

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

In the Matter of
THE CALIFORNIA FAIR PLAN ASSOCIATION,

Respondent.

ORDER NO. 2021-2

WHEREAS, the California FAIR Plan Association (“FAIR Plan”) is an association of all admitted insurers licensed to write and engaged in writing *Basic Property Insurance* in California, governed by Chapter 9 of Part 1, Division 2 of the California Insurance Code,¹ sections 10090 et seq. (“Chapter 9”);

WHEREAS, pursuant to section 10095, subdivision (g), administration of the FAIR Plan is subject to the California Insurance Commissioner’s (“Commissioner”) supervision;

WHEREAS, pursuant to section 10090, the FAIR Plan’s purposes are:

- (a) to assure stability in the property insurance market for property located in the State of California;
 - (b) to assure the availability of **basic property insurance** as defined by [Chapter 9];
 - (c) to encourage maximum use, in obtaining **basic property insurance**, of the normal insurance market provided by admitted insurers and licensed surplus line brokers; and
 - (d) to provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which **basic property insurance** cannot be obtained through the normal insurance market by the establishment of a FAIR Plan...;
- (Emphasis added.)

WHEREAS, the Commissioner issued Order 2019-2, directing the FAIR Plan to, *inter alia*, no later than June 1, 2021, offer an ISO HO-3 or a policy with coverages equivalent thereto, and to submit a Plan of Operation consistent with the Order pursuant to section 10095, subdivision (g);

WHEREAS, the Commissioner issued Order 2019-3, promulgating a Plan of Operation pursuant to section 10095, subdivision (f), because the FAIR Plan failed to submit a Plan of Operation consistent with Order 2019-2 as required by section subdivision (f) of section 10095;

WHEREAS, at the time Orders 2019-2 and 2019-3 were issued, section 10091, subdivision (c) provided that **basic property insurance** means:

“Basic property insurance” means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement and vandalism and malicious mischief **and such other insurance coverages as may be added with respect to such property by the industry placement facility with the approval of the commissioner or by the commissioner**, but shall not include insurance on automobile or farm

¹ All statutory citations are to Chapter 9 of Part 1, Division 2 of the California Insurance Code, section 10090 et seq.

1 risks. (Emphasis added.)²

2 WHEREAS, on December 13, 2019, the FAIR Plan filed a petition for writ of mandate in Los
3 Angeles Superior Court (Case No. 19STCP05434, Hon. Mary H. Strobel, Department 82) challenging the
4 authority of the Commissioner to issue Orders 2019-2 and 2019-3;

5 WHEREAS, on July 12, 2021, the Los Angeles Superior Court issued an Order (attached hereto
6 as Exhibit A, the "Court Order") granting in part and denying in part the FAIR Plan's petition for writ of
7 mandate challenging the legality of Orders 2019-2 and 2019-3;

8 WHEREAS, on September 20, 2021, the Commissioner served the FAIR Plan with Order 2021-1
9 (attached hereto as Exhibit B) which vacated, in part, Orders 2019-2 and 2019-3; and

10 WHEREAS, the Court Order provides that the Commissioner has the authority under section
11 10091, subdivision (c) to require the FAIR Plan to insure against perils to the insured property not named
12 in the statute and against indirect losses related to the insured property.

13 **NOW THEREFORE, IT IS ORDERED:**

- 14 1. Consistent with the Court Order, the FAIR Plan shall, pursuant to section 10095,
15 subdivision (f), submit no later than thirty (30) days of the date of this Order, an
16 amendment to its current Plan of Operation to provide that in addition to the Basic
17 Property Insurance offered pursuant to section 10091, subdivision (c) and Paragraph C of
18 Section I of Division I of the Plan, the FAIR Plan shall also offer and sell a "Homeowners'
19 Policy," that insures against, at a minimum, the following perils to the insured property not
20 currently covered under the FAIR Plan's dwelling fire policy: accidental discharge or
21 overflow of water or steam; premises liability; incidental workers' compensation; theft;
22 falling objects; weight of ice, snow, or sleet; freezing; and loss of use, including coverage
23 for additional living expenses and fair rental value.
- 24 2. The FAIR Plan shall submit for the Commissioner's approval, a rate and form filing for the
25 Homeowners' Policy no later than April 7, 2022.
- 26 3. Orders 2019-2 and 2019-3 are superseded to the extent provided herein; and
- 27 4. This Order is effective immediately.

28 **IT IS SO ORDERED.**

Executed this 24th day of September, 2021

California Insurance Commissioner



RICARDO LARA

² Subsequent to the issuance of Orders 2019-2 and 2019-3, on July 23, 2021 Governor Newsom signed SB 11 (Rubio) into law which changed the definition of Basic Property Insurance in section 10091, subdivision (c) to include commercial insurance coverage for farm structures.