

**SURPLUS LINE
ASSOCIATION
OF
OREGON**

**ARTICLES
OF INCORPORATION**

&

BY-LAWS



Articles of Incorporation of The Surplus Line Association of Oregon

I, TODD T. HENDRYX, a natural person over the age of 18 years, acting as incorporator under the Oregon Non-Profit Corporation Act, adopt the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be THE SURPLUS LINE ASSOCIATION OF OREGON and its duration shall be perpetual. This corporation shall operate as a mutual benefit corporation, as such term is understood pursuant to Chapter 65 of the Oregon Revised Statutes, as of execution of these Amendments. *Amended 12/18/1990*

ARTICLE II

The purpose of the corporation is to engage in any lawful activity for which corporations may be organized under the Oregon Non-Profit Corporation Act, including but not limited to the following objectives:

- a) To cooperate with recognized organizations of admitted insurance carriers and insurance agents for the proper use of the surplus line market by members of the corporation;
- b) To discourage and prevent violations of the law of the State of Oregon regarding surplus line insurance by members of the corporation and insofar as possible by nonmembers;
- c) To encourage fair dealing between members and with the public and admitted insurance carriers;
- d) To adopt and enforce rules, insofar as permitted by law for the accomplishment of the objects of the corporation.
- e) To support the education, investment and attraction of diverse new talent into the excess, surplus lines and risk management insurance industry, and to support the attraction, education and development of careers in the insurance industry, including without limitation, by providing educational programming, support, materials, sponsorship, scholarships, endowments and related initiatives to assist in furthering the development of insurance professionals and the insurance industry; and,
Amended 1/1/2019
- f) To engage in political and governmental lobbying and advocacy in furtherance of the purposes set out above.
Amended 1/1/2019

ARTICLE III

In the event of dissolution of the corporation, the assets of the corporation remaining after payment of all outstanding liabilities shall be distributed to (a) a non-profit tax exempt organization or organizations having a purpose substantially similar to the corporation, to be used for the purposes of such organizations, and/or to (b) any charitable organization or organizations approved by the Federal Internal Revenue Service as being one to whom a donation will qualify as a federal income tax deduction or as an exempt organization under the Federal Internal Revenue Code.

ARTICLE IV

No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to, its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay expenses and reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes and objectives set forth in Article II hereof.

ARTICLE V

The address of the initial registered office of the corporation is 610 S.W. Alder Street, Suite 1015, Portland, Oregon, and the name of the initial registered agent at such address is Alonzo P. Stiner.

ARTICLE VI

The number constituting the initial Board of Directors of the corporation is five (5) and the initial Board shall consist of the following:

- | | |
|---|---|
| 1. Todd T. Hendryx
101 SW Main Street
Portland, Oregon 97204 | 4. Gene Sause
200 SW Market Street
Portland, Oregon 97201 |
| 2. Willard McClain
900 SW Fifth Avenue
Portland, Oregon 97204 | 5. Wade Coykendall
1600 SW Fourth Avenue
Portland, Oregon 97201 |
| 3. James McFadden
812 SW Washington Street
Portland, Oregon 97205 | |

The directors shall serve until their successors shall be elected by the members and qualify.

ARTICLE VII

The name and address of the incorporator is:

Todd T. Hendryx
101 SW Main Street
Portland, Oregon 97204

ARTICLE VIII

To the fullest extent permitted by law, no director of this corporation shall be personally liable to the corporation or its shareholders for monetary damages for conduct as a director. No amendment or repeal of this Article, nor the adoption of any provision of these Articles of Incorporation which is inconsistent with this Article, nor a change in the law, shall adversely affect any right or protection of a director, which right or protection is based upon this Article and arises from conduct that occurred prior to the time of such amendment, repeal, adoption or change. No change in the law shall reduce or eliminate the rights and protections applicable immediately after this provision becomes effective unless the change in the law shall specifically require such reduction or elimination. If the Oregon Nonprofit Corporation Act (the "Act") is amended, after this Article becomes effective, to authorize corporate action further elimination or limiting the personal liability of directors of the corporation, then the liability of directors of this corporation shall be eliminated or limited to the fullest extent permitted by the Act, as so amended. *Amended 12/18/1990*

DATED this 28th day of August, 1980.

/s/ Todd T. Hendryx

STATE OF OREGON)
) ss
County of Multnomah)

BE IT REMEMBERED, That on this 28th day of August, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named TODD T. HENDRYX, known to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/ J. Ted Rogers
Notary Public for Oregon
My Commission Expires: 5-10-81

Amendments to Article I and Article VIII of the Articles of Incorporation of The Surplus Line Association of Oregon having been duly adopted by required vote of the membership or Board of Directors are effective December 18, 1990.

No other person or entity exercises any right to approve the adoption of these amendments, these amendments upon approval shall be submitted to the State of Oregon Corporation Division.

Peter Tennyson, Secretary
January 8, 1991

By-Laws of The Surplus Line Association of Oregon

ARTICLE I NAME AND LOCATION

Section 1. The name of the corporation shall be THE SURPLUS LINE ASSOCIATION OF OREGON, hereinafter referred to as the “Association”, and its duration shall be perpetual. This corporation shall operate as a mutual benefit corporation, as such term is understood pursuant to Chapter 65 of the Oregon Revised Statutes. *Amended 1/16/2006*

Section 2. The corporation may have offices at such places within the State of Oregon as the Board may from time to time determine, or as the business of the corporation may require.

ARTICLE II MEMBERSHIP

Section 1. Any person, licensed as a surplus line producer under the laws of the State of Oregon, upon acceptance of the Articles of Incorporation and By-Laws adopted by the Association and payment of any membership fees shall become a member. Membership in the Association shall automatically terminate upon a member's ceasing to be a licensed surplus line producer. *Amended 1/16/2006*

Section 2. A member may voluntarily withdraw from the Association by giving notice in writing to the Board of Directors of the Association. In no event shall the withdrawal or termination of any member reduce or eliminate any indebtedness to the Association. *Amended 1/01/2002*

Section 3. Membership may be terminated by expulsion of a member upon recommendation of the Board of Directors and approval by a two-thirds vote of the entire Resident Membership. Any such termination must be fair, reasonable and carried out in good faith. In this context, fair and reasonable shall mean that prior written notice of possible expulsion, including the reason therefore, shall be given to the member and the member shall have the opportunity to be heard by the Board of Directors, orally or in writing, not less than five (5) days before a recommendation by the Board for expulsion is submitted for vote of the Resident Membership.

Notice that the Board will be considering possible expulsion must be mailed to the member at his last known address at least fifteen (15) days prior to the date when the issue of expulsion is considered by the Board or within such other time period as is fair and reasonable under the circumstances. *Amended 1/01/2002*

Section 4. Membership shall be divided into two classes: Resident Members and Non-Resident Members. The Board will establish specific membership and reporting requirements for each class of membership. *Amended 1/01/2002*

ARTICLE III DIRECTORS

Section 1. The business affairs of the corporation shall be managed by its Board of Directors, hereinafter referred to as "The Board," which may exercise all such powers of the corporation and do all such lawful acts and things as are not directed or required by statute, by the Articles of Incorporation or by these By-Laws to be exercised or done by the members. *Amended 1/01/2002*

Section 2. The number of Directors of the corporation shall be five (5). Members of the Board must be Resident Members of the association. Each position of the Board shall have a term of three (3) years or until a successor has been elected. The term of office for directors shall begin on December 1. Board members shall not be eligible for re-election or appointment to the Board sooner than one (1) year following the end of that member's previous service as a Board member. At the first meeting of the Board of Directors following the election of new Board members, the duly elected Board shall elect three (3) of the Board members to serve in the offices of President, Vice-President and Secretary Treasurer for the next year. The Officers shall serve in their respective positions until their successor has been elected. The expiration of the terms of the positions of the members of the Board of Directors shall be staggered so that no more than two (2), and no fewer than one (1), new members are elected each year. *Amended 1/16/2006*

Section 3. Any vacancy occurring on the Board may be filled by the affirmative vote of a majority of the remaining Directors. The Director elected to fill a vacancy shall be elected for the unexpired portion of the term of their predecessor in office. *Amended 1/16/2006*

Section 4. No later than September 1st each year, the President shall appoint a nominating committee of three (3) from the Resident Members of the Association. The President shall not be a member of the nominating committee. The nominating committee shall nominate candidates for all open Board positions. Not more than one member of the nominating committee shall be nominated to the Board. The President shall submit to the Resident Membership, no later than October 1st, a list of candidates for open Board of Director positions nominated by the nominating committee and shall invite additional nominations from the Resident Members. No later than November 1st, the President shall submit ballots to the Resident Members listing all candidates nominated by the nominating committee and nominated by the Resident Members. Voting shall be by mail-in/fax ballots due not later than December 1st with the results of the vote to be announced at the annual meeting. If all open positions are not filled by a majority vote, a mail-in/fax vote of Resident Members shall be taken between the two candidates with the most votes prior to the annual meeting to fill each open position. If there is a tie in the run-off election, the Board shall convene a special meeting and by majority vote determine which of the two candidates will serve as director. *Amended 1/16/2006*

ARTICLE IV OFFICERS

Section 1. The Officers of the Association shall be the President, Vice-President, and Secretary-Treasurer, who shall be elected by the Board of Directors from sitting members of the Board and shall hold office for one (1) year or until their successors are elected by the Board.

Section 2. The President shall preside at all meetings of the Association and of the Board and may from time to time designate one or more members of the Association (which may be but need not be members of the Board) to act as a committee to perform such duties, responsibilities and functions as may be designated by the President.

Section 3. The Vice-President shall preside at all meetings of the Association and of the Board when the President is not in attendance.

Section 4. The Secretary-Treasurer shall regularly review the records of all receipts and disbursements of the Association, kept by the Executive Director, shall promptly notify the Board of any problems or concerns with such records, shall keep the minutes of all of the meetings of the Association and the Board and shall perform such other duties as the Board may in its powers delegate to the Secretary-Treasurer. *Amended 12/03/1993*

Section 5. Any vacancy occurring in any of the offices of the Association shall be filled by the Board for the unexpired term.

ARTICLE V MEETINGS

Section 1. The annual meeting of the Association shall be held in Portland, Oregon in the month of December each year, on the date to be fixed by the Board. In case the annual meeting for any year shall not be duly held in December, the Board shall cause a special meeting to be held as soon as may be possible thereafter, in lieu of and for the purpose of such annual meeting; and all proceedings of such special meeting shall have the same force and effect as if taken at the regular annual meeting.

Section 2. Special meetings of the Association or of the Board may be called at any time by the President and shall be called at the written request of any four (4) Resident Members of the Association. *Amended 1/01/2002*

Section 3. Any member shall be permitted to attend meetings of the Board to discuss before the Board matters in which that member is interested. *Amended 1/16/2006*

Section 4. Notice of regular meetings of the Association, with an agenda of the matters to be considered, shall be sent to the Resident Members at least 10 days in advance of the meeting. Notice of special meetings must be sent to the Resident Members at least four (4) days in advance, with an agenda of the matters to be considered. Any matter not included in the agenda shall not be considered at regular or special meetings, except by the unanimous vote of all the Resident Members present. *Amended 1/01/2002*

Section 5. At all meetings of the Association, ten percent (10%) of the Resident Members of the Association shall constitute a quorum; a majority of its members shall constitute a quorum of any Board or committee meeting. *Amended 12/2011*

Section 6. Any action required by law to be taken at a meeting of the Board of Directors, or any action which may be taken at a meeting of the Board, may be taken without a meeting if consent in writing, setting forth the action so taken or to be taken, shall be signed by a majority of the directors entitled to vote with respect to the subject matter thereof.

ARTICLE VI VOTING

Section 1. Only Resident Members may vote on matters requiring a vote of the membership. Each Resident Member shall have only one vote on any matter requiring a vote of the membership. No member shall be represented by agent, attorney, or proxy in the proceedings of this Association. *Amended 1/16/2006*

Section 2. All resolutions and motions, except as otherwise provided, shall be deemed adopted when assented to by a majority of the Resident Members present and voting. When a two-thirds vote of the entire Resident Membership of the Association is required, such resolutions or motions may be adopted by a two-thirds vote of the Resident Members present at the meeting. If not passed, then such resolutions and motions may be deemed adopted, if within thirty days after such meeting the written approval is received by a sufficient number of all the Resident Members to constitute the required two-thirds of the entire Resident Membership of the Association.

Amended 1/01/2002

ARTICLE VII RULES

Subject to the same requirements as provided in Article VIII for amendments, the Association may adopt rules which are neither contrary to law nor conflict with its Articles of Incorporation or By-Laws.

ARTICLE VIII AMENDMENTS

The Articles of Incorporation and By-Laws of the Association may be amended at any regular or special meeting of the Association, provided at least two weeks' notice has been given to the Resident Members that the meeting is called for such general purposes, and provided further that notice in writing setting forth the nature of such amendment has been sent to the Resident members at least seven days in advance of the meeting. It shall require the vote of not less than two-thirds of the entire Resident Membership to adopt an amendment to the Articles of Incorporation or By-Laws. If not passed at a regular or special meeting as provided above, then such amendment may be deemed adopted, if within thirty days after such meeting, the written approval is received by a sufficient number of all the Resident Members to constitute the required two-thirds of the entire Resident Membership of the Association.

The By-Laws and Articles of Incorporation may also be amended upon recommendation of the Board of Directors if later approved by a two-thirds vote of the entire Resident Membership obtained in writing by ballots mailed to the Resident Membership by the Board of Directors together with a written explanation of the proposed amendments. *Amended 1/01/2002*

ARTICLE IX FUNDS AND DISBURSEMENTS

Section 1. To cover the necessary expenses of the Association, the Board may levy and collect dues and assessments from members and may authorize the Association to charge surplus line filers a fee for reviewing surplus lines policies and collecting, on behalf of the state, taxes imposed under Oregon statutes. *Amended 1/01/2007*

Section 2. Funds previously approved by the Board for the regular operational expenses of the Association shall be disbursed by the Executive Director under the supervision of the Secretary-Treasurer.

All other funds of the Association shall be disbursed by the Secretary-Treasurer at the direction of the Board. *Amended 1/01/2002*

Section 3. Disbursements from the funds of the Association shall be subject to the specifications and approval of the Board by resolution duly recorded in its minutes. The Executive Director shall keep a record of all receipts and disbursements and these records shall be regularly reviewed by the Secretary-Treasurer. The Board shall audit the account of the Executive Director prior to each annual meeting date, and in its discretion, at any other time. *Amended 12/03/1993*

Section 4. All funds shall be used in furtherance of the purposes of the Association. In no event shall any funds be paid to or applied for the private benefit of the members of the Association, but funds may be paid or applied pursuant to the rules and regulations of Internal Revenue Code §501(c)(6). *Amended 1/1/2019*

**ARTICLE X
ADMINISTRATION AND VIOLATIONS**

Section 1. The Board shall appoint an Executive Director.

Section 2. The Executive Director shall have power and authority:

- a) To interpret the By-Laws and rules and regulations of the Association.
- b) To determine violations and remedies therefore, and whether or not the matter should be submitted to the Insurance Division of the Department of Consumer and Business Services for a ruling.
- c) To prescribe the procedure to be followed in matters coming before him under the powers hereby conferred. Findings and prescribed remedies of the Executive Director under the powers hereby conferred shall be binding upon the members and non-member filers subject to the right of appeal hereinafter provided. The Executive Director shall give notice of his findings and prescribed remedies in matters involving violations to all parties interested.

Amended 1/16/2006

Section 3. The findings and prescribed remedies of the Executive Director shall be subject to appeal to the Board by a member or non-member filer, and the decision of the Board shall be subject to appeal to the Resident Membership of the Association as a whole. Appeal must be made in writing and filed with the Executive Director within ten (10) days from the date of service of the findings and prescribed remedy from which appeal is taken; otherwise the findings or prescribed remedy of the Executive Director, or the decision of the Board, as the case may be, shall be final. To reverse or otherwise change the findings or prescribed remedy of the Executive Director shall require a two-thirds vote of the Board, and to reverse or otherwise change the decision of the Board shall require a two-thirds vote by secret ballot of the entire Resident Membership of the Association, in both cases exclusive of the vote of the complaining member and the member complained against. When an appeal is taken, the Board shall fix a date with due regard to the interests of the parties involved, but in no event later than sixty (60) days after notice of appeal is filed, for a hearing thereon. *Amended 1/16/2006*

Section 4. The Executive Director, (1) upon direction of the Board, or (2) upon written request of a member or non-member filer, shall submit any such matters involving the Surplus Line Law to the Insurance Division of the Department of Consumer and Business Services. *Amended 1/16/2006*

Section 5. The Executive Director shall have the right to inspect books and records of the members or non-member filers of the Association and their representatives for the purpose of determining the facts necessary to enable the Executive Director to resolve any issue before him. Members and their representatives shall disclose complete information and facts with respect to such issues on request of the Executive Director. Refusal or willful failure of a complainant or of a member or non-member filer complained against (or the representative of either) to recognize such rights of the Executive Director shall constitute a presumption of the invalidity or the validity of the complaint, as the case may be. *Amended 1/16/2006*

Section 6. The Association shall have the power to make findings and to prescribe remedies for acts determined by the Association to be contrary to the provisions of law or the lawful provisions of the By-Laws or rules or regulations of the Association, and shall have the power to expel or suspend a member from the Association or suspend filing privileges of a non-member filer for any such act by two-thirds vote of the entire Resident Membership. The Executive Director shall be responsible for ensuring that any action taken hereunder is pursuant to Article II of these By-Laws. The power to prescribe remedies shall not include the power to impose monetary fines, but pecuniary loss such as a member might suffer on account of being required to cancel a policy or any other consequential loss shall not be considered a monetary fine. *Amended 1/16/2006*

Section 7. The Executive Director shall maintain an operating account to pay the regular monthly expenses of the Association which have been previously budgeted and approved by the Board of Directors. The Executive Director shall keep records of all receipts and disbursements of the Association and shall make such records available for regular review by the Secretary-Treasurer. *Amended 12/03/1993*

ARTICLE XI PLEDGES

Section 1. Each member shall sign and file a pledge with the Association in form prescribed by the Board, committing themselves, their firm and all of its employees to strict adherence to the Articles of Incorporation and By-Laws of the Association. *Amended 1/16/2006*

Section 2. Each non-member surplus line licensee desiring to utilize the filing services of the Association shall sign and file a pledge with the Association in form prescribed by the Board, committing themselves, their firm, and all of its employees to strict adherence to the surplus line statutes of the state of Oregon and Article X of these by-laws. *Amended 1/16/2006*

**ARTICLE XII
DISSOLUTION - DISPOSITION OF PROPERTY**

The Association may be dissolved or liquidated only when authorized at any regular or special meeting of the Association, provided at least two weeks' notice has been given to the Resident Members that the meeting has been called to consider such dissolution or liquidation. It shall require the vote of not less than two-thirds of the entire Resident Membership in the manner set forth in Article VI, Section 2 to adopt a resolution authorizing dissolution or liquidation, as well as to determine to whom the assets of the Association shall be distributed in accordance with the Articles of Incorporation. *Amended 1/01/2002*

**ARTICLE XIII
BASIC PRINCIPLES**

All questions involving violation or alleged violation of the Surplus Line Producers' Act, ORS 735.400 to 735.495 inclusive, including all future amendments thereto, hereinafter referred to as the "Act", will be viewed by the Insurance Division of the Department of Consumer and Business Services and the Association on the basis of whether or not as to each such question there has been any violation of the following basic principles:

- a) The Act is designated to grant a preference to insurers admitted to do business in the State, with the specific exceptions contained therein, and insurance coverage may not be solicited for, or contracts of insurance placed with any non-admitted insurer, unless and until the kind or amount of coverage is not readily procurable from the admitted insurers holding certificates of authority to transact the class or classes of insurance involved in such insurance contracts.
- b) The Act is designated only to provide a medium through which citizens of this State may obtain from non-admitted insurers the kind or amount of coverage not readily procurable from admitted insurers.
- c) The Act requires the collection of a tax on premiums for insurance placed with non-admitted insurers.

THE ABOVE BASIC PRINCIPLES SHALL GOVERN IN ALL MATTERS RELATING TO THE ACT. GENERAL AND SPECIFIC RULES ARE HEREINAFTER INCORPORATED FOR THE PURPOSE OF FACILITATING THE APPLICATION OF THE BASIC PRINCIPLES AND ARE NOT TO BE USED FOR THE PURPOSE OF AVOIDING OR DEFEATING THESE BASIC PRINCIPLES.

Amended 1/16/2006

**ARTICLE XIV
CHECKING OF SURPLUS LINE PLACEMENTS**

All placements of insurance in non-admitted insurers by members of the Association or non-member filers shall be checked by a Stamping Bureau or authority approved by the Insurance Division of the Department of Consumer and Business Services as to form and eligibility of risk under the Surplus Line Act. The Board is herewith charged with the duty of making such arrangements as will carry out the intent of this Article. *Amended 1/16/2006*

**ARTICLE XV
INTERPRETATION**

The interpretations of the Board as to eligibility of classes or kinds of insurance not in conflict with the Surplus Line Act or Rulings of the Insurance Division of the Department of Consumer and Business Services are hereby declared to be binding upon all members of the Association and non-member filers. Such interpretations shall be bulletined to the members as soon as practicable after promulgation. *Amended 1/16/2006*

**ARTICLE XVI
INDEMNIFICATION**

Section 1. The Surplus Line Association of Oregon, (hereinafter "the Association") shall, subject to the terms, conditions and limitations set forth in the following Sections of this Article, indemnify and reimburse any person, firm, partnership, joint venture, corporation, or other business entity who or which is made, or threatened to be made, a named defendant, respondent, or other involuntary party to or in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, for all liabilities and expenses reasonably and actually incurred in or as a result of such action or proceeding, including, but not limited to, reasonable attorneys' fees, judgments, penalties, fines, and settlements, if the action or proceeding in which the expenses or liabilities are incurred arises out of or is in any way related to conduct or actions taken in an official capacity by any officer or director of the Association or by any member, employee, or agent of the Association, if the actions or conduct of the member, employee, or agent were at the request of or under the direction of an officer or director of the Association.

Section 2. Indemnification and reimbursement by the Association shall be provided if the person or business entity being indemnified or reimbursed:

- a) Acted in good faith and with the reasonable belief that his or her conduct was in the best interests of, or not opposed to, the interests of the Association; and
- b) In the case of any criminal proceeding, the person being indemnified or reimbursed had no reasonable cause to believe the conduct was unlawful.

Section 3. The termination of any civil suit, criminal action, or other proceeding by judgment, settlement, conviction, or upon a plea of no contest or its equivalent, shall not in and of itself create a presumption that a person or business entity did not act in good faith for a purpose which he, she, or it reasonably believed to be in the best interests of, or not opposed to the interests of, the Association, or that he, she, or it had reasonable cause to believe that his, her, or its conduct was unlawful.

Section 4. The indemnification and reimbursement provided for in this Article shall be provided regardless of whether the occurrence of the conduct giving rise to the proceeding or action in which expenses or liabilities are incurred was prior to or after the adoption of this Article by the membership of the Association. However, only those expenses or liabilities incurred after the adoption of this Article by the membership shall be subject to reimbursement or indemnification.

Section 5. The indemnification and reimbursement provided for in this Article shall be provided regardless of whether the person or business entity to be indemnified or reimbursed is still an active officer, director, member, agent, or employee of the Association at the time indemnification or reimbursement is sought or granted.

Section 6. The indemnification and reimbursement provided for in this Article shall not be exclusive of any other rights or remedies, and shall apply fully to the successors, heirs, conservators, and executors of any persons entitled to indemnification or reimbursement and to any subsequent owners, partners, or joint venturers of any business entity entitled to indemnification or reimbursement.

Section 7. No person or business entity shall be entitled to reimbursement or indemnification or any settlement or other voluntary payment made to an adverse party or claimant unless such settlement or payment has first been approved by the Board of Directors of the Association. However, the Board of Directors shall have the authority to approve indemnification or reimbursement of any settlement or voluntary payment made to a claimant or adverse party without the consent of the Board of Directors if the Board of Directors determines that it would have given such consent and that the reimbursement or indemnification is justified.

Section 8. In each instance in which a question of indemnification or reimbursement arises, entitlement thereto, pursuant to the conditions set forth in this Article, the reasonableness of claimed expenses, and the time and manner of payment of such indemnification or reimbursement shall be determined by the Board of Directors of the Association pursuant to either:

- a) A majority vote of a quorum consisting of Directors who were not parties to the action, suit or proceeding;
- b) Approval by independent legal counsel in a written opinion requested by the Board of Directors; or
- c) By written approval of a majority of the Resident Members of the Association.

Amended 1/01/2002

Section 9. Expenses and liabilities incurred by an officer, director, employee, or agent of the Association which are subject to reimbursement or indemnification under this Article may be paid or reimbursed by the Association in advance of the final disposition of an action or proceeding if the Board of Directors has determined that:

- a) Based on known information, the indemnification or reimbursement appears to be appropriate
- b) The person or business entity to be reimbursed or indemnified has affirmed in writing a good faith belief that he, she, or it is entitled to reimbursement or indemnification under this Article;
- c) The person or business entity to be reimbursed has agreed in writing to repay the Association all sums advanced if the Board of Directors determines within 90 days after the final disposition of the action or proceeding that reimbursement or indemnification was not proper under the terms of this Article. No security for this written agreement to repay advanced sums shall be required.

Section 10. Nothing contained in this Article shall in any way limit the Board of Directors of the Association from reimbursing expenses incurred by an officer, director, member, employee, or agent of the Association for expenses incurred in connection with an appearance as a witness in a proceeding in which he or she is not a defendant or respondent if the Board of Directors determines such reimbursement to be in the best interests of the Association and justified under the circumstances.

Section 11. Nothing contained in this Article shall be deemed to preclude a person or business entity who, or which, the Board of Directors has determined not to be entitled to indemnification or reimbursement from asserting the right to indemnification or reimbursement by legal proceeding.

Section 12. No indemnification or reimbursement of any kind shall be available as the result of liability or expenses incurred in any action or proceeding undertaken by or on behalf of the Association against any present or former director, officer, member, agent, or employee of the Association unless:

- a) The present or former director, officer, member, agent, or employee prevails, and is adjudged to be not liable in the suit or proceeding initiated against him or her by or on behalf of the Association; or
- b) The court or tribunal in which the action, proceeding or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, that the person or business entity is fairly and reasonably entitled to indemnity for or reimbursement of the expenses which the court or tribunal shall deem proper.

Section 13. Nothing contained in this Article shall in any way limit the power of the Association to purchase and maintain liability insurance on behalf of any person who is or was a director, officer, member, employee, or agent of the Association, and if such insurance is in force, the indemnification and reimbursement provided for in this Article shall apply only to those expenses and liabilities reasonably and actually incurred which were not paid or reimbursed by insurance.

Section 14. The provisions of this Article are severable and if any provision of this Article shall be deemed invalid by a court of law as against public policy, or for any other reason, the remaining provisions shall remain in full force and effect.