

CHAPTER 2023-210

House Bill No. 793

An act relating to collateral protection insurance; creating part XXII of ch. 627, F.S., entitled “Collateral Protection Insurance”; creating s. 627.9901, F.S.; providing legislative purpose; creating s. 627.9902, F.S.; providing applicability; creating s. 627.9903, F.S.; defining terms; creating s. 627.9904, F.S.; specifying requirements for collateral protection insurance policy terms; providing a restriction on insurance charges made to mortgagors; creating s. 627.9905, F.S.; providing for the calculation of collateral protection insurance coverages and premiums; requiring certain excess replacement cost coverage to be paid to the mortgagor; prohibiting insurers from writing collateral protection insurance having certain premium rates; creating s. 627.9906, F.S.; specifying prohibited practices by insurers and insurance agents relating to collateral protection insurance; creating s. 627.9907, F.S.; providing construction relating to noncircumvention; creating s. 627.9908, F.S.; providing requirements for the delivery and contents of policies or certificates of collateral protection insurance; creating s. 627.9909, F.S.; specifying requirements for the filing of policy forms and rates; requiring certain insurers to file specified annual reports with the Office of Insurance Regulation; providing construction; creating s. 627.9911, F.S.; specifying the office’s authority to enforce the provisions of the part; specifying applicable provisions for proceedings and for assessing penalties; creating s. 627.9912, F.S.; authorizing the Financial Services Commission to adopt rules; creating s. 627.9913, F.S.; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part XXII of chapter 627, Florida Statutes, consisting of ss. 627.9901-627.9913, Florida Statutes, is created and entitled “Collateral Protection Insurance.”

Section 2. Section 627.9901, Florida Statutes, is created to read:

627.9901 Purpose.—The purpose of this part is to:

- (1) Promote the public welfare by regulating collateral protection insurance on real property.
- (2) Create a legal framework within which collateral protection insurance on real property may be written in this state.
- (3) Help maintain the separation between the lenders and servicers and the insurers and insurance agents.
- (4) Minimize the possibility of unfair competitive practices in the sale, placement, solicitation, and negotiation of collateral protection insurance.

Section 3. Section 627.9902, Florida Statutes, is created to read:

627.9902 Scope.—

(1) This part applies to insurers and insurance agents engaged in any mortgage transaction involving collateral protection insurance.

(2) All collateral protection insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this part, except:

(a) Insurance associated with mortgage loans or other extensions of credit made primarily for business, commercial, or agricultural purposes.

(b) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor's option.

(c) Insurance purchased by a lender or servicer on real estate owned property.

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

Section 4. Section 627.9903, Florida Statutes, is created to read:

627.9903 Definitions.—As used in this part, the term:

(1) “Affiliate” has the same meaning as in s. 624.10.

(2) “Collateral protection insurance” has the same meaning as in s. 624.6085, provided that for purposes of this part, the term applies only to mortgaged real property and not to personal property.

(3) “Individual collateral protection insurance” means coverage for individual real property evidenced by a certificate of coverage under a master collateral protection insurance policy or a collateral protection insurance policy for individual real property.

(4) “Insurance agent” has the same meaning as the term “agent” in s. 626.015.

(5) “Insurer” has the same meaning as in s. 624.03, provided that for purposes of this part, the term is limited to an insurer, or an affiliate of the insurer, authorized to issue collateral protection insurance on mortgaged real property in this state.

(6) “Investor” means a person or an entity, or an affiliate thereof, holding a beneficial interest in loans secured by real property.

(7) “Lapse” means the date on which a mortgagor has failed to comply with a mortgage agreement's requirements to maintain valid and sufficient insurance upon mortgaged real property.

(8) “Lender” means a person or an entity, or an affiliate thereof, making loans secured by an interest in real property.

(9) “Loss ratio” means the ratio of incurred losses to earned premium.

(10) “Master collateral protection insurance policy” means a group policy issued to a lender or servicer which provides coverage for all loans in the lender’s or servicer’s loan portfolio as needed.

(11) “Mortgage agreement” means the written document setting forth an obligation or a liability of any kind secured by a lien on real property and due from, owing by, or incurred by a mortgagor to a lender on account of a mortgage loan, which document includes the security agreement, the deed of trust, other documents of similar effect, and any other document incorporated by reference.

(12) “Mortgage loan” has the same meaning as in s. 494.001(25)(a).

(13) “Mortgagee” means a person who holds mortgaged real property as security for repayment of a mortgage agreement.

(14) “Mortgagor” means a person who is obligated on a mortgage loan pursuant to a mortgage agreement.

(15) “Real estate owned property” means property owned or held by a lender or servicer as a result of a foreclosure under the related mortgage agreement or acceptance of a deed in lieu of foreclosure.

(16) “Replacement cost value” means the estimated cost to replace covered property at the time of loss or damage without deduction for depreciation. Replacement cost value is not market value but is the cost to replace covered property to its pre-loss condition.

(17) “Servicer” means a person or an entity, or an affiliate thereof, contractually obligated to service one or more mortgage loans for a lender or an investor. The term includes an entity involved in subservicing arrangements.

Section 5. Section 627.9904, Florida Statutes, is created to read:

627.9904 Term of insurance policy.—

(1) Collateral protection insurance must become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any state or federal law requiring the same.

(2) Individual collateral protection insurance must terminate on the earliest of the following dates:

(a) The date on which insurance acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.

(b) The date on which the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement.

(c) Such other date as specified by the individual policy or certificate of insurance.

(d) Such other date as specified by the lender or servicer.

(e) The termination date of the policy.

(3) An insurance charge may not be made to a mortgagor for collateral protection insurance before the effective date of the collateral protection insurance or for a term longer than the scheduled term of the collateral protection insurance.

Section 6. Section 627.9905, Florida Statutes, is created to read:

627.9905 Calculation of coverage and payment of premiums.—

(1) Any collateral protection insurance coverage, and the subsequent calculation of premium, should be based upon the replacement cost value of the property, which is determined as:

(a) If known to the lender or servicer, the last known coverage amount, which is the dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee. The insurer shall inquire of the insured at least once as to the last known coverage amount. If the insurer is unable to obtain the last known coverage amount from the insured or in another manner, the insurer may proceed according to paragraph (b) or paragraph (c), as applicable.

(b) If the last known coverage amount 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.

(c) If the last known coverage amount is unknown and the replacement cost is not available or its use is prohibited by other state or federal law, the unpaid principal balance of the mortgage loan.

(2) 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 must be paid to the mortgagor.

(3) An insurer may not write collateral protection insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the office as of the effective date of any such policy.

Section 7. Section 627.9906, Florida Statutes, is created to read:

627.9906 Prohibited practices.—

(1) An insurer or insurance agent may not issue collateral protection insurance on mortgaged property that the insurer or insurance agent, or an affiliate thereof, owns, performs the servicing for, or owns the servicing right to.

(2) An insurer or insurance agent may not compensate, including through the payment of commissions to, a lender, an insurer, an investor, or a servicer on collateral protection property insurance policies issued by the insurer.

(3) An insurer or insurance agent may not share collateral protection insurance premium or risk with the lender, investor, or servicer that obtained the collateral protection insurance.

(4) An insurer or insurance agent may not offer contingent commissions, profit sharing, or other payments dependent upon profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with collateral protection insurance.

(5) An insurer may not provide free or below-cost outsourced services to lenders, investors, or servicers or outsource its own functions to lenders, insurance agents, investors, or servicers on an above-cost basis.

(6) An insurer or insurance agent may not make any payments, including, but not limited to, the payment of expenses to a lender, an insurer, an investor, or a servicer, for the purpose of securing collateral protection insurance business or related outsourced services.

Section 8. Section 627.9907, Florida Statutes, is created to read:

627.9907 Noncircumvention.—This part may not be construed to authorize an insurance agent or insurer solely underwriting collateral protection insurance to circumvent the requirements of this part. Any requirement, limitation, or exclusion provided in this part applies to an insurer or insurance agent involved in collateral protection insurance.

Section 9. Section 627.9908, Florida Statutes, is created to read:

627.9908 Evidence of coverage.—Collateral protection insurance must 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 must be mailed, first-class mailed, or delivered in person to the last known address of the mortgagor, or delivered in accordance with s. 668.50. Notwithstanding any other information required by general law or by rule, the individual policy or certificate of insurance coverage must include all of the following information:

- (1) The address and identification of the insured property.
- (2) The coverage amount, or amounts if multiple coverages are provided.
- (3) The effective date of the coverage.
- (4) The term of coverage.
- (5) The premium charge for the coverage.
- (6) Contact information for filing a claim.
- (7) A complete description of the coverage provided.

Section 10. Section 627.9909, Florida Statutes, is created to read:

627.9909 Filing, approval, and withdrawal of forms and rates.—

(1) Except as otherwise provided in this part, all policy forms and certificates of insurance to be delivered or issued for delivery in this state are subject to the applicable provisions of s. 627.410, and the schedules of premium rates pertaining thereto are subject to the applicable provisions of s. 627.062.

(2) With respect to any analysis of rates in accordance with s. 627.062(1), the analysis must also include a determination as to whether expenses included by the insurer in the rate are appropriate.

(3) Notwithstanding s. 627.0645, insurers subject to this part shall refile collateral protection property insurance rates at least once every 4 years.

(4) All insurers writing collateral protection insurance shall have separate rates for collateral protection insurance and voluntary insurance obtained by a mortgage servicer on real estate owned property.

(5) Upon the introduction of a new collateral protection insurance program, the insurer shall reference its experience in existing programs in the associated filings. This part does not 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 National Flood Insurance Program data.

(6) By April 1 of each year, each insurer with at least \$100,000 in direct written premium for collateral protection insurance in this state during the prior calendar year shall report to the office the following information for the prior calendar year:

- (a) Actual loss ratio.
- (b) Earned premium.

(c) Any aggregate schedule rating debit or credit to earned premium.

(d) Itemized expenses.

(e) Paid losses.

(f) Loss reserves, including case reserves and reserves for incurred but not reported losses.

The report must be separately produced for each collateral protection insurance program and presented on both an individual-jurisdiction and countrywide basis.

(7) Except in the case of collateral protection insurance covering the peril of flood, to which this subsection does not apply, if an insurer experiences an annual loss ratio of less than 35 percent in any collateral protection insurance program for 2 consecutive years, it must submit a rate filing, either adjusting its rates or supporting their continuance, to the office no more than 90 days after the submission of the data required in paragraph (6)(f).

(8) Except as specifically set forth in this section, rate and form filing requirements are subject to the Florida Insurance Code.

Section 11. Section 627.9911, Florida Statutes, is created to read:

627.9911 Enforcement; proceedings; penalties.—The office has all rights and powers to enforce the provisions of this part as provided by s. 624.307. All proceedings must be conducted in accordance with chapter 120. Any penalty must be assessed in accordance with s. 624.4211.

Section 12. Section 627.9912, Florida Statutes, is created to read:

627.9912 Rulemaking.—The commission may adopt rules to administer this part.

Section 13. Section 627.9913, Florida Statutes, is created to read:

627.9913 Severability.—If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

Section 14. This act shall take effect July 1, 2023.

Approved by the Governor June 9, 2023.

Filed in Office Secretary of State June 9, 2023.