

VERMONT PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOC.

Second Amended and Restated Plan of Operation

as of 10/24/08

Article 1. Plan of Operation

This Plan of Operation ("the Plan") of the Vermont Property and Casualty Insurance Guaranty Association ("the Association") shall become effective upon written approval of the Commissioner of Insurance ("the Commissioner") after acceptance by member insurers transacting at least 60 percent of the total net direct premiums written for the kinds of Insurance covered by the Vermont Property and Casualty Insurance Guaranty Association Act ("the Act") as specified under Section 3611 of the Act. All section references herein are to sections of the Act.

Article 2. Board of Directors

A. There shall be a Board of Directors ("the Board") in accordance with the provisions of Section 3614 of the Act.

1. The board of directors of the association shall consist of not less than five nor more than nine persons, at least three of whom shall be persons who are officers, directors, or employees of insurance companies incorporated under the laws of this state, unless there are fewer than three such companies, in which case there shall be one director for each such company. The board shall be elected by the member insurers based on a weighted vote using premium volume as a determining factor in the number of votes allowed each member. Each member Insurer shall have at least one vote in electing a director. Any member of the Board may designate an alternate representative from the same company to serve from time to time in The place or stead of the actual elected representative.

2. The initial Board shall be appointed by the Commissioner and shall serve until the 1972 annual meeting of the member insurers. At such meeting, three member insurers shall be elected for a one year term. At each annual meeting thereafter, the member insurers shall elect three member Insurers for a three year term. Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the approval of the Commissioner to serve out the unexpired term.

3. Upon election of the Board, the Association shall notify the Commissioner and request his written approval of the Board.

4. The member insurers elected to the Board shall elect a Chairman from among its members and such other officers as they deem necessary'.

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; except that an affirmative vote of six Board members shall be required to:

1. Approve a contract with a servicing facility,
2. Levy an assessment or provide for a refund, or
3. Borrow money.

Amended and Restated Plan of Operation

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Article 2. Board of Directors

A. There shall be a Board of Directors ("the Board") in accordance with the provisions of Section 3614 of the Act.

1. The Board shall consist of nine member insurers who shall be elected by the member insurers based on a weighted vote using premium volume as a determining factor in the number of votes allowed each member. Not less than one half of the directors shall be persons who are officers, directors or employees of insurance companies incorporated under the laws of Vermont. Each member Insurer shall have at least one vote in electing a director. Any member of the Board may designate an alternate representative from the same company to serve from time to time in The place or stead of the actual elected representative.

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1. Approve a contract with a servicing facility,
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C. The Board shall hold an annual meeting at the office of the Insurance Commissioner in June unless the Board upon proper notice shall designate some other date or place. At each annual meeting, the Board shall:

1. Review the Plan 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 net direct premiums written for the kinds of insurance specified under Section 3611 of the Act.
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 Sections 3615 (a) (3) and 3615(b) (6) of the Act. The Board may waive the collection from or refund to a member insurer when the amount thereof is less than \$10.00.
4. Review, consider and act on any other matters it may deem appropriate.

D. The Board shall hold a meeting promptly after receiving notice from the Commissioner of the insolvency of any member insurer. At such meeting or at any subsequent meeting, the Board shall consider and decide:

1. What method or methods, as permitted under Section 3615 (a) (6) of the Act shall be adopted to pay and discharge covered claims of the insolvent insurer for each of the three categories of kinds of insurance as identified in Section 3613 of the Act, but in no event shall an insolvent 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 insolvent insurer.
2. What immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt and 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 such person's approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the insolvent 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.
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 insolvent insurer or its insureds were parties in accordance with Sections 3615 (a) (4) and 3625 of the Act.
5. What assessment or refund, if any, may be appropriate. The Board may waive the collection from or the refund to a member insurer when the amount thereof is less than \$10.00.
6. 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 5 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 meeting, the Board may consider and decide any matter it may deem appropriate.

F. Members of the Board may participate in a meeting of the Board through the use of a conference telephone or similar communications equipment, by means of which all persons participating in the meeting are able to hear each other, and the participation by such means shall constitute presence in person at such meeting.

G. Members of the Board shall serve without compensation; but they may be reimbursed for necessary 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 of the Board, 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 person, firm or corporation as the official 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 deposit and withdrawal authority to such accounts for 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. The Board shall levy an initial assessment of \$10.00 per member and such subsequent assessments of not less than \$10.00 as may from time to time become necessary to cover the reasonable costs of administration of the Association.

E. 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 an insolvency 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 such person, of each and every covered claim not otherwise reported to such person.
4. Procedures contemplated for the handling of covered claims as defined in the Act. These procedures shall include the right to request from or offer to any person arbitration of his covered claim.

5. Procedures for printing or preparation of forms necessary for the proper handling of covered claims.
6. Requirement of a bond for faithful performance.
7. Any other provisions deemed appropriate by the Board.

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 3621 of the Act, and an annual report to the member insurers, which shall include a review of the Association's activities and an accounting of its income and disbursements for the past year.
- C. After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the Association, the Board shall, once every year appoint certain of the member insurers to serve as an Audit Committee. Such committee shall see to the proper auditing of all of the books and records of the Association and shall report its findings to the Board.
- D. The Board shall, at the conclusion of any insurer's insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the Association, and submit such report to the Commissioner.

Article 5. Membership

- A. Insurers which were admitted as of April 9, 1970 to transact the kinds of insurance covered by the Act in the State of Vermont shall be members of the Association. Each insurer admitted after April 9, 1970 to transact the kinds of insurance covered by the Act shall automatically become, effective on the date of its admission, a member of the Association. An insurer which ceases to be admitted after April 9, 1970 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 Act; provided that such insurer shall remain liable for any assessments based on insolvency's occurring prior to the termination of its license.
- B. Any member insurer aggrieved by an action of the Association shall appeal to the Board before appealing to the Commissioner. If such member insurer is aggrieved by a final action or decision of the Board or if the Board does not act within 30 days, the member insurer may appeal to the Commissioner within 30 days after such action or decision of the Board or the expiration of such 30 days.
- C. There shall be an annual meeting of the members at the office of the Commissioner in June, unless the Board shall designate some other date or place. The Board shall give at least ten days written notice to the member insurers of such meeting. At such meeting the members shall:
 1. Elect Directors in accordance with paragraph A-2 of Article 2 of the Plan.
 2. Receive the report of the Chairman covering the activities of the Association during the preceding year.

3. Consider and act on any amendment to the Plan that may be submitted to them.
4. Transact any other business as may properly come before the meeting. The members may attend the annual meeting either in person or by proxy.

Article 6. Indemnification of Officers, Directors and Others.

A. Definitions, For purposes of this Article 6:

1. "Director/officer" means each member of the Board, each individual serving as a representative of a member insurer on the Board, 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 on 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.

3. "Expense" means any fine or penalty, and any liability fixed by a Judgment, order, decree or award in a Proceeding, any interest payable on account of such liability, any amount reasonably paid in settlement of a Proceeding and any attorneys or other professional fees and other costs, charges and disbursements reasonably incurred in connection with the investigation, defense, appeal or settlement of a Proceeding.

B. Indemnification. Except as limited by law or as provided in Sections C and D of this Article 6, each Director/officer (and the successors, assigns, heirs and personal representatives thereof) shall be indemnified and held harmless by the Association from and against any and all expense incurred by the Director/officer in connection with each Proceeding in which the Director/officer is involved as a result of his serving or having served as a Director/officer or as a result of any action alleged to have been taken or omitted as a Director/officer, whether such service, action or omission takes place before or after the date of the effectiveness of this Article 6.

C. Indemnification Not Available. No indemnification shall be provided to a Director/officer with respect to a Proceeding as to which it shall have been adjudicated that the Director/officer is liable for gross negligence or misconduct in the performance of duty as a Director/officer.

D. Settlement. In the event that a Proceeding is compromised or settled so as to impose any liability or obligation on a Director/officer or upon the Association or Association Related Entity no indemnification shall be provided as to said Director/officer with respect to such Proceeding if it is determined (i) by a majority of the disinterested Directors of the Association then in office (which for purposes hereof shall exclude member insurers whose representatives on the Board are parties to such Proceeding) or (ii) in the absence of any disinterested Directors or at the request of a majority of the disinterested Directors, by a majority of the member insurers, that with respect to the matter involved in such Proceeding said Director/officer did not act in good faith in the reasonable belief that the Director/officer's action was in the best interests of the Association or Association Related Entity. In lieu of submitting the question to a vote of disinterested Directors or member insurers, as provided above, the Association may deny indemnification to said Director/officer with respect to such Proceeding, if there has been

obtained, at the request of a majority of the Directors then in office, an opinion in writing of independent legal counsel, other than counsel to the Association, to the effect That said Director/officer did not act in good faith in the reasonable belief that said Director/officer's action was in the best interests of the Association or Association Related Entity.

E. Advances. The Association shall pay sums on account of indemnification, including, without limitation, attorneys fees and related disbursements, in advance of a final disposition of a Proceeding upon receipt of an undertaking by the Director/officer to repay such sums if it is subsequently established that the Director/officer is not entitled to indemnification pursuant to Sections C and D of this Article 6, which undertaking may be accepted without reference to the financial ability of the Director/officer to make repayment.

F. Partial Indemnification. If a Director/officer is entitled under any provision of this Article 6 to Indemnification by the Association for a portion of the Expense of any Proceeding but not, however, for the total amount thereof, the Association shall nevertheless indemnify the Director/officer for the portion of such expense to which the Director/officer is entitled.

G. Allocation of Indemnification Expense. The expense of indemnification provided hereunder shall be assessed against and paid by the member insurers in the proportion that the net direct written premiums of each member insurer for the calendar year preceding such assessment bears to the net direct written premiums of all member insurers for the calendar year preceding such assessment, except In the case of Insurers who shall cease to be members of the Association, as to which assessments shall be as follows:

any insurer which ceases to be a member of the Association shall remain liable for assessments on account of the expense of Indemnification with respect to any and all acts and omissions occurring prior to the time such insurer ceases to be a member of the Association, and in the case of such insurers, the assessment for indemnification expense shall be in the proportion that the net direct written premiums of the insurer for the calendar year preceding the year in which the act or omission with respect to which Indemnification is claimed bears to the net direct written premiums of all member insurers for the calendar year preceding the year in which the act or omission with respect to which indemnification is claimed.

H. Non-Exclusive. Nothing in this Article 6 shall limit any lawful right to Indemnification existing independently of this Article 6. This Article 6 is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 3624 of the Act.

I. Amendment. The provisions of this Article 6 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 6 with respect to acts or omissions occurring prior to such amendment or repeal.

Article 7. Conformity to Statute

The Act, as written, and as may be amended, is incorporated as part of the Plan.

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