

Chapter 733

1967 REPLACEMENT PART

Accounting and Investments

ACCOUNTING

- 733.010 Assets allowed
- 733.020 Assets not allowed
- 733.030 Liabilities in general
- 733.040 Reinsurance credit
- 733.050 Increase of inadequate reserves
- 733.060 Unearned premium reserve
- 733.070 Unearned premium reserve for marine and transportation insurance trip risks
- 733.080 Reserves for health insurance
- 733.090 Unearned premium reserve and fund for title insurance
- 733.100 Contingency reserve liability for mortgage insurance
- 733.110 Reserves on life insurance and annuity policies, in general
- 733.120 Minimum valuation standards for life insurance policies issued prior to operative date of standard nonforfeiture law
- 733.130 Minimum valuation standards for life insurance policies issued on or after operative date of standard nonforfeiture law
- 733.140 Disallowance of "wash" transactions
- 733.150 Alternative accounting for assets and liabilities
- 733.160 Valuation of various assets
- 733.170 Accounts and records
- 733.180 Domestic life insurer may establish separate accounts; accounting; guarantees by general surplus; investments
- 733.190 Notice of separate account; conditions for establishing separate account
- 733.200 Construction of ORS 733.180, 733.190 and 733.200
- 733.210 Commissioner's determinations

INVESTMENTS

- 733.510 Investments of insurers
- 733.520 Current operating requirements exempted
- 733.530 "Corporation," "sovereign," "political subdivision" defined

- 733.540 "Obligation" defined
- 733.550 "Amply secured obligation" defined
- 733.560 "Unencumbered" defined
- 733.570 "Improved real property" defined
- 733.580 Investment of required capitalization
- 733.590 Investment in obligations of sovereign, political subdivision thereof or corporation
- 733.600 Investment in mortgage loans
- 733.610 Investment in real property
- 733.620 Investment in stocks of corporation
- 733.630 Investment in stocks or obligations of subsidiaries
- 733.640 Lending funds; limitations on loans
- 733.650 Investment of funds in certain obligations and other specified items
- 733.660 Investment of funds in data processing system
- 733.670 Investment of funds under "prudent man" rule
- 733.680 Acquisition and retention of personal property generally; purchases or loans for protection of investment property
- 733.690 Investment of funds in title plant
- 733.700 Investment of funds in health care service facilities
- 733.710 Investments authorized by prior law; date of eligibility of investment
- 733.720 Investments subject to additional limitations and requirements
- 733.730 Approval by board of directors of investments and deposits
- 733.740 Record of investments required
- 733.750 Disposal of investments on order of insurance commissioner
- 733.760 Insurance required on buildings on property which is security for loan
- 733.770 Limitations on investments in any one person or single parcel of real estate
- 733.780 Prohibited investments

CROSS REFERENCES

Definitions and general provisions applicable, 731.004 to 731.194

Forms and filings prior to 1968, effect, 1967 c.359 §708

"Insurance Code" defined, 731.004

Savings clause with respect to pre-1968 law, 1967 c.359 §713

733.580

Federal Act, see 42 U.S.C. §§1450 to 1462

Loans to state development credit corporations, limitations, 63.290

733.650

Home Loan Bank Act, 12 U.S.C. §§1421 to 1449

Post Office Department Property Act of 1954, 39 U.S.C. §§901 to 909

Public Buildings Purchase Contract Act of 1954, 40 U.S.C. §§356, 357

733.770

Investment in subsidiary holding real property of parent insurer, 733.630

Note: ORS chapter 733 first becomes operative on January 1, 1968. See 1967 c.359 §714.

ACCOUNTING

733.010 Assets allowed. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) Cash in the possession or control of the insurer, including the true balance of any deposit in a solvent bank or trust company.

(2) Investments held in accordance with the Insurance Code, and due or accrued income items in connection therewith to the extent considered by the commissioner to be collectible.

(3) Premium notes, policy loans, liens and other like policy assets on life insurance policies and accrued interest thereon, in an amount not exceeding the loan value of the policy.

(4) Due premiums, deferred premiums, instalment premiums, and written obligations taken for premiums, to the extent allowed by the commissioner.

(5) The amount recoverable from a reinsurer which is approved or accepted under ORS 731.508 on ceded reinsurance, and amounts receivable on assumed reinsurance representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(6) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner to be available for the payment of losses and claims.

(7) The unaccrued portion of taxes paid prior to the due date on real property.

(8) Other assets considered by the commissioner to be available for the payment of losses and claims, at values determined by him.

[1967 c.359 §208]

733.020 Assets not allowed. In addition to assets impliedly excluded by ORS 733.010, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Good will, trade names and other like intangible assets.

(2) Advances to officers, other than policy loans, whether secured or not, and advances to employes, agents and other persons on personal security only.

(3) Stock of such insurer owned by it, or any material equity therein or loans se-

cured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.

(4) Tangible personal property, except such property as the insurer is otherwise permitted to acquire and retain as an investment under the Insurance Code and which is deemed by the commissioner to be available for the payment of losses and claims or which is otherwise expressly allowable, in whole or in part, as an asset.

(5) The amount, if any, by which the book value of any investment as carried in the ledger assets of the insurer exceeds the value thereof as determined under the Insurance Code.

[1967 c.359 §209]

733.030 Liabilities in general. In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall be calculated in accordance with the Insurance Code and shall include:

(1) The amount necessary to pay all of its unpaid losses and claims incurred on or prior to the date of the statement, whether reported or unreported to the insurer, together with the expenses of adjustment or settlement thereof.

(2) For insurance other than specified in subsections (3) and (4) of this section, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, calculated in accordance with the Insurance Code.

(3) For life insurance policies:

(a) Reserves on life insurance benefits, valued according to the tables of mortality, rates of interest, and valuation methods applicable thereto which are adopted pursuant to the insurance code.

(b) Reserves for disability benefits, for both active and disabled lives.

(c) Reserves for accidental death benefits.

(d) Any additional reserves considered to be necessary by the commissioner.

(4) For health insurance policies, the amount of reserves required pursuant to ORS 733.080.

(5) Taxes, expenses and other obligations due or accrued at the date of the statement.

(6) Any additional reserves for asset valuation contingencies or loss contingencies required by the Insurance Code or considered to be necessary by the commissioner for

the protection of policyholders and stockholders of the insurer.
[1967 c.359 §210]

733.040 Reinsurance credit. The commissioner shall disallow as credit against the liabilities of a ceding insurer any reinsurance with an insurer not approved or accepted under ORS 731.508.
[1967 c.359 §211]

733.050 Increase of inadequate reserves. If the commissioner determines that an insurer's reserves, however calculated or estimated, are inadequate, he shall require the insurer to maintain reserves in such additional amount as is needed to make them adequate.
[1967 c.359 §212]

733.060 Unearned premium reserve. (1) Every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserves shall be equal to the unearned portions of the gross premiums in force as calculated pro rata on each respective risk from the policy's date of issue. In the absence of such requirement, the unearned premium reserve shall be equal to the pro rata unearned portions of the gross premiums in force as calculated by an approximation method approved by the commissioner. After adopting a method of computing such reserves, an insurer shall not change methods without approval of the insurance supervisory official of the insurer's domicile.

(3) This section does not apply to:

- (a) Marine and transportation insurance on trip risks not terminated.
- (b) Health insurance.
- (c) Title insurance.
- (d) Life insurance.

[1967 c.359 §213]

733.070 Unearned premium reserve for marine and transportation insurance trip risks. As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned. The commissioner may require the insurer to carry a reserve equal to 100 percent of premiums on trip risks written during the month ended as of the date of statement.

[1967 c.359 §214]

733.080 Reserves for health insurance. For all health insurance policies the insurer shall maintain reserves which place a sound

value on its liabilities under such policies and which are not less than the reserves according to appropriate standards set forth in rules issued by the commissioner. Such reserves for nondisabled lives shall not be less in the aggregate than the pro rata gross unearned premiums for such policies calculated in accordance with ORS 733.060.

[1967 c.359 §215]

733.090 Unearned premium reserve and fund for title insurance. (1) Each title insurer shall maintain a reserve for unearned premiums on its policies in force, which shall be charged as a liability in any determination of its financial condition. Such unearned premium liability shall be separate from and in addition to the insurer's liability for incurred but unpaid losses and loss expenses.

(2) The amount of the unearned premium reserve shall be determined as follows:

(a) For each domestic title insurer, the reserve shall equal three percent of all gross premiums on title insurance policies issued by it during the preceding 15 years.

(b) For each foreign or alien title insurer, the reserve relating to its policies insuring titles to real property in this state shall equal three percent of all gross premiums on such policies issued by it during the preceding 15 years. The portion of the unearned premium reserve of a foreign insurer relating to its policies insuring real property located elsewhere shall be as prescribed or permitted by the laws of the insurer's domicile, unless found by the commissioner to be inadequate for the reasonable protection of the insurer's policyholders in this state. In the event of such a finding, the insurer shall maintain unearned premium reserves upon such business thereafter written in an amount not less than the reserves required on its business in this state.

(3) A separate and distinct fund, known as the Title Insurance Unearned Premium Reserve Fund, shall be maintained by each title insurer in its treasury, as additional security to holders of its title insurance policies. The amount of the fund shall at least equal the amount of the unearned premium reserve liability determined in accordance with subsection (2) of this section. This fund shall be in addition to the insurer's deposit with the State Treasurer and deposits required to be maintained with officials of other jurisdictions. The fund, to the extent of the unearned premium reserve on business

in this state, shall be invested as provided for funds of a domestic insurer, except that ORS 733.630, 733.670 and 733.690 shall not be applicable to investment of the fund. The remainder of the fund may be similarly invested, or may be invested as permitted by the laws of the insurer's domicile. The insurer shall keep a separate record of the cash and investments of the fund, giving complete identification of the assets belonging to the fund and showing full particulars as to withdrawals and additions. No title insurance policies shall be issued by an insurer during a period when its unearned premium reserve fund is below the required amount. [1967 c.359 §216]

733.100 Contingency reserve liability for mortgage insurance. A mortgage insurer shall establish a contingency reserve liability for the protection of policyholders against the effect of adverse economic cycles. The contingency reserve shall be maintained out of net premiums received (gross premiums less premiums returned to policyholders) less the unearned premium reserve applicable thereto. The amount of the contingency reserve shall equal 50 percent of all such net earned premiums on policies of mortgage insurance issued by the insurer during the preceding 15 years. [1967 c.359 §217]

733.110 Reserves on life insurance and annuity policies, in general. (1) The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies of every insurer doing business in this state. He may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or others) used in the calculation of such reserves. In the case of an alien insurer, such valuation shall be limited to its United States business.

(2) In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(3) In lieu of the valuation of reserves required by this section, the commissioner may accept in his discretion the valuation made by the insurer. In the case of any foreign or alien insurer he may accept any valuation made, or caused to be made, by the insurance supervisory official of any other jurisdiction if such valuation complies with

the minimum standard provided in ORS 733.120 or 733.130, and if that official accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner of this state when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that official's jurisdiction.

(4) The commissioner may vary the standard of mortality for insurance issued on a substandard basis.

(5) Reserves for any category of policies or benefits may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standards provided in ORS 733.120 or 733.130. In such case, with respect to the calculation of reserves for policies to which ORS 733.130 applies, the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. However, reserves for participating life insurance policies may be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies. If such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half percent, the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner approves.

(6) An insurer which previously has adopted a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in ORS 733.120 or 733.130 may, with the approval of the commissioner, adopt another standard of valuation not lower than the minimum standard.

(7) If the gross premium charged by an insurer on any policy is less than the net premium for the policy according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy a deficiency reserve in addition to all other reserves required by law. For each such policy the deficiency reserve shall be the present

value, according to such standard, of an annuity of the difference between such net premium and the gross premium charged for the policy, running for the remainder of the premium paying period.

[1967 c.359 §218]

733.120 Minimum valuation standards for life insurance policies issued prior to operative date of Standard Nonforfeiture Law. (1) This section applies only to life insurance policies issued prior to the operative date defined in ORS 743.204.

(2) The minimum standard for the valuation of life insurance policies, other than annuities, issued before January 1, 1918, is the method and basis of valuation applied by the insurance department of this state in the valuation of such contracts before January 1, 1918.

(3) The minimum standard for the valuation of life insurance policies, other than annuities, issued on and after January 1, 1918, is the one year preliminary term method of valuation, on the basis of the American Experience Table of Mortality with interest at three and one-half percent.

(4) The minimum standard for the valuation of annuities issued on and after January 1, 1918, is McClintock's "Table of Mortality Among Annuitants" with interest at four percent. However, annuities deferred 10 or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the insurer.

[Formerly 739.030]

733.130 Minimum valuation standards for life insurance policies issued on or after operative date of Standard Nonforfeiture Law. (1) This section applies only to life insurance policies issued on or after the operative date defined in ORS 743.204.

(2) The minimum standard for the valuation of all such policies is the Commissioners Reserve Valuation Method defined in subsection (3) of this section, three and one-half percent interest, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection (5) of ORS 743.216, and

the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date. However, for any category of such policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (7) of ORS 743.216, and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(c) For individual annuity and pure endowment policies, excluding any disability and accidental death benefits in such policies—the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment policies, excluding any disability and accidental death benefits in such policies—the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment policies.

(e) For total and permanent disability benefits in or supplementary to ordinary policies—for policies issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior

to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on a substandard basis and other special benefits—such tables as may be approved by the commissioner.

(3) The reserve according to the Commissioners Reserve Valuation Method, for the life insurance and endowment benefits of a policy providing for a uniform amount of insurance and requiring the payment of uniform premiums is the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policy, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of paragraph (a) over paragraph (b) of this subsection:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19 year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

(4) Reserves according to the Commissioners Reserve Valuation Method shall be calculated by a method consistent with the principals of subsection (3) of this section for:

(a) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums. Any extra premiums charged because of impairments or special hazards shall, however, be

disregarded in the determination of modified net premiums.

(b) Annuity and pure endowment policies.

(c) Disability and accidental death benefits in all policies.

(d) All other benefits, except life insurance and endowment benefits in life insurance policies.

(5) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the method set forth in subsection (3) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

[Formerly 739.035]

733.140 Disallowance of "wash" transactions. (1) The commissioner shall disallow as an asset or as a credit against liabilities any reinsurance found by him after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding insurer's financial condition as of the date of any financial statement of the insurer. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the insurer's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception.

(2) The commissioner shall disallow as an asset any deposit, funds or other assets of the insurer found by him after a hearing thereon:

(a) Not to be in good faith the property of the insurer, and

(b) Not freely subject to withdrawal or liquidation by the insurer at any time for the payment or discharge of claims or other obligations arising under its policies, and

(c) To be resulting from arrangements made principally for the purpose of deception as to the insurer's financial condition as of the date of any financial statement of the insurer.

[1967 c.359 §221]

733.150 Alternative accounting for assets and liabilities. Assets may be allowed as deductions from corresponding liabilities, liabilities may be charged as deductions from assets, deductions from assets may be charged as liabilities, and deductions from liabilities may be allowed as assets, in accordance with the form of annual statement prescribed by the commissioner, or otherwise in his discretion.

[1967 c.359 §222]

733.160 Valuation of various assets. (1) All amply secured obligations having a fixed term and rate of interest held by an insurer shall be valued on either the basis specified in paragraph (a) or (b) of this subsection, as elected by the insurer:

(a) If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to a method of valuation elected by the insurer and approved by the commissioner. Unless otherwise provided by valuation approved by the commissioner, no obligation shall be carried at a value above the call price for the entire issue during any period within which the obligation may be so called; or

(b) At market value or book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to paragraph (a) of this subsection.

(c) Purchase price shall in no case be a higher amount than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such obligations.

(2) Securities other than obligations held by an insurer may be valued at their market value if market value, in the judgment of the commissioner, can reasonably be ascertained. Otherwise, they shall be valued at their fair value determined by a generally accepted method of appraisal or, in the insurer's discretion, at cost when cost is lower than market value or such appraised value. Preferred or guaranteed stocks while paying full dividends may be carried at a fixed value in lieu of market value, according to a method of computation approved by the commissioner.

(3) Real property shall be valued as follows:

(a) Real property acquired pursuant to a mortgage loan or contract of sale shall be

valued at an amount not greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(b) Other real property held by an insurer shall be valued at an amount not in excess of the cost of the acquired property and the cost of improvements thereafter made by the insurer, less a reasonable allowance for depreciation.

(4) Purchase money mortgages on real property referred to in paragraph (a) of subsection (3) of this section shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90 percent of the fair value of such real property, whichever is less.

(5) Other assets shall be valued at cost of acquisition less any repaid portion thereof, unless the commissioner determines that another value is proper.

[1967 c.359 §223]

733.170 Accounts and records. An insurer shall keep its books, records, accounts and transaction source data in such manner that the commissioner may readily verify its statements of financial condition and ascertain whether the insurer is unimpaired, has given proper treatment to policyholders and has complied with the Insurance Code.

[Formerly 738.430]

733.180 Domestic life insurer may establish separate accounts; accounting; guarantees by general surplus; investments. (1) Subject to the provisions of this section and ORS 733.190 and 733.200, a domestic insurer issuing policies of life insurance may establish and maintain one or more separate accounts which shall pertain to and affect specified policies or parts thereof possessing distinguishable features, benefits or risks. Such separate accounts may be so established and maintained for one or more of the following (the categories described below are illustrative only and are neither exclusive nor a limitation of the foregoing):

(a) Proceeds of policies and other comparable funds which remain with the insurer at interest.

(b) Premium deposits of the type prescribed by ORS 731.446.

(c) Retirement, pension or profit-sharing plans which involve insurance.

(d) Annuities where benefits are based in whole or in part on investment experience.

(e) A group insurance plan where the group, or a composite of several groups, includes not less than 10 insured persons.

(f) Dividends to policyholders which are allowed to remain with the insurer at interest.

(2) Such separate accounts shall not be established and maintained except pursuant to a resolution of the board of directors of the insurer and only after certification thereof has been furnished to the commissioner. No policy issued or executed by such an insurer shall be limited or subject to any such separate account unless the holder of the policy so specifies and consents in writing.

(3) The insurer may allocate to one or more separate accounts, or partly to one or more such accounts and partly to its general account, in accordance with one or more written agreements, amounts which are paid to the insurer in connection with policies for which such separate accounts exist. The income, if any, and gains or losses, realized or unrealized, on each such account shall be credited to or charged against the account without regard to the other income, gains or losses of the insurer. The insurer shall not in connection with the allocation of expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and general accounts. Each policy subject in whole or in part to separate account provisions shall bear its share of investment and other expenses, including its proportion of the general operating expenses of the insurer. Notwithstanding the foregoing, the insurer shall not be required to follow uniform investment policies for its accounts. The insurer shall establish such reserves for any separate account as it deems necessary or advisable for protection of the policies and policyholders subject to such account and as required by the Insurance Code. From the surplus of such account the insurer may, in the discretion of its board of directors, declare and apportion interest or dividends to such policies and policyholders without regard to the amount or basis of interest or dividends paid to other policies or policyholders of the insurer. The insurer's general or unallocated surplus may also be used or applied to guarantee the insurer's

obligations on policies issued subject to a separate account or to supplement the surplus of such an account, provided there is compliance with the following:

(a) The board of directors authorizes such use or application of the insurer's general or unallocated surplus prior to the establishment of the separate account.

(b) A commensurate contribution, as determined by the board of directors, is required to be made to the insurer's general or unallocated surplus, from funds of such separate account.

(c) The approval of the commissioner to the use or application described in paragraph (a) of this subsection and to the contribution described in paragraph (b) of this subsection is obtained.

(4) Funds in any separate accounts shall be invested in the same manner prescribed for investment of funds of a domestic insurer except that ORS 733.670 shall not be applicable to investments of separate fund accounts; provided, however, that for any separate account which is guaranteed by the insurer's general or unallocated surplus pursuant to subsection (3) of this section, at least 25 percent of the investments of the funds of such account shall qualify under ORS 733.580, 733.590 and 733.600.

(5) Amounts allocated to such separate accounts shall be owned by the insurer and the insurer shall not be, or hold itself to be, a trustee with respect to such accounts. [Formerly 739.075]

733.190 Notice of separate account; conditions for establishing separate account.

(1) Any policy, or certificate evidencing such a policy, delivered or issued for delivery in this state, the benefits, risks or features of which are limited or subject to any separate or segregated account, shall clearly state this fact in a caption in a prominent position on the face of the policy.

(2) No insurer shall deliver or issue for delivery in this state any policy, or certificate evidencing such a policy, of the type described in subsection (1) of this section unless:

(a) It has established to the satisfaction of the commissioner that, taking into account its history and financial condition, the condition and method of operation of the insurer will not be such as to render its operation hazardous to the public or to holders of its policies in this state; and

(b) If a domestic insurer, it has complied with all of the applicable provisions of this section and ORS 733.180 and 733.200; or

(c) If a foreign or alien insurer, it has established to the satisfaction of the commissioner that the regulation provided by the laws of its place of domicile provides a degree of protection to holders of policies and to the public substantially equal to that provided by this section, ORS 733.180 and 733.200 and the laws of this state.

[Formerly 739.080]

733.200 Construction of ORS 733.180, 733.190 and 733.200. To the extent that the provisions of ORS 746.015 to 746.045 or of any other section of the Insurance Code or general corporation law of this state are inconsistent with the provisions of ORS 733.180, 733.190 and 733.200, the provisions of ORS 733.180, 733.190 and 733.200 shall govern, where applicable.

[Formerly 739.085]

733.210 Commissioner's determinations. In making any determination or prescribing rules relating to items such as are reported in the form of annual statement required to be filed by an insurer, the commissioner shall give consideration to the pertinent recommendations made from time to time by the National Association of Insurance Commissioners, and to customary and general practice in insurance accounting.

[1967 c.359 §228]

INVESTMENTS

733.510 Investments of insurers. (1) Funds of a domestic insurer shall be invested, reinvested and used in the manner and subject to the conditions, restrictions and limitations set forth in ORS 733.510 to 733.780.

(2) Investments of a foreign or alien insurer which would be authorized for a like domestic insurer shall be allowed as assets in any determination of its financial condition. Other investments of a foreign or alien insurer which are authorized by the laws of its domicile may be so allowed at the discretion of the commissioner.

[Formerly 738.235]

733.520 Current operating requirements exempted. Funds of an insurer necessary to satisfy normal current operating requirements are not subject to ORS 733.510 to 733.780. Normal current operating requirements include, but are not limited to, the ac-

quisition of personal property necessary or convenient in the operation of the insurer's business.

[1967 c.359 §230]

733.530 "Corporation," "sovereign," "political subdivision" defined. As used in ORS 733.510 to 733.780:

(1) "Corporation" means a corporation, joint stock association or business trust organized and existing under the laws of a sovereign.

(2) "Sovereign" means the United States, or a state, or Canada or a province thereof.

(3) "Political subdivision" means an incorporated county, city, town, village, municipality, or subdivision thereof, or a public corporation, district, agency, commission, authority or instrumentality, or subdivision thereof.

[1967 c.359 §231]

733.540 "Obligation" defined. As used in ORS 733.510 to 733.780, "obligation" means a bond, debenture, note, warrant, certificate or other evidence of indebtedness.

[1967 c.359 §232]

733.550 "Amly secured obligation" defined. As used in ORS 733.510 to 733.780, "amply secured obligation" means an obligation which is not in default and as to which no default is imminent, and which satisfies the requirements of one or more of the following subsections:

(1) An obligation of a sovereign or political subdivision thereof, if it is issued, assumed or guaranteed by the governmental unit involved and is payable either from:

(a) Taxes levied or which may be levied by such governmental unit; or

(b) Adequate special revenues pledged or otherwise appropriated or required by law to be used for the purpose of such payment, provided the law authorizing the issuance of the obligation requires that adequate rates be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating expenses, maintenance charges, and the principal, interest and dividends on the obligation. An obligation payable solely out of special assessments on real property benefited by local improvements shall not be considered amply secured unless the total amount so payable is less than 50 percent of the market value of the real property (including any improvements thereon) and constitutes a lien on such property.

(2) An obligation issued, assumed or guaranteed by a corporation, if the corporation is solvent, has not been in default on any of its obligations during the preceding three years, and if the obligation is secured by the pledge of property the market value of which exceeds the amount of the obligation by 25 percent or more. Obligations which are the subject of ORS 733.580 and 733.600 are not included within the provisions of this subsection.

(3) An obligation found to be amply secured under regulations duly promulgated by the commissioner. In making such regulations the commissioner shall give consideration to regulations pertaining to amply secured obligations issued from time to time by the National Association of Insurance Commissioners, and shall consider the financial condition of the issuing, assuming or guaranteeing corporation as well as the existence or absence of any pledge of property as security.

[1967 c.359 §233]

733.560 "Unencumbered" defined. As used in ORS 733.510 to 733.780, "unencumbered" means the nonexistence of any lien, burden or charge having priority over the lien securing the insurer's investment. The following shall not be considered encumbrances on real property or leasehold interests therein:

(1) Reservations of mineral, oil or timber rights, easements, rights of way, sewer rights or rights of walls.

(2) Liens for taxes or assessments not delinquent.

(3) Building restrictions or other restrictive covenants common to the community.

(4) Where the loan is secured by a lien upon real property, a lease under which rents or profits are reserved to the owner, if in any event the security for the loan would be a first lien upon the real property except for such lease.

(5) Where the loan is secured by a lien on a leasehold, a prior lien on the real property, provided the security for the loan is a first lien upon the leasehold and there exists no provision preventing the insurer from continuing the lease in force for the duration of the lease or no condition or rights of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee's obligations under the lease are discharged.

[1967 c.359 §234]

733.570 "Improved real property" defined. As used in ORS 733.510 to 733.780, "improved real property" means:

(1) Farmland used for tillage, crop or pasture;

(2) Real estate on which permanent improvements, or improvements under construction or in process of construction, suitable for residence, institutional, commercial or industrial use, are situated; and

(3) Real estate to be developed for the use or uses set forth in subsection (2) of this section on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated or abut.

[1967 c.359 §235]

733.580 Investment of required capitalization. (1) Funds of an insurer at least equal to its required capitalization shall be invested and kept invested as follows:

(a) In amply secured obligations of the United States, a state or a political subdivision of this state.

(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:

(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

(B) The lien does not exceed 66⅔ percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the instalment payments are sufficient to repay the loan within a period of not more than 25 years; or

(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Veterans' Administration, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(c) In certificates of deposit or other investments described in subsection (5) of ORS 733.650, to the extent such investments are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) Investments made pursuant to this section shall be kept free of any lien or pledge. The term "lien or pledge" as used in this section shall not include a deposit of

securities with a sovereign, nor assets held in trust for the benefit or protection of all or any class of policyholders of an insurer. [Formerly 738.238]

733.590 Investment in obligations of sovereign, political subdivision thereof or corporation. Funds of an insurer may be invested in amply secured obligations of a sovereign, political subdivision thereof or corporation. Expressly included, but not by way of limitation, are obligations of the following federal agencies and authorities: Federal Home Loan Banks, Federal Land Banks, Home Owners Loan Corporation, Public Housing Authorities (to the extent that such obligations are secured by a pledge of annual contributions to be paid by the United States or an agency thereof), and Federal Intermediate Credit Banks.

[Formerly 738.245]

733.600 Investment in mortgage loans.

(1) Funds of an insurer may be invested in:

(a) Loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in the manner and subject to the same terms and conditions set forth in paragraph (b) of subsection (1) of ORS 733.580, except that the property may be located within the boundaries of any sovereign; for loans described in subparagraph (B) of such paragraph, the maximum permitted ratio of the loan to the appraised value shall be 80 rather than $66\frac{2}{3}$ percent, and the maximum term of the loan shall be 30 rather than 25 years.

(b) Loans secured by first liens upon a leasehold of improved, unencumbered real property located within the boundaries of any sovereign if:

(A) The leasehold has a period of not less than 20 years to run from the date of the loan, inclusive of the term which may be provided by an enforceable option of renewal, the loan does not exceed 70 percent of the fair market value of the leasehold together with any improvements located thereon which are subject to the lien, the terms of the loan provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within a period of four-fifths of the term of the leasehold, and the insurer is entitled to be subrogated to all rights of the lessee under the leasehold; or

(B) The investment is insured or guaranteed in the manner provided in subparagraph (C) of paragraph (b) of subsection (1) of ORS 733.580.

(2) A loan upon the security of real property or a leasehold interest therein which is a participation in or a part of a series or issue shall not be made unless the insurer holds a senior participation or similar security interest in the mortgage or deed of trust giving it substantially the rights of a first mortgagee.

(3) Nothing in ORS 733.510 to 733.780 shall prohibit an insurer from renewing or extending a proper loan secured by a first lien upon real property or a leasehold interest therein made pursuant to this section or to ORS 733.580 for the original or a lesser amount even though such amount is a greater percentage of the current fair market value of the real property or leasehold than would otherwise be permitted under such sections.

[Formerly 738.255]

733.610 Investment in real property. (1)

Funds of an insurer may be invested in income-producing real property, leases thereon or vendors' interests therein under contracts of sale. Real property and leaseholds so acquired may be leased or sublet.

(2) Real property may also be acquired by an insurer:

(a) For its own business use or to protect or enhance other real property acquired and held under ORS 733.510 to 733.780; or

(b) In satisfaction or liquidation of obligations previously owned, or in exchange or part payment for property previously owned, or as a dividend, or by gift, devise, merger or consolidation.

(3) Real property acquired under this section shall be disposed of within five years after it ceases to be income-producing or to be used by the insurer for its business operation, whichever is later; provided, however, that any real property so acquired which qualifies as an investment under ORS 733.510 to 733.780 may be retained and held if approved as an investment in the manner prescribed by ORS 733.730 and 733.740. The commissioner may extend the time limit prescribed in this subsection if the interests of the insurer will suffer by a "forced sale" of the property.

[Formerly 738.265]

733.620 Investment in stocks of corporation. (1) Funds of an insurer may be invested in stocks (including trust certificates) of solvent corporations organized and carrying on a business under the laws of a sovereign as follows:

(a) Preferred or guaranteed stocks if the corporation is not in default or arrears as to any preferred or guaranteed dividend and has continuously and regularly paid such dividends during the preceding three years or has paid cash dividends for five years on common stock.

(b) Common stocks if:

(A) The obligations and preferred stock, if any, of such corporation are eligible for investment under ORS 733.510 to 733.780;

(B) Cash dividends on such common stock have been paid during each of five years preceding the date of acquisition; and

(C) The stock is registered on a national securities exchange regulated under the Securities Exchange Act, or if of a type not commonly so registered is regularly traded on a broad national or regional basis.

(2) An insurer shall not invest so as to own or control more than five percent of the voting power outstanding of a corporation, nor shall it invest in the obligations or stocks of a corporation if the insurer, directors, trustees and officers own or control, or as a result thereof shall own and control, in the aggregate more than 50 percent of the voting power.

[Formerly 738.275]

733.630 Investment in stocks or obligations of subsidiaries. (1) Except as provided in subsections (2) and (3) of this section, funds of an insurer may be invested in the stocks or obligations of a corporation without regard to the provisions and limitations of ORS 733.590, 733.620, 733.770 and paragraph (a) of subsection (1) of 733.780 if:

(a) Such corporation is engaged, or will be engaged, in the insurance business or primarily in a kind of business related to the insurance business carried on by the parent insurer, or such corporation holds or operates, or will hold or operate, real property owned or occupied by the insurer; and

(b) Eighty percent or more of the shares of such corporation having voting powers are owned by the insurer.

(2) The amount of funds so invested shall not exceed, in the aggregate, 50 percent of the amount of the insurer's combined capital and surplus, unless such investment is

made pursuant to a plan of acquisition which has been approved by the commissioner.

(3) The limitations of ORS 733.770 shall apply to funds invested in a subsidiary which holds or operates real property owned or occupied by the parent insurer.

[1967 c.359 §241]

733.640 Lending funds; limitations on loans. (1) Funds of an insurer may be invested in loans secured by pledges of obligations and stocks eligible for investment under ORS 733.510 to 733.780. As of the date the loan is made, it shall not exceed in amount 80 percent of the market value of the collateral pledged. No such loan shall be made for the purpose of providing funds to purchase or carry stocks registered on a national securities exchange.

(2) Funds of an insurer may be invested in loans secured by personal property or fixtures if such loan is:

(a) In connection with a loan on the security of real property or a leasehold as provided in ORS 733.580 or 733.600;

(b) In an amount not exceeding 20 percent of the amount loaned on the real property or leasehold;

(c) For a term of not more than five years;

(d) Secured by a security interest which constitutes a first lien, except for taxes not then delinquent, on tangible, permanent personal property of the borrower kept and used on the premises, other than stocks of goods held for sale or transfer in the ordinary course of business or items which by normal use will be consumed or depleted during the period of the loan; and

(e) In an amount, the ratio of which to the value of the security does not exceed the ratio of the companion loan to the value of the real property or leasehold.

(3) Funds of an insurer may be loaned to its own life insurance policyholder upon the security of such life insurance policy. The loan shall not exceed the cash value of the policy.

[Formerly 738.285]

733.650 Investment of funds in certain obligations and other specified items. Funds of an insurer may be invested in the following:

(1) Obligations secured by a mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance.

(2) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.

(3) Mortgage participation certificates issued by an authorized mortgage insurer in accordance with ORS 743.708.

(4) Bank and bankers' acceptances and other bills of exchange of the kind and nature made eligible by law for purchase in the open market by federal reserve banks.

(5) Deposits, certificates of deposits, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations insured with the Federal Deposit Insurance Corporation or with the Federal Savings and Loan Insurance Corporation or qualified to do business under the laws of this state.

(6) Obligations issued by trustees or receivers of a corporation created or existing under the laws of a sovereign which, or the assets of which, are being administered under the direction of a court having jurisdiction if the obligation is adequately secured as to principal and interest.

(7) Transportation equipment used wholly or in part within a sovereign, or adequately secured trust certificates of participation or similar obligations or contracts evidencing an interest in such transportation equipment where the investor is entitled to receive a determined or determinable portion of rental, purchase or other obligatory payments for use or purchase of the equipment.

(8) Purchase contracts or lease-purchase agreements executed under the Federal Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954.

(9) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act. An insurer acquiring such stock may exercise all rights and powers given to members under such Act, including but not by way of limitation the right to obtain advances or borrow money from such bank and to pledge collateral as security therefor.

(10) Obligations issued, assumed or guaranteed by the Inter-American Development Bank.

[Formerly 738.295]

733.660 Investment of funds in data processing system. Funds of an insurer may be invested in mechanical and electronic computers and equipment which constitute a

data processing system used by the insurer, if the cost of such system is at least \$50,000 and is to be amortized in full in not more than 10 years. The amount of such investment which may be allowed as an asset in any determination of the financial condition of the insurer shall not exceed the excess of the insurer's assets over all liabilities and required capitalization.

[1967 c.359 §244]

733.670 Investment of funds under "prudent man" rule. (1) Funds of an insurer may be invested in a manner not expressly prohibited under ORS 732.325 and 733.780, provided such investments are made in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(2) Funds invested under this section shall not exceed in the aggregate the lesser of:

(a) Seven and one-half percent of the insurer's assets.

(b) The excess of the insurer's assets over all liabilities and required capitalization.

(3) If the commissioner has reason to believe that loans or investments made pursuant to this section are not adequately secured or are not yielding an income he may direct the insurer to report to him under oath the amount of such loans or investments, the security therefor and its market value.

[Formerly 738.305]

733.680 Acquisition and retention of personal property generally; purchases or loans for protection of investment property.

(1) An insurer may acquire and retain personal property received as a dividend, gift or devise, or pursuant to a lawful plan of merger, consolidation or reorganization or bona fide agreement of bulk reinsurance, or in satisfaction or liquidation of an obligation, or in exchange or part payment for real or personal property previously owned or to protect or enhance such property.

(2) An insurer may make purchases or loan sums necessary to protect, preserve or enhance investment property, real or personal, which it is otherwise authorized to acquire or hold.

(3) The commissioner shall allow as assets in any determination of the financial condition of the insurer only such property or investments acquired or retained under this section as are consistent with the customary operations of an insurer.

[Formerly 738.315]

733.690 Investment of funds in title plant. Funds of a title insurer may be invested in its title plant.

[1967 c.359 §247]

733.700 Investment of funds in health care service facilities. Funds of a health care service contractor may be invested in all real and personal property used exclusively by the contractor to provide authorized health care services.

[1967 c.359 §248]

733.710 Investments authorized by prior law; date of eligibility of investment. (1) An investment which was legal and proper immediately before June 8, 1967, shall be considered a proper investment and shall be subject to extension or renewal.

(2) Eligibility of an investment shall be determined as of the date of its acquisition.

[Formerly 738.325]

733.720 Investments subject to additional limitations and requirements. Except as may be expressly provided to the contrary in ORS 733.510 to 733.780, all investments shall be subject to the qualifications, restrictions and limitations set forth in ORS 733.510 to 733.780.

[Formerly 738.333]

733.730 Approval by board of directors of investments and deposits. (1) Investments and sales or exchanges thereof, except for policy loans of an insurer issuing life insurance policies, shall be approved by the board of directors or a committee thereof charged with the duty of investing the funds of the insurer.

(2) Deposits shall be made in banks or banking institutions approved by the board of directors.

[Formerly 738.335]

733.740 Record of investments required. As to each investment, an insurer shall make a written record in permanent form, signed by a person authorized by the board of directors or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:

(1) In the case of mortgage loans: The name of the borrower; the location and legal description of the property; a physical description and the appraised value of the security as determined by a competent and qualified appraiser; the amount of the loan, rate of interest and terms of repayment.

(2) In the case of obligations: The name of the obligor; description of the security and record of earnings; the amount invested and the rate of interest or dividend; the maturity and yield based upon the purchase price.

(3) In the case of corporate stocks: The name of the issuing corporation; the record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock; a summary of the financial statement of the corporation as of the end of the preceding fiscal year; the exchange, if any, on which the stock is listed; the amount invested and the number of shares acquired and held.

(4) In the case of real estate, leaseholds or vendors' interests under contracts of sale therein: The location and legal description of the property; a physical description and the appraised value of the property and interest therein; the purchase price and terms; the amount of any lien known to be against the property; if of a leasehold, the terms of the outstanding lease; if a vendor's interest under a contract of sale, the terms and status of payments under the contract.

(5) In the case of all investments: The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records; the name of any director, trustee or officer of the insurer, having a direct, indirect, or contingent interest in the loan, security or property, or who would derive directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.

[Formerly 738.345]

233.750 Disposal of investments on order of insurance commissioner. After a hearing, the commissioner may by written order require the disposal of an investment which he finds to be made or retained in violation of the Insurance Code, or of an investment which he, for good cause, determines to be prejudicial to, and to impair the security of,

the stockholders or policyholders of the insurer.

[Formerly 738.355]

733.760 Insurance required on buildings on property which is security for loan. On loans secured by liens upon real property or leasehold interests therein, the buildings and other improvements located on the premises shall be kept insured against loss or damage from fire in an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is the lesser. The fire insurance policy or policies shall be payable to and held by the insurer, or a trustee for its benefit, and continued in force until the loan is repaid or satisfied.

[1967 c.359 §254]

733.770 Limitations on investments in any one person or single parcel of real estate. An insurer shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of 10 percent of the insurer's assets, nor shall it invest more than 10 percent of its assets in a single parcel of real property or in any other single investment. This section does not apply to:

(1) Investments in, or loans upon, the security of the general obligations of a sovereign;

(2) Policy loans by insurers issuing life insurance policies;

(3) Investments by a title insurer in its title plant, or in real property not in excess of 50 percent of the insurer's combined capital and surplus; or

(4) Investments by a health care service contractor in all real or personal property used exclusively by such contractor to provide authorized health care services or in real property used primarily for its home office.

[Formerly 738.375]

733.780 Prohibited investments. (1) An insurer shall not make investments:

(a) Which at the time of purchase or acquisition are not interest-bearing or dividend or income-paying, or are in default in any respect; or

(b) From which the insurer is not entitled to receive for its exclusive account and benefit the interest, dividends or income.

(2) Paragraph (a) of subsection (1) of this section shall not apply to property acquired under ORS 733.610, 733.670 or 733.680 if the property is acquired with the intent and expectation that it will be income-producing.

(3) An insurer shall not invest its funds in any investment or security found by the commissioner to be designed to evade any prohibition of the Insurance Code.

[Formerly 738.385]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel

