WEST VIRGINIA CODE: §33-8-28

§33-8-28. Same - Mortgage loans and real estate.

(a) Subject to the limitations of section twenty-three of this article, an insurer may acquire, either directly, indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subdivision (4), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan which is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, may not, at the time of acquisition of the obligation, exceed:

(1) Ninety percent of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;

(2) Eighty percent of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty years or less and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan is not greater than the outstanding principal balance which would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent limitation may be increased to ninety-seven percent if acceptable private mortgage insurance has been obtained; or

(3) Seventy-five percent of the fair market value of the real estate for mortgage loans that do not meet the requirements of subdivision (1) or (2) of this subsection.

(b) For purposes of subsection (a) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration or guaranteed by the administrator of Veterans Affairs, or their successors.

(c) A mortgage loan that is held by an insurer under subsection (f), section three of this article or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC accounting practices and procedures manual or successor publication continues to qualify as a mortgage loan under this article.

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(d) Subject to the limitations of section twenty-three of this article, credit lease transactions that do not qualify for investment under section twenty-four of this article with the following characteristics are exempt from the provisions of subsection (a) of this section:

(1) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(2) The lease payments cover or exceed the total debt service over the life of the loan;

(3) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(4) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(5) The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(6) There is a perfected assignment of the rents due pursuant to the lease to, or for the benefit of, the insurer.

(e) An insurer may acquire, manage and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by subsection (d), section five of this article, joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program (in which case the real estate shall be considered to be income producing).

(f) The income producing real estate that is acquired, managed or disposed of pursuant to subsection (e) of this section may be subject to mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (i) and (j) of this section.

(g) Real estate for the accommodation of business. --

An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's (which may include its affiliates) business operations, including home office, branch office and field office operations, as follows:

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(1) Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (e) of this section and is qualified by the insurer;

(2) The real estate acquired under this subsection may be subject to one or more mortgages, liens or other encumbrances, the amount of which may, to the extent that the obligations secured by the mortgages, liens or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (k) of this section; and

(3) For purposes of this subsection, business operations may not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsection (e) of this section.

(h) An insurer may not acquire an investment under subsection (a) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (a) of this section would exceed:

(1) One percent of its admitted assets in mortgage loans covering any one secured location;

(2) One quarter of one percent of its admitted assets in construction loans covering any one secured location; or

(3) One percent of its admitted assets in construction loans in the aggregate.

(i) An insurer may not acquire an investment under subsections (e) and (f) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (e) and (f) of this section plus the guarantees then outstanding would exceed:

(1) One percent of its admitted assets in any one parcel or group of contiguous parcels of real estate, except that this limitation may not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and sickness constitute at least ninety-five percent of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings or other health facilities used for the purpose of providing health services; or

(2) The lesser of ten percent of its admitted assets or forty percent of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and sickness insurance constitute at least ninety-

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five percent of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent of its admitted assets in the aggregate.

(j) An insurer may not acquire an investment under subsection (a) or (b) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (a) and (b) of this section plus the guarantees then outstanding would exceed twenty-five percent of its admitted assets.

(k) The limitations of section twenty-three of this article do not apply to an insurer's acquisition of real estate under subsection (g) of this section. An insurer may not acquire real estate under said subsection if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under said subsection would exceed ten percent of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under said subsection.

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