



## **Plan of Operation**

# **Minnesota FAIR Plan**

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**PLAN OF OPERATION  
MN FAIR Plan**

**SECTION 1  
Name**

This organization shall be known as the Minnesota FAIR Plan (hereinafter referred to as the "FAIR Plan") and shall operate as an unincorporated non-profit association.

**SECTION 2  
Purpose**

The purpose of the FAIR Plan is to make available property and liability insurance coverage as defined by the Minnesota FAIR Plan Act to qualified applicants who have been unable to secure such insurance through the normal insurance markets and to spread the costs of providing such coverage among all other purchasers of similar insurance through an assessment to member insurance companies (hereinafter referred to as "Member" or "Members"). The FAIR Plan shall provide insurance coverage only on property located in the State of Minnesota.

**SECTION 3  
Definitions**

"Board" means the Governing Board of Directors of the Minnesota FAIR Plan.

"Commissioner" means the Minnesota Commissioner of Commerce.

"Department" means Minnesota Department of Commerce.

"FAIR" means fair access to insurance requirements.

"FAIR Plan" means the Minnesota FAIR Plan.

"Insurer" means any insurance company or other organization licensed to write and engaged in writing property or liability insurance business, including the property or liability insurance components of multiperil policies, on a direct basis, in this state, except where such insurer is specifically exempted by statute from participation in this program.

"Member" means an "insurer" which is authorized to write and is engaged in writing, within this state, on a direct basis, property or liability insurance or any component thereof contained in a multiperil policy, including homeowners and commercial multiperil policies, and who shall participate in the FAIR Plan as a condition of its authority to write such kinds of insurance within this state.

“Public Director” means a director appointed by the Minnesota Commissioner of Commerce to represent the public.

“NAIC” means the National Association of Insurance Commissioners.

## **STRUCTURE OF THE FAIR PLAN**

### **SECTION 4 Administration**

The FAIR Plan shall be administered by the Board.

### **SECTION 5 Executive Director**

The Executive Director is the chief administrative officer and is accountable to the Board for the overall operation and financial position of the FAIR Plan. The Board will develop and maintain a job description for the Executive Director.

### **SECTION 6 Governing Board**

The membership of the Governing Board is set forth in MN Statute 65A.35 Subd. 5..

### **SECTION 7 Officers**

#### **Election of Officers**

The Board at its annual meeting shall elect a Chair, a Vice Chair, a Secretary and a Treasurer. The same person may hold the offices of Secretary and Treasurer. All officers shall hold office at the pleasure of the Board.

#### **Chair**

The Chair of the Board shall have the power to call meetings of the Members of the FAIR Plan and special meetings and emergency meetings of the Board. The Chair, or the Chair's designee in the absence of the Vice Chair, shall preside at all such meetings of the Members and the Board. The Chair shall also have the power to call meetings of all committees established by the Board. The Chair shall have the power on behalf of the FAIR Plan to execute with the Secretary such instruments as may be authorized by the Board, including but not limited to deeds, mortgages and other contracts in the ordinary course of business of the FAIR Plan and further shall have, subject to the

direction of the Board, general administration of the affairs of the FAIR Plan and shall perform all duties incidental to this office.

#### Vice Chair

The Vice Chair shall exercise the functions of the Chair of the Board in the event of the Chair's absence or inability to act for any cause. The Vice Chair shall perform such other duties as may from time to time be prescribed by the Board.

#### Secretary

1. The Secretary shall attest to the accuracy of the full and permanent minutes of all meetings of the Members of the FAIR Plan as well as the Board.
2. The Secretary shall record the vote of each member of the FAIR Plan present and voting in person at the annual meeting of the FAIR Plan.
3. The Secretary shall execute or attest to all deeds, minutes, resolutions and mortgages of the FAIR Plan, and perform such other duties as may from time to time be prescribed by the Board.
4. The Secretary may delegate functions to a duly authorized employee of the FAIR Plan subject to the approval of the Board.

#### Treasurer

The Treasurer of the FAIR Plan shall have general responsibility for keeping accurate and complete records of all receipts and disbursements and for custodianship of all funds of the FAIR Plan subject to the control of the Board. The Treasurer may delegate functions to a duly authorized employee of the FAIR Plan subject to the approval of the Board.

#### Other Officers

The Board may designate other officers from time to time and prescribe their duties.

#### Vacancies

The Board may at any time declare an office listed in this section vacant or remove a person from office. Vacancies may be filled by election by the Board, the persons so elected to hold office until the next annual meeting of the Board. A two-thirds majority of the Board is required to remove a person from office, or to declare an office vacant.

## **SECTION 8** **Committees**

### Member Nominating Committee

The Chair, subject to confirmation by the Board, shall appoint a Member Nominating Committee composed of three Member directors of the Board and further shall designate the chair of the committee from among its members. The members of the Nominating Committee shall be appointed to serve until the next Members' election. The Member Nominating Committee shall present a slate of Member nominees for election to the Governing Board.

### Officer Nominating Committee

The Chair, subject to confirmation of the Board, shall appoint a Nominating Committee composed of three members of the Board, at least one of whom shall be a public member, and further shall designate the Chair of the committee. The Nominating Committee shall present a slate of nominees for election as officers of the Board at the annual meeting.

### Executive Committee

The elected officers of the Board shall constitute the Executive Committee. The duties and responsibilities of the Executive Committee shall be documented in Appendix H.

### Standing Committees

The Board may establish standing committees, the membership of which may include persons other than members of the Board for the purpose of consulting with and assisting the Board in the conduct of the business of the FAIR Plan. The Chair of the Board shall appoint the members of such standing committees subject to approval by the Board and shall designate the chair of each such standing committee.

Each standing committee shall have such duties and responsibilities as the Board determines by resolution and shall make such regular and special reports as the Board shall request and such other reports as each standing committee may deem appropriate. The authority of any committee to act on behalf of the Governing Board shall be reviewed during the annual meeting of the Board. The duties and responsibilities of each standing committee shall be documented in Appendix H.

### Quorum

A quorum for any committee appointed by the Board shall consist of a majority of the committee members, at least one of which must be a Public Member. A quorum of the Executive Committee shall consist of a majority of the officers of the Board, at least one of which must be a Public Member. Minutes shall be kept of each committee meeting. Each committee shall appoint its own permanent or temporary secretary who shall

maintain a record of the meetings of the committee and record the votes of the members of the committee on any action taken. Proxy voting shall be allowed.

#### Costs

The reasonable costs of conducting meetings of the committees appointed by the Board shall be operating and administrative expenses of the FAIR Plan.

### **SECTION 9** **Membership**

Every insurer as defined in the Minnesota FAIR Plan Act shall participate in its share of the expenses and losses of the FAIR Plan or in the distribution of Members' share. Membership shall terminate when the insurer fails to meet the eligibility requirements of the Minnesota FAIR Plan Act, but the insurer shall continue to be governed by the Plan of Operation in order to complete its obligations with regard to any assessments or to participate in any distribution of Members' share.

### **SECTION 10** **Members' Equity – Assessments or Distributions**

#### Control

The control for Members' equity rests with the Board. The amount of an assessment or a distribution of excess funds is authorized solely by the Board.

#### Participation

Participation shall be calculated by the FAIR Plan based upon the direct written premiums charged during the second preceding calendar year with respect to property in this state for Fire, Allied Lines, Homeowners, the non-liability component of Farm, and the non-liability component of Commercial Multiple Peril policies as reported by the members to the NAIC. The Governing Board will determine the non-liability portion of Farm premium. (See Appendix G)

#### Notification

All Member companies shall be notified by November 1 of each year as to the participation factors that will be used during the ensuing year.

#### Appeal

Member companies have the right to appeal to the Board. All appeals of Participation Factor computations shall be in writing addressed to the Board and must be received by the FAIR Plan on or before November 30 each year. The Board will review all appeals at the Fourth Quarter Board meeting in December of each year. The Member Company shall be notified of the Board's decision, in writing, by December 31. Decisions of the



Board will be final, although Member companies retain their right to appeal to the Commissioner of Commerce.

### Equity

Statutory accounting prescribes that certain assets that cannot be readily converted to cash or whose collectibility is doubtful are categorized as non-admitted assets. These non-admitted assets cannot be included in computing the value of Members' equity.

## **MEETINGS OF THE FAIR PLAN**

### **SECTION 11** **Antitrust Statements**

A formal antitrust statement shall be read or distributed at the beginning of each meeting of the FAIR Plan for the purpose of cautioning participants to refrain from discussing their respective company's future rate, rules or forms filings or any other subjects which could give rise to charges of price fixing or a conspiracy to set prices. The FAIR Plan shall strive to conduct all of its activities in compliance with antitrust laws.

### **SECTION 12** **Open Meetings**

All meetings of the Governing Board of the MN FAIR Plan including all meetings of committees of the Governing Board will be held in accordance with the MN Open Meeting Law (MN Statute 13D).

### **SECTION 13** **Member Company Meetings**

#### Annual Meeting

There shall be an annual meeting of Members on a date and place fixed by the Board. The purpose of the annual meeting shall be to elect Members to the Board, to report on the activities of the FAIR Plan and to transact any business that requires action by the Members.

#### Written Notice

Notices of all Members' meetings shall be given in writing to all known Members and to the Commissioner at least thirty (30) days, but not more than sixty (60) days, prior to the date of the meeting. Notice of all meetings shall be accompanied by an agenda for such

meeting. The business of a special meeting shall be limited to the agenda accompanying the notice of the meeting.

### Voting

Members' votes shall be directly proportional to participation factors as determined by the FAIR Plan. Participation factors are determined using the method outlined in Section 10. A majority of the weighted votes of the Members shall constitute a quorum.

## **SECTION 14** **Board Meetings**

### Annual Meeting

The annual meeting of the Board shall be held immediately following or within thirty (30) days after the Members' annual meeting. At the annual meeting, the Board shall elect the officers of the FAIR Plan to serve until the next annual meeting of the Board. Any vacancy created shall be filled in accordance with Section 7 -- Vacancies.

### Regular Meeting

The Board shall hold four regular meetings per year at such time and place as determined by the Board.

### Special Meetings

Special meetings of the Board may be called at any time and place designated by the Chair, by the Commissioner, or upon written request of three members of the Board.

### Written Notice

Written notice, together with an agenda, shall be sent to each director and to the Commissioner at least three days in advance of the meeting. The business of special meetings shall be limited to the agenda items.

### Quorum

A quorum shall consist of five members of the Board, at least one of which must be a Public Member, in person or by telephonic connection. Proxy voting shall be allowed.

### Telephonic Meetings

Any member or members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this paragraph shall constitute presence in person at such meeting.

## Costs

The reasonable costs of conducting meetings of the Board shall be operating and administrative expenses of the FAIR Plan.

### **SECTION 15** **Per Diem, Mileage, Lodging and Meals**

Public Directors of the Board shall receive *per diem* payments in the amount of \$200 for attendance at duly scheduled meetings of the Board or its committees and for their day of travel to and from the meeting, if their travel day is not the same day as the meeting.

Public Directors shall receive mileage reimbursement at the allowable IRS rate for attendance at duly called meetings of the Board or its committees.

Public Directors who must stay overnight away from their home to attend duly scheduled meetings of the Board or its committees shall be reimbursed reasonable lodging and meal expenses as outlined in the Travel Expense Reimbursement Policy (See Appendix F).

## **HOW THE FAIR PLAN PROVIDES COVERAGE**

### **SECTION 16** **Application Process**

The basic application shall provide the information necessary to underwrite and evaluate the risk and, if appropriate, place coverage in force. An inspection report and/or a supplementary questionnaire may be required by the FAIR Plan.

The application will be rejected if it does not include a county tax report showing the estimated market value of the structure(s) to be insured. The application must also include photographs of the front and back of each structure to be insured. The application shall be on forms provided by the FAIR Plan. A separate application shall be completed for each risk location, even when coverage for multiple locations under common ownership is requested.

If the completed application submitted to the FAIR Plan shows that the subject property meets preliminary underwriting guidelines, the FAIR Plan will offer to place coverage in force. Coverage can be made effective no sooner than 12:01 a.m. on the day following receipt of the application.

If an offer to provide coverage is made by the FAIR Plan, a bill will be generated and the applicant will be given 30 days to provide their premium payment. Failure to provide payment in the time allowed will be considered a rejection of the FAIR Plan's offer of coverage by the applicant, and the offer to provide coverage will be withdrawn.

Regardless of the date coverage becomes effective, coverage will not go into force until a premium payment is received.

If it is necessary to perform an inspection of the subject property, the FAIR Plan will retain the right to refrain from making a coverage decision until after the inspection report is received. In cases where coverage will not be determined until after inspection of the property, The FAIR Plan will inform the applicant of this within 5 business days of receipt of the application for coverage.

In all cases, the FAIR Plan will inform the applicant that the risk does or does not qualify for coverage within 60 days of receipt of the properly completed application.

The FAIR Plan will determine if additional condition charges should be assessed after receipt of the inspection report. Condition charges will be assessed only when the condition requiring such a charge is documented in the inspection report.

If the risk is ineligible or unacceptable under the underwriting guidelines of the FAIR Plan, no offer to provide coverage will be made, and the applicant will be informed in writing of the reason for this determination.

Insurance policies are issued only for a period of one year.

## **SECTION 17** **Inspections and Investigations**

Underwriting reports and physical inspection reports (including photographs) will be obtained subject to the Minnesota FAIR Plan inspection policy.

The FAIR Plan may request a reinspection of the insured property when there is reason to believe that the occupancy, hazard or physical conditions of the risk have changed.

All inspections are performed at no cost to the applicant/policyholder.

## **SECTION 18** **Underwriting Guidelines**

The FAIR Plan operates as a residual market mechanism for the placement of distressed business. It is intended to serve the broad property insurance needs of the public and the insurance industry, rather than to have a proprietary profit as its objective.

The FAIR Plan's role is to accept insurable risks, to advise the applicant of the improvements necessary to make their risk insurable, and to reject those risks which are not insurable. The basis for such determination is found in the FAIR Plan Underwriting Guidelines (See Appendix A).

**SECTION 19**  
**Amount of Insurance**

The insurance provided by the FAIR Plan is non-replacement cost coverage.

The FAIR Plan places a high priority on establishing a reasonable and accurate insurable value for the property to be insured. Coverage limits are based on the estimated market value of the property as determined by the County Assessor. An additional amount reflecting the reasonable cost of debris removal and demolition can be added to the estimated market value to arrive at the limit of coverage.

The FAIR Plan follows the "Broad Evidence Rule," which provides for the consideration of every standard of value having a bearing on the subject property. The FAIR Plan will consider any additional information that may have a bearing on the insurable value of the property if requested by the applicant.

Where there is concern about potential over insurance, the underwriter will document the file and procure from the applicant written justification for the requested amount of insurance.

**SECTION 20**  
**Rates**

Rates are filed with the Commissioner prior to use. If a condition charge is made, it must be based on an appropriate, objective and identifiable physical condition of the property that is within the control of the applicant, disclosed by an inspection and specified in the inspection report. A copy of the inspection report will be made available to the applicant free of charge, upon their request.

**SECTION 21**  
**Claims**

Supervision

The Executive Director will select a qualified individual to serve as the FAIR Plan Claim Manager. The Claim Manager will be responsible for the oversight of all FAIR Plan claims. It will be the responsibility of the Claim Manager to assure that the handling of all FAIR Plan losses is performed in adherence to the Minnesota Fair Claims Practices Act and the FAIR Plan Claims Guidelines (See Appendix B). The Claim Manager will be responsible for the staff and budget for the Claim Department.

Assignment of Claims

The Claim Manager will be responsible for the assignment of claims to a member of the FAIR Plan claim staff, or to select licensed independent adjusters, as workload and location dictate.

**SECTION 22**  
**Cancellation or Non-Renewal**

Cancellation by Insured

All cancellation requests must be in writing, signed by the insured or the insured's agent, and indicate the effective date of cancellation.

Cancellation or Non-Renewal by the FAIR Plan

A cancellation or non-renewal notice must be sent to the insured, the agent and other parties of interest listed in the policy. Cancellation or non-renewal for cause requires a copy be filed with the Commissioner. The FAIR Plan will provide notice of cancellation or non-renewal in the time period required by law.

All policies will be canceled on a pro rata basis. The reasons for cancellation or non-renewal will be in accordance with the Minnesota Insurance Laws.

**SECTION 23**  
**Agents**

Agent of Record

The FAIR Plan does not appoint insurance agents. The FAIR Plan cannot accept payments drawn on an Agent's account. No employee of the FAIR Plan may possess an active property-casualty agent license. The FAIR Plan has the responsibility to provide necessary information and application forms so agents may be able to serve the needs of their insureds and clients.

Commission

Commissions paid by the FAIR Plan shall be paid to the agent of record. Commissions are not paid on any tax or fees.

Cooperation

Agents must comply with the rules of the FAIR Plan and pay promptly any funds due the FAIR Plan because of returned unearned commissions. An agent failing to remit within thirty (30) days money due the FAIR Plan may be referred to the Commissioner for whatever action the Commissioner deems appropriate.

## **OPERATING OBLIGATIONS OF THE FAIR PLAN**

### **SECTION 24** **Depopulation**

The FAIR Plan will follow the provisions of the FAIR Plan Depopulation Policy (See Appendix C), which will encourage applicants, insureds and agents to seek coverage in the voluntary insurance market. In addition, the FAIR Plan will implement procedures to inform the industry about depopulation efforts.

It is expected that each producing agent will make an earnest effort to place the coverage in the voluntary insurance market before making an application to the FAIR Plan. It is not intended that the FAIR Plan compete with the agent's normal sources of insurance.

The FAIR Plan will include with all new and renewal policies, a reminder to consider placement in the voluntary market. The policy declarations will have an "Important Notice" that FAIR Plan policies are "non-replacement" policies, and that broader coverage may be available in the voluntary insurance market.

### **SECTION 25** **Indemnification**

#### **Indemnification**

Any person or Member made or threatened to be made a party to any action, suit or proceeding because such person was a Member or served on a committee or was an officer, director, employee or agent of the FAIR Plan shall be indemnified against all judgments, fines, amounts paid in settlement, reasonable costs and expenses, including attorney's fees and any other liabilities which may be incurred as a result of such action, except in relation to matters as to which he, she or it shall be adjudged to be liable by reason of willful misconduct in the performance of his, her, its duties or obligations to the FAIR Plan. With respect to any criminal action or proceedings, a person or Member shall be entitled to indemnification as provided above only when such person or Member had reasonable cause to believe that his, her or its conduct was lawful. Such indemnification shall be provided whether or not such person or member is a current Member or is holding office or is employed at the time of such action, suit or proceeding and whether or not any such liability is incurred prior to the adoption of this section. Such indemnification shall not be exclusive of other rights such person or Member may have and shall pass to the successors, heirs, personal representatives or administrators of such person or Member. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of no contest or its equivalent, shall not in itself create a presumption that any such person or Member was liable by reason of willful misconduct or that he, she or it had reasonable cause to believe that his, her or its conduct was unlawful. If such action, suit or proceeding is compromised, it must with the approval of the Board.

### Entitlement to Indemnification

In each such instance in which a question of indemnification arises, entitlement thereto shall be determined by the Board, which shall also determine the time and manner of payment of such indemnification. However, when a person or Member prevails on the merits or otherwise in the defense of a civil or criminal action, suit or proceeding of the character described in this Article, then such result shall be conclusive and binding on the Board and such person or Member shall then be entitled to indemnification. Such indemnification as is herein provided shall be apportioned among all Members, including any named in any such action, suit or proceeding as is set forth in these Articles.

### Intent on Indemnification

It is the specific intent of the FAIR Plan to provide indemnification in situations in which a person or Member is acting within the scope of his, her or its office, duties, responsibilities and authority.

### Notice

In order to be entitled indemnification under this Article, a person or Member must provide prompt and reasonable notice to the FAIR Plan of any action, suit or proceeding in which he, she or it is named. Moreover, the claim of the person or Member for indemnification must be affirmatively accepted by a formal action of the Board before any obligation to indemnification arises pursuant to this Article. If possible, the FAIR Plan shall have the right to select counsel of its choosing to represent the person or Member in the action, suit or proceeding.

## **SECTION 26** **Public Relations**

### Government Activity

The FAIR Plan shall cooperate with the Commerce Department and the Minnesota State Legislature in furnishing information or statistical data concerning the property insurance residual market mechanism in general and the FAIR Plan in particular.

### Community Involvement

The FAIR Plan shall develop and maintain an active role in disseminating information about the services available through the FAIR Plan. Participation in professional insurance associations, neighborhood associations and other community groups with special interest in insurance education, fire prevention, anti-arson programs and responses to natural disasters is consistent with the purposes of the FAIR Plan.



**SECTION 27**  
**Retention of Records**

The FAIR Plan shall store all records necessary to meet legal requirements for the retention of business documents. Refer to the Record Retention Policy (See Appendix D).

**SECTION 28**  
**Disaster Recovery Plan**

In the event of a catastrophe that partially or totally disables the operations of the FAIR Plan, the staff of the FAIR Plan will follow the procedures set forth in the FAIR Plan Disaster Recovery Policy (See Appendix E).

**SECTION 29**  
**Operational Audits**

The underwriting functions of the FAIR Plan shall be audited at least once every three years.

The financial operations of the FAIR Plan shall be independently audited by a Certified Public Accountant each calendar year.

An independent claims audit shall be performed at least once every three years for the purpose of reviewing individual files and investigation procedures, verification of the extent of damage, quality of documentation, negotiation and resolution of the claim, and every other aspect of the FAIR Plan's claim operation.

Reports of audits shall be made to the Board, which will include findings, comments and recommendations.

**MISCELLANEOUS**

**SECTION 30**  
**Amendments to the Plan of Operation**

The Plan of Operation may be amended by a two-thirds vote of the full Board with the approval of the Commissioner.

**SECTION 31**  
**Notification to Commissioner**

Failure of any Member to comply with the Plan of Operation or with any rules prescribed hereunder by the Board or to pay any assessment levied within thirty (30) days of notice

thereof shall be grounds for the FAIR Plan to notify the Commissioner for whatever action the Commissioner deems appropriate.

**SECTION 32**  
**Compliance with Law**

Nothing in this Plan of Operation shall be interpreted so as to conflict with Minnesota law or administrative rulings of the Department. This Plan of Operation is intended in all respects to be consistent with Minnesota law. To the extent that any portion of the Plan of Operation is inconsistent with Minnesota law, said portion shall be construed as in agreement with the law.

**SECTION 33**  
**Right of Appeal**

Appeals of decisions by the FAIR Plan shall be made in accordance with the applicable provisions of MN Statute 65A. (See Appendix I)

**SECTION 34**  
**Termination of the FAIR Plan**

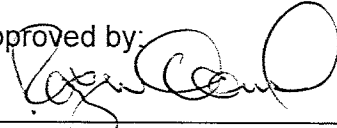
This FAIR Plan shall continue indefinitely but in no event shall be of any force and effect after the expiration of the Minnesota FAIR Plan Act. Any obligations incurred by the FAIR Plan shall not be impaired by the expiration of the Minnesota FAIR Plan Act and the FAIR Plan shall be continued for the purpose of performing such obligations. When the FAIR Plan is terminated, in the absence of a statute to the contrary, distribution of any refund or allocation of any assessment to the Members entitled to participate herein shall be made within such reasonable period of time as the Board shall determine and all provisions of the Plan of Operation shall remain in full force and effect until such final refund or assessment shall have been made. Distribution of any refund or apportionment of any assessment in the event of termination of the FAIR Plan shall be made to each Member based upon participation factors as determined by the FAIR Plan.

**SECTION 35**  
**Effective Date**

This Plan of Operation shall become effective on the date shown below.

**PLAN OF OPERATION**

Approved by:



\_\_\_\_\_  
Governing Board Chair



\_\_\_\_\_  
Department of Commerce

Deputy Commissioner - Insurance

Date: 6/18/13