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AMENDED IN ASSEMBLY MAY 26, 1995
AMENDED IN ASSEMBLY MAY 4, 1995

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1611

Introduced by Assembly Member Archie-Hudson

February 24, 1995

An act to amend Sections 12640.02 and 12640.09 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1611, as amended, Archie-Hudson. Mortgage insurance.

Existing law authorizes mortgage guaranty insurance to be written to insure loans secured by first liens on authorized real estate securities, or loans secured by junior liens in certain instances. Existing law defines "authorized real estate security" to include real estate and cash, and to include real estate securing a note, bond, or other evidence of indebtedness by a junior mortgage, deed of trust, or other instrument constituting a junior lien or charge on the real estate that, when combined with all existing mortgage loan amounts, does not exceed a total indebtedness equal to 90% of the fair market value of the real estate at the time the junior loan is made, unless otherwise approved by the Department of Insurance and subject to additional limitations.

This bill would instead provide for the junior liens that the total indebtedness not exceed 97% of the fair market value of the real estate at the time the junior loan is made, and that, in determining the 97% limitation, if the loan securing the junior lien is an equity line of credit loan, the full amount of the line of credit shall be considered the amount of the loan.

Existing law requires a mortgage guaranty insurer to limit its coverage for insurance against nonpayment on a junior lien to a maximum of a net of 25% of risk of the combined indebtedness of all existing mortgage loan amounts secured by all liens or charges on the real estate, or, in lieu thereof, to elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

This bill would provide that ~~in lieu of insuring individual loans subject to~~ notwithstanding the above limits, a mortgage guaranty insurer may elect to insure a portfolio of loans secured by instruments constituting junior liens on real estate, provided that the total amount at risk in any one portfolio shall not at any time exceed 20% of the original principal amount of mortgage loans secured by junior liens.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12640.02 of the Insurance Code
2 is amended to read:
3 12640.02. The definitions set forth in this article shall
4 govern the construction of the terms used in this chapter
5 but shall not affect any other provisions of this code.
6 (a) "Mortgage guaranty insurance" means:
7 (1) Insurance against financial loss by reason of
8 nonpayment of principal, interest, and other sums agreed
9 to be paid under the terms of any note or bond or other
10 evidence of indebtedness secured by a mortgage, deed of
11 trust, or other instrument constituting a first lien or
12 charge on real estate, provided the improvement on the
13 real estate is a residential building or a condominium unit
14 or buildings designed for occupancy by not more than
15 four families.



1 (2) Insurance against financial loss by reason of
2 nonpayment of principal, interest, and other sums agreed
3 to be paid under the terms of any note or bond or other
4 evidence of indebtedness secured by a mortgage, deed of
5 trust, or other instrument constituting a junior lien or
6 charge on real estate, provided the improvement on the
7 real estate is a residential building or a condominium unit
8 or building designed for occupancy by not more than four
9 families.

10 (3) Insurance against financial loss by reason of
11 nonpayment of principal, interest and other sums agreed
12 to be paid under the terms of any note or bond or other
13 evidence of indebtedness secured by a mortgage, deed of
14 trust, or other instrument constituting a lien or charge on
15 real estate, provided the improvement on the real estate
16 is a building or buildings designed for occupancy by five
17 or more families or designed to be occupied for industrial
18 or commercial purposes.

19 (4) Insurance against financial loss by reason of
20 nonpayment of rent and other sums agreed to be paid
21 under the terms of a written lease for the possession, use
22 or occupancy of real estate, provided the improvement
23 on the real estate is a building or buildings designed to be
24 occupied for industrial or commercial purposes.

25 (b) (1) "Authorized real estate security" for the
26 purposes of this chapter means either (A) real estate, plus
27 the balance of any pledged cash account, pledged
28 borrower retirement account, or collateralized guaranty
29 agreement contracted for by parents, blood relatives,
30 employers, or nonprofit corporations for the benefit of
31 the borrower; or (B) real estate securing a note, bond, or
32 other evidence of indebtedness by a junior mortgage,
33 deed of trust, or other instrument constituting a junior
34 lien or charge on the real estate, which, when combined
35 with all existing mortgage loan amounts, does not exceed
36 a total indebtedness equal to 97 percent of the fair market
37 value of the real estate at the time the junior loan is made,
38 provided that, in determining the forgoing 97 percent
39 limitation, if the loan securing the junior lien is an equity
40 line of credit loan, the full amount of the line of credit to



1 be secured by the junior lien shall be considered the
2 amount of the loan, and further provided, in all cases that
3 both of the following are true:

4 (i) The real estate loan secured in this manner is any
5 type of loan which a bank, savings and loan association,
6 mortgage banker, credit union, mortgage loan broker, or
7 an insurance company, which is supervised and regulated
8 by a department of this state or an agency of the federal
9 government, is authorized to make or arrange, or would
10 be authorized to make or arrange, disregarding any
11 requirement applicable to such an institution that the
12 amount of the loan not exceed a certain percentage of the
13 value of the real estate.

14 (ii) The improvement on the real estate is a building
15 or buildings designed for occupancy as specified by
16 paragraphs (1), (2), and (3) of subdivision (a).

17 (C) The lien on the real estate may be subject and
18 subordinate to the following:

19 (i) The lien of any public bond, assessment, or tax,
20 when no installment, call, or payment of or under the
21 bond, assessment, or tax is delinquent.

22 (ii) Outstanding mineral, oil or timber rights,
23 rights-of-way, easements or rights-of-way or support,
24 sewer rights, building restrictions or other restrictions or
25 covenants, conditions or regulations of use, or
26 outstanding leases upon the real property under which
27 rents or profits are reserved to the owner thereof.

28 (2) "Authorized real estate security" also means a
29 stock or membership certificate issued to a
30 tenant-stockholder or resident-member by a completed
31 fee simple cooperative housing corporation, as defined in
32 Section 17265 of the Revenue and Taxation Code and
33 Section 216 of the United States Internal Revenue Code.

34 (c) "Contingency reserve" means an additional
35 premium reserve established for the protection of
36 policyholders against the effect of adverse economic
37 cycles.

38 (d) "Policyholders surplus" means the aggregate of
39 capital, surplus and contingency reserve.



1 SEC. 2. Section 12640.09 of the Insurance Code is
2 amended to read:

3 12640.09. (a) A mortgage guaranty insurer shall limit
4 its coverage for the class of insurance defined in
5 paragraphs (1) and (3) of subdivision (a) of Section
6 12640.02 to a maximum of a net of 25 percent at risk of the
7 entire indebtedness to the insured, or in lieu thereof, a
8 mortgage guaranty insurer may elect to pay the entire
9 indebtedness to the insured and acquire title to the
10 authorized real estate security.

11 (b) (1) A mortgage guaranty insurer shall limit its
12 coverage for the class of insurance defined in paragraph
13 (2) of subdivision (a) of Section 12640.02, to a maximum
14 of a net of 25 percent of risk of the combined indebtedness
15 of all existing mortgage loan amounts secured by all liens
16 or charges on the real estate. In lieu thereof, a mortgage
17 guaranty insurer may elect to pay the entire indebtedness
18 to the insured and acquire title to the authorized real
19 estate security.

20 ~~(2) In lieu of insuring individual loans under~~

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

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

33 (c) Notwithstanding subdivision (a) or (b), a
34 mortgage guaranty insurer may extend its coverage for
35 the class of insurance defined in paragraphs (1), (2), and
36 (3) of subdivision (a) of Section 12640.02 beyond the
37 limits established by subdivisions (a) and (b) of this
38 section, provided the excess is insured by a contract of
39 reinsurance.



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

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

10 (B) A nonaffiliated insurer or reinsurer which writes
11 any type or types of insurance or reinsurance and which
12 meets the following requirements:

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

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

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

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

30 (2) Nothing herein contained shall be deemed to
31 permit the assuming insurer or reinsurer to directly write
32 mortgage guaranty insurance.

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

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