

VIRGINIA PROPERTY INSURANCE ASSOCIATION

PLAN OF OPERATION

EFFECTIVE SEPTEMBER 2005

Part A

ORGANIZATION AND GOVERNANCE

ARTICLE I

Name

This organization shall be known as the Virginia Property Insurance Association (hereinafter referred to as the Association), a residual market facility created pursuant to Chapter 27, Title 38.2 of the Code of Virginia.

ARTICLE II

Purpose

The purpose of this Association is to provide for the equitable distribution among licensed insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the voluntary insurance market.

ARTICLE III

Office

The principal office of the Association shall be in the Commonwealth of Virginia.

ARTICLE IV

Definitions

The definitions prescribed in Section 38.2-2701 of the Code of Virginia shall apply to terms defined therein when used in this Plan of Operation. "Commission" means the State Corporation Commission of Virginia and "Commissioner" means the Commissioner of Insurance of Virginia.

ARTICLE V

Membership

- A. **Members.** All insurers licensed to write basic property insurance on a direct basis in Virginia, unless specifically exempted by law from participation in this Association, shall become Members of the Association by subscribing to this Plan of Operation and shall be referred to herein as Members.
- B. **Participation and Assessments.** Each Member shall participate in the writings, expenses, profits and losses of the Association and each Member's vote in the affairs of the Association including amendment of this Plan of Operation shall be weighted in the proportion that such Member's net direct premiums written during the preceding calendar year on property located in the Commonwealth of Virginia bear to the aggregate of such net direct premiums written by all Members of the Association. Provided, no Member will be assessed an amount less than \$25 nor will a disbursement be paid to a Member if the amount of such payment is less than \$25 unless such payment is requested by the Member, or unless such assessment or disbursement is in connection with a dissolution of the Association.

- C. **Withdrawal, Suspension or Loss of License, Liquidation, Merger.** A Member which has withdrawn from the Commonwealth of Virginia, has had its license revoked or suspended, or has been placed in liquidation, shall remain liable for all obligations incurred to the date of such withdrawal, license revocation or suspension or liquidation. When a Member has been merged with or into another insurer, its successor in interest shall remain liable for all obligations hereunder and shall continue to participate in the Association, based upon the aggregate net direct premium written by such merged insurers.
- D. **Meetings.** There shall be an Annual Meeting of the Members on a date fixed by the Board for the election of directors and such other business as may be necessary. Special meetings of the Members may be called by the Board on its own motion and shall be called on the written request to the Board by any ten Members, no two of which may be under common control or ownership.
- E. **Quorum.** At any annual or special meeting, Members representing not less than fifty-one (51%) percent of the aggregate participation of all Members in the Association during the preceding calendar year shall constitute a quorum. Members may be represented by proxy.
- F. **Notice of Meetings.** Written notice of the Annual Meeting or Special Meetings, stating the time and place thereof and the matters to be considered, shall be given to all Members at least thirty days in advance of such meetings.
- G. **Voting.** Voting shall be weighted in accordance with the participation of each Member as defined in Article V B of this Plan of Operation. A proposal other than for amendment of this Plan of Operation shall be considered adopted by the Members when approved by a majority of the votes cast on such weighted basis.
- H. **Action and Vote by Mail.** Any matter, including amendment to the Plan of Operation, may be proposed and voted upon by mail, provided it is authorized by the Board at any Board Meeting. Notice of any proposal so authorized shall be mailed to Members not less than thirty (30) days prior to the final date fixed by the Board for voting thereon.

ARTICLE VI

Board of Directors

- A. **Number, Selection.** The Association shall be governed by a Board of fifteen directors composed of (1) four individuals appointed by the Commissioner, two of whom shall be licensed property and casualty agents and two of whom shall be from the general public, and (2) eleven Members, no two of which may be under common control or ownership, which shall be elected by cumulative vote of the Members.
- B. **Term.** Directors shall be annually appointed or elected, as the case may be, and shall serve for a period of one year or until their successors are appointed or elected and their designated representatives named. In the event of a vacancy occurring during the term if among appointed directors, a successor shall be appointed by the Commissioner and if among the Member directors, a successor shall be elected by the Board.
- C. **Designation of Member Representation.** As soon as practicable following the Annual Meeting of Members, each Member director shall designate a representative and an alternate representative and shall notify the Association in writing of such designations.

- D. **Powers.** The Board shall have all the powers vested in the Association under Chapter 27, Title 38.2 of the Code of Virginia and shall have such further powers and responsibilities as may be prescribed by this Plan of Operation or by the Members subject in either case to approval by the Commission, including, without limitation, the right in person or through representatives, to audit and inspect the books and records of any Member as to matters within the purview of this Plan of Operation or the Member's responsibilities as a Member of this Association. The Board may adopt such rules and rules of order as it deems necessary for the conduct of its business.
- E. **Meetings.**
1. The Board shall meet upon call of the Chairman or upon call of any five directors and may establish such regular meeting schedule as it deems appropriate.
 2. As soon as practicable following the Annual Meeting of Members, the Board shall hold an Organizational Meeting.
 3. A majority of the directors shall constitute a quorum.
 4. Notice of meetings shall be given by mail, telegram or telephone at least twenty-four hours in advance of such meeting, but notice may be waived in writing by a director and a director present shall be deemed to have received timely notice.
- F. **Voting.** Each director shall have one (1) vote. Any proposal shall be carried if it receives an affirmative vote of a majority of those present at a duly constituted meeting.
- G. **Action and Vote by Mail.** Any matter may be proposed and voted upon by mail or telephone and any matter thus submitted shall be carried if it receives an affirmative vote from a majority of all directors, does not receive a negative vote and the action taken is subsequently ratified by majority vote of the full Board at its next meeting.
- H. **Committees.** The Board may establish an executive committee which shall have such powers as the Board may confer upon it and the Board may establish such other standing or special committees as it deems necessary. The Chairman of the Board shall be a member ex officio of each such committee with the right to vote.
- I. **Officers.**
1. **Officers -** The Officers of the Association shall be a Chairman and a Vice Chairman, each of whom shall be an appointed director or a designee of an elected Member director, a Secretary, and such other officers as may be deemed necessary by the Board. The Chairman and Vice Chairman shall be elected at the Organizational Meeting and shall hold office subject to the pleasure of the Board for a term of one year or until their successors are elected. The manager shall serve as Secretary to the Board.
 2. **Duties**
 - a. The Chairman shall preside at all meetings of the Board and all meetings of the Members and shall discharge such other duties as may be incidental to his office or as the Board shall require of him.
 - b. The Vice Chairman shall preside at any meeting of the Board in the absence of the Chairman. In the event of death, incapacity or disability of the Chairman, the Vice Chairman shall perform the duties of the Chairman until such office has been filled by the Board.

- c. The Secretary shall issue all notices of meetings, record the minutes, keep record of the minutes, keep the records of the Board, and discharge such other duties as may be incidental to his office or as shall be required of him.
- J. **Audit.** The Board shall annually appoint a properly qualified firm of certified public accountants to conduct an annual audit of the operations of the Association and perform such other functions as may be directed by the Board.

ARTICLE VII

Indemnification

- A. The Association shall indemnify its directors (including the designees of Member directors), officers, employees and persons serving as members of Association Committees and subcommittees which persons shall be deemed agents of the Association when acting as a member of any such committee or subcommittee, in the manner and to the fullest extent permitted by, and subject to the limitations contained in Article 9 (Section 13.1-875 et seq.), Chapter 10, Title 13.1, of the Code of Virginia, except an indemnity against gross negligence or willful misconduct. In addition to the foregoing, the Association may, but shall not be required to, purchase and maintain on behalf of any such person insurance against liability asserted against or incurred by him in his capacity or arising out of his status as a director, officer, employee or agent of the Association in the manner permitted by Section 13.1-882 of the Code of Virginia.
- B. In addition to the foregoing indemnification, the Members executing this Plan of Operation in consideration of the mutual undertaking provided by this paragraph agree that the Association shall in like manner indemnify each Member against liability asserted against it or incurred by it or its officers or employees in its capacity or arising out of its status as a Member of the Association.
- C. Any indemnification pursuant to paragraphs A or B of this Article shall constitute an expense of the Association under Article V B.

ARTICLE VIII

Insolvency

In the event any Member fails, by reason of insolvency, to pay its portion of any expense or of any loss incurred by the Association, such unpaid loss or expense shall be paid by the Association on behalf of the remaining Members, each such Member contributing thereto in the manner provided for the distribution of expenses and losses under Article V B, deleting the net direct written premium of the defaulting Member from such determination. The Association shall be vested with the rights of the remaining Members with respect to payment of any such loss or expense in any liquidation proceeding and shall have full authority on their behalf to exercise such rights in any action or proceeding.

ARTICLE IX

Citation to Commission

Failure to comply with this Plan of Operation or with any rules prescribed thereunder by the Board or to pay any assessment levied within thirty days of notice thereof shall be grounds for citation of such Member to the Commission.

ARTICLE X

Appeal to Commission

Any Member aggrieved by any ruling, order, decision, action or refusal to act, on the part of the Association may appeal to the Commission in the manner prescribed by Section 38.2-2712 of the Code of Virginia.

ARTICLE XI

Termination of Association

- A. Upon termination, the Association shall continue operating only 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 residual market facility. When terminated, distribution of any refund or allocation of any assessment to the Members entitled to participate therein shall be made within such reasonable period of time as the Board shall determine subject to approval by the Commission.
- B. All provisions of this Plan of Operation shall remain in full force and effect until such final refund or assessment shall have been completed.
- C. Distribution of any refund or apportionment of any assessment in the event of termination of the Association shall be made to each Member in the same manner as is provided in Article V B for the distribution of writings, expenses, profits and losses.

ARTICLE XII

Amendments

Part A of this Plan of Operation may be amended by the membership subject to the subsequent approval of the Commission. The amendment shall be considered adopted when approved by at least two-thirds of the votes cast weighted in accordance with Article V G.

Part B

OPERATIONS

ARTICLE I

Management

The Board shall appoint and arrange for the compensation of a manager and such other employees as the Board may designate, which persons 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 II

Inspections and Reports

Any person having an insurable interest in real property and tangible personal property at a fixed location in this Commonwealth is entitled, upon request, to an inspection of the property by representatives of the Association to determine whether the property is within the definition of qualified property. A copy of the inspection report shall be made available upon request to the applicant or his agent.

ARTICLE III

Policies of Insurance

The Association is authorized to issue policies or certificates of insurance on risks in such form that each Member of the Association shall be a direct Insurer thereunder in the proportion prescribed by Part A, Article V B.

In connection with such policies issued by the Association, the Association shall act on behalf of its Members in all necessary matters including, but not limited to, collection of premiums, issuance of cancellations, and payment of commissions, losses, judgments and expenses. The liability of each Member shall be several, each for itself and not joint, and no Member shall be liable under any such policy or certificate for liability of any other Member thereunder, except as provided in Part A, Articles V or VIII.

Member companies of the Association shall be deemed to have authorized the Manager of the Association to act as attorney-in-fact. In the event of the death, resignation or incapacity of said attorney-in-fact, the Board shall name his successor. No policy or certificate of insurance shall be affected or invalidated by any change of the attorney-in-fact who, at the time such policy or certificate of insurance was issued, acted pursuant to the powers in him then vested.

ARTICLE IV

Effective Date of Coverage

- A. Coverage will be effective on qualified property as of the first 12:01 A.M. Standard Time immediately following receipt by the Association of an application completed to the satisfaction of the Association and the estimated annual premium.

Coverage is effective on acceptable new applications submitted with the premium payment for a period not exceeding sixty days pending the issuance of the policy.

Also, coverage will be effective on qualified property as of the first 12:01 A.M. Standard Time immediately following receipt by the Association via facsimile machine, or via the *Association's* web site, of an application completed to the satisfaction of the Association. The insured and/or producer must then submit the estimated annual premium. If the premium is not received by the Association within ten days of receipt of the application, the policy will be canceled in accordance with section X1-A-3-a of the Manual of Operations.

Coverage is effective on acceptable new applications submitted with the premium payment for a period not exceeding sixty days pending the issuance of the policy.

- A. The estimated annual premium for coverage shall be based on the applicable existing rates approved for use by the Association subject to minimum premium per location as approved by the Commission.
- B. Providing coverage shall not prevent the Association from later determining a property uninsurable and canceling such coverage.
- C. Coverage will not be provided on property previously declined or cancelled by the Association until insurability has been determined through a physical inspection of the property.

ARTICLE V

Underwriting

- A. Following receipt of the completed inspection report, the Association will determine whether the risk is acceptable for coverage.
- B. An application may be declined or a policy may be cancelled, if the risk is ineligible or fails to meet reasonable underwriting standards.
- C. Reasonable underwriting standards shall include, but not be limited to, the following:
 - 1. Physical condition of the property including its construction, heating and wiring;
 - 2. Its present use or housekeeping;
 - 3. Ownership or use which is not in violation of law or public policy and which does not result in increased exposure to loss;
 - 4. Conditions enumerated in the Manual of Operational Procedures.
- D. Neighborhood, location, or any environmental hazards beyond the control of the property owner shall not be acceptable criteria for declining a risk.
- E. The Association may obtain additional reports as aids in the underwriting of applications submitted.

ARTICLE VI

Notice of Declination and Quotation of Premium

- A. When coverage is declined, a Notice of Declination shall be sent to the producer and the applicant. The notice shall state the reason(s) for declination and include a statement of appeal procedures available to the applicant. Copies of the notice and inspection report shall be sent to the Commission.
- B. If the conditions for which the property was declined are corrected, the applicant may submit a new application and upon receipt of the new inspection report, the risk will be reconsidered.

- C. If the property is acceptable, a notice of acceptance shall be sent, including a statement of the annual premium.
- D. All payments of premium must be payable to the Virginia Property Insurance Association. The Association reserves the right to require a certified check, cashier's check, or money order in payment of premiums.
- E. When the quotation of annual premium includes charges for deficiencies resulting in rates or premiums above standard, a notice shall accompany the quotation indicating the condition for which charges are made and the amount of such charges. This notice shall be sent to the applicant and the producer, if any.

ARTICLE VII

Policy Coverage and Limits

- A. All policies issued shall include at least Basic Property Insurance on policy forms approved by the Commission and shall be issued for a term of one year.
- B. The maximum limits of liability for which insurance may be written through this Association on any Habitational property at one location shall be \$500,000, and on any Commercial property at one location \$1,000,000. The word "location" as used herein means all interests in real and personal property consisting of and contained in a single building or consisting of and contained in contiguous buildings. Dwelling limits will be allowed to increase in excess of the maximum dwelling limits in accordance with the provisions of the Automatic Increase in Insurance endorsement (FL-10).

"Contiguous" means abutting, touching, in actual contact.

"Habitational" means Basic Property Insurance included under the Personal Lines Statistical Plan (OTA).

"Commercial" means Basic Property Insurance not included under the Personal Lines Statistical Plan (OTA).

ARTICLE VIII

Appeal Procedure

An applicant has the right to appeal to the Board, or its duly constituted committee or subcommittee, any decision of the Manager of the Association within thirty (30) days of the date of receipt of such decision.

A decision of the Board or its committee or subcommittee may be appealed to the Commission within thirty (30) days from receipt of the decision.

ARTICLE IX

Producer's Commission

A commission of ten percent of the policy premium shall be paid by the Association to the licensed producer, if any, submitting an application accepted by the Association.

ARTICLE X

Amendments

Part B of this Plan of Operation may be amended by resolution of the Board of Directors or by the Members subject in either case to approval by the Commission.

ARTICLE XI

Effective Date

This Plan of Operation is subject to the approval of the State Corporation Commission and shall become effective on a date established by the Commission.

IN WITNESS WHEREOF, the undersigned hereby acknowledges membership in the Association by causing its corporate name to be hereunto subscribed by its Executive Officer. Each Member so subscribing does hereby ratify this Plan of Operation and agrees to be bound by it, and all rules and regulations made pursuant thereto, as now or hereafter may be duly and lawfully adopted and promulgated.

Member _____
Name of Company

By _____
Executive Officer

DATE SUBSCRIBED: ____ / ____ / ____