Chapter 5 Florida Insurance Guaranty Association

Florida created a nonprofit legal entity known as the Florida Life and Health Insurance Guaranty Association (FIGA). Insurers must become and remain members of the association as a condition of their authority to transact insurance in Florida. Additionally, insurers must agree to reimburse the association for all claim payments made on the insurer's behalf during financially difficult times if the insurer is subsequently rehabilitated. The association will perform its functions under the plan of operation established and approved and will exercise its powers through a board of directors.

For purposes of administration and assessment, the association maintains three accounts:

1. A health insurance account;
2. A life insurance account; and
3. An annuity account.

Borrowing between accounts for payment of policyholder and contract holder claims and other obligations of the association is authorized at the discretion of the board of directors, provided that the amounts so borrowed are restored to the appropriate accounts not less than annually. The association comes under the immediate supervision of the department and is subject to the applicable provisions of the insurance laws of Florida.

Board of Directors

The board of directors of the association is comprised of not fewer than five nor more than nine-member insurers, serving terms as established in the plan of operation. At all times, at least one member of the board must be a domestic insurer. The members of the board are elected by member insurers subject to the approval of the department. A vacancy on the board will be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the department. Prior to the selection of the initial board of directors and the organization of the association, the department shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer is entitled to one vote, in person or by proxy. If the board of directors is not elected within 60 days after notice of the organizational meeting, the department may appoint the initial members.

In approving the election of members to the board, or in appointing members to the board, the department shall consider, among other things, whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

Powers and Duties of the Association

If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

1.Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;

2.Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (a) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a); and

3.Loan money to the impaired insurer.

If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1.Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of persons referred to in s. 631.713(2); and

2.Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the department:

1.Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents of this state; and

2.Provide moneys, pledges, notes, guarantees, or other means that are proper and reasonably necessary to implement paragraph (a) in order to assure payment of the contractual obligations of the insolvent insurer with regard to persons referred to in s. 631.713(2).

This does not apply when the department has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this part for residents of Florida.

The association may:

1.Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part.

2.Sue or be sued, including the taking of any legal actions necessary or proper for the recovery of any unpaid assessments, provided that service of process must be made upon the person registered with the department as agent for receipt of service of process.

3.Borrow money to affect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

4.Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part.

5.Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

6.Take such legal action as may be necessary to avoid payment of improper claims.

7.Exercise, for the purposes of this part and to the extent approved by the department, the powers of a domestic life or health insurer, but in no case, may the association issue insurance policies or annuity contracts other than those issued to satisfy the contractual obligations of the impaired or insolvent insurer.

The association is not liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer prior to its liquidation. This does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or liquidation.

The association may reinsure any alternative or reissued policy. Alternative or reissued policies adopted by the association are subject to the approval of the department upon terms and conditions the department considers appropriate, given the function and special purpose of the association. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

Alternative or reissued policies must contain at least the minimum statutory provisions required under this code and provide benefits that are reasonable with respect to the premium charged.

The association shall set the premium in accordance with a table of rates adopted by the association. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured occurring since the original policy was last underwritten.

Alternative policies issued by the association must provide coverage of a type generally similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date that the coverage is replaced by another similar policy by the association. Any reissued, reinsured, or alternative policy must, however, be subject to association coverage if the replacement insurer becomes impaired or insolvent.

In carrying out its duties regarding guaranteeing, assuming, or reinsuring policies or contracts, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.
2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

Powers and Duties of Department and Office

The office will, upon request of the board of directors, provide the association with a statement of the premiums in each of the appropriate states for each member insurer. When impairment is declared, and the amount of the impairment is determined, it will serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties.

The department will, in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the department will be appointed conservator.

The office may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the approved plan of operation of the association. As an alternative, the office may levy a forfeiture on any member insurer that fails to pay an assessment when due. Forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than $100 per month.

Any action of the board of directors or of the association may be appealed to the office by any member insurer if it is taken within 30 days of the action. If a member company is appealing an assessment, the amount assessed must be paid to the association and available to meet association obligations during the pendency of the appeal. If the appeal is upheld, the amount paid in error or excess will be returned to the member company. Any final action or order of the office shall be subject to judicial review in a court of competent jurisdiction.

The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this part.

Membership and Assessments

All insurers licensed to sell property and casualty insurance in Florida must be members of the Association in order to transact insurance in Florida. However, the following lines of insurance are not covered by FIGA:

-Life, health, disability, or annuity insurance

-Mortgage or financial guaranty protection

-Fidelity and surety bonds

-Credit, vendors single interest, or collateral protection insurance

-Warranty, including motor vehicle service and home warranties

-Ocean and wet marine insurance

-Any kind of self-insurance

-Title and surplus lines insurance

-Workers compensation and employer's liability insurance

-The transfer of any type of investment or credit risk

The Association assesses member insurers fees to carry out its powers and duties. The Association maintains two accounts for the collection of these fees: the auto liability and auto physical damage account and the account for all other applicable insurance. Assessments are capped at 2 percent of an insurer's net direct written premiums in Florida for a particular calendar year. An additional 2 percent may be assessed for emergency assessments for insolvencies related to hurricanes.

Although the Association pays covered claims, the amount of its payments are limited. Notably, the Association provides for a maximum claim payment of $300,000 on behalf of an insolvent insurer, with the following exceptions:

-An additional $200,000 is provided for damages that are related only to building and contents under policies that provide homeowners insurance

-For policies insuring condominium or homeowners associations if the associations are responsible for insuring the residential units and their attached structures, the lesser of the policy limits or $100,000 multiplied by the number of units.

It is important to note that for the maximum limit of $300,000 to apply, the loss or claim must be worth that amount, and the insured must carry at least that limit of insurance on the insurance policy. For example, if an insured carried a $200,000 property limit on a dwelling and a $100,000 limit for liability insurance, the guaranty association would only be responsible up to those limits despite the fact that $300,000 is available.

All claims are subject to a $100 deductible.

Advertising

An advertisement or a solicitation that uses the existence of the Association in order to sell, solicit, or induce consumers to purchase insurance must explain the coverage limits of the Association, which apply to the type of insurance described in the advertisement or solicitation.

Examinations and Annual Reports

The Department is responsible for regulating and examining the Association. By March 30 each year, the Association’s board of directors must submit a financial report to the Department, along with a report of its activities for the preceding year.

Definitions

As used for the Guaranty Association:

‘‘Account” means any of the three accounts created in s. 631.715.

‘‘Association” means the Florida Life and Health Insurance Guaranty Association created in s. 631.715.

‘‘Contractual obligation” means any obligation under covered policies.

‘‘Covered policy” means any policy or contract set out in s. 631.713 and reduced to written, printed, or other tangible form.

‘‘Impaired insurer” means a member insurer deemed by the department to be potentially unable to fulfill its contractual obligations and not an insolvent insurer.

‘‘Insolvent insurer” means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction.

‘‘Member insurer” means any person licensed to transact in this state any kind of insurance as set out in s. 631.713.

‘‘Premium” means any direct gross insurance premium and any annuity consideration written on covered policies, less return premium and consideration thereon and dividends paid or credited to policyholders on such direct business. “Premium” does not include premium and consideration on contracts between insurers and reinsurers.

“Person” means any individual, corporation, partnership, association, or voluntary organization.

“Resident” means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer. A person may be a resident of only one state, which in the case of a person other than an individual shall be the person’s principal place of business. Citizens of the United States who are residents of foreign countries or United States possessions, territories, or protectorates that do not have an association similar to the guaranty association created by this part shall be deemed residents of the state of domicile of the issuing the policies or contracts.