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3901-1-18 Ohio fair plan - plan of operation.

(A) Purpose:

The purpose of this rule is for adoption by the superintendent of a plan of operation submitted by the board of governors of the "Ohio Fair Plan Underwriting Association". The plan of operation has been formulated for the purpose of making basic property and homeowners' insurance coverage, as identified in section 3929.42 of the Revised Code, available for qualified property owned by persons who have been unable to secure such insurance in the normal insurance market. ~~This plan of operation is adopted pursuant to section 3929.43 of the Revised Code, and implements sections 3929.41 to 3929.49 of the Revised Code.~~

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code. This plan of operation is adopted pursuant to section 3929.43 of the Revised Code and implements sections 3929.41 to 3929.49 of the Revised Code.

~~(B)~~ (C) Definitions:

- (1) "Association" means the "Ohio Fair Plan Underwriting Association" created under section 3929.43 of the Revised Code.
- (2) "Basic property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements thereon, as approved by the superintendent, and insurance for such types, classes and locations of property against the perils of vandalism, malicious mischief, burglary, theft or liability, as the superintendent shall designate. Pursuant to the designation made by the superintendent on September 30, 1985, under authority of division (A) of section ~~392-9.42~~ 3929.42 of the Revised Code, the association is authorized to provide insurance against the perils of burglary, robbery, and theft for properties which are currently covered or eligible for coverage under the federal crime insurance program under FEMA forms 81-11 (April 1986) and 81-13 (April 1986) as administered by the federal insurance administrator prior to July 1, 1987. Such coverage is to be provided by separate policies. Basic property insurance does not include automobile insurance or insurance on manufacturing risks.
- (3) "Environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner.
- (4) "Insurable risks" means property that meets the reasonable underwriting standards of the association.

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- (5) "Underwriting standards" means the underwriting standards for basic property insurance and homeowners' insurance which have been filed with the superintendent.
- (6) "Homeowners' insurance" means insurance on owner-occupied dwellings providing personal multi-peril property and liability coverages, commonly known as homeowners' insurance, subject to underwriting standards, exclusions, deductibles, rates and conditions as are customarily used by member insurers for similar coverages.
- (7) "Location" means real and personal property consisting of and contained in a single building or in contiguous buildings under one ownership.
- (8) "Urban area" means the state of Ohio having been so designated by the superintendent.
- (9) "Superintendent" means the superintendent of insurance of the state of Ohio.
- (10) "Member insurer" means an insurer required to be a member of the association by section 3929.43 of the Revised Code.
- (11) "Licensed agent" means any person licensed by the superintendent pursuant to section 3905.01 of the Revised Code.
- (12) "Board" means the board of governors of the association authorized pursuant to section 3929.43 of the Revised Code.
- (13) "Applicant" means any person applying for insurance from the association and includes any person designated by the applicant to be the applicant's representative at an inspection.

~~(C)~~ (D) Notice of cancellation by members:

Member insurers shall provide written notice of cancellation or nonrenewal for any risk eligible for insurance through the association, (except for non-payment of premium, evidence of incendiarism, or misrepresentation) not less than thirty days prior to cancellation or nonrenewal. The notice shall explain to the insured the procedures for making application to the association. This thirty-day notice shall not apply to binders of thirty days duration or less.

~~(D)~~ (E) Insurance agents:

- (1) Upon request, a licensed agent shall assist any owner of property in completing an application for insurance with the association.
- (2) No licensed agent, although licensed to represent one or more member insurers of the association, shall hold himself out as an agent of the association or have any authority to bind any risk for the association.

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~~(E)~~ (F) Maximum liability, limitations and special coverage:

- (1) The maximum limits of liability for basic property insurance and homeowners' insurance per location through the association is one million five hundred thousand dollars. The maximum limit of liability for residential crime insurance is ten thousand dollars. The maximum limit of liability for commercial crime insurance is fifteen thousand dollars.
- (2) The association may require that vandalism and malicious mischief coverage be written in conjunction with extended coverage.
- (3) The association is authorized to issue mine subsidence insurance coverage to its policyholders pursuant to sections 3929.50 to 3929.61 of the Revised Code and as provided for in the plan of operations of the "Mine Subsidence Insurance Underwriting Association."
- (4) The association is not authorized to provide insurance coverage for automobiles or manufacturing risks.

~~(F)~~ (G) Inspections:

- (1) Any person having an insurable interest in real or tangible personal property, or both, at a fixed location in Ohio, who has been unable to obtain basic property insurance or homeowners' insurance, shall be granted upon application to the association, an inspection of the property by an inspection bureau assigned by the association and approved by the superintendent. The inspection shall be made only of property requiring an inspection to determine eligibility for fair plan coverage. The inspection shall be free of charge to the applicant. Such an inspection request may be made by the owner, his representative, the current insurer, or a licensed agent.
- (2) All inspection reports shall be in writing and shall contain the information necessary to determine eligibility for coverage pursuant to the association's underwriting guide as filed with the superintendent.
- (3) If an interior inspection is necessary to determine eligibility of property described in an application submitted to the association:
 - (a) The inspector or inspection company shall contact the new applicant and arrange for the applicant to be present during the inspection. The inspector shall not recommend correction of physical deficiencies or advise the applicant whether the association will provide coverage. The inspection report shall provide any information necessary for underwriting but shall not refer to environmental hazards. Physical deficiencies shall be reported on the inspection report. Vacancy or unoccupancy shall be reported on the inspection report.
 - (b) The inspection report shall contain information describing the occupancy and construction of the risk.

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- (4) Subsequent to the inspection of a property, the association shall indicate to the new applicant any condition charges which have been applied by the association.
- (5) After the inspection report has been completed, a copy of the completed inspection report, and any photograph, indicating the pertinent features of the building construction, maintenance, and occupancy shall be sent within ten days to the association. Included with the report shall be information sufficient for rating in accordance with rating plans filed with the superintendent.
- (6) The association shall, within ten business days after receipt of the inspection report, advise the applicant and his licensed agent that:
 - (a) The risk is acceptable, and if condition charges have been imposed, the improvements necessary to remove the condition charges; or
 - (b) The risk will be acceptable if the improvements noted in the report are made by the applicant and confirmed by reinspection; or
 - (c) The risk is not acceptable for the reasons stated in the report.
- (7) The association shall not refuse to insure any risk because of an environmental hazard.
- (8) The association may, for cause upon information or well-founded belief without notice to the insured at any time during the policy term, cause a property insured by it to be inspected for the purpose of determining whether the property meets the association's underwriting standards. Reinspections may also be made upon the request of the insured, for statistical purposes, upon change in type of occupancy, or upon a reasonable periodic schedule. The association may, upon the basis of the report of reinspection, refuse to renew or may cancel a policy in accordance with its terms and this plan of operation. Any person aggrieved by such decision may appeal, in accordance with paragraph ~~(H)~~ (J) of this rule. The association need not afford an insured the opportunity to be present during a reinspection nor furnish the insured with a copy of a reinspection report. If an insured requests a copy of a reinspection report, the association shall provide a copy to the insured.
- (9) If an inspection report shows that a property is in violation of any building, housing, air pollution, sanitation, health, fire or safety code, ordinance or rule, or if an applicant otherwise has received written notice of any violation of such a code, ordinance or rule, the applicant shall also submit to the association a detailed plan that indicates the manner and estimated period of time in which violation will be corrected. In no case will the association provide coverage unless the necessary corrections are to commence within thirty days following the date of the application. If the association is satisfied that the violations are subject to correction within a reasonable period of time and that the applicant otherwise meets the requirements of section 3929.44 of the Revised Code, it may issue a policy or binder to the applicant on the condition that the plan be implemented and completed on schedule and that

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the property be reinspected.

~~(G)~~(H) Application and issuance of policy:

- (1) Every policy written by the association shall include an additional policy condition representing that:
 - (a) At least two insurance companies authorized to do business in Ohio have declined to grant the coverage requested in the application; and
 - (b) There are no outstanding taxes, assessments, penalties or charges with respect to the property to be insured; and
 - (c) The applicant has not received written notice from an authorized public entity stating that his property is in violation of any building, housing, air pollution, sanitation, health, fire or safety code, ordinance or rule.
- (2) If the property is in violation of any such code, ordinance or rule, and if the applicant has received such written notice of any such violation, the applicant shall submit to the association a detailed plan that indicates the manner and estimated period of time in which such violations will be corrected. In no case will the association provide coverage unless the necessary repairs are to commence within thirty days following the date of the application. If the association is satisfied that the violations are subject to correction within a reasonable period of time and that the applicant otherwise meets the requirements of section 3929.44 of the Revised Code, it may cause a policy or binder of basic property insurance to be issued to the applicant on the condition that the plan be implemented on schedule and that the property be reinspected.
- (3) The association is under no obligation to issue basic property insurance or homeowners insurance to any person, unless that person and his or her property would be insurable in the normal insurance market, and such property, except for its location, would constitute an insurable risk in accordance with reasonable underwriting standards. The association, in determining whether the property is insurable, shall give no consideration to the condition of surrounding property or properties, where such condition is not within the control of the applicant.
- (4) If a risk is accepted by the association, it shall deliver a policy or binder to the licensed agent, or if none, to the applicant, upon payment of the premium to the association. The association shall pay the authorized commission to the licensed agent as designated by the applicant. The association shall not pay commission to a nonresident agent. The association may pay commission to a licensed nonresident business entity agent for assistance provided by an individual resident agent affiliated with that nonresident business entity agent.
- (5) The association, upon receipt of the annual premium from the applicant, shall issue

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the policy to be effective the day following receipt of the premium. The policy shall be issued in the name of the association as provided in section 3929.481 of the Revised Code.

- (6) The policy shall be issued for a term of one year.
- (7) If the property is found to be an insurable risk but the inspection reveals that there are one or more unsatisfactory conditions, charges will be imposed in conformity with the rating plans on file with the superintendent. If the unsatisfactory conditions are corrected, and such corrections are verified, the charges shall be revised.
- (8) If the association determines that the property is not an acceptable risk, the association shall, within ten days, send the applicant a written statement setting forth in reasonable detail the features of the property or conditions which prevent it from constituting an acceptable risk and the corrections to be made in order to make the property an acceptable risk.
- (9) Upon completion of the required corrections by the applicant, the association, when notified, shall promptly reinspect the property, if such reinspection is necessary to determine eligibility.

~~(H)~~ (I) Binders-

- (1) Each application shall clearly indicate the availability of a binder to an applicant.
- (2) If an inspection has not been made and a quote furnished to an applicant within fifteen calendar days from the date a completed application was received by the association through no fault of the applicant, a binder shall be issued to the applicant upon payment to the association of the estimated premium. The estimated premium shall be computed from rates filed with and approved by the superintendent of insurance pursuant to Chapter 3935. of the Revised Code. A binder shall be effective at one minute after twelve a.m. the day following receipt of the estimated premium by the association but no earlier than one minute after twelve a.m. on the sixteenth day following receipt of the application.
- (3) If inspection is impossible through no fault of the inspection bureau, or the association, the fifteen-day period referred to in paragraph ~~(H)(2)~~ (I)(2) of this rule shall not start until such time as the property becomes available for inspection.
- (4) The superintendent may alter the fifteen-day time requirement as expressed in paragraph ~~(H)(2)~~ (I)(2) of this rule, under conditions as he finds appropriate. When such time alteration is requested, the association shall present the facts to the superintendent or his designee for a decision. The binder shall remain in effect until the risk is accepted by the association or until cancelled and the reasons for cancellation given to the applicant.
- (5) Binders shall be issued for a definite period, not to exceed one year.

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- (6)
- (a) If an insurance policy is to be issued, the policy shall commence on the effective date of the binder. Policies so issued are not subject to flat cancellation.
 - (b) If an insurance policy will not be issued, the full earned premium must be charged subject to the rules governing cancellation of policies.
 - (c) A binder shall be void upon the acceptance of a risk by the association and the payment of any additional premium indicated by an inspection; or upon the cancellation of a risk and notice of reasons for the cancellation given to the applicant.
- (7)
- (a) The association shall not cancel a policy or binder issued by it, except:
 - (i) For cause, which would have been grounds for nonacceptance of the risk had such cause been known to the association at the time of acceptance; or
 - (ii) For nonpayment; or
 - (iii) At the request of an insured.
 - (b) Notice of cancellation, together with the reasons therefore, shall be sent to the insured.
 - (c) Any cancellation notice to an insured shall be accompanied by a statement that the insured has a right to appeal as provided in paragraph ~~(H)~~ (J) of this rule.
- (8) If a property meets all underwriting requirements, the association shall compute the actual annual premium. A return premium will be forwarded to the applicant if the provisional binder premium exceeds the actual annual premium. The association shall request additional premium if the actual annual premium exceeds the estimated provisional binder premium.
- (9) If a property does not meet all underwriting requirements, the association shall cancel the binder on a pro rata basis. If an applicant requests cancellation of a binder, the association shall cancel in accordance with cancellation provisions of the coverage forms approved by the superintendent.

~~(H)~~ (J) Right to appeal-

- (1) Any applicant or insured shall have the right to appeal any action or decision of the association to the board of the association. Such appeal to the board must be made in writing within thirty days after receipt of notice of the action or decision of the association. Within forty-five days from receipt of an appeal, the board, upon no less than ten days notice to the insured, shall hold a hearing on the appeal. For good cause shown, by the insured or the association, the hearing may be continued for not

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more than sixty days. The board shall render its decision on the appeal and notify the applicant or insured of its decision no later than ten days after the hearing. Each denial of insurance to an applicant shall be accompanied by a statement to the applicant and the licensed agent that the applicant has the right to appeal.

- (2) Any applicant, insured, or member insurer shall have the right to appeal to the superintendent any action or decision of the board. An appeal shall be made within thirty days of the board's action or decision. The decision of the superintendent of an appeal is a final order and is subject to judicial review as provided in Chapter 119. of the Revised Code.

~~(J)~~ (K) Indemnification:

Each member of any association committee, each association officer, employee, or member insurer, and each member of the board shall be indemnified against liability incurred in connection with the affairs of the association. The conditions and limits of such indemnification are provided in "Article IX of the Constitution," "Articles of Agreement" and "Bylaws of the Association."

~~(K)~~ (L) Fidelity bonds:

The association shall obtain fidelity bonds in the amount as prescribed by the superintendent. These bonds shall reimburse the association for any pecuniary loss it may sustain by any act or acts of fraud or dishonesty on the part of members of the board, association officers or employees in the discharge of their duties.

~~(L)~~ (M) Board of governors:

- (1) The association shall be governed by a board.
- (2) The board shall meet as often as may be required to perform the general duties of administration of the association or on the call of the superintendent. Seven members of the board shall constitute a quorum.
- (3) The board shall appoint a general manager as administrator who shall serve at the pleasure of the board and perform such duties as the board designates.
- (4) The board may promulgate guidelines consistent with state law and the plan of operation to govern such internal operations as investments, personnel, underwriting standards and claims practices. The guidelines shall be in writing and filed with the superintendent.
- (5) The board shall undertake a public education program to assure that the services of the association receive adequate public attention. In accordance with division (I) of section 3929.43 of the Revised Code, the board shall adopt a written program for decreasing the overall utilization of the association as a source of insurance.

~~(M)~~ (N) Standing committees:

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The board may appoint committees as it deems necessary to carry out the purpose and operations of the association.

~~(N)~~ (O) Relationship with member insurers:-

- (1) The association shall operate as a joint underwriting association insuring one hundred percent of the risk on behalf of its member insurers. It may cede or purchase reinsurance in the name of the association or on behalf of member insurers on eligible risks written through the association.
- (2) Each member insurer shall participate in the writings, expenses, assessments, profits and losses of the association in the same proportion as a member insurer's premiums written bear to the aggregate premiums written by all member insurers as determined by the board.
- (3) There shall be an annual meeting of the association and its member insurers at a time and place fixed by the superintendent. Representatives of member insurers on the board shall serve for a period of one year or until successors are elected or designated.
- (4) A special meeting may be called at such time and place designated by the superintendent or upon the written request to the superintendent.
- (5) Twenty days notice of an annual or special meeting shall be given in writing by the board to member insurers. A majority of member insurers present at a meeting shall constitute a quorum. Voting by proxy shall be permitted. Notice of any meeting shall be accompanied by an agenda for the meeting.
- (6) Any matter may be proposed and voted upon by mail, provided such procedure is unanimously authorized by the members of the board present and voting at any meeting of the board. If so approved by the board, notice of any proposal shall be mailed to member insurers not less than twenty days prior to the final date fixed by the board for voting thereon.
- (7) At any regular or special meeting at which the vote of member insurers is or may be required on any proposal, or any vote of member insurers which may be taken by mail on any proposal, votes shall be cast and counted on a weighted basis in accordance with each member insurer's respective habitational or commercial premiums written, as the case may be.

~~(O)~~ (P) Member insolvency:-

- (1) In the event any member insurer fails to pay the assessment for its proportionate part of any loss or expense because the member insurer is insolvent, and the board determines that the assessment cannot be collected within a reasonable period of time, the unpaid assessment shall be paid by the remaining member insurers, each contributing in the manner provided by division (E) of section 3929.43 of the Revised Code, but without regard to the premium writings of the insolvent member

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insurer. The insolvent member insurer shall remain liable to the association for the full amount of the assessment and any collection made by the association against the assessment shall be credited and paid back to the other member insurers in the same proportions as shall have been utilized in calculating each member insurer's contribution toward the unpaid assessment.

- (2) No refund which would otherwise be paid under the plan of operation shall be paid to a member when its membership has been terminated, or to the liquidator, receiver, conservator, or statutory successor of a member insurer until the assessment of the member insurer has been paid. A refund shall be applied as a set-off against an assessment. Any balance remaining shall be paid to the member insurer or to the liquidator, receiver, conservator, or statutory successor of the member insurer.

~~(P)~~ (Q) Advance assessments and recoupments-

- (1) At such times as may be determined by the board and approved by the superintendent, the board shall establish an annual rate of assessment needed to cover any deficit arising out of the operation of the association. The rate of assessment shall be based upon a reasonable estimate of a deficit expected to occur. The association may levy advance assessments at that rate against member insurers, payable in periodic installments, subject to approval by the superintendent.
- (2) The board may at any time levy an assessment against member insurers to provide necessary operating funds.
- (3) Each member insurer may recoup assessments levied against it by adjusting its premiums for basic property insurance and homeowner's insurance by the addition of a rating factor computed from time to time by the board and approved by the superintendent. The board shall notify all member insurers of the amount of the rating factor and any changes to it.
- (4) Any member insurer implementing a change in rates pursuant to division (D)(2) of section 3929.43 of the Revised Code, shall file the change with the superintendent. The change shall not increase rates more than the amount authorized by the association and approved by the superintendent pursuant to the plan.

~~(Q)~~ (R) Reinsurance-

No reinsurance plan or proposal of the association shall be implemented prior to being filed with the superintendent.

~~(R)~~ (S) Statistics-

- (1) Every insurance policy issued by the association shall be separately coded for statistical purposes.
- (2) The association shall comply with any reporting requirements of the superintendent in respect of its underwriting operations and experience. The reports shall be made at

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least annually in such form and detail as may be required by the superintendent under section 3935.03 of the Revised Code.

- (3) The association shall report its loss and expense experience to a statistical organization approved by the superintendent. Its loss and expense experience shall be reported in a form and according to a plan filed by the statistical organization with the superintendent.
- (4) The association shall submit to the superintendent periodic reports concerning the number of risks inspected, the number of risks accepted, the number of risks conditionally accepted, the number of reinspections made and the number of risks declined.

~~(S)~~(T) Distribution of associated funds:

Ten days prior to the distribution to its member insurers of any funds held by the association, notification shall be given to the superintendent.

~~(T)~~(U) Filing of policies and other documents:

All policies, endorsements, forms, manual rates or rating plans, minimum class rates, rating schedules, rating rules, and every modification of the same shall be those filed with the superintendent. The association may file special notice endorsements for review by the superintendent. In the event that the superintendent approves a rating factor under paragraph ~~(P)(3)~~(Q)(3) of this rule, such increment shall be applicable to all policies issued by the association.

~~(U)~~(V) Annual and quarterly financial statements:

The association shall file annual and quarterly financial statements with the superintendent in the form prescribed by the superintendent. Annual financial statements shall be prepared and furnished to the superintendent on or before March first of the following year.

~~(V)~~(W) Examination of books and records:

The superintendent or any person designated by him may examine the operation of the association in accordance with section 3929.45 of the Revised Code. The expenses of the examination shall be paid by the association.

~~(W)~~(X) Investments:

The association shall invest its funds in accordance with section 3925.08 of the Revised Code.

~~(X)~~(Y) General powers of superintendent:

- (1) The plan of operation and any amendment thereto shall be subject to the approval of

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the superintendent and adopted pursuant to Chapter 119. of the Revised Code.

- (2) The plan of operation shall be administered under the supervision of the superintendent.
- (3) The association shall submit to the superintendent periodic reports as he deems necessary.

~~(Y)~~ (Z) Severability:

~~If any provision of this rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~ If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.