

REAL PROPERTY LENDER-PLACED INSURANCE MODEL ACT

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Section 1. Purpose

The purpose of this Act is to:

- A. Promote the public welfare by regulating lender-placed insurance on real property.
- B. Create a legal framework within which lender-placed insurance on real property may be written in this state.
- C. Help maintain the separation between lenders/servicers and insurers/insurance producers.
- D. Minimize the possibilities of unfair competitive practices in the sale, placement, solicitation and negotiation of lender-placed insurance.

Section 2. Scope

- A. This Act applies to insurers and insurance producers engaged in any transaction involving lender-placed insurance as defined in this Act.
- B. All lender-placed insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this Act, except:
 - (1) Transactions involving extensions of credit primarily for business, commercial or agricultural purposes.
 - (2) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor's option.
 - (3) Insurance purchased by a lender or servicer on real estate owned property.

- (4) Insurance for which no specific charge is made to the mortgagor or the mortgagor's account.

Drafting Note: Nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to enforce this Act subject to the laws of this state. Furthermore, nothing in this Act shall be construed to extinguish any mortgagor rights available under common law or other state statutes.

Section 3. Definitions

As used in this Act:

- A. "Affiliate" shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- B. "Individual lender-placed insurance" means coverage for individual real property evidenced by a certificate of coverage under a master lender-placed insurance policy or a lender-placed insurance policy for individual real property.
- C. "Insurance Producer" means a person or entity (or its Affiliates) required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
- D. "Insurer" means an insurance company, association or exchange authorized to issue lender-placed insurance in [insert applicable state] (or its Affiliates).
- E. "Investor" means a person or entity (and its Affiliates) holding a beneficial interest in loans secured by real property.
- F. "Lapse" means the moment in time in which a mortgagor has failed to secure or maintain valid and/or sufficient insurance upon mortgaged real property as required by a mortgage agreement.
- G. "Lender" means a person or entity (and its Affiliates) making loans secured by an interest in real property.
- H. "Lender-placed insurance" means insurance obtained by a lender or servicer when a mortgagor does not maintain valid and/or sufficient insurance upon mortgaged real property as required by the terms of the mortgage agreement. It may be purchased unilaterally by the lender or servicer, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense or damage to collateralized property as a result of fire, theft, collision or other risks of loss that would either impair a lender, servicer or investor's interest or adversely affect the value of collateral covered by limited dual interest insurance. It is purchased according to the terms of the mortgage agreement as a result of the mortgagor's failure to provide evidence of required insurance.
- I. "Loss ratio" means the ratio of incurred losses to earned premium.
- J. "Master lender-placed insurance policy" means a group policy issued to a lender or servicer providing coverage for all loans in the lender or servicer's loan portfolio as needed.

- K. “Mortgage agreement” means the written document that sets forth an obligation or a liability of any kind secured by a lien on real property and due from, owing or incurred by a mortgagor to a lender on account of a mortgage loan, including the security agreement, Deed of Trust and any other document of similar effect, and any other documents incorporated by reference.
- L. “Mortgage loan” means a loan, advance, guarantee or other extension of credit from a lender to a mortgagor.
- M. “Mortgage transaction” means a transaction by the terms of which the repayment of money loaned or payment of real property sold is to be made at a future date or dates.
- N. “Mortgagee” means the person who holds mortgaged real property as security for repayment of a mortgage agreement.
- O. “Mortgagor” means the person who is obligated on a mortgage loan pursuant to a mortgage agreement.
- P. “Person” means an individual or entity.
- Q. “Real Estate Owned Property” means property owned or held by a lender or servicer following foreclosure under the related Mortgage agreement or the acceptance of a deed in lieu of foreclosure.
- R. “Replacement Cost Value (RCV)” is the estimated cost to replace covered property at the time of loss or damage without deduction for depreciation. RCV is not market value, but it is instead the cost to replace covered property to its pre-loss condition.
- S. “Servicer” means a person or entity (and its Affiliates) contractually obligated to service one or more mortgage loans for a Lender or Investor. The term “Servicer” includes entities involved in subservicing arrangements.

Section 4. Term of Insurance Policy

- A. Lender-placed insurance shall become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement and/or any other state or federal law requiring the same.
- B. Individual lender-placed insurance shall terminate on the earliest of the following dates:
 - (1) The date insurance that is acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.
 - (2) The date the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement.
 - (3) Such other date as specified by the individual policy or certificate of insurance.
 - (4) Such other date as specified by the lender or servicer.

- (5) The termination date of the policy.
- C. An insurance charge shall not be made to a mortgagor for lender-placed insurance for a term longer than the scheduled term of the lender-placed insurance, nor may an insurance charge be made to the mortgagor for lender-placed insurance before the effective date of the lender-placed insurance.

Section 5. Calculation of Coverage and Payment of Premiums

- A. Any lender-placed insurance coverage, and subsequent calculation of premium, should be based upon the replacement cost value of the property as best determined as follows:
 - (1) The dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee (“last known coverage amount” or “LKCA”), if known to the lender or servicer.
 - (2) The insurer shall inquire of the insured, at least once, as to the LKCA; and if it is not able to obtain the LKCA from the insured or in another manner, the insurer may proceed as set forth below.
 - (3) If the LKCA is unknown, the replacement cost of the property serving as collateral as calculated by the insurer, unless the use of replacement cost for this purpose is prohibited by other state or federal law.
 - (4) If the LKCA is unknown and the replacement cost is not available or its use is prohibited, the unpaid principal balance of the mortgage loan.
- B. In the event of a covered loss, any replacement cost coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.
- C. An insurer shall not write lender-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the commissioner as of the effective date of any such policy.

Section 6. Prohibited Practices

- A. An insurer or insurance producer shall not issue lender-placed insurance on mortgaged property that the insurer or insurance producer or an Affiliate of the insurer or insurance producer owns, performs the servicing for, or owns the servicing right to the mortgaged property.
- B. An insurer or insurance producer shall not compensate a lender, insurer, investor or servicer (including through the payment of commissions) on lender-placed property insurance policies issued by the insurer.
- C. An insurer or insurance producer shall not share lender-placed insurance premium or risk with the lender, investor or servicer that obtained the lender-placed insurance.
- D. An insurer or insurance producer shall not offer contingent commissions, profit sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with lender-placed insurance.

- E. An insurer shall not provide free or below-cost outsourced services to lenders, investors or servicers, and an insurer will not outsource its own functions to lenders, insurance producers, investors or servicers on an above-cost basis.
- F. An insurer or insurance producer shall not make any payments, including but not limited to the payment of expenses to a lender, insurer, investor or servicer for the purpose of securing lender-placed insurance business or related outsourced services.

Section 7. Non-Circumvention

Nothing in this Act shall be construed to allow an insurance producer or an insurer solely underwriting lender-placed insurance to circumvent the requirements set forth within this Act. Any such part of any requirements, limitations or exclusions provided herein apply in any part to any insurer or insurance producer involved in lender-placed insurance.

Section 8. Evidence of Coverage

Lender-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage shall be mailed, first class mailed, or delivered in person to the last known address of the mortgagor or delivered in accordance with [inset reference to Electronic Transaction Act]. Notwithstanding any other statutory or regulatory required information, the individual policy or certificate of insurance coverage shall include the following information:

- A. The address and identification of the insured property.
- B. The coverage amount or amounts if multiple coverages are provided.
- C. The effective date of the coverage.
- D. The term of coverage.
- E. The premium charge for the coverage.
- F. Contact information for filing a claim.
- G. A complete description of the coverage provided.

Section 9. Filing, Approval and Withdrawal of Forms and Rates

- A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Commissioner.
- B. The Commissioner shall review the rates to determine whether the rates are excessive, inadequate or unfairly discriminatory. This analysis shall include a determination as to whether expenses included by the insurer in the rate are appropriate.
- C. All insurers shall re-file lender-placed property insurance rates at least once every four (4) years.

- D. All insurers writing lender-placed insurance shall have separate rates for lender-placed insurance and voluntary insurance obtained by a mortgage servicer on real estate owned property.
- E. Upon the introduction of a new lender-placed insurance program, the insurer shall reference its experience in existing programs in the associated filings. Nothing in this Act shall limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria or other unique or different characteristics. Moreover, an insurer may, where actuarially acceptable, rely upon models or, in the case of flood filings where applicable experience is not credible, on Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) data.
- F. No later than April 1 of each year, each insurer with at least \$100,000 in direct written premium for lender-placed insurance in this state during the prior calendar year shall report to the Commissioner the following information for the prior calendar year:
 - (1) Actual loss ratio.
 - (2) Earned premium.
 - (3) Any aggregate schedule rating debit/credit to earned premium.
 - (4) Itemized expenses.
 - (5) Paid losses.
 - (6) Loss reserves, including case reserves and reserves for incurred but not reported losses.

This report shall be separately produced for each lender-placed program and presented on both an individual-jurisdiction and countrywide basis.
- G. Except in the case of lender-placed flood insurance, to which this paragraph does not apply, if an insurer experiences an annual loss ratio of less than 35% in any lender-placed program for two consecutive years, it shall submit a rate filing (either adjusting its rates or supporting their continuance) to the Commissioner no more than 90 days after the submission of the data required in Section 9F above.

Drafting Note: The 35% trigger for re-filing rates is not intended to be, nor should be interpreted as, a loss ratio standard for determining whether rates are excessive or inadequate. The loss ratio standard in this section is solely directed to prompt a re-filing of rates by the insurer.

- H. Except as specifically set forth in this Section, rate and form filing requirements shall be subject to the insurance laws of this state.

Section 10. Enforcement

The Commissioner shall have all rights and powers to enforce the provisions of this Act as provided by section(s) [insert section(s) number] of the Insurance Code of this state.

Section 11. Regulatory Authority

The commissioner may, after notice and hearing, promulgate reasonable regulations and orders to carry out and effectuate the provisions of this Act.

Section 12. Judicial Review

- A. A person subject to an order or final determination of the commissioner under Section 8 or Section 13 may obtain a review of the order or final determination by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order or final determination of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding; and the questions determined shall determine whether the filing of the petition shall operate as a stay of the order or final determination of the commissioner, and they shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order or final determination of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by [insert type] evidence, shall be conclusive.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination.

- B. To the extent that the order or final determination of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or final determination of the commissioner. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and be adduced upon the hearing in the manner and upon the terms and conditions the court may deem proper. The commissioner may modify the findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings that are supported by [insert type] evidence with a recommendation if any, for the modification or setting aside of the original order or final determination, with the return of the additional evidence.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination. In a state where final judgment, order or final determination or decree would not be subject to review by an appellate court, provision should therefore be inserted here.

- C. An order issued by the commissioner under Section 13 shall become final:
- (1) Upon the expiration of the time allowed for filing a petition for review if no petition has been duly filed within that time except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 13.
 - (2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review be dismissed.

- D. No order of the commissioner under this Act or order of a court to enforce the same shall relieve or absolve any person affected by the order from liability under any other laws of this state.

Drafting Note: States may delete this section if the substance of it already exists in state law.

Section 13. Penalties

An insurer that violates an order of the commissioner while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to either or both of the following:

- A. Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$100,000, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall not be more than \$25,000 for each violation, but not to exceed an aggregate penalty of \$250,000.
- B. Suspension or revocation of the insurer's license.

Drafting Note: States may delete or modify this section if the substance of it already exists in state law.

Section 14. Severability Provisions

If any provision of this Act, or the application of the provision to any person or circumstance, is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 15. Effective Date

This Act shall take effect [insert effective date].

Chronological Summary of Action (all references are to the Proceeding of the NAIC)

2021 Spring National Meeting (adopted).