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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (Division 2 enacted by Stats. 1935, Ch. 145.)

PART 6. INSURANCE COVERING LAND [12340 - 12661] (Part 6 enacted by Stats. 1935, Ch. 145.)

CHAPTER 1. Title Insurance [12340 - 12418.4] (Chapter 1 enacted by Stats. 1935, Ch. 145.)

ARTICLE 3. Title Insurers: Finances and Investments [12370 - 12377] (Article 3 enacted by Stats. 1935)

12370. Every title insurer shall annually set apart a sum equal to 10 percent of its premiums collected during the year. Such sums shall be allowed to accumulate until a fund is created equal in amount to 25 percent of the aggregate of the subscribed capital stock of the insurer, or one million dollars (\$1,000,000), whichever is the lower amount. After the establishment by a title insurer of an unearned premium reserve, pursuant to Article 3.5 (commencing with Section 12380) of this chapter, such amount shall be reduced by the aggregate amount which shall be set aside and maintained by such insurer in such unearned premium reserve. Such fund shall be known as the "title insurance surplus fund."

(Amended by Stats. 1971, Ch. 1318.)

12371. The title insurance surplus fund shall be maintained as a further security to holders and beneficiaries of the title policies issued by the insurer. If all or any part of the fund shall at any time be in excess of the amount required by Section 12370, such excess may be transferred by the insurer to its general assets. If at any time the fund is impaired by reason of a loss, the amount by which it is impaired shall be restored in the manner provided for its accumulation. The reporting of a loss is an impairment of such fund for the purposes of this section.

(Amended by Stats. 1965, Ch. 272.)

12372. Any such domestic insurer, after having its required capital paid in and depositing its required guarantee fund with the State Treasurer, may invest its funds in the preparation and purchase of materials and plant necessary to enable it to engage in the title insurance business. In all statements and proceedings required by law for the ascertainment and determination of the condition of such insurer, such materials and plant shall be treated in one of the following ways:

- (a) They may be treated as an asset, valued at actual cost to the insurer not in excess of 50 per cent of the aggregate par value of the shares of the insurer's capital stock then issued outstanding, and apportioned to its title insurance department, including treasury shares;
- (b) They may be treated as an asset, at such lesser value than that permitted by paragraph (a) of this section as the insurer estimates;
- (c) They may be omitted entirely from the statement or proceeding.

(Amended by Stats. 1939, Ch. 325.)

12372.5. Notwithstanding the provisions of Section 12372, where a title plant is not being currently maintained, the asset value of such plant shall not exceed its asset value as of the last annual statement date preceding the first month such plant is not currently maintained, less $\frac{1}{10}$ th thereof for each succeeding year or part thereof that such plant is not being currently maintained. For the purposes of this section, a title plant shall be deemed currently maintained so long as it is used in the normal conduct of the business of title insurance, and (1) the owner thereof continues regularly to obtain and index title record data to such plant or to a continuation thereof in a format other than that previously used, including, but not limited to, computerization of such data, or (2) the owner thereof is a participant, in an arrangement for joint use of a title plant system regularly maintained in any format, provided such owner is contractually entitled to receive a copy of the title record data contained in such jointly used title plant system during the period of such owner's participation therein, either periodically or upon termination of such participation, at a cost not to exceed the actual cost of duplication of such title record data.

(Added by Stats. 1978, Ch. 846.)

12373. A title insurer shall not make any dividends except from profits remaining on hand after retaining unimpaired assets aggregating in value an amount equal to the sum of the following:

- (a) The aggregate par value of the shares of its capital stock issued and outstanding, including treasury shares;
- (b) The amount required to be set apart as the title insurance surplus fund;
- (c) The amount required to be maintained in the unearned premium reserve;
- (d) The amount required to be maintained in the reserve for unpaid losses and loss adjustment expense;
- (e) A sum sufficient to pay all liabilities for expenses and taxes and all other indebtedness.

(Amended by Stats. 1965, Ch. 272.)

12374. Except as otherwise authorized by subdivision (g) of Section 1105, a title insurer shall not directly or indirectly make a loan from its assets to any of its officers, directors or employees, or to any member of the family of any officer or director. Any officer, director, agent, or employee of any such insurer who knowingly consents to any violation of this section is guilty of a misdemeanor.

(Amended by Stats. 1981, Ch. 55, Sec. 3.)

12375. Whenever a title insurer, upon withdrawing from insurance business in this State, desires to reinsure its policies with a title insurer whose "title insurance surplus fund" is not fully made up, the commissioner may require the reinsurer to increase its "title insurance surplus fund." The amount of increase shall not be greater than the amount in the withdrawing insurer's "title insurance surplus fund" nor greater than will fully make up the reinsurer's title insurance surplus fund. Such increase may be made a condition of the commissioner's approval of the reinsurance plan.

(Enacted by Stats. 1935, Ch. 145.)

12376. (a) If an underwritten title company is placed into bankruptcy, receivership, or conservation by the commissioner, each title insurer operating under an underwriting agreement with the underwritten title company during the six months prior to the earliest of the conservation, bankruptcy, or receivership shall be liable for its proportionate share of the commissioner's costs and any escrow and subescrow account shortages as determined by the calculations set forth in subdivisions (b) and (c).

(b) If, during the six months prior to the earliest of the establishment of a conservation, bankruptcy, or receivership under subdivision (a), the underwritten title company was authorized by underwriting agreements to issue title policies for more than one title insurer, the liability of each title insurer is determined by multiplying the amount of the total escrow and subescrow shortages, as well as the costs, and expenses, as set forth in subdivision (c), by that title insurer's percentage of the underwritten title company's net premiums for policies issued by each title insurer during the 12-month period preceding the earliest of the establishment of the conservation, bankruptcy, or receivership, with each title insurer's liability pursuant to this subdivision to be referred to as its proportionate share.

(c) When determining the total proportionate liability of each title insurer, the commissioner shall include the following:

- (1) The commissioner's costs and expenses of seizing and taking control of the underwritten title company's offices, operations, and assets.
- (2) The commissioner's costs and expenses of handling, adjusting, and closing all subescrow and escrow accounts, including the costs and expenses of determining whether shortages exist in any subescrow and escrow accounts.
- (3) Other costs and expenses incurred by the commissioner in connection with borrowing from the Insurance Fund pursuant to subdivision (g) and foregone earnings or interest of the Insurance Fund resulting from the borrowing.

As used in this subdivision, "commissioner's costs and expenses" includes the costs and expenses of all agents and contractors retained by the commissioner in performing functions set forth in this subdivision, and "subescrow" and "escrow" means title subescrows and escrows. These calculations shall result in 100 percent of the shortage, costs, and expenses being proportionately allocated to each title insurer authorized to issue title policies in the last six months preceding the underwritten title company being placed into bankruptcy, receivership, or conservation.

(d) (1) The commissioner shall make an initial estimate of the total shortage in the escrow and subescrow accounts and the commissioner's costs and expenses as provided in subdivision (c) and shall provide this estimate in writing to each title insurer determined to have liability under this section as soon as practicable. The initial estimate shall be substantiated by a summary of the accounting information pertinent to the commissioner's estimate of the escrow and subescrow shortfalls and the commissioner's costs and expenses.

- (2) The commissioner shall make further estimates, as necessary, of the total shortage in the escrow and subescrow accounts and the commissioner's costs and expenses as provided in subdivision (c) and shall provide the estimates in writing to each title

insurer determined to have liability under this section. These estimates shall be substantiated by a detailed summary of pertinent accounting information.

(3) After receiving an estimate pursuant to paragraphs (1) and (2), each title insurer having liability under this section shall, within 30 days after written notification, deposit its proportionate share of the shortage, costs, and expenses into an escrow account established by the commissioner for the purpose of reimbursement to subescrow or escrow accountholders, reimbursement to the commissioner in the event that the commissioner advances or has advanced payments to subescrow or escrow accountholders, or payment or reimbursement of the commissioner's costs and expenses pursuant to subdivision (c). If a title insurer fails to make a payment required by this subdivision within the 30-day period, the title insurer shall pay a penalty calculated at the rate of 10 percent per annum on the unpaid amount until the payment is received by the commissioner.

(e) Nothing in this section relieves a person of liability under any other provision of law that he or she may have for a shortage as set forth in subdivision (a). A title insurer, on becoming liable for a shortage as set forth in this section, is entitled to enforce every available remedy, or bring any cause of action that would have been available to a person compensated by the title insurer.

(f) A title insurer shall be entitled to make a claim for reimbursement for subescrow or escrow shortages paid to subescrow or escrow accountholders and for payments of its proportionate share pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033.

(g) A title insurer shall be entitled to make a claim for reimbursement for payment of its proportionate share of the commissioner's costs and expenses paid pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033. The commissioner shall return to each title insurer its proportional share of any funds remaining in the escrow account after all liabilities in subdivision (a) have been satisfied.

(h) In order to minimize potential losses and negative impacts on consumers having money in escrow accounts held by an underwritten title company taken into conservation, bankruptcy, or receivership by the commissioner, the commissioner shall hire all necessary escrow consultants or other experts necessary to achieve this goal.

(i) The commissioner may borrow from the Insurance Fund to cover shortages in subescrow or escrow accounts and to pay costs and expenses set forth in subdivision (c).

(Amended by Stats. 2002, Ch. 899, Sec. 3. Effective January 1, 2003.)

12377. (a) All escrow funds received by an underwritten title company that are subject to Section 12413.5 shall not be considered part of the estate of the underwritten title company for purposes of liquidation, receivership, bankruptcy, or conservation pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1.

(b) Where an underwritten title company is placed into conservation, receivership, or bankruptcy and the escrow accounts held by the company are found to have shortages, the department, conservator, liquidator, receiver, or bankruptcy trustee shall do everything reasonably possible to trace these moneys to other depository accounts or assets.

(c) Any real or personal property traceable to shortages in the escrow accounts shall not be considered part of the estate available to other claimants under Section 1033. Those assets shall be liquidated and paid in the following order: (1) if the commissioner has paid or advanced funds to subescrow or escrow accountholders from sources other than the escrow established pursuant to subdivision (c) of Section 12376, they shall be paid to the commissioner to the extent that the commissioner has not been repaid by title insurers having liability under Section 12376, (2) they shall be deposited into an escrow established pursuant to subdivision (c) of Section 12376, and (3) they shall be directly reimbursed to the title insurer or insurers that have reimbursed escrow depositors under Section 12376. In no event shall a title insurer be reimbursed an amount in excess of its liability as determined in Section 12376.

(Amended by Stats. 2002, Ch. 899, Sec. 4. Effective January 1, 2003.)