may, subject to approval of the Commissioner, contract with one or more persons, firms or corporations to act as servicing facilities should the Board receive notice from the Commissioner of any impairment of a member insurer. Such contract terms may include:
 - 1. Terms of payment to the servicing facility.
 - 2. Extent of authority delegated to the servicing facility.
 - 3. Procedures for giving the receiver, liquidator or statutory successor timely notice, sufficient to protect the Association's right to subrogation against him, of each and every covered claim not otherwise reported to him.
 - 4. Procedures contemplated for the handling of covered claims as defined in the Vermont Life and Health Insurance Guaranty Association Act. These procedures shall include the right to request from or offer to any person arbitration of his covered claim.
 - 5. Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.
 - 6. Requirement of bond for faithful performance.
 - 7. Any other provisions deemed appropriate by the Board of Directors.

Article 4. Records and Reports

- A. A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained by the Chairman with copies being furnished to each Board Member and the Commissioner.
- B. The Board shall make an annual report to the Commissioner, as required by Section 4165 not later than May 1 of each year. Such report shall include a financial report for the preceding calendar year in a form approved by the Commissioner and a review of the activities of the Association during the preceding calendar year.

- C. The Board shall, once each calendar year, engage an independent certified public accountant to review or audit the financial affairs of the association.
- D. In the event a member insurer shall be declared an "impaired" insurer, as defined in Section 4155(7), which necessitates the levy of an assessment by the Association or the procurement of funds in a manner authorized to the Association, the Board shall, once each calendar year, appoint certain of the member insurers as an audit committee. The audit committee shall consist of three member insurers, at least two of which shall not have representatives on the Board of Directors. Such committee shall see the proper calendar of all books and records of the Association and shall report its findings to the Board of Directors.

Article 5. Membership

- A. Insurers which were admitted as of April 28, 1972, to transact the kinds of insurance covered by the Vermont Life and Health Insurance Guaranty Association Act in the State of Vermont shall be members of the Association. Each insurer admitted after April 22, 1972, to transact the kinds of insurance covered by the Vermont Life and Health Insurance Guaranty Association Act shall automatically become, effective on the date of its admission, a member of this Association. An insurer which ceases to be admitted after April 28, 1972, shall automatically cease to be a member effective on the day following the termination or expiration of its license to transact the kinds of insurance covered by the Vermont Life and Health Insurance Guaranty Association Act. However, such insurer shall remain liable for any assessments based on impairments occurring prior to a termination of its license. Such insurer shall also be entitled to a refund of all or part of any assessments which were made prior to termination of its license which later proves to be excessive.
- B. A majority of members present at the meeting in person or represented by proxy shall constitute a quorum for the transaction of business and the acts of a majority of the members present at a meeting at which a quorum is present shall be the acts of the members. For the purpose of this section, in person shall include physical presence or participation by a telecommunications device.

Article 6. Indemnification.

Comment: Our article is much more comprehensive than Model.

- A. Definitions. For purposes of this Article 6:
 - 1. "Director/officer" means each member of the Board of Directors of the Association, each individual serving as a representative of a member insurer on the Board of Directors of the Association, each employee, officer or agent of the Association, each employee, officer or agent of any

association or other entity which performs services, including without limitation claims handling services, on behalf of the Association (in their capacity of performing such services of behalf of the Association only) and each person who is serving or has served at the request of the Association or such other entity as a director, officer, trustee, fiduciary, principal, partner, member of a committee, employee, consultant or agent of any other entity (sometimes referred to in this Article 6 as an "Association Related Entity").

2. "Proceeding" means any action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom, brought in or before, or threatened to be brought in or before, any court, tribunal, administrative or legislative body or agency, and any claim which could be the subject of a Proceeding.

B. Indemnification. The Association shall indemnify and hold harmless any Director/officer that is a party or is threatened to be made a party to any threatened, pending or completed Proceeding (any such Director/officer being referred to hereinafter as "Indemnatee") by reason of the fact the Indemnatee is or was a Director/officer or by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of this Article 6, from and against any and all expenses, including attorney's fees, judgements, fines, interest and amounts paid in settlement actually and reasonably incurred by Indemnatee in connection with the Proceeding if (i) Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceeding had no reasonable cause to believe Indemnatee's conduct was unlawful, and (ii) such Proceeding in not act action by or in the right of the Association. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceedings, had reasonable cause to believe that Indemnatee's conduct was unlawful.

C. Proceedings by or in the Right of the Association. The Association shall indemnify and hold harmless Indemnatee in the event Indemnatee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Association to procure judgment in its favor by reason of the fact that Indemnatee is or was a Director/officer, officer, employee or agent by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of this Article 6, from and against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnatee in connection with the defense or settlement of the Proceeding if indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, except that no such indemnification shall be made in respect of any

Proceeding as to which Indemnitee shall have been adjudged to be liable for negligence or misconduct in the performance of Indemnitee's duty to the Association unless and only to the extent that the Court in which the Proceeding was brought shall determine upon application that, despite the adjudication of the liability but in view of all circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for expenses which the court shall deem proper.

D. Successful Defense of Proceedings. To the extent that Indemnitee is successful on the merits or otherwise in defense of any Proceeding, Indemnitee shall be indemnified against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnitee in connection therewith.

E. Determination that Indemnification is Available. Any indemnification under Section B or C of this Article 6, unless ordered by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in Sections B and C of this Article 6. This determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of directors who are not parties to the Proceeding and whose representatives on the Board of Directors are not parties to the Proceeding, (ii) by independent legal counsel in a written opinion if such a quorum is not obtainable or, even if obtainable, if such a quorum so directs, or (iii) in the absence of a determination pursuant to clauses (i) or (ii), by the Board of Directors of the Association by a majority vote of a quorum, including directors who are parties to such Proceeding, after providing each member insurer of the Association notice of its intention to make such determination and asking such member insurers to provide the Association with notice of any objections thereto; provided that the determination provided in clause (iii) shall not be effective until sixty (60) days following such Board notice and shall not be effective at all in the event a majority of the member insurers provide notice to the Association within such sixty (60) day period of their objection to such determination.

F. Advances. The Association shall pay sums on account of indemnification, including, with limitation, attorneys fees and related disbursements, in advance of a final disposition of a Proceeding upon receipt of a written undertaking by Indemnitee to repay such sums if it is subsequently determined that Indemnitee is not entitled to indemnification pursuant to this Article 6, which undertaking may be accepted without reference to the financial ability of the indemnitee to make repayment.

G. Partial Indemnification. If Indemnitee is entitled under any provision of this Article 6 to indemnification by the Association for a portion of the liability or expense of any Proceeding but not, however, for the total amount thereof, the Association shall nevertheless indemnify Indemnitee for the portion of such expense to which Indemnitee is entitled.

H. Allocation of Indemnification Expense. The expense of indemnification provided hereunder shall be a general expense of the Association.

I. Non-Exclusive. Nothing in this Article 6 shall limit any lawful rights to indemnification existing independently of this Article 6.

J. Amendment. The provisions of this Article may be amended or repealed by the member insurers, provided however that no amendment or repeal of such provisions shall adversely affect the rights of a person or entity entitled to indemnification under this Article with respect to acts or omissions occurring prior to such amendment or repeal.

Article 7. Appeals

A. Any member insurer aggrieved by an act of the Board of Directors or Association shall appeal to the Board of Directors before appealing to the Commissioner. Such appeal shall be taken within 60 days of the date on which such member insurer knew or should have known of such act. If such member insurer is aggrieved by the final action or decision of the Board on the appeal, or if the Board declines or fails to act on such appeal within 60 days, the member insurer may appeal to the Commissioner with 60 days after the action or decision of the Board or the expiration of the 60 day period within which the Board failed to act on such appeal. Any member insurer which makes an appeal to the Commissioner pursuant to this Article must provide the Association with notice of the appeal by mailing a copy of the appeal to the Association by certified mail on the same day on which the appeal is submitted to the Commissioner. Failure to take an appeal within the time and in the manner set forth in this plan shall bar any claim that a member might otherwise have with respect to any act taken by the Association or its Board. If the appeal pertains to a protest of all or part of an assessment, the member shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet the Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

Article 8. Conformity to Statute.

Subchapter 8A of Chapter 112, Title 8 VSA as written, and as may be amended, is incorporated as part of this Plan of Operation.