



Plan of Organization

PLAN OF ORGANIZATION
OF THE
WEST VIRGINIA ESSENTIAL
PROPERTY INSURANCE ASSOCIATION

Article I - Name

This organization shall be a nonprofit unincorporated association and shall be known as the West Virginia Essential Property Insurance Association (hereinafter referred to as the Association). An office of the Association shall be established, if necessary, at a location or such locations deemed to be appropriate by the Board of Directors subject to the approval of the Insurance Commissioner.

Article II - Purpose

The purpose of this Plan of Organization is to form the West Virginia Essential Property Insurance Association and to provide for the operation of the Plan of Operation in compliance with Chapter 33, Article 20A of the West Virginia Code.

The purpose of the Association shall be to provide essential property insurance (fire and extended coverage), as defined and called for in the Plan of Operation, to any person having an insurable interest in habitational or commercial property situated in West Virginia and who is equitably entitled, but unable to secure such insurance in the voluntary insurance market.

Article III - Membership

Membership

All insurers in the State of West Virginia authorized to write and engage in writing on a direct basis, essential property insurance or any component thereof in multi-peril policies, are required to be a member of the Association and shall be bound by the Plans of Organization and Operation. Every such insurer shall remain a member of the Association as a condition of its authority to transact essential property insurance within the State of West Virginia.

Article IV - Member's Obligations

- A. Each member of the Association shall participate in the assets, liabilities, income and disbursements of the Association in accordance with Chapter 33, Article 20A of the West

Virginia Code, this Plan of Organization and the Plan of Operation. A Member's liability shall be several, each for itself and not jointly, and no Member shall be liable for the responsibility of any other member, except as provided in the event of the Termination of the Plan, Article XVIII, or Insolvency of a Member, Article XIV.

- B. The Association shall procure, through assessment of its members, funds necessary for initial operating expenses.
- C. All members shall participate in the assets, liabilities, income and disbursements of the Association in the proportion that the net direct premiums of each such member bears to the aggregate net direct premiums written in the state by all members. Each member's participation shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the Commissioner. No member shall be obligated in any one year to pay assessments in that year in excess of five percent of the net direct written premium written by it in the previous year and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subsection after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operation allocated to all members of the association in any calendar year shall exceed five percent of their respective net direct written premiums, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subsection.
- D. A member which has withdrawn from the State of West Virginia or whose license has been revoked or which has been placed in liquidation, shall remain liable from the date of withdrawal, revocation or liquidation, for any assessment hereunder based on the losses or expenses of the Association incurred in connection with policies issued in the year of the withdrawal, revocation or liquidation. When a member has been merged or consolidated into another member, such member or its successor in interests shall remain liable and shall continue in the Association, based upon the premiums written as defined in the Plan of Operation by it and by the other insurers with which it has been merged or consolidated.

Article V - Membership Meetings

Annual Meetings

There shall be an Annual Meeting of members on a date fixed by the Board of Directors for such business as may be necessary.

Special Meetings

Special Meetings of the members may be called by the Commissioner of Insurance or the Board of Directors on its own motion or upon the written or electronic request to the Board of Directors

by any ten (10) members, not more than one of which shall be in the same group of insurers, as respect management or ownership.

Notice of Meetings

Written or electronic notice of the Annual or any Special Meetings stating the time and place thereof and matters to be considered shall be given to all members at least twenty (20) days in advance of such meeting.

Such notice, in the case of a Special Meeting, shall be accompanied by an Agenda and such supporting information as can be conveniently assembled by the Board of Directors. No matter may be discussed at Special Meetings which has not been included in the agenda thereof.

Quorum

At any Annual or Special Meeting, members representing in the aggregate at least 51% of the total participation of the Association, determined in accordance with Article IV C, shall constitute a Quorum. Members may be represented by a proxy.

Voting

Voting on matters requiring a vote by the members shall be weighted in accordance with the then current participation of each member. A proposal shall be considered adopted by the members when approved by at least two-thirds of the votes of members cast on such weighted basis.

Mail Voting

Any matter subject to vote by the members may be proposed and voted upon by mail or email, providing such procedure is authorized by vote of at least five (5) directors. Notice of a proposal so authorized shall be mailed or e-mailed to the members not less than twenty (20) days prior to the final date fixed by the Board of Directors for voting on.

Article VI - Board of Directors

Number, Appointment, Term

The Association shall be administered by a Board consisting of seven (7) Directors (hereinafter referred to as the Board). The members of the Board shall be appointed by the Commissioner of Insurance. Six members of the Board shall be insurer members - - five foreign and one domestic insurer, each of which shall designate an officer or employee to serve as its representative; and one member of the Board shall be appointed to represent producers. No more than one member in a group under the same management or ownership shall serve on the Board at the same time. Each Director shall serve a term of one year or until their successors are appointed.

Directors may be reimbursed from the assets of the Association for expenses incurred by them for reasonable and equitable compensation, as prescribed by the Board.

Article VII - Board of Directors
General Powers and Authority

Powers

The Board shall have the responsibility for the administration of the Association and may take any necessary action to make available the essential property insurance provided for in Article II including, but not limited to:

- (1) Assessing members amounts necessary to pay the obligations of the Association, administration expenses and cost of examinations and other authorized expenses. The assessment of each member shall be in accordance with the participating percentages determined in Article IV "C" & "D".
- (2) Entering into such contracts as are necessary or proper to carry out the provisions and purposes of this Plan of Organization.
- (3) Suing or being sued, including taking legal action necessary to recover any assessment(s) for, on behalf of, or against participating insurers.
- (4) Investigating claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the Association's obligations and deny all other claims.
- (5) Classifying risks as may be applicable and equitable.
- (6) Establishing appropriate rates, rate classifications and rating adjustments and filing such rates with the Commissioner as may be required. Rates, rating plans and any provision for recoupment shall be based upon the Association loss and expense experience and investment income from unearned premiums and loss reserves. Premium rates, including initial premiums, shall be on an actuarially sound basis and calculated to be self-supporting.
- (7) Administering any type reinsurance program for or on behalf of the Association or any participating carrier.
- (8) Pooling risks among participating carriers.
- (9) Issuing and marketing through producers, policies of insurance which provide coverage required by this Plan of Organization in its own name or on behalf of participating carriers.

- (10) Administering separate pools, separate accounts or other plans as may be deemed appropriate for separate carriers or group carriers.
- (11) Investing, reinvesting and administering all funds or moneys held by the Association.
- (12) Borrowing funds needed by the Association which affect its purpose.
- (13) Developing, effectuating and promulgating any loss prevention programs aimed at the best interests of the insured public and the Association.
- (14) Operating and administering any combination of plans, pools, reinsurer arrangements or other mechanism as deemed appropriate to best accomplish the fair and equitable operation of the Association for the purposes of making available essential property insurance coverage.
- (15) Providing for the method of recoupment of deficits incurred by any plan, pursuant to Chapter 33, Article 20A - (15) of the West Virginia Code.
- (16) Holding real and personal property in the name of the Association, to buying, selling, leasing and maintaining such property.
- (17) Arranging for, annually, an external financial audit of the Association.

Article VIII - Board of Directors and Executive Officers

The Board shall elect from its membership a Chairman, Vice Chairman and Secretary. Additional officers may be appointed by the Board.

Article IX - Board of Directors Meetings

Place and Frequency of Meeting

Regular and Special Meetings of the Board shall be held at such locations as designated by the Chairman of the Board of Directors. The Board shall meet as often as may be required to perform the general duties of administration and shall meet upon the request of any two (2) Directors or any ten (10) members. Due notice of all members shall be made to the Board by the Secretary.

Quorum

Four (4) Directors shall constitute a quorum.

Voting

Every Director shall have one (1) vote. Any matter submitted shall be carried provided it is voted in the affirmative by a majority of the entire Board. Voting by proxy shall not be permitted. Voting by mail or telephone is permitted, provided any matter submitted for a mail or telephone vote shall carry only if it is voted in the affirmative by a majority of the members of the Board and receives no negative votes.

Procedure

The Chairman, or in his absence the Vice Chairman, shall preside over meetings of the Board and Annual or Special Meetings of the Association. The Secretary, or in his/her absence a person appointed by the Chairman or Vice Chairman, shall act as Secretary at such meetings.

Article X - Standing Committees

Committees

The Chairman may appoint or the Board may elect such Standing Committees or such temporary or Special Committees as may be deemed necessary for the transaction of the Board's business. The Chairman shall be a member ex-officio of all committees of the Board, with right to vote.

Article XI - Audits

The Board shall have the right, in person or through representatives, at all reasonable times, to audit and inspect the books and records of any member of the Association as to matters coming within the purview of the Plan of Organization.

Article XII - Association Management

The Board may appoint and arrange for the compensation of a Manager or President and such other employees as the Board may designate. Such person(s) shall serve at the pleasure of the Board and perform the duties provided in the Plan of Operation and such other duties as the Board may designate.

Article XIII - Indemnification Agreement

1. The Association shall indemnify; (a) each member of the Board, each member of any
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committee or any subcommittee, every officer and employee of the Association, and the estate, executor, administrator, heirs, legatees and devisees of any such person; and (b) every insurer member of the Association, both as a member and by reason of such insurer having one or more of its personal representatives or employees serving in any of the capacities or positions specified in clause (a) hereinabove; against all judgements including interest, fines, amounts paid or agreed upon in settlement, reasonable costs and expenses including attorneys' fees, and any other liability that may be incurred as a result of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, prosecuted or threatened to be prosecuted, for or on account of any act performed or omitted or obligation entered into, if done or omitted in good faith without intent to defraud and within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interest of and in connection with the administration, management, conduct or affairs of the Association or committee, and with respect to any criminal actions or proceedings, in addition, had not reasonable cause to believe that his or its conduct was unlawful, provided, however, that if any such claim, action, suite or proceeding is compromised or settled, it must be done so with the prior and express approval of the Board of the Association.

2. Such indemnification may include payment by the Association of expenses incurred in defending a civil or criminal action or other proceeding in advance of the final disposition of such action or proceeding, upon receipt of an undertaking by the person or member indemnified to repay such payment if he/she shall be found to be not entitled to indemnification under this Article. Such advance payments shall be made only if authorized by the Board.
3. Such indemnification shall not depend upon whether or not such insurer is a member of the Association; or such person is a member of the Board of the West Virginia Essential Property Insurance Association, or any committee, at the time such claim, action, suit or proceeding is begun, prosecuted or threatened, nor whether or not the liability to be indemnified was incurred or the act or omission occurred prior to the adoption of this Article.
4. The right to indemnification hereunder shall be exclusive of other rights such person or insurer may have as a matter of law or otherwise.
5. In each instance in which a question of indemnification hereunder arises, determination in the first instance of the right to indemnification hereunder, and of the time, manner, and amount of payment thereof, shall be made by the Board. In the event that a majority of the members of the Board are seeking indemnification hereunder as a result of the same occurrence, such determination in the first instance shall be made by vote of the membership of the Association taken on weighted basis as provided in the Plan of Operation or the enabling legislation. Nothing in the paragraph is intended to make an adverse determination finally binding upon the person or insurer from appealing an adverse determination against him or it, or from instituting legal proceedings to enforce a right of indemnification under this Article.

6. The indemnification provided for in this Article shall be deemed to be an expense of the Association to which all of the members of the Association shall contribute in the proportion that each member participates in the writings, expenses and losses of the Association.

Article XIV - Insolvency

1. In the event any member fails, by reason or insolvency, to pay its proportion of any assessment expense or loss incurred by the Association, such unpaid assessment loss or expense shall be paid for by the remaining members, each contributing in the manner provided for the distribution of assessment expenses and losses under the Plan of Operation, deleting therefrom the proportion of the defaulting member. The Association shall be subrogated to the rights of the remaining members in any liquidation proceeding and shall have full authority on their behalf to exercise such rights in any action or proceeding.
2. In the event of insolvency of a member, any reinsurance assumed by the Association with respect to policies issued by such member pursuant to the Plan of Operation shall be payable, on the basis of the liability of the member without diminution because of the insolvency of the member, directly to the member, or its liquidator, receiver or statutory successor, except where the Association with the consent of the insured under such reinsured policy, as evidenced by endorsement thereon, has assumed the policy obligations of the member as direct obligations of the Association to the payees under such policy and in substitution for the obligations of the member to such payees. The liquidator, receiver or statutory successor of the member shall give written notice to the Association of the pendency of a claim against the member on the policy reinsured within reasonable time after such claim is filed in the insolvency proceeding. During the pendency of such claim, the Association may investigate such claim and interpose, at its own expenses, in the proceeding where such claim is to be adjudicated, any defenses that it may deem available to the member or its liquidator, receiver or statutory successor, the Expense thus incurred by the Association shall be chargeable subject to court approval against the insolvent member as part of the expense liquidation to the extent of a proportionate share of the benefit which may accrue to such member solely as a result of the defense undertaken by the Association.

Article XV - Amendments

The Board shall make suitable or necessary amendments to this Plan of Organization to assure the fair, reasonable and equitable administration of the Association. Amendments to the Plan of Organization shall become effective upon approval, in writing, by the Commissioner of Insurance.

Article XVI - Effective Date

This Plan of Organization shall become effective upon approval, in writing, by the Commissioner of Insurance.

Article XVII - Fiscal Year

The fiscal year of the Association shall commence on January 1, and end on December 31.

Article XVIII - Termination

The Association shall dissolve at the earliest date when essential insurance becomes readily available in the private market. The dissolution of the Association, including its assets and liabilities, shall be accomplished under the supervision of the Commissioner of Insurance, in an equitable and reasonable manner.

Upon termination, the Association shall continue operating to the extent necessary to process, verify and pay claims for losses and perform other necessary functions in connection therewith and to complete the liquidation and termination of the Program.

Distribution of any refund or apportionment of any assessment upon termination of the Association shall be made in the same manner as provided in Article IV and shall be made within such reasonable time after termination as the Board shall determine. This Plan of Organization shall remain in full force and effect until such final refund or assessment shall be made.

Following termination of the Association, each Member shall be allowed a premium tax credit, for five successive years, at the rate of twenty percent (20%) per year.

Article XIX - Severability Clause

Should any part of section of this Plan of Organization be determined to be void or unenforceable, the remaining parts and sections shall be valid and enforceable.

Membership Agreement

The undersigned insurer, by subscribing to this Plan of Organization, hereby becomes a member of the West Virginia Essential Property Insurance Association by causing its corporate name to be hereunto subscribed by its President or a Vice President, attested by its Secretary or an Assistant Secretary. The undersigned insurer acknowledges, agrees and understands that:

- (1) it is bound by the Plan of Operation and all rules pursuant thereto, as now or hereafter may be duly and lawfully adopted and promulgated; and by the actions and decisions of the Board;
- (2) the Board is authorized to:
 - (a) make assessments of each member for the acquisition of initial operating expenses.
 - (b) make assessments when the Board determines that sufficient funds are not available for the sound financial operation of the Association;
- (3) any assessments will be paid within 30 days of receiving a written request from the Board;
- (4) the amount of any assessment shall be computed in accordance with Article IV "B & C" of the Plan of Organization, and recorded as a charge to "Boards, Bureaus and Associations";
- (5) any deficits incurred by the Association shall be recouped in a manner as provided in Article VII, §6 and §15 of the Plan of Organization.
- (6) in fulfillment of its assessment obligations, a member insurer may not be assessed in any year in an amount greater than five percent (5%) of the insurer's net direct written premium of the preceding year.

Name of Company

By _____
President

Secretary

ATTEST:

DATE SUBSCRIBED: _____