

INSURANCE CODE
TITLE 12. OTHER COVERAGE
CHAPTER 3502. MORTGAGE GUARANTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3502.001. APPLICABILITY OF CHAPTER. This chapter applies only to mortgage guaranty insurance and does not affect any other provision of this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.002. APPLICABILITY OF OTHER LAW. (a) This code and other state laws apply to the business of mortgage guaranty insurance.

(b) This chapter controls to the extent of any conflict with another provision of this code or other state law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.003. MORTGAGE GUARANTY INSURANCE DEFINED. In this chapter, "mortgage guaranty insurance" means insurance against:

(1) financial loss because of nonpayment of principal, interest, and other amounts agreed to be paid under the terms of a note, bond, or other evidence of indebtedness that is secured by an authorized real estate security, provided the improvement on the real estate is:

(A) one or more residential buildings designed to be occupied by not more than four families;

(B) a condominium unit; or

(C) one or more buildings designed to be occupied by five or more families or for industrial or commercial purposes;

or

(2) financial loss because of nonpayment of rent and other amounts agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided the

improvement on the real estate is one or more buildings designed to be occupied for industrial or commercial purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.004. AUTHORIZED REAL ESTATE SECURITY DEFINED.

(a) In this chapter, "authorized real estate security" means:

(1) a proprietary lease and a stock membership certificate issued to a tenant stockholder or resident member of a fee simple cooperative housing corporation as defined in Section 216, Internal Revenue Code of 1986; or

(2) a mortgage, deed of trust, wraparound mortgage, or other instrument that constitutes a first lien or charge on real estate or is considered to be the equivalent of a first lien or charge on real estate by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Finance Board, a successor of one of those entities, an agency of this state, or a federal agency, provided:

(A) the improvement on the real estate is a building or buildings designed to be occupied as specified by Section 3502.003(1); and

(B) the real estate loan is a type of loan that is:

(i) authorized to be made by a bank, savings and loan association, credit union, or insurer that is supervised and regulated by a department of this state or a federal agency;

(ii) authorized to be made by a mortgage banker that is an approved seller-servicer of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a successor of one of those entities; or

(iii) approved by the federal secretary of housing and urban development for participation in a mortgage insurance program.

(b) The lien on real estate described by Subsection (a)(2) may be subject and subordinate to:

(1) the lien of a public bond, assessment, or tax if there is not a delinquent installment, call, or payment of or under

the bond, assessment, or tax;

(2) an outstanding mineral, oil, or timber right, right-of-way, easement or right-of-way support, sewer right, building restriction, other restriction or covenant, or other condition or regulation of use; or

(3) an outstanding lease on the real estate under which rents or profits are reserved to the owner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER B. MORTGAGE GUARANTY INSURERS

Sec. 3502.051. GENERAL ELIGIBILITY TO WRITE MORTGAGE GUARANTY INSURANCE. (a) An insurer that writes anywhere any class of insurance other than mortgage guaranty insurance may not be issued or continue to hold a certificate of authority to write mortgage guaranty insurance in this state.

(b) A mortgage guaranty insurer that writes anywhere the class of mortgage guaranty insurance described by Section 3502.003(1)(C) or (2) may not be issued or continue to hold a certificate of authority to write in this state the class of mortgage guaranty insurance described by Section 3502.003(1)(A) or (B).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.052. ELIGIBILITY OF FOREIGN OR ALIEN INSURER TO WRITE MORTGAGE GUARANTY INSURANCE. The department may not issue a certificate of authority to a foreign or alien insurer writing mortgage guaranty insurance unless the insurer demonstrates a satisfactory operating experience in the insurer's state of domicile.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.053. DISCRIMINATION PROHIBITED. In extending or issuing mortgage guaranty insurance, a mortgage guaranty insurer

may not discriminate on the basis of the applicant's sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless:

(1) the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER C. FORMS AND RATES

Sec. 3502.101. RATE FILINGS. (a) Not later than the 15th day before the date a mortgage guaranty insurer uses a rate or supplementary rate information in this state, the insurer must file the rate and supplementary rate information, and any changes to the rate or supplementary rate information, with the department.

(b) The rate filing must include adequate supporting data, including:

(1) information on:

(A) past and prospective loss experience in this state and outside the state;

(B) catastrophe hazards;

(C) expenses of operation; and

(D) a reasonable margin for profit and contingencies;

(2) an explanation of the insurer's interpretation of any statistical data on which the insurer relied;

(3) an explanation and description of the methods used in making the rates; and

(4) certification by an appropriate official of the insurer relating to the appropriateness of the charges, rates, or rating plans based on reasonable assumptions and accompanied by adequate supporting information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff.

April 1, 2007.

Sec. 3502.102. RATE STANDARDS. (a) A mortgage guaranty insurance rate, rating plan, or charge may not be excessive, inadequate, or unfairly discriminatory and must be reasonable with respect to the benefits provided.

(b) This chapter does not require the department to:

(1) establish standard and absolute rates or a single and uniform rate for each risk or risks; or

(2) compel all insurers to adhere to rates previously filed by other insurers.

(c) The department may accept different rates for different insurers for the same risk or risks on mortgage guaranty insurance. The department may accept different rates for different insurers as filed by any authorized insurer unless the department finds that the filing does not meet the requirements of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.103. RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt reasonable rules and statistical plans for the recording and reporting of loss experience and other required data by a mortgage guaranty insurer. The rules and plans must ensure that each insurer's total loss and expense experience is made available in the form and with the detail the commissioner considers necessary.

(b) Each mortgage guaranty insurer shall use the statistical plans adopted under this section to record and report loss experience and other required data in accordance with the rules adopted by the commissioner.

(c) The commissioner may modify statistical plans adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.104. POLICY FORM FILINGS. (a) Except as provided

by Subsection (b), not later than the 15th day before the date a mortgage guaranty insurer uses a policy form, related form, classification, or rule in this state, the insurer must file the form, classification, or rule with the department.

(b) This subsection applies only to a policy form, related form, classification, or rule a mortgage guaranty insurer uses in this state for a policy that provides coverage for a pool or group of loans in connection with the issuance of mortgage-backed securities or bonds. Not later than the 15th day after the date the insurer uses the form, classification, or rule, the insurer shall file the form, classification, or rule with the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.105. POLICY FORM STANDARDS. The commissioner shall disapprove a mortgage guaranty insurance policy form if the form:

(1) violates this code or rules adopted by the commissioner; or

(2) contains a provision that encourages misrepresentation or is unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.106. CLAIM AGAINST RESIDENTIAL BORROWER. A mortgage guaranty insurance policy may not contain a provision that allows subrogation rights or any other claim by the insurer against the borrower for a deficiency arising from a foreclosure sale of a single-family dwelling that is occupied by the borrower as the borrower's principal residence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.107. EXEMPTION; WITHDRAWAL OF APPROVAL. (a) A policy form, related form, classification, or rule a mortgage guaranty insurer uses in this state, including for a policy

described by Section [3502.104\(b\)](#), is exempt from department approval.

(b) If the commissioner finds, after notice and hearing, that the filing of a policy form, related form, classification, or rule is no longer in the best interest of the public, the commissioner may issue an order:

(1) suspending the exemption under Subsection (a) with respect to one or more insurers that filed the form, classification, or rule; and

(2) requiring each affected insurer to cease and desist using the form, classification, or rule, as the commissioner specifies.

(c) If the commissioner finds, after notice and hearing, that a filed policy form or rate no longer meets the requirements of this code, the commissioner may issue an order withdrawing approval of the form or rate. The order must specify the reasons the form or rate no longer meets the requirements. An order under this subsection may not take effect until the 30th day after the date the commissioner issues the order.

(d) The commissioner must provide to each insurer that filed a form, classification, rule, or rate that is the subject of a hearing under this section notice of the hearing not later than the 20th day before the date of the hearing. The notice must specify the matters to be considered at the hearing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Sec. 3502.108. RULES. (a) The commissioner may, after notice and hearing, adopt reasonable rules:

(1) relating to the minimum standards for coverage under policy forms consistent with the purpose of this chapter and the public policy of this state; and

(2) necessary to establish guidelines, procedures, methods, standards, and criteria by which the types of forms and documents submitted to the department are to be reviewed and acted on by the department.

(b) The department may establish requirements for data and

information filed under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER D. FINANCIAL REQUIREMENTS

Sec. 3502.151. DEFINITION. In this subchapter, "contingency reserve" means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles or losses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.152. CAPITAL AND SURPLUS REQUIREMENTS. An insurer may not write mortgage guaranty insurance unless the insurer has the minimum capital and surplus required by Chapter 861 for a general casualty company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.153. UNEARNED PREMIUM RESERVE. (a) Except as provided by Subsection (b), the unearned premium reserve on mortgage guaranty insurance must be computed in accordance with this code.

(b) For a policy covering a risk period of more than one year, the unearned premium reserve must be computed in accordance with standards adopted by the commissioner after appropriate hearings.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.154. LOSS RESERVE. A mortgage guaranty insurer shall determine the loss reserve using the case basis method. The loss reserve must include a reserve for claims incurred but not reported.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.155. CONTINGENCY RESERVE. (a) In addition to the capital, surplus, and reserves required by Sections 3502.152, 3502.153, and 3502.154, a mortgage guaranty insurer shall establish a contingency reserve and report the contingency reserve as a liability in the insurer's financial statements.

(b) To establish and maintain the contingency reserve, the mortgage guaranty insurer shall annually contribute to the contingency reserve 50 percent of the earned premiums on the insurer's mortgage guaranty insurance business. The reserved earned premiums may be released to the insurer's surplus annually after the premiums have been maintained for 120 months.

(c) In addition, the mortgage guaranty insurer may withdraw premiums from the contingency reserve in any year for which the insurer can demonstrate to the department that the incurred losses for that year exceed 35 percent of the corresponding earned premiums for that year. The insurer shall reduce any subsequent annual release to surplus from the established contingency reserve by an amount equal to the amount withdrawn and released for the losses. The insurer shall deduct from subsequent annual releases any balance that exceeds the normal annual release from the contingency reserve.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.156. OUTSTANDING TOTAL LIABILITY. (a) Except as provided by Subsection (d), a mortgage guaranty insurer may not at any time have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 25.

(b) An insurer shall compute the insurer's liability for leases on the basis of the insurer's liability as determined by the department.

(c) Except as provided by Subsection (d), a mortgage guaranty insurer that has outstanding total liability that exceeds the amount computed under Subsection (a) may not write new mortgage

guaranty insurance business until the insurer's total liability no longer exceeds that amount.

(d) The commissioner may waive the limit imposed by Subsection (a) at the written request of a mortgage guaranty insurer on a finding by the commissioner that the sum of the insurer's capital, surplus, and contingency reserve is reasonable in relationship to the insurer's aggregate insured risk and adequate to the insurer's financial needs. The request must be made in writing on or before the 90th day before the date the insurer expects to exceed the limit imposed by Subsection (a) and shall, at a minimum, address the factors listed in Subsection (e).

(e) In determining whether a mortgage guaranty insurer's capital, surplus, and contingency reserve is reasonable in relation to the insurer's aggregate insured risk and adequate to the insurer's financial needs, the commissioner, in the commissioner's sole discretion, may consider relevant factors including:

(1) the insurer's size as measured by the insurer's assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified across time, geography, credit quality, origination, and distribution channels;

(3) the nature and extent of the insurer's reinsurance program;

(4) the quality, diversification, and liquidity of the insurer's investment portfolio;

(5) the historical and forecasted trend in the size of the insurer's capital, surplus, and contingency reserve;

(6) the capital, surplus, and contingency reserve maintained by other comparable mortgage guaranty insurers in relation to the nature of the insurers' respective insured risks;

(7) the reasonableness of the insurer's reserves;

(8) the quality and liquidity of the insurer's investments in affiliates; and

(9) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(f) With respect to the factors listed in Subsection (e)(8), the commissioner may treat an investment in an affiliate as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(g) The commissioner may retain accountants, actuaries, or other experts to assist the commissioner in the review of a request made by a mortgage guaranty insurer under Subsection (d). The insurer shall pay the commissioner's cost of retaining those persons.

(h) A waiver granted under Subsection (d) must be for a specified period that does not exceed two years and is subject to any terms and conditions the commissioner considers best suited to restoring the mortgage guaranty insurer's capital, surplus, and contingency reserve to the level required by Subsection (a). The mortgage guaranty insurer may apply to extend the waiver on or before the 90th day before the date the waiver period expires.

(i) The commissioner may not under any circumstances allow the mortgage guaranty insurer to have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 50.

(j) An insurer may not be allowed a waiver under Subsections (d) and (h) for a continuous period of more than six years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 41 (S.B. 416), Sec. 1, eff. May 10, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 734 (S.B. 147), Sec. 1, eff. June 14, 2013.

Sec. 3502.157. LIMIT ON INSURANCE OF CERTAIN LOANS. (a) In this section, "contiguous" means not separated by more than one-half mile.

(b) A mortgage guaranty insurer may not insure loans secured by properties in a single housing tract or a contiguous tract in an

amount that exceeds 10 percent of the insurer's capital, surplus, and contingency reserve.

(c) In determining the amount of risk under this section, a mortgage guaranty insurer shall deduct from the total direct risk insured any applicable reinsurance in an assuming insurer authorized to engage in the business of mortgage guaranty insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER E. LENDER POWERS AND DUTIES

Sec. 3502.201. DEFINITION. In this subchapter, "lender" has the meaning assigned by Section 549.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.202. NOTICE OF BORROWER'S RIGHT TO CANCEL. (a) A lender that requires a borrower to purchase mortgage guaranty insurance shall provide annually to the borrower a copy of the following written notice printed in at least 10-point boldfaced type:

"NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE: If you currently pay private mortgage insurance premiums, you may have the right to cancel the insurance and cease paying premiums. This would permit you to make a lower total monthly mortgage payment and to possibly receive a refund of any unearned premiums on the policy. In most cases, you have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current fair market appraised value of your home. If you want to learn whether you are eligible to cancel this insurance, please contact us at (address and telephone number of lender) or the Texas Department of Insurance consumer help line at (the appropriate toll-free telephone number)."

(b) If federal law requires a lender to provide a borrower with a written notice containing substantially the same information required by Subsection (a), a lender that provides the notice

required by federal law within the period prescribed by federal law satisfies the notice requirement of Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.203. REFUND OF PREMIUM. A lender that receives a refund of an unearned mortgage guaranty insurance premium paid by a borrower shall remit the refund to the borrower not later than the 10th business day after the date the lender receives the refund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.204. ADVERTISING OF "INSURED LOANS." A bank, savings and loan association, insurer, or approved seller-servicer of the Federal National Mortgage Association, any of whose authorized real estate securities are insured by a mortgage guaranty insurer, may not state in a brochure, pamphlet, or report or any form of advertising that the real estate loans of the bank, savings and loan association, insurer, or seller-servicer are "insured loans" unless:

(1) the brochure, pamphlet, report, or advertising also:

(A) clearly states that the loans are insured by private insurers; and

(B) lists the names of the private insurers; and

(2) the insurance on the real estate loans is written by an insurer authorized to write that insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.