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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 3.5. Unearned Premium Reserve and Reserve for Unpaid Losses and Loss Expense [12380 - 12388]** ( *Article 3.5 added by Stats. 1965, Ch. 272.*  )

**12380.** Unless the provision or context otherwise requires, the following definitions govern the construction of this article:

(a) "Total charges for policies of title insurance" means (i) the total of fees and charges as shown on policies, as required by Section 12412, less any amount paid for coinsurance of such policy to any coinsuring title insurer and (ii) the total sum charged by any coinsuring title insurer for acting as a coinsurer in respect to any policy of title insurance.

(b) "Ceding company" means a title insurer which shall have purchased a policy or contract of reinsurance from a reinsuring company.

(c) "Reinsuring company" means a title insurer which shall have sold a policy or contract of reinsurance to a ceding company.

(d) "Unearned premium reserve" means that reserve that is generally known as the statutory premium reserve.

(*Amended by Stats. 1993, Ch. 974, Sec. 7. Effective January 1, 1994.*)

**12381.** Every domestic title insurer shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall, at all times for all purposes, be deemed and shall constitute the unearned portion of premiums due or received on all of its business wherever transacted and shall be charged as a reserve liability of such title insurer in determining its financial condition. The unearned premium reserve shall be retained and held by such title insurer for the protection of the policyholders' interest in policies which have not expired. Except as provided in Section 12385, assets equal to the amount of such reserve shall not be subject to distribution among depositors or other creditors or stockholders of such title insurer until all claims of holders of policies and contracts of title insurance of such title insurer have been paid in full and all liability on the policies or other contracts of title insurance, whether contingent or actual, has been discharged or lawfully reinsured. Income from the investment of all or any part of such reserve shall be the unrestricted property of the title insurer.

Every admitted foreign insurer shall maintain a like reserve under like conditions in respect to its California business.

(*Added by Stats. 1965, Ch. 272.*)

**12382.** The unearned premium reserve of every title insurer shall consist of:

(a) Such amount as would have been required to be set aside in said reserve on all policies or contracts of title insurance issued during the calendar years 1962, 1963 and 1964, if this article had been effective at and after the date that such policies or contracts were written, less the amount of withdrawals that would have been permitted if this article had been so effective; and

(b) The amount of all additions required to be made to such reserve by this article less the withdrawals therefrom permitted by this article.

(*Added by Stats. 1965, Ch. 272.*)

**12382.2.** (a) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve commencing as of January 1, 1965, an amount equal to 2 percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsuring company shall be required to set aside in its unearned premium reserve only that portion, if any, of that 2 percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured prior to January 1, 1988.

(b) Out of total charges for policies of title insurance, a title insurer shall add to and set aside in its unearned premium reserve, an amount equal to  $2\frac{1}{2}$  percent of those total charges for policies of title insurance, which amount shall be deemed and shall constitute the unearned premiums due or received from all such policies or contracts. Except as otherwise provided in Section 12382.6, if any policy of title insurance shall be reinsured, the reinsurer shall be required to set aside in its unearned premium reserve only that portion, if any, of the  $2\frac{1}{2}$  percent as shall have not theretofore been set aside by the ceding company. This subdivision shall apply to policies issued and reinsured on and after January 1, 1988, and prior to January 1, 1994.

(c) Out of total charges for policies of title insurance and, commencing no later than the year beginning January 1, 1994, a title insurer shall add to and set aside in its unearned premium reserve an amount equal to  $4\frac{1}{2}$  percent of the sum of the following items, for all jurisdictions where the title insurer operates, set forth in the title insurer's annual statement filed in this state:

(1) "Direct premiums written" as set forth in Schedule T.

(2) "Other income" as set forth in Schedule T.

(3) "Premiums written during year—reinsurance assumed" less "Premiums for reinsurance ceded during year."

(d) The insurer shall calculate an adjusted unearned premium reserve as of December 31, 1993. The adjusted unearned premium reserve shall be calculated as if subdivision (c) of this section and subdivision (c) of Section 12382.5 had been in effect for all years beginning on or after January 1, 1974. For purposes of this calculation, the balance of the unearned premium reserve as of December 31, 1973, shall be deemed to be zero. If the adjusted unearned premium reserve so calculated exceeds the aggregate amount set aside for unearned premiums in the insurer's December 31, 1993, Annual Statement (Form 9), the insurer shall, out of total charges for policies of title insurance, increase its unearned premium reserve by an amount that is not less than one-sixth of that excess in each of the succeeding six years, commencing no later than the year beginning January 1, 1994, until the entire excess has been added.

*(Amended by Stats. 1994, Ch. 353, Sec. 1. Effective January 1, 1995.)*

**12382.3.** The aggregate amount set aside in the unearned premium reserve shall be separately recorded and reserved in respect to such policies and contracts issued in each calendar year. All amounts set aside as additions to the unearned premium reserve, to the extent that the same have not previously been deducted from net profits or earned surplus, shall be deducted in determining net profits of any title insurer.

*(Added by Stats. 1965, Ch. 272.)*

**12382.4.** For the purpose of determining the amounts of the unearned premium reserve that may be withdrawn pursuant to Section 12382.5 and the interest of the policyholders therein under Section 12385, all policies and contracts of title insurance or reinsurance shall be considered as dated on July 1 of the year of issue.

*(Added by Stats. 1965, Ch. 272.)*

**12382.5.** (a) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (a) of Section 12382.2 shall be released from that reserve and restored to net profits pursuant to the following formula: one-tenth of that aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of that aggregate sum on July 1 of each succeeding year thereafter until the entire sum shall have been so released and restored to net profits. The aggregate of the amounts set aside in unearned premium reserve pursuant to subdivision (a) of Section 12382 shall be released from the reserve and restored to net profits and surplus pursuant to the foregoing formula, provided that the amounts so set aside shall be treated as if subdivision (a) of Section 12382 and this section had been effective during the calendar years 1962, 1963, and 1964.

(b) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (b) of Section 12382.2 shall be released from the reserve and restored to net profits pursuant to the following formula: one-tenth of the aggregate sum on July 1 of each of the 10 years next succeeding the year of addition to the reserve until the entire sum shall have been so released and restored to net profits.

(c) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subdivision (c) of Section 12382.2 shall be released from the reserve and restored to net profits over a period of 20 years pursuant to the following formula: 10 percent of the aggregate sum on July 1 of each of the five years next succeeding the year of addition; 9 percent of the aggregate sum on July 1 of each of the next succeeding five years; and one-half of 1 percent of the aggregate sum on July 1 of each of the last 10 years.

(d) The aggregate of the amounts set aside in unearned premium reserve in any calendar year as adjustments to the insurer's unearned premium reserve pursuant to subdivision (d) of Section 12382.2 shall be released from the reserve and restored to net profits, or equity if the additions required by subdivision (d) of Section 12382.2 reduced equity directly, over a period not exceeding 10 years pursuant to the following table:

Year of addition	Release
1994, or earlier	Equally over 10 years
1995	Equally over 9 years
1996	Equally over 8 years
1997	Equally over 7 years
1998	Equally over 6 years
1999	Equally over 5 years

*(Amended by Stats. 1994, Ch. 353, Sec. 2. Effective January 1, 1995.)*

**12382.6.** If substantially the entire outstanding liability under all policies and contracts of title insurance or reinsurance of any ceding company shall be reinsured, pursuant to and as authorized by Section 12385, the total charge received by any reinsuring company authorized to transact the business of title insurance in this state shall constitute, in its entirety, unearned portions of original premiums, and shall be added to its unearned premium reserve and shall be deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such reinsuring company shall be not less than two-thirds ( $\frac{2}{3}$ rds) of the amount of the unearned premium reserve required to be maintained by the ceding company at the time of such reinsurance.

*(Added by Stats. 1965, Ch. 272.)*

**12383.** All amounts set aside in the unearned premium reserve of a title insurer shall be held either as cash on hand or shall be deposited or invested in those investments suitable for the investment of trust funds, as provided in Section 16040 of the Probate Code.

*(Amended by Stats. 1999, Ch. 187, Sec. 1. Effective January 1, 2000.)*

**12384.** If the aggregate amount set aside by a title insurer in its unearned premium reserve should at any time be less than the amount required to be maintained in such reserve, and the deficiency shall not be promptly cured, such title insurer shall forthwith give written notice thereof to the commissioner. Any such title insurer shall not thereafter issue any further policies or contracts of title insurance or reinsurance until the deficiency shall have been eliminated and until it shall have received written approval from the commissioner authorizing it to again issue such policies and contracts of title insurance and reinsurance. For the purpose of determining the aggregate amount set aside by a title insurer in its unearned premium reserve, any portion of such reserve which shall have been invested shall be valued at the purchase price or the fair market value of such investment on the date that such investment was made.

*(Added by Stats. 1965, Ch. 272.)*

**12385.** If a title insurer shall at any time become insolvent, be in the process of liquidation or dissolution or be in the possession of the commissioner, all amounts set aside in the unearned premium reserve shall be used and applied as follows:

(a) Such amount up to the whole of the reserve as is necessary may be used with the written approval of the commissioner to pay for reinsurance of the liability of such title insurer under all outstanding policies and contracts of title insurance or reinsurance as to which claims for losses by holders thereof are not then pending. The amount of the unearned premium reserve not so used shall be transferred to the general assets of the title insurer to be held and distributed subject to the limitations imposed by this section.

(b) The assets of a title insurer other than the unearned premium reserve shall be available to pay claims for losses sustained by holders of policies then pending or arising up to the time reinsurance is effected. In the event that claims for losses are in excess of such other assets of a title insurer, the excess of such claims, when established, shall be paid pro rata out of surplus assets attributable to the unearned premium reserve to the extent of such surplus, if any.

*(Added by Stats. 1965, Ch. 272.)*

**12386.** In the event that reinsurance is not obtained, as authorized by Section 12385, the unearned premium reserve and assets constituting the guarantee fund of the title insurer, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held by the commissioner for twenty (20) years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of such fund shall, at the expiration of twenty (20) years, constitute general assets of the title insurer.

*(Added by Stats. 1965, Ch. 272.)*

**12387.** Where a title insurer organized or incorporated under the laws of any state other than California does business in California, if the laws of the state of its domicile obligate such company to create and maintain an unearned premium reserve for purposes substantially similar to those of this article, any amounts required by the law of such state to be added to such reserve by reason of business done in California shall be deducted from any amounts required by this article to be set aside by such title insurer in an unearned premium reserve for its California business.

The provisions of this section shall be applicable only to title insurers organized or incorporated in those states whose laws provide that a title insurer organized and incorporated under the laws of California and which does business in such other state will be permitted a deduction substantially similar to that provided by this section with respect to any unearned premium reserve requirements for business done in that state.

*(Added by Stats. 1965, Ch. 272.)*

**12388.** Every title insurer shall, in addition to other reserves establish and maintain a reserve to be known as the "reserve for unpaid losses and loss adjustment expense", which shall be used for the payment of losses incurred as a result of liability arising under policies of title insurance and the payment of adjustment expenses necessary for the settlement of or defense against claims of any such liability. Said reserve shall be in an amount equal to the sum of (1) the estimated amounts necessary to pay unpaid losses, plus (2) the estimated amounts of loss adjustment expense necessary to settle or defend against every claim presented pursuant to notice from or on behalf of every insured that may result in a loss to or cause expense to be incurred by a title insurer for the proper disposition of the claim. Every title insurer shall calculate such reserve by making a careful estimate in each year of the amounts anticipated to be reasonably necessary for both such purposes. The sum of the items so estimated shall be the total amount of the reserve for unpaid losses and loss adjustment expenses of such title insurer. The amounts so estimated may be revised from time to time as circumstances warrant and reduced by the amount of payments made, but shall be redetermined at least once each year. The amounts set aside in such reserve in any year shall be deducted in determining the net profits for such period of any title insurer.

*(Added by Stats. 1965, Ch. 272.)*