Chapter 746

Mortgage Insurance Companies

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746.010 Definitions. (1) The term "mortgage insurance company" includes every association, corporation, firm or person who engages as a business in making and issuing policies of mortgage insurance.

(2) The term "security" whenever used in this chapter without a different meaning being specified or made apparent, refers to and includes within its meaning a note or notes, or bond or bonds, together with the mortgage or deed of trust securing the same which evidence a debt secured by a first lien on a marketable title in fee to real estate, or to real estate with improvements thereon.

(3) A "policy of mortgage insurance" is any contract made and issued by a mortgage insurance company which purports to guarantee or insure against loss on, or to guarantee the payment of, within a specified time, the whole or any part of the principal, interest or other sums agreed to be paid under the terms of any security or other sums secured under the terms of any security.

(4) A "mortgage participation certificate" is a policy of mortgage insurance which evidences the ownership by the insured of an undivided or other partial share or interest, or the right to participate to a specified extent, in a security, or in a group consisting of several securities, and purports to guarantee the payment of such securities, or the payment of such undivided or other partial share or interest therein, or the amount of such participation.

(5) An "entire mortgage guaranty" is a policy of mortgage insurance, other than a mortgage participation certificate, which covers and refers to the entire indebtedness evidenced by a security.

746.020 Mortgage insurance companies subject to laws governing insurance companies and to regulations of insurance department; license and fee. (1) Every mortgage insurance company shall be subject to and shall comply with all the requirements of the laws of this state made applicable to insurance companies generally and the rules and regulations of the Department of Insurance of the State of Oregon, excepting in so far as said laws, rules or regulations may be inconsistent with the other provisions in this chapter. The State Insurance Commissioner shall have the same power and authority over such company that he may exercise in relation to other insurance companies, including the right to examine and inspect the financial condition and affairs of such company relating to the business of such company, and to compel compliance with the provisions of law governing any such company.

(2) On compliance with all provisions of the insurance law applicable to such companies and the further provisions of this chapter, the commissioner shall issue a license to such company authorizing it to transact its appropriate business, which license shall be renewed annually upon the receipt of the fee of $100 required for such license.

746.030 Limitations on issuance of policies, including prerequisite paid-up capital. (1) No mortgage insurance company shall engage in business or issue any policy of mortgage insurance within this state without having a paid-up capital of at least $100,000, nor until it has obtained from the commissioner his certificate that such company has complied with the laws of this state applicable thereto and is duly authorized to do business as a mortgage insurance company.

(2) No mortgage insurance company shall:

(a) Guarantee the payment of any security unless it is a first lien upon a marketable title in fee to the property covered thereby.

(b) Issue any policy of mortgage insurance guaranteeing the payment of any portion of any security, exceeding 50 percent of the market value of the real estate with improvements covered by the same.

(c) Have at any time outstanding policies of mortgage insurance guaranteeing the payment of securities the aggregate amount of the unpaid principal of which exceeds 20 times the amount of its paid-up capital and surplus.

(3) A violation of any of the terms or provisions of this section shall not make any security or any policy of such company void or voidable.

746.040 Surplus; dividends. (1) Every mortgage insurance company shall annually set apart a sum equal to 10 percent of its net earnings collected during the year, which sums shall be allowed to accumulate until a fund is created equal in amount to 25 percent of the paid-up capital stock of such company. Such fund shall be maintained as a further security to the holders of policies of mortgage insurance issued by such company and shall be known as the "surplus";

and, if at any time such surplus is impaired by reason of a loss, the amount by which it is impaired shall be restored in the manner hereinabove provided for its accumulation. All additions to the surplus, whether made in fulfillment of the requirements of this section or voluntarily by the company, shall be and remain subject to the provisions of this chapter.

(2) Such company must not make any dividends except from profits remaining on hand after retaining unimpaired:

(a) The entire capital stock.

(b) The 10 percent set apart as a surplus under the provisions of this section.

(c) A sum sufficient to pay all liabilities for expenses and taxes, and all losses reported or in course of settlement, without impairment of the surplus.

746.050 Investment of funds of a mortgage insurance company. A mortgage insurance company may invest its capital, surplus and accumulations in the purchase of, or loans upon, any of the items or things specified in subsections (1) to (7) of this section and in no others.

(1) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(2) Bonds of this state or those for which the faith and credit of the State of Oregon are pledged for the payment of principal and interest and bonds of any other state in the United States that has not, within five years next preceding such investment by such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

(3) Bonds or interest-bearing notes or obligations issued under authority of law by any county, municipality or school district in this state or in any other state or territory of the United States; provided, that said county, municipality or school district, or the state or territory in which it is located has not, within five years next preceding such investment by such insurance company, defaulted in payment of any part of either principal or interest due upon any legally authorized bond issue.

(4) Bonds of a permanent road division in this state, and any irrigation district bonds which the law may now or hereafter authorize as legal investments for insurance companies; provided, that the total amount of bonds issued by any such irrigation district does not exceed 60 percent of the aggregate market value of the lands within such district, and of the water, water rights, canals, reservoirs, reservoir sites and irrigation works owned or to be acquired or constructed with the proceeds of any such bonds, by said district, such facts in reference to bonds of irrigation districts to be determined by a commission now or hereafter authorized by law to ascertain and report upon such facts.

(5) Notes or bonds secured by first mortgage or deed of trust or other first lien upon real estate, improved or unimproved; provided, that the principal so lent, or the entire note or bond issued so secured, shall not exceed 50 percent of the market value of such real estate, or of such real estate with improvements; provided, also, in case the loan is made, or the note or bond issue created as or for a building loan on real estate, that at no time shall the principal so lent or the entire outstanding note or bond issue exceed 50 percent of the market value of the real estate and the actual cost of the improvements thereon.

(6) Securities guaranteed by a mortgage insurance company operating under the laws of this state, also mortgage participation certificates issued by any such company in accordance with the provisions of this chapter, including securities guaranteed and mortgage participation certificates issued by the investing company.

(7) Real estate or interest in real estate occupied in whole or in part by any such company in the general conduct of its business, such investment not to exceed 50 percent of its capital stock.

746.060 Report of company as to policies issued; civil penalties for failure to make annual report. (1) Every mortgage insurance company shall make an annual written report to the State Insurance Commissioner, which report shall be verified by the oath of its president or vice president and its secretary or treasurer, or of any two of its principal officers. Such report shall contain a statement of each new policy of mortgage insurance issued by such company since the last preceding report, stating specifically whether such policy constitutes an entire mortgage guaranty or a mortgage participation certificate.

(2) When such policy constitutes an en-

tire mortgage guaranty, such report shall set forth separately the following facts regarding the security on which the policy is based, namely:

(a) The aggregate amount of the unpaid principal indebtedness evidenced by such security.

(b) A description of the property covered by such security.

(c) Separately, the market value of the land and the market value of the improvements thereon, if any, as shown by an appraisement as provided for by the terms of ORS 746.070; also the aggregate value of such lands and improvements.

(d) The book and page of the record of the mortgage or deed of trust which is a part of such security.

(3) When such policy constitutes a mortgage participation certificate such report shall set forth, directly or by reference to a previous report, separately, the following facts regarding the security or securities on which such participation certificate is based, namely:

(a) The aggregate amount of unpaid principal indebtedness evidenced and secured by such security or securities, and, separately, the amount of the unpaid principal indebtedness evidenced and secured by each such security.

(b) A description of the property covered by each such security.

(c) Separately, the market value of the land, and the market value of the improvements thereon, if any, as shown by an appraisement as provided for by the terms of ORS 746.070; also the aggregate value of such land and improvements.

(d) The book and page of the record of each mortgage and deed of trust which is part of such security or securities.

(e) The aggregate amount of participation certificates issued, outstanding and based upon the particular security or group of securities on which the certificate so reported is based.

(4) In case of the neglect or failure of any such mortgage insurance company to make any such annual report as herein provided, such company shall forfeit to the State of Oregon $10 per day for every day during which such neglect or failure continues; provided, however, that the commissioner may extend the time within which any such report may be filed for not exceeding a period of 30 days.

746.070 Appraisement and certificate to accompany report. There shall be filed with the report required by ORS 746.060 an appraisement of each separate parcel of property mentioned in the report, an appraisement of which has not theretofore been made and filed in accordance with the provisions of ORS 746.060. The appraisement shall be made by an officer of the corporation and shall be accompanied by a certificate signed and verified by at least three directors of such mortgage insurance company to the effect that in the opinion of the affiants and each of them:

(1) Such appraisement is correct.

(2) The amount of the appraisement does not exceed the market value of the property.

(3) The principal amount lent on the security of such property does not in their opinion exceed 50 percent of the market value of such property.

(4) The company has in its possession or control evidence of title consisting of a full abstract of title, a full certificate or guaranty of title, or a policy of title insurance, showing that the mortgage or deed of trust securing such loan is a first lien upon a marketable title in fee to the property covered thereby.

746.080 Mortgage participation certificates and guaranteed securities as legal investments and securities for deposit. (1) Securities guaranteed by policies of mortgage insurance issued in conformity with the provisions of this chapter, and also, subject to subsection (2) of this section, mortgage participation certificates, shall be legal investments for all trust funds held by any executor, administrator, guardian, trustee or other person or corporation holding trust funds, also for the funds of insurance companies, banks, banking institutions and trust companies, and shall be accepted by the State of Oregon, its officers and officials as securities comprising any part of any fund or deposit required by law to be made with the State of Oregon, or any officer or official thereof, by any trust company or insurance company doing business in this state. All premiums required to be paid according to the terms of any such mortgage participation certificate, or other policy of mortgage insurance, may be charged to or paid out of the income from the note or notes or bond or bonds covered thereby.

(2) The provisions of subsection (1) of

this section, in so far as they refer to mortgage participation certificates, shall apply only to such mortgage participation certificates as evidence the ownership of shares or interests in, or participation in, securities which have been assigned to a trust company organized and doing business under the laws of and within this state and are held by such trust company for the common and equal benefit of the holders of all mortgage participation certificates issued or to be issued evidencing the ownership of shares or interests in, or participation in, any particular security or group of securities so assigned. Such trust, and the administration thereof, shall at all times be subject to the inspection, supervision and control of the State Insurance Commissioner. Each such mortgage participation certificate must bear the certificate of such trust company to the effect that the aggregate amount of mortgage participation certificates then outstanding, including both the one being certified and all others based on the same security or group of securities, does not exceed the amount of the unpaid principal and the debt or debts evidenced by such particular security or group of securities. Each security so assigned shall be accompanied by a copy of the appraisement and of the certificate of the directors filed or to be filed with the commissioner as required by the provisions of ORS 746.060 and 746.070. A copy of each such appraisement and accompanying certificate of the directors shall be promptly, upon assignment of each such security, transmitted to the commissioner and each copy of appraisement so transmitted shall bear an indorsement or certificate executed by the trust company to which each such security is so assigned reciting and setting forth the amount of the unpaid principal named in the security which covers the property described in such appraisement. If any such mortgage participation certificates, or securities guaranteed by policies of mortgage insurance issued in conformity with the provisions of this chapter, are used as securities comprising any part of any fund or deposit required by law to be made with the State Treasurer by a trust company, the securities so guaranteed or the ownership of, or participation in, which is evidenced by such participation certificates must constitute a first lien on improved and productive real estate in this state, such improved real estate being worth at least double the amount of such lien.

(3) A mortgage insurance company which issues mortgage participation certificates in accordance with the provisions of this section may at any time and from time to time substitute for any security or securities comprising or constituting a part or parts of a group of securities, the ownership of, or participation in, which is evidenced in whole or in part by any such participation certificates, other securities similarly guaranteed by it and withdraw from the trust company the security or securities for which such substitution is made. At all times the amount of the unpaid principal of the debts evidenced by the particular group of securities held by such trust company and affected by any such substitution shall not be less than the aggregate amount of the participation certificates theretofore issued, then outstanding and evidencing the ownership of undivided or other partial shares or interests, or participation, in such group of securities. The right of substitution provided in this section and the exercise thereof shall not alter or affect the status of such participation certificates as legal investments for trust funds, insurance companies, banks, banking institutions and trust companies as provided in this section, or as securities acceptable by the State of Oregon, its officers and officials, as comprising or constituting any fund or deposit or any part thereof, by any trust company or insurance company doing business in this state.

746.090 Remedies available to commissioner. The commissioner may invoke the aid of any court of competent jurisdiction, through injunction, mandamus or other process, to enforce any order or action made or taken by him in pursuance of law.

746.990 Penalties. Any officer, director, agent or other employe of any mortgage insurance company who knowingly consents to any violation of any of the terms or provisions of ORS 746.030 shall be guilty of a misdemeanor.