AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN ASSEMBLY JUNE 26, 2009

SENATE BILL No. 291

Introduced by Senator Calderon
(Principal coauthor: Assembly Member Solorio)

February 25, 2009

An act to amend Section 12640.05 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 291, as amended, Calderon. Insurance reserves.

Existing law requires a mortgage guaranty insurer to maintain a policyholders surplus at all times in an amount not less than the amount required, as specified, and defines "face amount of an insured mortgage" for these purposes. Existing law requires a mortgage guaranty insurer to cease new business if the insurer does not have the amount of policyholders surplus required, as specified.

This bill would revise the definition of "face amount of an insured mortgage" to exclude the outstanding principal balance of any loan that is in default and for which the insurer has established a loss reserve, as specified. The bill would provide that if a mortgage guaranty insurer will not have the amount of policyholders surplus required, ~~then as soon as practicable after the insurer is reasonably certain that its policyholder surplus will fall below the amount required, the insurer shall so notify the commissioner. The commissioner may issue an order instructing the insurer to cease transacting new business in California, as specified, provided however, that prior to the issuance of an order instructing the insurer to cease transacting new business, the insurer shall be entitled to a hearing. The costs of the hearing would be borne by the insurer, as~~

~~specified~~ *it shall cease transacting new business, as specified, until its policyholders surplus is in compliance. The bill requires that the insurer notify the commissioner at least 60 days prior to the time the policyholders surplus is estimated to fall below the amount required and may at that time request a waiver of the requirements. If the commissioner fails to issue an order in response to the waiver request within 60 days, the insurer may continue transacting new business in California until the commissioner issues an order. The insurer would bear the commissioner's cost of retaining consultants reasonably necessary to evaluate the waiver request, and reimburse the commissioner for the cost of a hearing held, as specified.*

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

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

SECTION 1. Section 12640.05 of the Insurance Code is amended to read:

12640.05. (a) A mortgage guaranty insurer shall maintain a policyholders surplus in an amount not less than the amount required by this section. The policyholders surplus shall be the calculated net of reinsurance ceded, but shall include reinsurance assumed. "Face amount of an insured mortgage" means the outstanding principal balance computed without any reduction because of an insurer's option limiting its coverage, but shall exclude the outstanding principal balance of any loan that is in default and for which the insurer has established a loss reserve, provided that the loss reserve established for that loan is equal to or greater than the policyholders surplus the insurer would otherwise be required to establish with respect to that loan, pursuant to this section. Nothing in this subdivision limits the commissioner's authority under Section 12640.04.

(b) If a policy of mortgage guaranty insurance insures individual loans with a percentage claim settlement option on such loans, the insurer shall maintain a policyholders surplus based on each one hundred dollars ($100) of the face amount of the mortgage, the percentage coverage or claim settlement option, and the loan-to-value category.

The required amount of policyholders surplus shall be calculated in the following manner:

(1) If the total indebtedness is greater than 75 percent of the value of the collateral property at the date of the insurance:

Percent Coverage	Policyholders Surplus per $100 of the Face Amount of the Mortgage	Percent Coverage	Policyholders Surplus per $100 of the Face Amount of the Mortgage
5%	$ .20	55%	$1.50
10	.40	60	1.55
15	.60	65	1.60
20	.80	70	1.65
25	1.00	75	1.75
30	1.10	80	1.80
35	1.20	85	1.85
40	1.30	90	1.90
45	1.35	95	1.95
50	1.40	100	2.00

If the percent coverage is between any five-point increment, then the factor for policyholders surplus per one hundred dollars ($100) of the face amount of the mortgage shall be prorated.

(2) If the total indebtedness is at least 50 percent and not more than 75 percent of the value of the collateral property at the date of insurance, the required amount of policyholders surplus shall be 50 percent of the amount required by paragraph (1) of subdivision (b).

(3) If the total indebtedness is less than 50 percent of the value of the collateral property at the date of insurance, the required amount of policyholders surplus shall be 25 percent of the amount required by paragraph (1) of subdivision (b).

(c) If a policy of mortgage guaranty insurance provides coverage on a group of loans subject to an aggregate loss limit, the policyholders surplus shall be:

(1) If the equity is not more than 50 percent and is at least 20 percent, or equity plus prior insurance or a deductible equals 25 percent of the value of the collateral property at the date of insurance, the required amount of policyholders surplus shall be calculated as follows:

Percent Coverage	Policyholders Surplus per $100 of the Face Amount of the Mortgage	Percent Coverage	Policyholders Surplus per $100 of the Face Amount of the Mortgage
1%	$ .30	50%	$ .825
5	.50	60	.85
10	.60	70	.875
15	.65	75	.90
20	.70	80	.925
25	.75	90	.95
30	.775	100	1.00
40	.80		

If the percent coverage is between any specified increment, then the factor for policyholders surplus per one hundred dollars ($100) of the face amount of the mortgage shall be prorated.

(2) If the equity is less than 20 percent or the equity plus prior insurance or a deductible is less than 25 percent of the value of the collateral property at the date of insurance, the required amount of policyholders surplus shall be 200 percent of the amount required by paragraph (1) of subdivision (c).

(3) If the equity is more than 50 percent or the equity plus prior insurance or a deductible is more than 55 percent of the value of the collateral property at the date of insurance, the required amount of policyholders surplus shall be 50 percent of the amount of policyholders surplus required by paragraph (1) of subdivision (c).

(d) If a policy of mortgage guaranty insurance provides for layers of coverage, deductibles or excess reinsurance, the required amount of policyholders surplus may be computed by subtraction of the required policyholders surplus for the lower percentage coverage limits from the required policyholders surplus for the upper or greater coverage limit.

(e) If a policy of mortgage guaranty insurance provides for coverage on loans secured by second liens, the policyholders surplus shall be:

(1) If the policy provides coverage on individual loans, the required amount of policyholders surplus shall be calculated according to subdivision (b) after the percent of coverage and the loan-to-value ratios have been determined as follows:

(A) Divide the insured portion of the second loan by the entire loan indebtedness on the collateral property to determine the percent coverage.

(B) Divide the entire loan indebtedness on the property by the value of the collateral property at the date of insurance to determine loan-to-value percent.

(C) The face amount of insured mortgage shall mean the entire loan indebtedness on the property.

(D) Equity shall mean the complement of the loan-to-value percent.

(2) If the policy provides coverage on a group of loans subject to an aggregate loss limit, the policyholders surplus shall be calculated according to subdivision (c) after the percent of coverage and the loan-to-value ratios have been determined in accordance with paragraph (1).

(f) If a policy of mortgage guaranty insurance provides for coverage on leases, the policyholders surplus shall be four dollars ($4) for each one hundred dollars ($100) of the insured amount of the lease.

~~(g) If a mortgage guaranty insurer will not have the amount of policyholders surplus required by this section, it shall, as soon as practicable after the insurer is reasonably certain that its policyholder surplus will fall below the amount required by this section, so notify the commissioner. Based on the information provided by the insurer, or as otherwise determined by the commissioner, the commissioner may issue an order instructing the insurer to cease transacting new business in California. Prior to the issuance of an order instructing the insurer to cease transacting new business, the insurer shall be entitled to a hearing. The commissioner may retain consultants, including accountants, actuaries, or other experts, to assist the commissioner in the review of the information submitted by the insurer pursuant to this section. The insurer shall bear the commissioner's cost of retaining those consultants, and shall reimburse the commissioner for the cost of any hearing requested by the insurer. Nothing in this section is intended to limit the commissioner's authority under any other provision of this code.~~

(g) If a mortgage guaranty insurer will not have the amount of policyholders surplus required by this section, it shall cease transacting new business until such time that its policyholders

surplus is in compliance with this section. At least 60 days prior to the time the policyholders surplus is estimated to fall below the amount required by this section, the insurer shall notify the commissioner and may request a waiver of the requirements of this subdivision. If the commissioner fails to issue an order in response to the waiver request within 60 days after the insurer requests a waiver, the insurer may continue transacting new business in California until the commissioner issues an order. The commissioner may retain consultants, including accountants, actuaries, or other experts, to assist the commissioner in the review of the information reasonably necessary to evaluate the waiver request made pursuant to this subdivision, and the insurer shall bear the commissioner's cost of retaining those consultants. The insurer shall reimburse the commissioner for the cost of a hearing held pursuant to this subdivision unless the insurer has expressly waived the right to a hearing. Nothing in this subdivision is intended to limit the commissioner's authority under any other provision of this code.

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