CHAPTER 85

Consolidations and Mortgage Insurance

**SECTION 38‑85‑10.** Application of chapter.

 This chapter applies to:

 (1) all consolidations, whether the old coverage is provided under an individual or group policy;

 (2) all mortgage insurance offered, issued, or delivered in this State, by mail or otherwise, in connection with consolidations.

HISTORY: 1988 Act No. 382, Section 2.

**SECTION 38‑85‑20.** Definitions.

 In this chapter, unless the context clearly indicates otherwise:

 (1) “Consolidation” means any transaction in which a financial institution makes its premium collection services available to its mortgage debtors in connection with a particular insurer’s offer of mortgage insurance, which offer is made to debtors who, immediately prior to the offer, had mortgage insurance and were paying premiums for that insurance with their monthly mortgage payments.

 (2) “Financial institution” or “servicer” means any entity or organization that services mortgage loans by collecting and accounting for monthly mortgage payments.

 (3) “Loan transfer” means a transaction in which the servicing of a block of mortgage loans is transferred from one servicer to another.

 (4) “Loan transfer consolidation” means a consolidation involving debtors whose mortgage loans have been transferred from one servicer to another.

 (5) “Mortgage” or “mortgage loan” means an indebtedness which is secured by real estate and which is not subject to the South Carolina Consumer Protection Code (Title 37 of the 1976 Code).

 (6) “Mortgage insurance” means life, accidental death, or disability insurance, or any combination of these, designed to pay off all or a part of the mortgage loan in the event of the insured’s death or disability.

 (7) “New coverage” or “new plan” means the mortgage insurance coverage or mortgage insurance plan sponsored by the financial institution in connection with a consolidation.

 (8) “Old coverage” or “old plan” means the mortgage insurance coverage or mortgage insurance plan the insured debtor had or participated in immediately prior to the consolidation.

HISTORY: 1988 Act No. 382, Section 2.

Library References

Insurance 1007.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 3 to 22.

**SECTION 38‑85‑30.** Requirements for insurer’s participation in consolidation.

 (A) No insurer may participate in any consolidation, other than a loan transfer consolidation, unless it complies with the following requirements:

 (1) The offer of new coverage must be made to the mortgage debtors not less than thirty days prior to the proposed effective date of the new coverage.

 (2) In conjunction with the offer of new coverage, the new insurer shall disclose in writing to each debtor the following:

 (a) that the insured debtor may have the right to continue or convert his old coverage by paying premiums directly to the old insurer;

 (b) that the offer of new coverage is not conditioned upon either the termination or replacement of the old coverage;

 (c) the name and address of the old and the new insurer;

 (d) the effective date of the new coverage;

 (e) that the financial institution is the primary beneficiary of the new coverage;

 (f) whether premium rates under the new plan are guaranteed;

 (g) material differences between the new plan and the old plan;

 (h) that payment of the required premium constitutes acceptance of the new coverage.

 (B) An insurer which fails to comply with item (1) of subsection (A) of this section shall notify the debtor, in writing, that he has the right to an unconditional refund of all premiums paid for the new coverage as long as he exercises that right, in writing, within thirty days from the notification.

 (C) Disclosures required under this section may be made on behalf of the new insurer by the financial institution.

HISTORY: 1988 Act No. 382, Section 2.

**SECTION 38‑85‑40.** Loan transfer consolidations.

 The following provisions apply to loan transfer consolidations:

 (1) An offer of new coverage must be made as soon as reasonably possible after the loan transfer. If an offer of new coverage is not made within thirty days after the loan transfer, or at least thirty days prior to the proposed effective date of the new coverage, the insurer shall notify the debtor, in writing, that he has the right to an unconditional refund of all premiums paid for the new coverage as long as he exercises that right, in writing, within thirty days from the date of the notification.

 (2) In conjunction with the offer of new coverage, the new insurer shall disclose in writing to each debtor the following:

 (a) that the insured debtor may have the right to continue or convert his old coverage by paying premiums directly to the old insurer;

 (b) that the offer of new coverage is not conditioned upon either the termination or replacement of the old coverage;

 (c) the name and address of the new insurer;

 (d) the effective date of the new coverage;

 (e) that the financial institution is the primary beneficiary of the new coverage;

 (f) whether premium rates under the new plan are guaranteed;

 (g) a description of the benefits provided under the new plan;

 (h) that payment of the required premium constitutes acceptance of the new coverage.

 (3) Disclosures required under this section may be made on behalf of the new insurer by the new servicer.

HISTORY: 1988 Act No. 382, Section 2.

**SECTION 38‑85‑50.** Additional requirements for insurer’s participation in consolidations

 No insurer may participate in any consolidation, including loan transfer consolidations, unless it complies with the following requirements:

 (1) A group certificate must be delivered to each debtor insured under the new plan. The group certificate shall include the following information:

 (a) the name or names of the single or joint insureds;

 (b) identification of the insured mortgage;

 (c) the amount of insurance under the new plan;

 (d) the premium for the new coverage;

 (e) the effective date of the new coverage;

 (f) the beneficiary for the new coverage.

 (2) A group certificate evidencing the new coverage may not include a contestability clause or, in the case of mortgage life insurance, a provision excluding suicide.

 (3) The new coverage offered to the debtor must be the same type of coverage as the old coverage.

 (4) Notwithstanding the provisions of Section 38‑65‑210, all group mortgage life insurance certificates shall include a conversion privilege permitting an insured debtor to convert, without evidence of insurability, to an individual policy of decreasing term insurance within thirty days of the date the insured debtor’s group coverage is terminated for any reason other than the nonpayment of premiums. The initial amount of coverage under the individual policy must be an amount equal to the amount of coverage terminated under the group policy and must decrease over a term that corresponds with the scheduled term of the insured debtor’s mortgage loan.

 (5) Whenever the offer of coverage under the new plan is based on the same premium as charged under the old plan, all supplemental benefits provided by the old plan must be provided by the new plan.

HISTORY: 1988 Act No. 382, Section 2.

**SECTION 38‑85‑60.** Premiums.

 If an insurer charges debtors the same premium for the new coverage that they were paying for the old coverage, and, as a result, insured debtors of a financial institution are charged different premium rates for the same coverage, the rate differences do not constitute unfair discrimination under Sections 38‑55‑50 and 38‑57‑120, so long as all the applicable requirements of this chapter are met.

HISTORY: 1988 Act No. 382, Section 2.

Library References

Insurance 1518, 1541.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 91 to 95, 105 to 107, 659 to 660, 662.

**SECTION 38‑85‑70.** Group policy or group certificate of mortgage insurance to be filed with and approved by director.

 No group policy or group certificate of mortgage insurance used in connection with a consolidation, nor any application, endorsement, or rider which becomes a part of any such group policy or certificate, may be issued or delivered in this State until a copy of the form has been filed with and approved by the director or his designee.

HISTORY: 1988 Act No. 382, Section 2; 1993 Act No. 181, Section 834.

Library References

Insurance 1774.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 479 to 480.

RESEARCH REFERENCES

Treatises and Practice Aids

Couch on Insurance Section 8:23, Statutory Provisions Addressing Certificates or Promotional Materials.

**SECTION 38‑85‑80.** Authorization to promulgate regulations.

 The department is authorized to promulgate regulations to implement this chapter.

HISTORY: 1988 Act No. 382, Section 2; 1993 Act No. 181, Section 835.