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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 2A. Mortgage Guaranty Insurance [12640.01 - 12640.20] (*Chapter 2A added by Stats. 1961, Ch. 719.*)

ARTICLE 4. Limitations and Restrictions for Transacting Business [12640.07 - 12640.11] (*Article 4 added by Stats. 1961, Ch. 719.*)

12640.07. (a) Mortgage guaranty insurance may be transacted in this state only by a stock or mutual casualty insurer holding a certificate of authority for the transaction of the insurance pursuant to this chapter, and shall be written only to insure either of the following:

(1) Loans secured by first liens on authorized real estate securities not exceeding, at the time the loan is made, 103 percent of the fair market value of the authorized real estate security, as defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 12640.02.

(2) Loans secured by junior liens, as defined in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12640.02.

(b) Any reciprocal insurer engaging in this type of business shall be bound by all provisions of this chapter, including the requirements as to paid-in capital and paid-in surplus.

(Amended by Stats. 2002, Ch. 429, Sec. 2. Effective January 1, 2003.)

12640.08. A mortgage guaranty insurer shall not insure loans secured by properties in a single housing tract or a contiguous tract in excess of ten (10) percent of the insurer's policyholders surplus. In determining the amount of such risk, applicable reinsurance in any assuming insurer authorized to transact mortgage guaranty insurance in this State shall be deducted from the total direct risk insured. "Contiguous," for the purposes of this section, means not separated by more than one-half mile.

(Added by Stats. 1961, Ch. 719.)

12640.09. (a) A mortgage guaranty insurer shall limit its coverage for the class of insurance defined in paragraph (3) of subdivision (a) of Section 12640.02 to no more than a net of 30 percent at risk of the entire indebtedness to the insured or, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

(b) (1) A mortgage guaranty insurer shall limit its coverage for the class of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02, to no more than a net of 30 percent of risk of the combined indebtedness of all existing mortgage loan amounts secured by all liens or charges on the real estate. Instead, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

(2) Notwithstanding paragraph (1), a mortgage guaranty insurer may elect to insure a portfolio of loans secured by instruments constituting junior liens on real estate, if the total amount at risk in any one portfolio shall not at any time exceed 20 percent of the original principal amount of mortgage loans secured by junior liens.

(3) If the borrower is required to pay the cost of insurance written under paragraph (1) or (2), the lender shall disclose in writing to the borrower that the borrower is not a party to or a beneficiary of the mortgage guaranty insurance policy.

(4) Notwithstanding subdivision (a) and paragraph (1) of subdivision (b), if Freddie Mac or Fannie Mae increases the required amount of mortgage guaranty insurance, the commissioner may adopt regulations to increase the maximum coverage limitation of a mortgage guaranty insurer to an amount not to exceed a net of 35 percent of risk of the entire indebtedness.

(c) Notwithstanding subdivision (a) or (b), a mortgage guaranty insurer may extend its coverage for the class of insurance defined in paragraphs (2) and (3) of subdivision (a) of Section 12640.02 beyond the limits established by subdivisions (a) and (b) of this section, if the excess is insured by a contract of reinsurance.

(d) (1) Notwithstanding any law to the contrary, mortgage guaranty insurance or reinsurance may be ceded by contract, if the assuming insurer is either of the following:

(A) A mortgage guaranty insurer, which may be under common control with the ceding mortgage guaranty insurer, but which does not own, and is not owned by, in whole or in part, directly or indirectly, the ceding mortgage guaranty insurer.

(B) An insurer or reinsurer, that may be under common control with the ceding mortgage guaranty insurer, but that is not owned by, in whole or in part, directly or indirectly, the ceding mortgage guaranty insurer or another mortgage guaranty insurer, that writes any type or types of insurance or reinsurance and that meets the following requirements:

(i) Has paid-in capital and paid-in surplus totaling at least thirty-five million dollars (\$35,000,000).

(ii) Derives, on an annual basis, at least 50 percent of its premium income from reinsurance; or, alternatively, derives at least twenty-five million dollars (\$25,000,000) of premium income per year from reinsurance.

(iii) Establishes and maintains its share of the reserve liabilities required by Section 12640.16 if licensed in this state, or establishes, maintains, and funds in accordance with Section 922.4 or 922.5, its share of the reserve liabilities required by Section 12640.16 if not licensed in this state.

(iv) Establishes and maintains its share of an amount equal to the greater of either the reserve liabilities required by Section 12640.04 or the policyholders surplus required by Section 12640.05 in a segregated trust which meets the requirements of Section 12640.091.

(2) This section does not permit the assuming insurer or reinsurer to directly write mortgage guaranty insurance.

(3) Any assuming insurer or reinsurer and the ceding mortgage guaranty insurer shall establish and maintain in the aggregate the reserves required by Sections 12640.04 and 12640.16.

(e) This section does not apply to the California Housing Loan Insurance Fund or to any program it may develop in conjunction with any federal or federally sponsored mortgage lender or insurer.

(Amended (as amended by Stats. 2012, Ch. 105, Sec. 1) by Stats. 2016, Ch. 62, Sec. 1. (AB 1645) Effective January 1, 2017.)

12640.091. (a) In order to qualify as a segregated trust under subdivision (d) of Section 12640.09, a trust shall meet all of the following requirements:

(1) Be established by an insurer or reinsurer for the benefit of the ceding mortgage guaranty insurer.

(2) Have the trust assets located in the mortgage guaranty insurer's state of domicile, in the State of California, or in another jurisdiction which is approved by the commissioner.

(3) Be funded by assets permitted by Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1, or by tax and loss bonds purchased pursuant to Section 832(e) of the Internal Revenue Code.

(4) Be subject to withdrawals only by, and under the control of, the ceding mortgage guaranty insurer provided that written notification with adequate supporting documentation is filed with the commissioner within 15 calendar days after the withdrawal.

(5) Consent to and be subject to examination by the commissioner.

(6) Appoint an agent for service of process in the State of California and file the appointment with the commissioner within 30 calendar days after the effective date.

(b) The trust agreement and any amendments to it shall be filed with the commissioner within 30 calendar days after its effective date. The commissioner may order a prospectively applicable modification, correction, disapproval, or termination of any trust arrangement, agreement, or amendment which fails to meet the requirements set forth in this chapter. Any order of the commissioner shall be in writing and shall specify the reasons for the modifications, corrections, disapproval, or termination.

(c) The ceding mortgage guaranty insurer shall make quarterly, annual, and interim reports on the segregated trust account at the time as they are required or requested by the commissioner on forms prescribed by the commissioner.

(d) The commissioner may adopt rules and regulations necessary to carry out the provisions of this section including appropriate rules or regulations to assure that the trust assets are legally segregated, reasonably liquid, secure, and accessible.

(Added by Stats. 1990, Ch. 772, Sec. 3.)

12640.095. A mortgage guaranty insurer transacting the class of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02 may reinsure with either the type of reinsurer defined in subdivision (d) of Section 12640.09, or, any other insurer which has received written permission from the commissioner to write the type of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02.

(Added by Stats. 1982, Ch. 1084, Sec. 4.)

12640.10. (a) An insurer that anywhere transacts any class of insurance other than mortgage guaranty insurance defined in paragraphs (1), (3), and (4) of subdivision (a) of Section 12640.02 is not eligible for the issuance of a certificate of authority to transact those classes of mortgage guaranty insurance in this state nor for the renewal thereof. An insurer with a certificate of authority to transact the business of credit insurance in this state may also transact the business of mortgage guaranty insurance as defined in paragraph (2) of subdivision (a) of Section 12640.02, provided the insurer has received the written permission of the commissioner.

(b) An insurer that anywhere transacts the classes of insurance defined in paragraphs (2), (3), and (4) of subdivision (a) of Section 12640.02 is not eligible for the issuance of a certificate of authority to transact in this state the class of mortgage guaranty insurance defined in paragraph (1) of subdivision (a) of Section 12640.02.

(c) An insurer authorized to transact the class of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02 shall maintain segregated accounts with respect to that insurance in the following manner if it anywhere transacts any other class of insurance:

(1) The minimum paid in capital and surplus required by Section 12640.03 and the reserves required to be established pursuant to Sections 12640.04 and 12640.16 shall be contributed to and maintained in the account.

(2) The income and assets attributable to the segregated account shall continuously remain identifiable with the particular account, but, unless the commissioner so orders, the assets need not be kept physically separate from other assets of the insurer. The income, gains, and losses, whether or not realized, from assets attributable to the segregated account shall be credited to or charged against the account without regard to other income, gains, or losses of the insurer.

(3) Assets attributable to the segregated account shall not be chargeable with any liabilities arising out of any other business of the insurer, and any assets not attributable to the account shall not be chargeable with any liabilities arising out of it.

(4) The segregated account shall be deemed an insurer for purposes of any proceedings in cases of insolvency and delinquency instituted, pursuant to applicable provisions of this code; provided, however, that account shall not be subject to the provisions of Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(5) Assets allocated to the segregated account are the property of the insurer, which shall not hold itself out to be a trustee of the assets.

(6) An insurer may own a particular asset in determinate proportions for that segregated account or for its general account.

(7) An insurer may, by an identifiable act, transfer assets for fair consideration between its segregated account and its general account.

(d) The written permission described in subdivision (a) shall be obtained by filing an application with the commissioner on a form prescribed by the commissioner accompanied by any additional information concerning the insurer, its conditions, and affairs, as the commissioner may require. A fee of two thousand two hundred forty-one dollars (\$2,241) shall be paid in advance to the department for the filing of the application.

(Amended by Stats. 2017, Ch. 534, Sec. 83. (AB 1699) Effective January 1, 2018.)

12640.11. (a) Nothing in this chapter (commencing with Section 12640.01) shall be construed as limiting the right of any mortgage guaranty insurer to impose reasonable requirements upon the lender with regard to the terms of any note or bond or other evidence of indebtedness secured by a mortgage or deed of trust, such as requiring a stipulated down payment by the borrower.

(b) All statements and descriptions in any application for mortgage guaranty insurance or in negotiations for that insurance, and all documents relating thereto, submitted to the mortgage guaranty insurer shall be deemed to be representations and not warranties. Furthermore, misrepresentations and incorrect or incomplete statements in any such application, negotiations, and all documents relating thereto shall not prevent a recovery under a policy of mortgage guaranty insurance unless:

(1) Fraudulent; or

(2) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(3) The insurer in good faith would either not have issued the mortgage guaranty insurance policy or extended coverage thereunder, or would not have issued the policy or extended coverage in as large an amount or at the premium rate as applied for or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been known to the insurer as required by the application for the policy or for the extension of coverage or otherwise.

(Amended by Stats. 1985, Ch. 1476, Sec. 1.)