

ARTICLE 1. PLAN OF OPERATION.

This plan of operation, hereinafter referred to as the Plan, shall become effective upon written approval of the Commissioner of Insurance.

ARTICLE 2. BOARD OF DIRECTORS.

A. There shall be a Board of Directors in accordance with the provisions of Section 58-48-30 of the North Carolina Insurance Guaranty Association Act.

1. The Board of Directors shall consist of eight (8) directors, comprised of seven (7) elected directors, each of whom are member insurers, who shall serve three year terms, or until their successors have been elected and qualified, and one (1) non-voting appointed director who shall be a property and casualty insurance agent authorized to write insurance for a member insurer and who is appointed by the Commissioner of Insurance to serve for a three year term at the pleasure of the Commissioner. Any director shall be eligible for re-election or re-appointment.

2. The elected directors of the Board of Directors shall be elected by member insurers, subject to the approval of the Commissioner, and shall be fairly representative of member insurers. The elected directors shall be elected by a plurality vote of the member insurers, each member insurer being entitled to one vote. At least one of the elected directors shall be a domestic insurance company. Upon the election of the elected directors, the Association shall notify the Commissioner and request his written approval of the elected directors. If, within ten (10) days following such notification and request, the Commissioner does not order a new election, the elected directors shall be deemed approved.

3. Vacancies on the Board shall be filled for the remaining period of the term by appointment by the Commissioner to serve the unexpired term.

4. Member insurers belonging to affiliated groups or under common ownership or control shall not hold more than one membership on the Board of Directors.

5. The elected directors of the Board of Directors shall vote to elect a Chairman and such other officers as may be necessary from among themselves, each to serve for a period of one year.

B. At any meeting of the Board of Directors, each elected director shall have one vote, and a majority of the elected directors shall constitute a quorum for the transaction of business and the acts of a majority of the elected directors present at a meeting at which a quorum is present shall be the acts of the Board; except that an affirmative vote of a majority of all of the elected directors is required to:

1. approve a contract with a servicing facility;
2. levy an assessment or provide for a refund;
3. borrow money.

C. An annual meeting of the Board shall be held at the office of the Insurance Commissioner on the first Thursday in October, 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 proposed amendments, if any, to the Commissioner for approval or rejection.
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, and the amount of either is necessary for the proper administration of the Association. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 58-48-35(a)(3) or Section 58-48-120(b) and Section 58-48-35(b)(6) or Section 58-48-115(a)(2) of the North Carolina Insurance Guaranty Association Act. The Board may waive the collection from or refund to a member insurer when the amount produces an assessment or refund of less than \$10.00.
4. Review, consider and act on other matters deemed by it to be appropriate for the administration of the Association.

D. The Board shall hold an emergency meeting promptly after receiving notice from the Commissioner of the insolvency of any member insurer. At least 48 hours oral or written notice shall be given each Board member. At such meeting or a subsequent meeting the Board shall:

1. Consider and decide whether or not an insurer has, in fact, become an insolvent insurer within the meaning of the North Carolina Insurance Guaranty Association Act.
2. Consider and decide what method or methods, as permitted under Section 58-48-35 of the North Carolina Insurance Guaranty Association 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 58-48-25 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, liquidator or statutory successor's participation in such contract to assist the Association in the performance of its legally imposed duties. The Board shall pursue all recoveries permitted to the insolvent insurer.
3. Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt, economical handling by the Association of covered claims. In this effort, the Board or a designated servicing facility shall work closely with the receiver, liquidator or statutory successor and seek his approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the insolvent insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law.

4. Consider and decide what persons, if any, should be hired by the Association to implement and carry out broad directives of the Board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who shall be knowledgeable about insurance matters, conversant with the law as it relates to covered claims, and administratively capable of implementing the Board's directives, and who would have such authority as is properly delegated to him by the Board. Such persons may also include attorneys at law, insurance actuaries, accountants, claims men and others whose advice or service is deemed by the Board to be necessary to the discharge of its duties. The Board may agree to compensate such persons as to best serve the interest of the Association.

5. Consider and decide 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 58-48-35(a)(4) and 58-48-85 of the Act.

6. Consider and decide what assessment, if any, should be levied or whether any refund should be made to member insurers. If such assessment is determined to be necessary, the Board shall levy such assessment in accordance with Sections 58-48-35(a)(3), 58-48-115(a)(3), or 58-48-120(b) of the Act. Notice of assessment shall be in sufficient detail to enable member insurers to understand the action taken by the Board. If such refund is determined to be necessary, the Board shall make such refund in accordance with Sections 58-48-35(b)(6) or 58-48-115(a)(2) of the Act. The Board may waive the collection from or refund to a member insurer when the amount produces an assessment or refund of less than ten dollars (\$10.00).

7. Take any legal steps deemed necessary to protect the Associations' rights against the estate of the insolvent insurer.

8. Consider and decide any other matter deemed by it to be appropriate for the proper administration of the Association.

E. The Board may determine a schedule of such other regular meetings as it may deem appropriate, and special meetings of the Board may be called by the Chairman and shall be called at the request of any two elected directors. Not less than five (5) days written notice shall be given to each Board member of the time and place and purpose or purposes of any special meeting. Any elected director not present at any meeting may consent in writing to any specific action taken by the Board. Any action approved by the required number of elected directors at any meeting, including those consenting in writing, shall be as valid a Board action as though such consenting members were present and voting. At any special meeting the Board may consider and decide only such matters as are designated in the written notice of the meeting, except that the Board may also consider and decide administrative matters whether or not specifically designated in said notice.

F. Members of the Board shall serve without compensation, but they may be reimbursed for necessary travel expenses incurred in attendance at Board meetings. Such expenses shall be submitted to the Board for approval and subsequent payment.

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 a person, firm or corporation as the official office address of the Association. Such persons, firms or corporations shall keep such records of its 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. Any person to whom such authority has been delegated shall be bonded in such amount as may be required by the Board. The Board may borrow money from any person or organization including a member insurer, from the separate reserve accounts created under Section 58-48-115 and Section 58-48-120, or from an appointed servicing facility as the Board in its judgment deems advantageous for the Association and the public.

D. The Board may levy a non-pro-rata assessment not to exceed \$25 in any calendar year against each member insurer to cover reasonable administrative and other general expenses of the Association not related to a particular insolvent insurer.

E. The Board may contract with one or more persons, firms or corporations to serve as servicing facilities should the Board receive notice from the Commissioner of an insolvency of a member insurer. Such contract terms shall comply with the North Carolina Insurance Guaranty Association Act and be subject to the approval of the Commissioner. 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 of subrogation against him, of each and every covered claim not otherwise reported to him.
4. Procedures contemplated for the handling of covered claims as defined in the North Carolina Insurance Guaranty Association Act. These procedures shall include the right to request from or offer to any person arbitration of his covered claim.
5. Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.
6. Requirement of bond for faithful performance.
7. Any other provisions deemed appropriate by the Board of Directors.

F. To aid in the detection and prevention of insurer insolvencies, the Board of Directors may, upon majority vote, request that the Commissioner order an

examination of any member insurer which the Board in good faith believes may be in a financial condition hazardous to the policyholders or the public. No such request shall be considered a public document.

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, or if the Board so directs by the managing secretary, with copies being furnished to each Board member and the Commissioner, and upon written request to any member insurer.

B. The Board shall make an annual report to the Commissioner and, upon written request, any member insurer. Such report 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 or the borrowing of money by the Association, the Commissioner shall, once every year, if deemed appropriate, appoint three member insurers which are not members of the Board of Directors to serve as an audit committee. Such committee shall see to the proper auditing of all the books and records of the Association and shall report its findings to the Board, the Commissioner, and upon written request to any member insurers.

ARTICLE 5. MEMBERSHIP.

A. Insurers which were admitted, as of June 25, 1971, to transact the kinds of insurance covered by the North Carolina Insurance Guaranty Association Act in the State of North Carolina shall be members of this Association. Insurers admitted after June 25, 1971, to transact the kinds of insurance covered by the North Carolina Insurance Guaranty Association Act shall automatically become, effective on the date of admission, members of this Association. An insurer becoming a member insurer after October 1, 1985, shall pay to the Association upon demand a nonrefundable initial membership fee of \$50.00. Such initial membership fee shall be in lieu of any non-pro-rata assessment levied by the Board during the calendar year in which the insurer becomes a member insurer. An insurer which ceases to be licensed to operate in North Carolina after June 25, 1971, 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 North Carolina Insurance Guaranty Association Act; provided such insurer shall remain liable for any assessments based on insolvencies occurring prior to termination of its license.

B. Any member insurer aggrieved by an action or decision of the Association shall appeal to the Board in writing before appealing to the Commissioner. If such member insurer is aggrieved by the final action or decision of the Board or if the Board does not act on such complaint within 30 days, the member insurer may appeal to the Commissioner in writing within 30 days after the action or decision of the Board or the expiration of the 30 days.

ARTICLE 6. INDEMNIFICATION.

A. All persons described in Section 58-48-80 of the Act (except the Commissioner and his representatives) shall be indemnified by the Association against reasonable expenses (including attorneys' fees), judgments, decrees, fines, penalties and amounts paid in settlement actually and necessarily incurred in the defense of any action, suit or proceedings, whether civil, criminal, administrative or investigative, including all appeals, brought against such person, his testator or intestate on account of any action taken or not taken by him in the performance of his powers and duties under the North Carolina Insurance Guaranty Association Act, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, wilful misfeasance or reckless disregard of the responsibilities of his office or position. In the event of settlement before final adjudication, with or without court approval, such indemnity shall be provided only if the Association is advised by independent legal counsel that such person did not, in counsel's opinion, commit such a breach of duty.

B. The expense of such indemnification shall be paid for by the member companies in such manner as the Board may determine, subject to the approval of the Commissioner.

C. This article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 58-48-80 of the Act.

D. Any indemnification shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who are not or were not parties to or threatened with such action, suit or proceeding, or any other action, suit or proceeding arising from the same or similar operative facts, or (ii) if such a quorum is not obtainable with due diligence, (a) by the Board of Directors by majority vote upon the opinion in writing of independent legal counsel (compensated by the Association) that indemnification is proper in the circumstances, or (b) by vote in person or by proxy of a majority of the member companies.

E. The expenses of each person indemnified hereunder incurred in defending any action, suit, or proceeding (including all appeals) may be paid by the Association in advance of the final disposition of such action, suit, or proceeding if authorized under Paragraph D., upon receipt of an undertaking by or on behalf of such person to repay such expenses unless it shall ultimately be determined that he is entitled to be indemnified by the Association.

F. The indemnification provided by this Article 6 shall not be deemed exclusive of or in any way to limit any other rights to which any person indemnified may be or may otherwise become entitled and shall continue as to a person who has ceased to be a person entitled to indemnification under this Article 6 and shall inure to the benefit of the heirs, executors and administrators of such a person.

G. The Association may, as the Board of Directors may direct, purchase and maintain insurance to indemnify the Association for any obligation which it incurs as the result of indemnification under this Article 6 and to indemnify the persons covered by this Article 6 in instances in which they may be indemnified under this Article 6 or in

instances in which they may not otherwise be indemnified by the Association under this Article 6 to the extent permitted by law.

ARTICLE 7. CONFORMITY TO STATUTE.

[Article 48 of Chapter 58](#) of the General Statutes of North Carolina, as written, and as may be amended, is incorporated as part of this plan.

* * * * *

(Rev. January, 1993)