

CHAPTER 65A

FIRE AND RELATED INSURANCE

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65A.01 MINNESOTA STANDARD FIRE INSURANCE POLICY.

[For text of subs 1 to 2a, see M.S.2002]

Subd. 3. **Policy provisions.** On said policy following such matter as provided in subdivisions 1 and 2, printed in the English language in type of such size or sizes and arranged in such manner, as is approved by the commissioner of commerce, the following provisions and subject matter shall be stated in the following words and in the following sequence, but with the convenient placing, if desired, of such matter as will act as a cover or back for such policy when folded, with the blanks below indicated being left to be filled in at the time of the issuing of the policy, to wit:

(Space for listing the amounts of insurance, rates and premiums for the basic coverages provided under the standard form of policy and for additional coverages or perils provided under endorsements attached. The description and location of the property covered and the insurable value(s) of any building(s) or structure(s) covered by the policy or its attached endorsements; also in the above space may be stated whether other insurance is limited and if limited the total amount permitted.)

In consideration of the provisions and stipulations herein or added hereto and of the premium above specified this company, for a term of from (At 12:01 a.m. Standard Time) to (At 12:01 a.m. Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified does insure and legal representatives

(In above space may be stated whether other insurance is limited.) (And if limited the total amount permitted.)

Subject to form No:(s) attached hereto.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such provisions, stipulations and agreements as may be added hereto as provided in this policy.

The insurance effected above is granted against all loss or damage by fire originating from any cause, except as hereinafter provided, also any damage by lightning and by removal from premises endangered by the perils insured against in this policy, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere. The amount of said loss or damage, except in case of total loss on buildings, to be estimated according to the actual value of the insured property at the time when such loss or damage happens.

If the insured property shall be exposed to loss or damage from the perils insured against, the insured shall make all reasonable exertions to save and protect same.

This entire policy shall be void if, whether before a loss, the insured has willfully, or after a loss, the insured has willfully and with intent to defraud, concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interests of the insured therein.

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion, or manuscripts.

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, providing that such fire did not originate from any of the perils excluded by this policy.

This company shall not be liable for loss by fire or other perils insured against in a commercial policy caused, directly or indirectly, by terrorism, unless an endorsement specifically assuming coverage for loss or damage caused by terrorism is attached to the policy.

Other insurance may be prohibited or the amount of insurance may be limited by so providing in the policy or an endorsement, rider or form attached thereto.

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of 60 consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

The extent of the application of insurance under this policy and the contributions to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirements or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

If loss hereunder is made payable, in whole or in part, to a designated mortgagee or contract for deed vendor not named herein as insured, such interest in this policy may be canceled by giving to such mortgagee or vendor a ten days' written notice of cancellation.

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee or contract for deed vendor of the covered real estate, no act or default of any person other than such mortgagee or vendor or the mortgagee's or vendor's agent or those claiming under the mortgagee or vendor, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee or vendor nor affect such mortgagee's or vendor's right to recover in case of loss on such real estate; provided, that the mortgagee or vendor shall on demand pay

according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee or vendor for any sum for loss under this policy for which no liability exists as to the mortgagor, vendee, or owner, and this company shall elect by itself, or with others, to pay the mortgagee or vendor the full amount secured by such mortgage or contract for deed, then the mortgagee or vendor shall assign and transfer to the company the mortgagee's or vendor's interest, upon such payment, in the said mortgage or contract for deed together with the note and debts thereby secured.

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

In case of any loss under this policy the insured shall give immediate written notice to this company of any loss, protect the property from further damage, and a statement in writing, signed and sworn to by the insured, shall within 60 days be rendered to the company, setting forth the value of the property insured, except in case of total loss on buildings the value of said buildings need not be stated, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured.

The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and, after being informed of the right to counsel and that any answers may be used against the insured in later civil or criminal proceedings, the insured shall, within a reasonable period after demand by this company, submit to examinations under oath by any person named by this company, and subscribe the oath. The insured, as often as may be reasonably required, shall produce for examination all records and documents reasonably related to the loss, or certified copies thereof if originals are lost, at a reasonable time and place designated by this company or its representatives, and shall permit extracts and copies thereof to be made.

In case the insured and this company, except in case of total loss on buildings, shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. In case either fails to select an appraiser within the time provided, then a presiding judge of the district court of the county wherein the loss occurs may appoint such appraiser for such party upon application of the other party in writing by giving five days' notice thereof in writing to the party failing to appoint. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then a presiding judge of the above mentioned court may appoint such an umpire upon application of party in writing by giving five days' notice thereof in writing to the other party. The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual value and loss. Each appraiser shall be paid by the selecting party, or the party for whom selected, and the expense of the appraisal and umpire shall be paid by the parties equally.

It shall be optional with this company to take all of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

There can be no abandonment to this company of any property.

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

It is moreover understood that there can be no abandonment of the property insured to the company, and that the company will not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy have been complied with, and unless commenced within two years after inception of the loss.

This company is subrogated to, and may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company; and the insurer may prosecute therefor in the name of the insured retaining such amount as the insurer has paid.

Assignment of this policy shall not be valid except with the written consent of this company.

IN WITNESS WHEREOF, this company has executed and attested these presents.

.....
(Signature)
.....
(Name of office)

.....
(Signature)
.....
(Name of office)

[For text of subds 3a to 6, see M.S.2002]

History: 2003 c 10 s 1

65A.29 CANCELLATION; NONRENEWAL; REFUSAL TO WRITE.

[For text of subds 1 and 3, see M.S.2002]

Subd. 4. **Form requirements.** Any notice or statement required by subdivisions 1 to 3, or any other notice canceling a homeowner's insurance policy must be written in language which is easily readable and understandable by a person of average intelligence and understanding. The statement of reason must be sufficiently specific to convey, clearly and without further inquiry, the basis for the insurer's refusal to renew or to write the insurance coverage.

The notice or statement must also inform the insured of:

- (1) the possibility of coverage through the Minnesota FAIR plan under sections 65A.31 to 65A.42;
- (2) the right to object to the commissioner under subdivision 9; and
- (3) the right to the return of unearned premium in appropriate situations under subdivision 10.

[For text of subds 5 to 11, see M.S.2002]

History: 2003 c 40 s 4

65A.32 PURPOSES.

The purposes of sections 65A.31 to 65A.42 are:

- (1) to encourage stability in the property and liability insurance market for property located in this state;
- (2) to encourage maximum use, in obtaining property and liability insurance, as defined in sections 65A.31 to 65A.42, of the normal insurance market provided by the private property and casualty insurance industry;
- (3) to encourage the improvement of the condition of properties located in this state and to further orderly community development generally;
- (4) to provide for an organization known as the Minnesota FAIR plan, which will assure fair access to insurance requirements in order that no property is denied

property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics;

(5) to publicize the purposes and procedures of the FAIR plan to the end that no one may fail to seek its assistance through lack of knowledge of its existence; and

(6) to provide for the formulation and administration by the Minnesota FAIR plan of a reinsurance arrangement whereby property and casualty insurers share equitably the responsibility for insuring insurable property for which property and liability insurance cannot be obtained through the normal insurance markets.

History: 2003 c 40 s 5

65A.33 DEFINITIONS.

[For text of subs 1 to 3, see M.S.2002]

Subd. 4. "Minnesota FAIR plan," or "plan," means the organization formed by insurers to assist applicants in securing property or liability insurance and to administer the FAIR plan.

Subd. 5. [Repealed, 2003 c 40 s 21]

Subd. 5a. **Member.** "Member" means any insurer as defined in subdivision 2.

Subd. 6. "Premiums written" means direct written premiums charged during the second preceding calendar year with respect to property in this state for fire, allied lines, homeowners, the nonliability component of farm policies, and the nonliability component of commercial multiperil policies, as reported by the members to the NAIC.

[For text of subd 7, see M.S.2002]

Subd. 9. **Board.** "Board" means the governing board of directors of the Minnesota FAIR plan.

Subd. 10. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

History: 2003 c 40 s 6-10

65A.34 PLAN COVERAGE.

Subdivision 1. **Application.** Any person having an insurable interest in real or tangible personal property who has been canceled, nonrenewed, or otherwise rejected for coverage in the private market may submit an application for coverage to the plan. If an inspection of the premises is performed, it must be done at no cost to the applicant.

Subd. 2. **Inspections.** Before the plan may deny coverage due to the condition of the property or write coverage with a condition charge, it must first inspect the property for which coverage has been requested. The manner and scope of the inspections of Minnesota FAIR plan business must be prescribed by the plan with the approval of the commissioner.

Subd. 3. **Initial inspection report.** An inspection report must be made for each property inspected. The report must cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

Subd. 4. **Condition charges.** Either during the inspection or immediately after the inspection, an employee of the FAIR plan shall inform the applicant as to the features that result in a condition charge if the risk is accepted. No inspector has the authority to advise whether the plan will provide the coverage.

Subd. 5. **Completed inspection report.** Within ten business days after the inspection, the FAIR plan shall prepare or have prepared a completed inspection report that includes conditions that are subject to a condition charge under the rating plan approved by the commissioner. A copy of the inspection report must be made available to the applicant or the applicant's agent upon request.

Subd. 6. [Repealed by amendment, 2003 c 40 s 11]

History: 2003 c 40 s 11

65A.35 ADMINISTRATION.

Subdivision 1. **Membership.** Each insurer authorized to write and engaged in writing within this state, on a direct basis, property or liability insurance or any component of this insurance contained in a multiperil policy, including homeowners and commercial multiperil policies, shall participate in the plan as a condition of its authority to write such kinds of insurance within this state.

Subd. 2. **Purposes.** The purposes of the Minnesota FAIR plan are:

(1) to formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics; and

(2) to formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the Minnesota FAIR plan share equitably the responsibility for insuring property which is insurable but for which property or liability insurance cannot be obtained through normal insurance markets.

Subd. 3. **Plan of operation.** The plan of operation of the Minnesota FAIR plan, consistent with the provisions of sections 65A.31 to 65A.42 and the purpose of the plan must provide for the FAIR plan, the reinsurance arrangement, and the economical and efficient administration of the Minnesota FAIR plan, including, but not limited to, management of the plan, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation is subject to approval by the commissioner.

Subd. 4. **Amendment of the plan of operation.** The Minnesota FAIR plan shall amend the plan of operation on its own initiative, subject to prior approval by the commissioner, or at the direction of the commissioner.

Subd. 5. **Administration.** (1) The Minnesota FAIR plan is administered by a board of nine directors, five of whom are elected by the members of the plan and four who represent the public. Public directors may include licensed insurance agents. Public directors are appointed by the commissioner. No less than two elected directors must be representatives of domestic insurers. In the election of directors, each member of the Minnesota FAIR plan is allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the plan bears to the total participation.

(2) Any vacancy among the elected directors must be filled by a vote of the other elected directors.

(3) If at any time the members fail to elect the required number of directors to the board, or a vacancy remains unfilled for more than 15 days, the commissioner may appoint the directors necessary to constitute a full board of directors.

(4) Vacancies among directors appointed by the commissioner must be filled by appointment by the commissioner. A person so appointed serves until the end of the term of the director the person is replacing.

(5) All public directors serve for a period of two years. The terms of all public directors begin on July 1 of the year their appointments begin.

(6) The plan of operation must provide for adequate compensation of public directors. A per diem amount and a procedure for reimbursement of expenses incurred in the discharge of their duties must be included in the plan. Private directors are not eligible for compensation.

Subd. 6. **Participation.** All members of the Minnesota FAIR plan shall participate in its expenses, losses, and equity distribution in the proportion that the premiums

written as defined in this subdivision, but excluding that portion, if any, of premiums attributable to the reinsurance arrangement maintained by the facility, by each such member during the second preceding calendar year bear to the aggregate premiums written in this state by all members of the plan. Participation by each member in the plan is determined annually by the plan on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the NAIC.

History: 2003 c 40 s 12

65A.36 UNDERWRITING.

Subdivision 1. Evaluation of risk. Agents are not permitted to bind coverage. The Minnesota FAIR plan shall issue a policy if the risk meets preliminary underwriting requirements. The plan may request an inspection report to obtain further underwriting information. If the inspection reveals that the applicant is not eligible for the coverage applied for, the plan shall inform the applicant within 59 days of the inception of the policy that the policy will be rescinded under section 65A.01, subdivision 3, paragraph (b), or canceled under section 65A.38. If the applicant is eligible for other coverage provided by the plan, the plan will offer to replace the rescinded or canceled policy with a policy providing coverage for which the applicant is eligible.

Before the 60th day after the inception of the policy, the FAIR plan shall advise the applicant that:

(1) the risk is acceptable with or without a condition charge or adjustment of policy limits. If a condition charge applies, the plan will tell the insured what improvements are necessary in order to remove the charge;

(2) the risk is not acceptable unless improvements noted by the plan are made by the applicant and confirmed by the plan; or

(3) the risk is not acceptable for the reasons stated by the plan.

Subd. 2. Premium invoice. If the risk is accepted, an invoice will be delivered to the applicant requiring remittance of the appropriate premium.

Subd. 3. Declining a risk. In the event a risk is declined because it fails to meet reasonable underwriting standards, the applicant must be so notified. Reasonable underwriting standards include, but are not limited to:

(1) the physical condition of the property, such as its construction, heating, wiring, evidence of previous fires, significant unrepaired damage, or general deterioration;

(2) the present use or housekeeping of the property such as vacancy, overcrowding, storage of rubbish, or flammable materials; or

(3) other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner are not acceptable criteria for declining a risk.

Subd. 4. Appeal of plan decision. In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or the coverage will be written on condition that the property be improved, the plan shall, within five business days, send copies of the inspection report to the applicant and the commissioner, and shall advise the applicant of the right to and the procedure for an appeal to the governing board and to the commissioner.

Subd. 5. Action on completed application. The plan must within five business days of the receipt of a completed application advise the applicant that the risk has been declined, the risk has been accepted, or that the limit of coverage has been adjusted to reflect the insurable value of the subject property.

History: 2003 c 40 s 13

65A.37 POLICY FORMS.

All policies must be on standard policy forms published by Insurance Services Office, issued for a term of one year, and approved by the commissioner.

History: 2003 c 40 s 14

65A.375 RATES.

The commissioner shall set the insurance rates for cooperative housing, organized under chapter 308A, and for neighborhood real estate trusts, characterized as nonprofit ownership of real estate with resident control. The rates must be actuarially sound. All other rates used by the Minnesota FAIR plan must be approved by the commissioner prior to use.

History: 2003 c 40 s 15

65A.38 POLICY CANCELLATION.

Subdivision 1. The Minnesota FAIR plan shall not cancel a policy issued under sections 65A.31 to 65A.42 except:

- (1) for cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the plan at the time of acceptance;
- (2) for nonpayment of premium; or
- (3) with the approval of the governing board.

[For text of subds 2 to 4, see M.S.2002]

Subd. 5. Cancellation of a commercial property insurance policy issued by the Minnesota FAIR plan must comply with sections 60A.35 to 60A.38.

History: 2003 c 40 s 16,17

65A.40 EDUCATION PROGRAMS.

The plan will undertake a continuing public education program, in cooperation with producers and others, to assure that the Minnesota FAIR Plan Act receives adequate public attention.

History: 2003 c 40 s 18

65A.41 AGENTS.

Subdivision 1. **Generally.** A person licensed under chapter 60K may submit an application for coverage to the Minnesota FAIR plan and receive a commission from the plan for premiums paid for coverage. However, the licensee is not an agent of the Minnesota FAIR plan for purposes of state law. All checks or similar instruments submitted in payment of plan premiums must be made payable to the Minnesota FAIR plan and not the agent.

Subd. 2. **Duty to submit application.** An agent or broker shall not refuse to submit an application for basic property insurance coverage to the Minnesota FAIR plan if licensed to write and actively engaged in writing such insurance.

History: 2003 c 40 s 19

65A.42 IMMUNITY FROM LIABILITY.

There is no civil or criminal liability on the part of, and no cause of action of any nature arises against insurers, the Minnesota FAIR plan, the governing board, or employees of the plan or the commissioner or the commissioner's authorized representatives, for any acts or omissions by them if the acts or omissions were in good faith and within the scope of their responsibilities under sections 65A.31 to 65A.42. The inspection reports and communications of the inspection vendors and the Minnesota FAIR plan are not public documents.

History: 2003 c 40 s 20