

**Subchapter T. FAIR Plan**  
**Division 1. Plan of Operation**  
**28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and 5.9930 - 5.9933**

**INTRODUCTION.** The commissioner of insurance adopts amended 28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933, concerning residual market coverage for property owners' associations. The new and amended sections implement House Bill 998, 88th Legislature, 2023, Regular Session. Sections 5.9910, 5.9913, 5.9915, 5.9916, 5.9917, 5.9932, and 5.9933 are adopted without changes to the text as proposed in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4682). Sections 5.9911, 5.9914, 5.9930, and 5.9931 are adopted with changes to the proposed text to correct errors and in response to comments.

**REASONED JUSTIFICATION.** The amended and new sections are necessary to implement HB 998, which authorizes the Fair Access to Insurance Requirements Plan (FAIR Plan) to provide property owners' association insurance for condominium owners' and homeowners' associations.

HB 998 requires that the commissioner set, by rule, a designated area for FAIR Plan property owners' association insurance coverage for condominium owners' and homeowners' associations. According to Insurance Code §2211.1515(a), in determining the designated area, the commissioner must "to the extent practicable, ensure the designated area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under Section 2210.005; and follow geographical features."

After determining the designated area, Insurance Code §2211.051(b) authorizes the commissioner to set underserved areas within that designated area, if the commissioner determines that "property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks."

The amendments incorporate references to property owners' association insurance in various sections of FAIR Plan's plan of operation where residential property insurance is referenced and remove the term "residential" before "property" where those terms appear, which reflects the expanded property types authorized under Insurance Code Chapter 2211.

In addition, the amendments enhance clarity and consistency with agency style guidelines by deleting "shall" or replacing "shall" with "will" or another context-appropriate word. Amendments also replace "Association" with "FAIR Plan," "Commissioner" with "commissioner," and "pursuant to" with "under," where appropriate.

The amendments also (1) update statutory references to reflect Insurance Code recodification; (2) add or amend Insurance Code section titles and citations for consistency; and (3) correct and revise punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences. These nonsubstantive amendments are not noted in the following descriptions of the sections unless it is necessary or appropriate to provide additional context or explanation.

Descriptions of the new and amended sections follow.

**Section 5.9910. Purpose.** The amendments incorporate property owners' association insurance into the purpose of FAIR Plan and change "qualified citizens of Texas" to

"insurable risks" to better align with statutory language and recognize that FAIR Plan may insure entities as well as individuals.

**Section 5.9911. Definitions.** The amendments add and clarify definitions to align with the broader scope of Insurance Code Chapter 2211, introducing definitions for "property owners' association," "property owners' association insurance," "TDI," and "TWIA." The amendments also add "FAIR Plan" to the current definition of "Association" and replace "Association" with "FAIR Plan." With these changes, both "Association" and "FAIR Plan" have the same meaning in these rules. Using "FAIR Plan" adds clarity because there are many associations. "Association" will be replaced with "FAIR Plan" in future amendments to other FAIR Plan rules.

An amendment adds a reference to property owners' association insurance to the definition of "inspector." This clarifies that an inspector may determine the condition of properties for which property owners' association insurance coverage under FAIR Plan is sought.

Amendments update an Insurance Code citation in the definition of "residential property insurance" and expand the definition of "underserved area" to include both residential property insurance and property owners' association insurance.

An amendment adds a reference to property owners' association insurance to the definition of "underwriting rules" to clarify that the underwriting rules include those for property owners' association insurance.

The proposal incorrectly cited Insurance Code §2211.011(6-a) for the definition of "property owners' association insurance." The correct citation is §2211.001(6-a), which is corrected in the adopted text.

**Section 5.9913. Authority of Agents and Commissions.** The amendments add "property owners' association" as a type of applicant. The amendments also increase readability of §5.9913(b) by rephrasing it to state that agents may not hold themselves out as agents of FAIR Plan.

**Section 5.9914. Maximum Limits of Liability and Limitations.** The amendments set the maximum liability limit for property owners' association insurance at \$3 million for commercial structures and authorize FAIR Plan to reinsure some or all risks that are within or at the limit.

TDI looked at residual market limits for other states and considered the purpose and funding of FAIR Plan when setting the limit. The maximum liability limit of \$3 million acknowledges that property owners' association insurance is commercial and presents different risks than FAIR Plan's residential coverage. In response to a comment, the adopted text removes the term "per location" from subsection (b). This change clarifies that the maximum limit applies on a per-structure basis.

**Section 5.9915. Inspections.** Amendments make changes throughout the section to add a reference to property owners' association insurance and revise or remove "residential" in addressing property insurance, for consistency with HB 998 and other amendments and new text.

**Section 5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements.** The amendments (1) remove the term "residential" in "residential

property" to reflect that property under the section includes commercial property in property owners' association, and (2) replace "association policies" with "residential property insurance" in §5.9916(d) to clarify that the prohibition against covering businesses or commercial risks applies only to residential property insurance, not property owners' association insurance.

**Section 5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation.** The amendments expand the scope of the section by adding "or property owners' association insurance" after each instance of "residential property insurance." This addition reflects the expanded scope of Insurance Code Chapter 2211 to include property owners' association insurance, as authorized under HB 998.

An amendment updates an incorrectly titled citation to the "Property Tax Code" by removing "Property," so the citation correctly reads "§33.06 of the Tax Code." Amendments also add the title of Tax Code §33.06 so it is consistent with other code citations throughout the rule text.

**Section 5.9930. Designated Area for Property Owners' Association Policies.** New §5.9930 implements HB 998 by designating the area where FAIR Plan could write property owners' association insurance under Insurance Code §2211.1515. The commissioner designates the region extending 10 miles inland from the geographical features that form the border of the Texas Windstorm Insurance Association (TWIA) catastrophe area as the designated area.

Insurance Code §2211.1515 sets an inland boundary for the designated area--10 miles from the catastrophe area. Setting the coastal side boundary as the catastrophe

area boundary and proposing a 10-mile strip as the designated area aligns with information from legislative hearings and comments received on the informal draft.

The text of paragraph (1) as proposed has been changed to correct a reference to an agency order. As adopted, "Commissioner Order No. 16878" is changed to "State Board of Insurance Order No. 16878." In addition, for clarification, a list of the 14 counties referenced by the order is included in the text as adopted.

**Section 5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance.** New §5.9931 specifies the requirements for property owners' associations to petition for an area to be classified as underserved for property owners' association insurance. The section requires the petitioner to provide information that will help the commissioner determine whether an area is underserved. In response to a comment, the requirement in proposed subsection (c)(7) has been removed. As adopted, §5.9931(c)(7)(C) only requires petitioners to provide the names, physical addresses, and contact information of other property owners' associations *if known*.

**Section 5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance.** New §5.9932 outlines TDI's procedures for assessing petitions from property owners' associations seeking classification of areas as underserved for property owners' association insurance.

New subsection (a) states that TDI will review petitions for compliance with §5.9931. TDI may also gather additional information to determine whether the proposed area qualifies as underserved.

New subsection (b) states that TDI may schedule a public hearing and provide notice as required under Insurance Code §2211.051.

New subsection (c) provides that the commissioner may determine that some, all, or none of the proposed area is underserved.

**Section 5.9933. Setting Underserved Areas for Property Owners' Association Insurance.** New §5.9933 recognizes the commissioner's statutory authority under Insurance Code §2211.051(b) to issue an order, either in response to a petition or on the commissioner's own initiative, determining that all or part of the designated area is underserved.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** TDI provided an opportunity for public comment on the rule proposal for a period that ended on July 29, 2024. A public hearing on the proposal was held on July 16, 2024; the hearing notice was published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4682).

**Commenters:** TDI received comments from three commenters during the comment period. FAIR Plan's representative spoke in support of the proposal. The Community Associations Institute Texas Legislative Action Committee and a property owner association manager provided written comments in support of the proposal with changes.

**Comments on the Maximum Limits of Liability and Limitations (§5.9914)**

**Comment.** One commenter expresses concern about the maximum limit of liability under §5.9914(b), which is currently set at \$3 million per structure. The commenter suggests

switching to a per-residential-unit basis, similar to the National Flood Insurance Program, to ensure that larger buildings with multiple units are adequately covered.

**Agency Response.** TDI declines to make the suggested change. The limit of \$3 million per structure is consistent with practices in other state residual markets. According to the 2024 Compendium of Property Insurance Plans from the Property Insurance Plans Service Office (PIPSO), most states set limits on the basis of the building rather than individual units (see Table 4 of the Compendium). Setting the limits on a per-unit basis with no maximum structure limit would make it more difficult for FAIR Plan to project and manage its exposure and could complicate reinsurance purchases. The per-structure limit is also consistent with how TWIA handles commercial property policies.

**Comment.** A commenter states that the \$3 million maximum limit of liability is too low and suggests increasing it to \$5 million to better match current rebuilding costs and reduce the number of structures for which property owners' associations would need to buy "reinsurance." TDI interprets this to mean an additional policy is needed to cover the remaining amount of insurance necessary to insure a structure.

**Agency Response.** TDI declines to increase the \$3 million limit because it is greater than most other states and is a reasonable amount to provide insureds a first layer of coverage while managing FAIR Plan's exposure with this new insurance. Of the 32 states listed in PIPSO's report, only two are listed with maximum limits for commercial property over \$3 million. Another state is listed with no maximum limits for commercial residential property (as opposed to commercial non-residential property). The majority of states have limits below \$2 million (see PIPSO's 2024 Compendium of Property Insurance Plans, Table 4).

Insurance Code §2211.054(11) requires that FAIR Plan's plan of operation set maximum limits of liability. The statute necessarily requires balancing the need to make coverage available with the need to limit FAIR Plan's potential exposure. Setting a \$3 million maximum limit for this new type of FAIR Plan insurance is a reasonable and measured approach. If needed, TDI can revisit this limit in the future.

**Comment.** A commenter suggests that FAIR Plan should allow for acting as an excess layer above primary insurance when primary coverage does not fully insure a property owners' association or when a specific peril coverage is unavailable.

**Agency Response.** TDI declines to make this change, as it is beyond the scope of this rulemaking.

**Comment.** A commenter states that the current wording on the maximum limit of liability in §5.9914(b) is unclear and suggests removing the term "per location" to avoid confusion.

**Agency Response.** TDI agrees and has removed the term "per location" in §5.9914(b). This change clarifies that the \$3 million limit applies per structure. If there is more than one structure at a location, each structure will have its own limit. The per-structure limit aligns with the way TWIA sets its limits, which will assist with efficiency in FAIR Plan operations.

### **Comments on Authority of Agents and Commissions (§5.9913)**

**Comment.** A commenter suggests that the phrase "upon request" in §5.9913(a) is unclear about who should make the request and proposes additional language.

**Agency Response.** TDI disagrees. Section 5.9913(a) is sufficiently clear that residential property owners, property owners' associations, or others with insurable interests may apply for FAIR Plan coverage. The phrase "upon request" has been in §5.9913(a) for many years without reported confusion. Therefore, TDI declines to make this change.

**Comment.** A commenter suggests adding language to §5.9913(b) to state that only after determining an applicant's eligibility may an agent inform a potential insured that they are appointed as an agent to FAIR Plan. The commenter states that without this addition, residential property owners and property owners' associations might remain unaware of FAIR Plan as an option, even if they are eligible.

**Agency Response.** TDI declines to make the suggested change. Adding the language could cause confusion. FAIR Plan does not sell policies directly to the public and does not have its own agents. Section 5.9913(f) specifically provides that an applicant may apply to FAIR Plan only through an agent. The purpose of §5.9913(b) is to prohibit agents from misrepresenting themselves as agents of FAIR Plan. Agents are responsible for assisting applicants in finding coverage and may inform them about FAIR Plan as an option.

### **Comments on Application, Binder, Policy Issuance, Renewal, and Cancellation (§5.9917)**

**Comment.** A commenter seeks clarification on §5.9917(a)(1) and questions whether an offer from a Lloyd's plan qualifies as an offer to insure for determining eligibility for FAIR Plan. The commenter suggests that TDI refer to Insurance Code §551.051(1-a) and says that a Lloyd's plan is a surplus lines insurer and thus excluded as an insurer.

**Agency Response.** TDI disagrees. Insurance Code Chapter 2211 provides that offers from Lloyd's plan insurers qualify as offers to insure for the purpose of determining eligibility. Insurance Code §2211.1515(b) provides that two declinations from insurers writing property owners' association insurance is evidence that a property owners' association cannot obtain insurance through the voluntary market. Insurance Code §2211.001(5) defines "insurer" to mean "an authorized insurer writing property insurance in this state, including: (A) a Lloyd's plan; and (B) a reciprocal or interinsurance exchange."

Also, Insurance Code §551.051(1-a) specifically includes Lloyd's plans as insurance companies "admitted to engage in business and authorized to write liability insurance or commercial property insurance in this state."

**Comment.** A commenter suggests that the terminology in §5.9917(a)(1) conflicts with Insurance Code §551.051(1-a) and suggests using "insurers" instead of "insurance companies." The commenter also suggests using the term "admitted" instead of "licensed" in this subsection to align with the definition of "insurer" in Insurance Code §551.051(1-a).

**Agency Response.** TDI disagrees. Using the term "insurance companies" and the word "licensed" in §5.9917(a)(1) is not contrary to the meaning of the words "insurer" and "authorized" as used in the relevant statutory provisions, Insurance Code §2211.151 and §2211.1515. Section 5.9917(a)(1) has used "insurance companies" and "licensed" for many years, and TDI is not aware of any issues from using those terms. TDI will consider revising or clarifying the subsection in future rulemaking if issues arise.

**Comment.** A commenter suggests that declinations should be based on whether coverage meets "the level required by lenders, laws, or the property owners' associations governing documents."

**Agency Response.** TDI declines to make the suggested change. The suggested language lacks specific criteria and could lead to unclear and inconsistent eligibility requirements. Without detailed knowledge of the various laws and documents referenced, this could lead to uneven access to FAIR Plan.

**Comment.** A commenter expresses concerns that the requirement for two insurance companies to decline providing residential insurance property and property owners' association insurance is too restrictive for FAIR Plan eligibility. The commenter also seeks clarification on whether §5.9917 replaces Insurance Code §2211.1515 and suggests changing "authorized" to "admitted" in Insurance Code §2211.1515.

**Agency Response.** TDI declines to make changes to the current requirements. Section 5.9917(a)(1), which requires that two insurance companies must decline to provide coverage, aligns with and implements Insurance Code §2211.1515(b), which requires two declinations as evidence of the applicant's inability to obtain insurance. Any modification to this requirement would need legislative action. Likewise, legislation would be required to replace the word "authorized" in Insurance Code §2211.1515 with "admitted."

### **Comments on Petition Requirements (§5.9931)**

**Comment.** A commenter states that the requirement in §5.9931(c)(7) is difficult to interpret and suggests removing it. The commenter notes that listing every property

owners' association within a 1-mile radius is challenging due to the lack of a central database.

**Agency Response.** TDI agrees and has removed the proposed requirement to list all property owners' associations within a 1-mile radius. As adopted, §5.9931(c)(7)(C) requires petitioners to provide, *if known*, the names, physical addresses, and contact information of property owners' associations within the proposed underserved area. This simplifies the petition process while still collecting relevant information.

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**STATUTORY AUTHORITY.** The commissioner adopts amendments to §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 under Insurance Code §§2211.051, 2211.053(b), 2211.1515(a), and 36.001.

Insurance Code §2211.051 authorizes the commissioner to include in FAIR Plan the delivery of property owners' association insurance in underserved areas as provided in Insurance Code §2211.1515 if the commissioner determines, after notice and a hearing, that property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Insurance Code §2211.053(b) requires amendments to FAIR Plan's plan of operation to be adopted by the commissioner by rule.

Insurance Code §2211.1515(a) provides that the commissioner must, when determining the area to be designated by rule, ensure the area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features when making this decision.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**TEXT.****§5.9910. Purpose.**

The Texas FAIR Plan Association was established by Insurance Code Chapter 2211, concerning FAIR Plan, for the purpose of delivering residential property insurance, and later, property owners' association insurance, to insurable risks in areas determined by the commissioner to be underserved areas. The purpose of this plan of operation is to set forth and establish the structure, function, procedures, and powers of the Texas FAIR Plan Association.

**§5.9911. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings.

(1) Agent--Any person licensed by the commissioner as a general lines property and casualty agent under Insurance Code §4051.051, concerning License Required.

(2) Applicant--Any person applying for insurance from FAIR Plan, including any person designated by the applicant to be the applicant's representative at an inspection.

(3) Association or FAIR Plan--The Fair Access to Insurance Requirements (FAIR) Plan Association created under Insurance Code Chapter 2211, concerning FAIR Plan.

(4) Commissioner--The Texas commissioner of insurance.

(5) Governing Committee--The Governing Committee of FAIR Plan authorized under Insurance Code §2211.052, concerning Administration of FAIR Plan; Composition of Governing Committee.

(6) Inspector--The individual(s) or organization(s) designated by FAIR Plan to make inspections to determine the condition of the properties for which residential property insurance and property owners' association insurance is sought and to perform such other duties as may be authorized by FAIR Plan or the commissioner.

(7) Insurable risk--Property that meets the underwriting rules of FAIR Plan for determining the insurability of the risk.

(8) Member insurer or member--An insurer licensed to write property and casualty insurance in Texas and writing residential property insurance in Texas, including reciprocal exchanges and Lloyds plan insurers.

(9) Property owners' association--Homeowners' or condominium owners' association.

(10) Property owners' association insurance--Has the meaning assigned by Insurance Code §2211.001(6-a), concerning Definitions.

(11) Residential property insurance--Coverage as defined in Insurance Code §2211.001, concerning Definitions, with the exception of farm and ranch owners and farm and ranch insurance as set forth in Insurance Code §2301.003, concerning Applicability of Subchapter.

(12) Residential property insurance premiums--Net direct written premiums for residential property insurance for a calendar year as determined by the Texas residential property statistical plan.

(13) TDI--The Texas Department of Insurance.

(14) Underserved area--

(A) For residential property insurance, the areas designated by the commissioner in §5.3701 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Insurance Code Article 21.49A).

(B) For property owners' association insurance, the areas determined by the commissioner under §5.9933 of this chapter (relating to Determining Underserved Areas for Property Owners' Association Insurance).

(15) TWIA--The Texas Windstorm Insurance Association established under Insurance Code Chapter 2210.

(16) Underwriting rules--The underwriting rules for residential property insurance and property owners' association insurance as developed by FAIR Plan that have been filed with and approved by the commissioner.

**§5.9913. Authority of Agents and Commissions.**

(a) Upon request, an agent may assist any property owners' association or owner of residential property in the completion and submission of an application for insurance on forms prescribed by FAIR Plan.

(b) Agents may not hold themselves out as agents of FAIR Plan.

(c) A commission must be paid on the basis of a commission schedule set by the Governing Committee and approved by the commissioner. The commission must be

based on paid gross written premiums and subject to adjustment based on policy changes and cancellations. The agent must remit the gross premium collected on a FAIR Plan policy to FAIR Plan, and FAIR Plan will pay the commission.

(d) FAIR Plan must establish minimum requirements and performance standards for agents who submit applications to FAIR Plan or renew business in FAIR Plan. These requirements and standards must be designed to ensure the efficient transmission of applications, forms, notices, and money from the agent to FAIR Plan and vice versa; and ensure the efficient operation of FAIR Plan, and the efficient and convenient servicing of applicants and policyholders. FAIR Plan may require that agents demonstrate and certify compliance with these requirements and standards. FAIR Plan has the power to bar an agent from submitting new applications to or renewing business in FAIR Plan if the agent refuses to demonstrate and certify compliance with these requirements and standards or the agent violates any of these requirements or standards. Such minimum requirements and performance standards are binding upon any agent as a condition of the agent's request for an inspection, submission of an application, receipt of commissions from FAIR Plan, or other act in connection with FAIR Plan. FAIR Plan may contract with agents who meet FAIR Plan's standards and may limit applications to FAIR Plan to those agents. FAIR Plan is not required to appoint agents.

(e) FAIR Plan may limit communications with agents to website communications only.

(f) An applicant may apply to FAIR Plan only through an agent.

**§5.9914. Maximum Limits of Liability and Limitations.**

(a) The maximum limits of liability for residential property insurance per location through FAIR Plan are \$1,000,000 dwelling and \$500,000 contents. FAIR Plan is authorized to reinsure some or all risks that are within or at these maximum limits.

(b) The maximum limit of liability for property owners' association insurance through FAIR Plan is \$3,000,000 per structure, including business personal property. FAIR Plan is authorized to reinsure some or all risks that are within or at the maximum limit.

(c) FAIR Plan may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Insurance Code Chapter 2210, concerning Texas Windstorm Insurance Association.

(d) FAIR Plan may issue a policy that includes coverage for an amount in excess of a liability limit set forth in subsection (a) of this section, if FAIR Plan first obtains, from a reinsurer approved by the commissioner, reinsurance for the full amount of policy exposure above the limits for any given type of risk.

(e) The premium charged by FAIR Plan for the excess coverage must be equal to the amount of the reinsurance premium charged to FAIR Plan by the reinsurer, plus any payment to FAIR Plan that is approved by the commissioner.

**§5.9915. Inspections.**

(a) The underwriting rules must determine the inspection criteria for risks to be written by FAIR Plan. FAIR Plan may issue a policy of residential property insurance or property owners' association insurance on certain types of risks without an inspection in accordance with the underwriting rules.

(b) An inspection must be made only of property requiring an inspection to determine eligibility for FAIR Plan coverage in accordance with the underwriting rules. The inspection must be free of charge to the applicant. An inspection request may be made by the owner, their representative, or an agent.

(c) All inspection reports must be in writing and must contain the information necessary to determine eligibility for coverage under FAIR Plan's underwriting rules. 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 must be sent within 10 days to FAIR Plan.

(d) The inspection report must contain information describing:

- (1) occupancy;
- (2) information necessary for underwriting and rating;
- (3) construction; and
- (4) physical deficiencies.

(e) If an interior inspection is necessary to determine eligibility of property described in an application submitted to FAIR Plan, the inspector must contact the applicant and arrange for the applicant to be present during the inspection. The inspector may not recommend correction of physical deficiencies or advise the applicant on whether FAIR Plan will provide coverage.

(f) FAIR Plan must, as soon as practical but not to exceed 30 days after receipt of the inspection report, advise the applicant and agent of the following.

(1) If the inspector finds that the property meets the underwriting rules, FAIR Plan must notify the applicant in writing and issue a policy or binder.

(2) FAIR Plan must indicate to the applicant any condition charges that have been applied by FAIR Plan in accordance with §5.9917(h) of this subchapter (relating to Application, Binder, Policy Issuance, Renewal, and Cancellation).

(3) If the property is not insurable based on the underwriting rules, FAIR Plan must notify the applicant in writing why the property is not insurable.

(g) If, at any time, the applicant makes improvements in the property or its condition that the applicant believes are sufficient to make the property insurable, an inspector must reinspect the property upon request. The applicant is eligible for one reinspection any time within 60 days after the initial inspection. If, upon reinspection, the property meets FAIR Plan's underwriting rules, FAIR Plan must notify the applicant in writing and issue a policy or binder.

(h) If an inspection report shows that a property has unrepaired damages or 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 a code, ordinance, or rule, the applicant must submit to FAIR Plan a detailed plan that indicates the manner and estimated period of time in which the violation will be corrected or the damage repaired. FAIR Plan may not provide coverage unless the necessary corrections are completed to the satisfaction of FAIR Plan.

(i) FAIR Plan may, for cause upon information or well-founded belief, without notice to the insured at any time during the policy term, inspect an insured property to determine whether the property meets the underwriting rules. FAIR Plan need not afford an insured the opportunity to be present during a reinspection nor furnish the insured with a copy of a reinspection report, unless requested. Reinspections may also occur:

(1) upon change in type of occupancy; or

(2) on a reasonable periodic schedule.

(j) FAIR Plan may cancel or refuse to renew a policy on the basis of the reinspection report, according to the policy terms and this plan of operation.

**§5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements.**

(a) FAIR Plan must adopt application forms. The forms must be designed to obtain all of the information necessary for underwriting and rating the risk. The forms may also elicit additional information that FAIR Plan may use to revise its rates, underwriting rules, policy forms, and endorsements. An application is considered complete when every question on the application form is answered fully, is signed by a proposed named insured, and is submitted by the agent. FAIR Plan may independently verify the information in an application or request additional information from the applicant or other sources.

(b) FAIR Plan must file with the commissioner for approval the underwriting rules for FAIR Plan policies before use. The underwriting rules must determine whether a property is an insurable risk eligible for FAIR Plan coverage, and if eligible, what coverages, policy forms, and endorsements can be offered for that risk. The underwriting rules are subject to the underwriting standards set forth in §§5.9914, 5.9915, and 5.9917 of this subchapter (relating to Maximum Limits of Liability and Limitations; Inspections; and Application, Binder, Policy Issuance, Renewal, and Cancellation) and any other requirements set forth in the underwriting rules. The rules must include under what circumstances FAIR Plan may grant an agent permission to bind coverage.

(c) FAIR Plan must file with the commissioner for approval the proposed rates and supplemental rate information, including a manual of rating rules, to be used in connection with the issuance of FAIR Plan policies or endorsements. No policies or endorsements may be issued unless the commissioner has approved the rates to be applied to the policy or endorsement.

(1) FAIR Plan rates must be set in an amount sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

(2) The rate filing must also provide for:

(A) premium installment payment plans, including a servicing fee for those policyholders electing to use such a plan; and

(B) deductible options, such as different dollar amounts or different percentages of property coverage limits that may vary by coverage or peril insured against.

(d) FAIR Plan must file with the commissioner for approval policy forms and endorsements before use. The policy forms and endorsements that FAIR Plan will offer to applicants are governed by its underwriting rules. FAIR Plan may offer its policy forms on either an actual cash value or a replacement cost value basis, based on its underwriting rules. Residential property insurance policies may not cover businesses or commercial risks, even if they are operated in or from a residence. FAIR Plan policies may not cover motor vehicles.

**§5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation.**

(a) An agent must maintain and submit, at the request of FAIR Plan, written documentation that indicates all of the following.

(1) At least two insurance companies, not in the same holding company as defined in Insurance Code Chapter 823, concerning Insurance Holding Company Systems, licensed to write and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas have declined to provide residential property insurance or property owners' association insurance (the names of the two insurance companies must be identified), and the applicant has not received a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed in Texas, not including any surplus lines insurers.

(2) There are no outstanding taxes, assessments, penalties, or charges with respect to the property to be insured, except those covered under a properly filed deferral affidavit in compliance with §33.06 of the Tax Code, concerning Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person or Disabled Veteran.

(3) The applicant has not received written notice from an authorized public entity stating that the property is in violation of any building, housing, air pollution, sanitation, health, fire, or safety code, ordinance, or rule.

(b) FAIR Plan may specify what documentation would fulfill the requirements of subsection (a)(1) - (3) of this section.

(c) FAIR Plan is under no obligation to issue residential property insurance or property owners' association insurance unless the property constitutes an insurable risk in accordance with FAIR Plan's underwriting rules. FAIR Plan, in determining whether the property is insurable, may not consider the condition of surrounding property or properties, where such condition is not within the control of the applicant.

(d) FAIR Plan must deliver a policy or binder to the agent upon acceptance of the risk. FAIR Plan must pay the authorized commission to the agent.

(e) The effective date of coverage may be no earlier than the date and time that FAIR Plan both accepts and binds the risk. The policy must be issued in the name of FAIR Plan, as insurer.

(f) FAIR Plan may suspend acceptance of applications in the state when issuance of binders and/or policies has been suspended by TWIA. FAIR Plan may also suspend acceptance of applications when and in the part of the state it finds that an ongoing event threatens to create an imminent danger of catastrophic losses.

(g) The policy must be issued for a term of one year.

(h) If the property is found to be an insurable risk but the inspection reveals that there are one or more physical deficiencies, surcharges will be imposed according to the rates and underwriting rules. If the physical deficiencies are corrected and verified, the surcharges must be revised.

(i) In accordance with the underwriting rules of FAIR Plan except for subsection (k) of this section, at least 30 days before the expiration of a FAIR Plan policy, FAIR Plan must do one of the following:

(1) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan policy for a term of one year at the FAIR Plan rates that will be in force on the effective date of the renewal;

(2) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan policy conditioned on a change in coverage, limits, and/or terms or conditions;  
or

(3) send a notice to the policyholder with a copy to the agent of nonrenewal of FAIR Plan policy.

(j) If a payment for an estimated premium, annual premium, or any installment payment is refused or dishonored by the bank upon which it is drawn for any reason, coverage under FAIR Plan policy must be cancelled for nonpayment of premium, and FAIR Plan must send a notice of cancellation.

(k) Every two years starting with the second renewal, the policyholder must reapply for residential property insurance or property owners' association insurance, as applicable, in the voluntary market. If a diligent effort has been made and the policyholder is unable to obtain residential property insurance or property owners' association insurance, as evidenced by two current declinations from insurers licensed to write property insurance and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas, the policyholder will be eligible for renewal of FAIR Plan coverage. If a FAIR Plan policyholder receives a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed by Texas, other than a surplus lines carrier, then the policyholder is no longer eligible for coverage and FAIR Plan may nonrenew the policy.

(l) FAIR Plan may not issue a policy to an applicant if the applicant or any proposed named insured is indebted to FAIR Plan on a prior FAIR Plan policy. If the new FAIR Plan policy has already been bound or issued, then FAIR Plan must cancel that binder or policy and deduct from any return premium the amount that FAIR Plan is owed from the prior FAIR Plan policy.

(m) Binders must be issued for a definite period, not to exceed 90 days.

(n) Policies issued are not subject to flat cancellation and are subject to a minimum earned premium as stated in the underwriting rules.

(o) If an insurance policy will not be issued, the full earned premium must be charged.

(p) A binder terminates upon the acceptance of a risk by FAIR Plan and the payment of any premium due; or upon the cancellation of a risk and notice of reasons for the cancellation given to the applicant and agent.

(q) FAIR Plan may not cancel a policy or binder issued by it, except:

(1) for a condition that would have been grounds for nonacceptance of the risk had such condition been known to FAIR Plan at the time of acceptance;

(2) for property that does not meet the underwriting rules;

(3) for nonpayment of premium, including nonpayment of premium on a prior FAIR Plan policy;

(4) for fraud;

(5) for material misrepresentation;

(6) for evidence of incendiarism by the insured or another acting on the insured's behalf; or

(7) at the written request of the insured.

(r) FAIR Plan must send notice of cancellation, stating the reasons for cancellation to an insured and agent. The cancellation takes effect according to the policy provisions.

(s) Any cancellation notice to an insured, except for the cancellation set forth in subsection (q)(7) of this section, must be accompanied by a statement that the insured has a right to appeal as provided in §5.9919 of this subchapter (relating to Right to Appeal).

(t) If a property meets all underwriting requirements, FAIR Plan must calculate the actual annual premium. FAIR Plan must remit a return premium to the applicant if the

provisional binder premium exceeds the actual annual premium. FAIR Plan must bill the applicant for additional premium if the actual annual premium exceeds the provisional binder premium.

(u) FAIR Plan must cancel a binder on a pro rata basis. If an applicant requests cancellation of a binder, FAIR Plan must cancel the binder on a pro rata basis.

**§5.9930. Designated Area for Property Owners' Association Policies.**

For purposes of Insurance Code §2211.1515, concerning Mandatory Property Owners' Association Policies in Certain Areas, the commissioner sets the designated area as the region extending 10 miles inland from the border of the TWIA catastrophe area, which consists of the geographical features of:

(1) the county lines of the 14 first tier coastal counties, which are Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy, as designated in State Board of Insurance Order No. 16878;

(2) Highway 146 where it intersects the cities of Seabrook and La Porte, as designated in Commissioner Order No. 95-1200;

(3) the municipal boundary of the City of Morgan's Point, as designated in Commissioner Order No. 96-0380; and

(4) Highway 146 where it intersects the cities of Shoreacres and Pasadena, as designated in Commissioner Order No. 96-1468.

**§5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance.**

(a) A property owners' association may submit a petition to classify an area as an underserved area.

(b) Underserved areas must be located within the area designated in §5.9930 of this title (relating to Designated Area for Property Owners' Association Policies).

(c) The petition must:

(1) be submitted in writing to the Office of the Chief Clerk;

(2) provide contact information for the petitioner;

(3) clearly specify the area proposed as underserved, in a written description, a map, or other method;

(4) explain why the petitioner thinks the area is underserved;

(5) state the names of the petitioner's current and former insurers;

(6) provide:

(A) the names of insurers that have declined to provide coverage in the proposed underserved area; and

(B) detailed information about the risks, coverages, and coverage amounts the insurers are unwilling to offer;

(7) include, if known:

(A) the names of insurers that have or are actively writing property coverage in the proposed underserved area;

(B) the total number of property owners' associations within the proposed underserved area;

(C) the names, physical addresses, and contact information of property owners' associations in the proposed underserved area; and

(D) the number of property owners' associations within the proposed underserved area that have been unable to get coverage.

(d) TDI may request additional information from the petitioner to help complete the review under §5.9932 of this title (relating to Petition Procedures for Underserved Area for Property Owners' Association Insurance).

**§5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance.**

(a) TDI will review petitions for compliance with the specified requirements in §5.9931 of this title (relating to Petition Requirements for Underserved Area for Property Owners' Association Insurance). If compliant, TDI may gather additional information to determine whether to set the proposed area as underserved.

(b) TDI may schedule a public hearing and provide notice under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, to receive public input on the petition.

(c) The commissioner may determine that some, all, or none of the proposed area is underserved.

**§5.9933. Determining Underserved Areas for Property Owners' Association Insurance.**

(a) At any time after notice and hearing under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, whether in response to a petition or on the

commissioner's own initiative, the commissioner may issue an order determining that all or part of the designated area is underserved.

(b) The order may include a deadline by which FAIR Plan must begin offering property owners' association policies within the underserved area.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 25, 2024.

Signed by:  
*Jessica Barta*  
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Jessica Barta, General Counsel  
Texas Department of Insurance

The amendments to 28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 are adopted.

Signed by:  
*C. Brown*  
FC5D7EDDFFBB4F8...

Cassie Brown  
Commissioner of Insurance

# 2024-8850

TITLE 28. INSURANCE  
Part I. Texas Department of Insurance  
Chapter 5. Property and Casualty Insurance

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