

PLAN OF OPERATION
OF
MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION

TABLE OF CONTENTS

	Page
Section I. Purposes	2
Section II. Effective Date	2
Section III. Definitions	2
Section IV. Participation of Member Companies	5
Section V. Management of the Association	8
Section VI. Authority to Issue Policies on Behalf of Members	9
Section VII. Request for Inspection; Application for Insurance	11
Section VIII. Rates and Forms.....	12
Section IX. Limits of Liability and Deductibles	13
Section X. Installment Payment Plan	14
Section XI. Policy Issuance/Declination	14
Section XII. Provisional Binders.....	15
Section XIII. Reasonable Underwriting Standards.....	15
Section XIV. Cancellation or Nonrenewal	19
Section XV. Appeals	21
Section XVI. Commissions	22
Section XVII. Statistical Reporting	22
Section XVIII. Reports	23
Section XIX. Market Assistance Plan	23
Section XX. Public Education	23
Section XXI. Group Marketing	23
Section XXII. Amendment.....	24

PLAN OF OPERATION
OF
MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION

Section I. Purposes

The purposes of this Plan of Operation are:

- A. to make Basic Property Insurance more readily available to all Eligible Applicants who have been unable to secure such insurance in the voluntary insurance market, in accordance with the provisions of G.L. c. 175C, (hereinafter referred to as the “Statute”); and
- B. to equitably apportion and distribute the writings, expenses, profits if any, and losses of the Association among insurers licensed to write Basic Property Insurance, as defined herein, in the Commonwealth.

Section II. Effective Date

This Plan of Operation shall become effective upon approval by the Commissioner.

Section III. Definitions

- A. "Commissioner" means the Commissioner of Insurance.
- B. "Association" means the Massachusetts Property Insurance Underwriting Association, established pursuant to the Statute, the Constitution and this Plan of Operation.
- C. "Basic Property Insurance" means insurance against direct loss to property as defined and limited in the standard fire policy and extended coverage

endorsement thereon, insurance against direct loss to property from the perils of vandalism and malicious mischief, insurance against direct loss to property from sprinkler leakage, and homeowners insurance, including the scheduled personal property endorsement, all as filed with and approved by the Commissioner, and such other coverages as the Commissioner after public hearing shall determine, but shall not include insurance on automobile or manufacturing risks except such classes of manufacturing risks as may, after proper hearing, be designated by the Commissioner.

- D. “Credit Eligible Zip Code” shall mean any five digit postal zip code in the Commonwealth in which, at a minimum, more than 20% of the total homeowners premium written in that zip code, averaged over the three most recent calendar years, was written by the Association, with the specific percentage to be determined annually such that the total homeowners premium written by the Association in credit eligible zip codes as a percentage of statewide homeowners premium written by the Association shall not exceed 29.45%. 29.45% represents the percentage of the homeowners premium written by the Association in territories that were eligible for credits in 1997. Before January 1, 1999, a credit eligible territory was defined by the Statute to mean “any territory of the Commonwealth in which at least twenty percent of the homeowners premium averaged over the most recent three calendar years was written by the Association”. Credit eligible zip codes for each calendar year shall be determined by the Association, subject to the approval of the Commissioner, based on homeowners premiums written over the most recent three calendar years for

which such data are available, as reported to the Commissioner. Notice to all member insurers of credit-eligible zip codes shall be sent in writing on or before December 1 of the year preceding the year for which credits apply. Whenever changes are made by the United States Postal Service in the geographic boundary of a five digit postal zip code, the association shall identify and analyze the market share data for homeowners premiums written in the affected zip code(s) both before and after the effective date of the change. The association will then submit its analysis and conclusions as to whether to include affected zip codes on the list of credit eligible zip codes, based upon the language and intent of the laws and rules otherwise governing the system for determining credit eligibility by zip code, to the commissioner for approval.

- E. "Eligible Applicant" means any person having an insurable interest in property eligible for Basic Property Insurance who has made a reasonable effort to obtain such insurance and has been unable to obtain it. It shall be evidence of a reasonable effort if an applicant presents to the Association a written statement by the applicant, if direct, a company, broker or agent that a company is unable to provide the required insurance or amount of such insurance, or that the applicant has applied for such insurance through the Market Assistance Plan contemplated by Chapter 93 of 1996, but has not yet obtained it. Acceptance of the property for insurance by a MA-MAP participating insurer through the MA-MAP shall not be construed to render the applicant ineligible for basic property insurance through the Association.
- F. "Premiums Written" means gross direct premiums written on property in the

Commonwealth for insurance included within the definition of Basic Property Insurance, and the corresponding components of such insurance in multi-peril package policies which include other types of insurance, all as computed by the Association and approved by the Commissioner, less all premiums and dividends credited or returned to policyholders or the unused or unabsorbed portion of premium deposits on such policies. In determining homeowners premiums written for purposes of calculating credits under Section IV, premiums on the homeowners insurance component of Basic Property Insurance shall not include premiums on the scheduled personal property endorsement.

- G. "Member" means any insurer licensed to write Basic Property Insurance in the Commonwealth which is required to be a member of the Association by the Statute.

Section IV. Participation of Member Companies

- A. Each Member shall participate in the Association's writings, expenses, profits if any, and losses in the proportion that such member's Premiums Written, as defined in this Plan of Operation, on property located in the Commonwealth, during the preceding calendar year bear to the aggregate of such Premiums Written on property located in the Commonwealth by all members of the Association, which participation shall be calculated annually by the Association.
- B. The participation ratio of each Member of the Association writing personal lines coverage shall be adjusted based on the homeowners premiums written

by such a Member in any credit-eligible zip code in accordance with the following paragraphs:

- (1) The participation ratio of each Member writing personal lines insurance shall be recalculated, in accordance with the procedures set forth in subsection (A) by subtracting the Premiums Written by Members of the Association writing only commercial lines insurance from the aggregate Premiums Written in the Commonwealth by all members of the Association.
- (2) The participation ratio of each Member writing personal lines insurance as recalculated in paragraph (1) shall be multiplied by the sum of the total premiums written by the Association in the Commonwealth and the total industry homeowners premium written in credit-eligible zip codes.
- (3) In determining the total industry homeowners premiums written in credit-eligible zip codes, premiums written in the zip code in which the Association's homeowner's insurance market share is largest shall be weighted at one. The weight assigned to premiums written in other credit-eligible zip codes shall be calculated by determining the ratio, expressed as a decimal, between the percentage market share of homeowners premiums written by the Association in such zip code and the percentage market share of homeowners premiums written by the Association in the zip code in which the Association's market share is the largest, and then rounding such ratio to the nearest tenth. All such calculations shall be based on an average of the homeowners

premiums written in the three most recent calendar years. Weights calculated in accordance with this paragraph shall be adjusted whenever a zip code becomes or ceases to be credit-eligible, or every three years if no adjustment has been made in the two preceding years.

- (4) The product of the multiplication described in paragraph (2) shall be reduced by subtracting therefrom the homeowners premiums written by each Member in any credit-eligible zip code adjusted in accordance with the weights set forth above.
- (5) The result of the calculation described in paragraph (4) shall be divided by the total premiums written by the Association in the Commonwealth. The resulting ratio shall be the adjusted participation ratio for the Member.
- (6) The adjusted participation ratio of those Members whose participation ratio is calculated as provided in this subsection shall apply to that portion of the writings, expenses, profits if any, and losses of the Association not recovered by applying the participation ratios of the remaining Members of the Association calculated as provided in subsection (A), so that all writings, expenses, profits if any, and losses of the Association are allocated to its Members.

C. The participation of each Member of the Association writing personal lines insurance shall be further adjusted if such Member has written homeowners insurance during the preceding calendar year (hereafter called the "base year") on property that was insured by the Association in the year immediately

preceding such base year and which is located in any coastal zip code in which the rate of increase in the market share of the Association exceeded 60% in the base year and in the preceding calendar year. The participation of such a Member shall be adjusted by reducing the amount of Premiums Written by such Member in subsection (A) above by 20% of the total homeowners insurance premiums written by the Member on property described in this paragraph. Such adjustment shall not apply to any insurance written on property that was insured by the Member or any affiliate or subsidiary of the Member in either of the two years preceding the base year.

- D. The Association shall distribute to the Commissioner and to each Member its calculation of the Member's participation ratio for each policy year. The Member shall notify the Association in writing within thirty days from the date of mailing by the Association of any objection it may have to such calculation. If the Association does not receive any objection within such thirty day period, the calculation shall be binding upon the Member. Until the Association has received the necessary data to calculate a participation ratio for any policy year, it may use the participation ratio calculated for the prior policy year on a provisional basis, but shall adjust any assessments made on the basis of such provisional ratios when final participation ratios for the year are calculated.

Section V. Management of the Association

- A. The Board of Directors shall have general responsibility for the management and direction of the Association. They shall employ such officers and

employees, enter into such contracts and take such actions as they deem necessary. They shall have all powers, not reserved to the Members by the Constitution, necessary or appropriate to carry out the purposes of the Association under the Statute and this Plan of Operation.

- B. Each Member authorizes the Board of Directors to levy such assessments as may be necessary to carry out the purposes of the Association, and agrees to be bound by all contracts and decisions of the Board and to pay all assessments that may be necessary or appropriate to carry out the purposes of the Association.

Section VI. Authority to Issue Policies on Behalf of Members

- A. The Association shall be authorized (a) to issue policies or certificates of insurance on behalf of its Members for risks found insurable by the Association and (b) to provide for the investigation and adjustment of claims, defense of policyholders, payment of losses and all such other functions as are usual in servicing the insured under such policies. Each Member irrevocably designates the Association as its agent in carrying out such functions.
- B. Each Member of the Association shall be a direct insurer under each policy or certificate of insurance issued by the Association during any calendar year to the extent of its participation for that year as determined in accordance with Section IV of this Plan. 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 the liability of any other Member thereunder, except as provided in Article IX of the Constitution in case of the insolvency of a Member. All policies issued by the Association shall provide that a list of Members and of each Member's share of the policy shall be made available upon request.

- C. The Board of Directors shall from time to time designate in writing one or more persons to act as attorney-in-fact for all companies to execute policies on behalf of the Members of the Association. 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, shall have duly acted pursuant to the powers in him then vested. Any policy or certificate of insurance issued pursuant to this Section may be executed on behalf of the participating Members by any attorney-in-fact appointed hereunder, and each Member agrees to be bound thereby to the extent of its participation in the writings of the Association, as determined under Section IV.

Section VII. Request for Inspection; Application for Insurance

- A. Every Eligible Applicant may submit to the Association a completed application for an inspection and insurance coverage or for immediate certification insurance coverage on a form prescribed by the Association, directly or through a licensed agent or broker.
- B. When a completed application for coverage of property which has not previously been inspected by the Association is submitted, the Association shall not reject the application without first making or securing a physical inspection of the property, unless the application discloses that the property or applicant fails to meet the underwriting standards and other requirements of this Plan.
- C. When a completed application for immediate coverage is submitted and

approved, the Association shall issue a policy without first making or securing a physical inspection of the property.

- D. The owner of any building or condominium unit or any tenant seeking coverage shall provide full access to the property.
- E. The inspection will be without cost to an Eligible Applicant.
- F. No Member shall penalize any agent or other producer for soliciting business for placement with or submitting applications to the Association. No Member shall direct any agent or other producer not to solicit business for placement with or to submit applications to the Association. No insurance agent or broker shall direct any person in his employ not to solicit business for placement with or to submit applications to the Association.
- G. No insurance agent or broker licensed to sell property insurance shall refuse a request to submit an application from an Eligible Applicant to the Association unless such applicant is then indebted to any agent or broker, or to an insurance company, for such coverage.

Section VIII. Rates and Forms

- A. All policies issued by the Association shall be issued on policy forms approved by the Commissioner, and in accordance with the Statute, and shall be for a term of one year.
- B. Premiums for policies shall be calculated in accordance with classifications, rates and rating plans filed by or on behalf of the Association and approved by the Commissioner pursuant to the Statute.
- C. The Association shall use such forms and rules consistent with the Statute

and this Plan, as may be filed by or on its behalf and approved by the Commissioner in accordance with the Statute.

- D. Return premium on all policies shall be calculated on a pro-rata basis.

Section IX. Limits of Liability and Deductibles

- A. The Association shall provide coverage up to the reasonable insurable value of the property but in no event in excess of \$1,000,000 for a single interest at one location, or, in the event of multiple interests, in excess of \$1,500,000 in the aggregate for all interests at one location.
- B. Standard deductibles, percentage participation clauses, and other underwriting devices may be imposed by the Association on any commercial or non-owner occupied risk to meet special problems of insurability. In addition, the Association may require large or special deductibles on a "consent to rate basis" subject to approval by the Commissioner.
- C. On all other risks, with the exception of theft losses under homeowners policies and windstorm and hail losses as provided in paragraph D, the Association may impose deductibles only if there has been excessive loss frequency and the applicant has failed to take reasonable steps to correct any situation which has given rise to past losses. Deductibles may be imposed whenever a homeowners risk suffers two or more theft losses within a twelve month period, which deductible shall be eliminated, upon renewal, if the insured remains free from additional theft losses for the most recent twelve consecutive months.
- D. Notwithstanding anything in paragraph C, the Association may impose

minimum mandatory deductibles for the perils of windstorm and hail on all risks, including homeowners' policies, which shall vary depending on coverage A limits, in accordance with rating plans and rules filed by or on behalf of the Association and approved by the Commissioner.

Section X. Installment Payment Plan

The Association shall offer Eligible Applicants the option to pay premiums on an installment payment plan, consistent with plans offered to insureds in the voluntary market, as approved by the Commissioner.

Section XI. Policy Issuance/Declination

- A. Upon approval by the Association of an application for coverage, or renewal of coverage, and upon receipt by the Association of the full amount of the required premium, (or if the applicant chooses an approved installment payment plan, the full amount of the deposit premium) in cash, or by personal check, certified check, bank check, money order, postal money order, or the check of a licensed lending institution, the Association shall issue a policy in accordance with Section VI.
- B. Applications for coverage shall be declined where the property fails to meet reasonable underwriting standards or other requirements of this Plan.
- C. In the event of declination, the applicant shall be furnished a written statement of the conditions which make the property uninsurable and the measures, if any, which if taken would make the property insurable, or a written statement of any other reasons for declination. The applicant shall

also be informed of his or her right to appeal such determination by the Association and advised of the means whereby such an appeal may be initiated in accordance with Section XV.

Section XII. Provisional Binders

A. To prevent lapses of insurance coverage for risks eligible under this Plan of Operation before coverage has been made available or declined, a provisional binder affording the insurance requested, subject to all provisions of this Plan of Operation, will be automatically issued if:

- (1) through no fault of the applicant, coverage has not been either offered or denied within twenty calendar days after the date the request for inspection was received; and
- (2) the applicant, at the time of requesting the inspection or at any time prior to the receipt of a written statement indicating that the property is uninsurable, pays the estimated annual premium, or deposit premium.

Section XIII. Reasonable Underwriting Standards

A. Reasonable underwriting standards for Basic Property Insurance, including homeowners, shall include, but not be limited to, the following:

- (1) The right to decline or cancel insurance because of the physical condition of the property, which increases the risk of loss, including its construction, heating, wiring, evidence of unrepaired damage, or general deterioration;

- (2) The right to decline or cancel insurance because of the existing use of the property, including abandonment, vacancy, overcrowding, excessive rubbish, or improper storage of flammable materials;
- (3) The right to decline or cancel insurance because of other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of law or public policy and result in unreasonable exposure to loss;
- (4) The right to decline or cancel insurance on buildings in which any one of the following exists:
 - (a) failure to pay real estate taxes on the property after the taxes have been delinquent for one (1) year or more (real estate taxes shall not be deemed to be delinquent for this purpose even if they are due and constitute a lien, so long as a grace period remains under local law during which such taxes may be paid without penalty);
 - (b) failure, within the insured's direct and exclusive control, to furnish heat, water, or public lighting for thirty consecutive days or more;
 - (c) failure within a reasonable time to correct conditions dangerous to life, health or safety;
- (5) The right to decline or cancel insurance on property:
 - (a) where, because of physical conditions, there is an outstanding demolition order, or which has been declared unsafe or uninhabitable in accordance with law;

- (b) where fire or other damage exists which increases the risk of further loss to the property and the owner has not taken reasonable steps to protect and secure the property;
 - (c) where, following a fire or other damage which increases the risk of further loss, permanent repairs have not been commenced within sixty days after satisfactory adjustment of loss; or
 - (d) where fire or other damage which increases the risk of loss exists and the insured has stated or such time has elapsed as clearly indicates that the damage will not be repaired;
- (6) The right to decline insurance where the applicant is in arrears in the payment of insurance premiums to the Association, a licensed agent or broker or company for the types of coverage which are offered by the Association;
 - (7) The right to decline or cancel insurance on any building where 65% or more of the building is unoccupied, unless the building is undergoing rehabilitation and the Association, upon request, has received a schedule for such rehabilitation;
 - (8) The right to decline or cancel insurance on any building which has been abandoned or where there has been removal of fixtures or salvageable material from the building and the owner can give no reasonable explanation for such removal;
 - (9) The right to decline or cancel insurance where reliable information is secured indicating that the property will be burned for the purpose of

collecting insurance on the property;

- (10) The right to decline or cancel insurance where the applicant, insured, mortgagee, loss payee, or any other person having a financial interest in the property is convicted of arson or a crime involving a purpose to defraud an insurance company;
- (11) The right to decline or cancel insurance where the property has been subject to more than two (2) fires, each loss amounting to at least \$500 or one percent of the insurance in force, whichever is greater, in any 12-month period; or more than three (3) such fires in any 24-month period, provided that the cause of such fires is due to conditions which are the responsibility of the owner-named insured;
- (12) The right to decline or cancel insurance for failure to complete or for any misrepresentation in the application required by G.L. c. 175, Section 98;
- (13) The right to decline or cancel insurance for any coastal risk subject to storm surge or flooding from the sea, which is eligible for flood insurance under the National Flood Insurance Program, and which does not have the maximum coverage permitted by such program or the amount of coverage sought from the Association, whichever is less.

B. Reasonable underwriting standards with respect to Section II of homeowners insurance shall include the general standards listed above and in addition shall include, but not be limited to, the following:

- (14) Hazardous physical conditions, including but not limited to, unfenced

- swimming pools;
- (15) Presence of vicious animals;
- (16) Excessive loss frequency when the applicant has failed to take reasonable steps to correct any situation which has given rise to past losses.

Section XIV. Cancellation or Nonrenewal

- A. After a policy has been in effect for sixty days, it may be cancelled only in the manner and for the reasons provided in the Standard Massachusetts Fire Insurance Policy.
- B. During the first sixty days in which a policy is in effect it may be cancelled only for one or more of the following reasons:
 - (1) nonpayment of premium;
 - (2) evidence of owner or occupant incendiarism;
 - (3) any reason which would have been grounds for declination of the risk under the Plan of Operation if such reason had been known at the time of acceptance;
 - (4) any reason arising subsequent to the inspection which would have been grounds for declination of the risk under the Plan of Operation if such reason had existed at the time of acceptance;
 - (5) in cases in which an application for renewal or reissue of a policy is received less than twenty calendar days before the expiration of such policy, any reason which would have been grounds for declination of the risk under the Plan of Operation if such reason had been known at

- the time of receipt of such application for renewal or reissue;
- (6) any reason provided in the standard Massachusetts Fire Insurance Policy.
- C. Notice of cancellation by the Association shall be issued in accordance with the applicable requirements of Massachusetts law.
- D. A policy may be cancelled at any time at the request of the insured with the written assent of all mortgagees and loss payees.
- E. A policy may be cancelled at any time by a premium finance company or insurance broker or agent pursuant to a written power of attorney signed by the insured. In such cases the Association shall issue a notice of cancellation to each mortgagee or loss payee giving at least the statutory notice of cancellation, unless the mortgagee or loss payee assents in writing to an earlier cancellation.
- F. If the policy so provides, the Association will give written notice to the insured of its intent not to renew or reissue a policy providing protection against loss by fire to a dwelling or contents thereto at least forty-five days prior to expiration of the policy. The notice shall state the specific reasons for such decision and shall be sent or delivered either to the named insured at the address shown in the policy or to the insurance agent or broker who negotiated the issuance of the policy. The notice shall contain or be accompanied by a statement explaining that the insured has a right of appeal as provided in Section XV.
- G. Every member of the Association which issues a notice of cancellation or nonrenewal to a risk eligible to apply for insurance under this Plan shall

(except in cases of owner or occupant incendiarism, material misrepresentation, or non-payment of premium), furnish the policyholder thirty days advance notice of such cancellation or nonrenewal, and an explanation of the procedures for applying for insurance through the Association.

Section XV. Appeals

- A. Any applicant for insurance, any person insured pursuant to this Plan of Operation and any affected Insurer may appeal to the Board of Directors of the Association within fifteen days after any ruling, action or decision of the Association. The Board, or an appeals committee designated by the Board, shall hear and determine such appeal within fifteen days after it is filed. Such determination may be appealed to the Commissioner within ten days as provided in G.L. c. 175C, Section 7.
- B. If a decision of the Board is appealed to the Commissioner, the Association shall promptly file copies of all relevant documents on which its decision was based, including but not limited to the application, inspection report, all correspondence from the applicant or producer with the Commissioner, and the minutes of the hearing, with a copy to the applicant.
- C. Orders of the Commissioner may be appealed by any aggrieved person within ten days of the filing of such an order, as provided in G.L. c. 175C, Section 7.

Section XVI. Commissions

- A. The Association shall pay a commission to a licensed agent or broker

designated by the Eligible Applicant at the rate of 12% or such other rate as shall be set by the Commissioner from time to time at such percentage of the average commission rate customarily paid by those insurance companies who customarily compensate agents by commissions, as the Commissioner, after appropriate hearing, shall find to be sufficiently attractive to encourage agents and brokers to actively seek out risks and to assist property owners to obtain coverage while at the same time leaving a further incentive to the agent or broker to place such business through his customary markets when he finds that it is practicable.

- B. In the event of cancellation of a policy, or if an endorsement is issued which requires premium to be returned to the insured, the agent or broker shall return to the Association the commission on the unearned portion of the premium on the cancelled policy and on any reduction in premium, at the same rate at which such commissions were originally paid. The Association may offset any such amounts not paid by the agent or broker within thirty days against any commission otherwise payable to such agent or broker.

Section XVII. Statistical Reporting

Business written pursuant to this Plan of Operation shall be regarded as a separate kind or class of business for statistical purposes and shall be separately coded.

Section XVIII. Reports

The Association shall furnish all Members and the Commissioner a written report, quarterly or at such other times as the Board may determine or the Commissioner may require. The

report shall be in such form and detail as the Board of Directors may determine or the Commissioner may require. The report shall include the number of requests for inspection, risks inspected, risks rejected, risks conditionally accepted and reinspections made, and policies written. In addition, the Association shall compile and report homeowners insurance experience on policies issued by the Association by rating territory or zip code in accordance with G.L. c. 175, Section 4A.

Section XIX. Market Assistance Plan

The Association shall prepare and file for approval by the Commissioner a market assistance plan in accordance with the Statute to assist applicants to obtain homeowners insurance in the voluntary market.

Section XX. Public Education

The Association may undertake or fund public education programs to inform consumers about property insurance, loss control measures, and the availability of coverage through the voluntary market, as well as through the Association.

Section XXI. Group Marketing

No member company, broker or agent shall use the Association in any group marketing plan.

Section XXII. Amendment

The Association may, on its own initiative by a majority vote of the Board of Directors or at the request of the Commissioner, amend the Plan of Operation, in any manner not inconsistent with the Statute, subject to the approval of the Commissioner.

25015.02_planofooperation