

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 14-1062.01 Duane Gall x4335

SENATE BILL 14-209

SENATE SPONSORSHIP

Heath and Scheffel,

HOUSE SPONSORSHIP

Tyler, Priola

Senate Committees
Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REQUIREMENTS FOR PERMISSIBLE INVESTMENTS BY**
102 **INSURERS IN LOANS SECURED BY INTERESTS IN REAL ESTATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Current law limits the investments insurers may make in mortgage loans and similar instruments to those secured by property located in the United States and having a loan-to-value ratio of 80% in most cases. The national association of insurance commissioners (NAIC) recommends limitations that differ in certain respects from these requirements. The bill

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
April 29, 2014

adopts the NAIC's recommendations by:

- ! Authorizing investment in loans secured by property in either the United States or Canada;
- ! Increasing the allowable loan-to-value ratio to 90% for purchase-money mortgages if the insurer holds the note, 80% for commercial property if the payment schedule meets specified requirements, up to 97% for mortgages on residential property if mortgage insurance applies, and 75% in all other cases; and
- ! Repealing portions of current law that conflict with these provisions.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-216, **amend** (1)
3 introductory portion, (1) (a), and (1) (e); and **repeal** (1) (b) and (1) (g) as
4 follows:

5 **10-3-216. First liens on real property.** (1) Domestic insurance
6 companies may invest in loans secured by first liens on real property
7 LOCATED IN THE UNITED STATES OR CANADA, subject to the following
8 provisions:

9 (a) (I) ~~Except as provided in paragraph (b) of this subsection (1)~~
10 AT THE TIME OF ACQUISITION, no such loan shall exceed:

11 (A) NINETY PERCENT OF THE VALUE OF THE REAL PROPERTY IF THE
12 MORTGAGE LOAN IS SECURED BY A PURCHASE-MONEY MORTGAGE OR LIKE
13 SECURITY RECEIVED BY THE INSURER UPON DISPOSITION OF THE REAL
14 PROPERTY;

15 (B) Eighty percent of the value of the real property ~~except that, in~~
16 ~~the case of property which is improved with~~ IF THE MORTGAGE LOAN IS
17 SECURED BY COMMERCIAL REAL PROPERTY OR BY REAL PROPERTY THAT
18 IS IMPROVED WITH A RESIDENTIAL BUILDING DESIGNED FOR OCCUPANCY
19 BY FIVE OR MORE DWELLING UNITS AND IF THE MORTGAGE LOAN:

1 REQUIRES IMMEDIATE SCHEDULED PAYMENT IN PERIODIC INSTALLMENTS
2 OF PRINCIPAL AND INTEREST; HAS AN AMORTIZATION PERIOD OF THIRTY
3 YEARS OR LESS; AND REQUIRES PERIODIC PAYMENTS TO BE MADE NO LESS
4 FREQUENTLY THAN ANNUALLY. IN ADDITION, EACH PERIODIC PAYMENT
5 MUST BE SUFFICIENT TO ASSURE THAT, AT ALL TIMES, THE OUTSTANDING
6 PRINCIPAL BALANCE OF THE MORTGAGE LOAN DOES NOT EXCEED THE
7 OUTSTANDING PRINCIPAL BALANCE THAT WOULD BE OUTSTANDING UNDER
8 A MORTGAGE LOAN WITH THE SAME ORIGINAL PRINCIPAL BALANCE, WITH
9 THE SAME INTEREST RATE, AND REQUIRING EQUAL PAYMENTS OF
10 PRINCIPAL AND INTEREST WITH THE SAME FREQUENCY OVER THE SAME
11 AMORTIZATION PERIOD. MORTGAGE LOANS PERMITTED UNDER THIS
12 SUB-SUBPARAGRAPH (B) ARE PERMITTED NOTWITHSTANDING THE FACT
13 THAT THEY PROVIDE FOR A PAYMENT OF THE PRINCIPAL BALANCE PRIOR
14 TO THE END OF THE PERIOD OF AMORTIZATION OF THE LOAN. IF THE LOAN
15 MEETS ALL OTHER REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (B),
16 ACCEPTABLE PRIVATE MORTGAGE INSURANCE HAS BEEN OBTAINED, AND
17 THE MORTGAGE LOAN IS SECURED BY REAL PROPERTY THAT IS IMPROVED
18 WITH a residential building, (~~which for the purposes of this paragraph (a)~~
19 ~~shall be deemed to include~~ INCLUDING a condominium, unit) designed for
20 occupancy by not more than four dwelling units, the loan ~~shall not exceed~~
21 ~~ninety~~ MAY BE UP TO NINETY-SEVEN percent of the value of the real
22 property.

23 (C) SEVENTY-FIVE PERCENT OF THE VALUE OF THE REAL PROPERTY
24 IF THE MORTGAGE LOAN IS SECURED BY A MORTGAGE THAT DOES NOT
25 MEET THE REQUIREMENTS SET FORTH IN SUB-SUBPARAGRAPH (A) OR (B)
26 OF THIS SUBPARAGRAPH (I).

27 (II) In all cases, value shall be evidenced by the written appraisal

1 of a qualified real estate appraiser, who may be an employee of the
2 company; except that, in the case of property to be qualified under this
3 section by reason of producing oil, gas, or other minerals, the appraisal
4 must be made by an engineer or geologist qualified in the relevant field,
5 and, in the case of commercial properties of over one hundred thousand
6 dollars in value, the appraiser must be a member of an institute of real
7 estate appraisers, or its equivalent.

8 (b) ~~If a company sells any real property which is an admitted asset~~
9 ~~at the time of sale, the company may upon such sale make a purchase~~
10 ~~money loan, secured by a lien upon the property up to one hundred~~
11 ~~percent of the appraised value thereof, but any excess of the amount of~~
12 ~~the loan over the admitted asset value of the property at the time of sale~~
13 ~~shall not be taken into account in valuing the loan. Profits on any such~~
14 ~~sale shall not be deemed surplus until realized in cash or equivalent.~~

15 (e) The company shall hold such documents as are necessary to
16 evidence its ownership of such first liens. If, under the law of the state
17 JURISDICTION in which the real property is situated, it is necessary to the
18 validity of the lien to record a mortgage or assignment thereof, the
19 company shall record such mortgage or assignment in compliance with
20 such law.

21 (g) ~~The instrument evidencing the loan secured by a first lien on~~
22 ~~real property shall provide for annual or more frequent periodic payments~~
23 ~~of principal and interest, so as to amortize the obligation over a specific~~
24 ~~period of time, and shall require that repayment of principal commence~~
25 ~~on a date not later than five years after the date the loan is made. In the~~
26 ~~case of a loan secured by a lien on a leasehold estate, the fixed payments~~
27 ~~under the loan instrument shall be sufficient to repay the indebtedness~~

1 within the unexpired term of the lease. As to all loans made on or after
2 July 1, 1973, except those made pursuant to binding commitments made
3 prior to such date, the instrument evidencing the loan secured by a first
4 lien on real property shall provide for payment of interest, which interest
5 may be at a variable rate, at regular intervals no less frequent than annual,
6 commencing on a date not later than one year from the date the loan is
7 made, and for repayment of principal as follows: In the case of a loan
8 secured by a lien on a fee simple interest in real property, the instrument
9 shall provide for repayment of principal at least as rapidly as would be
10 required under a repayment schedule calling for repayment of the entire
11 principal within thirty-five years after the date the loan is made or within
12 the actual term of the loan if shorter than thirty-five years, and calling for
13 payment in equal installments at regular intervals not less frequent than
14 annually, commencing no later than five years from the date the loan is
15 made; in the case of a loan secured by a lien on a leasehold estate, the
16 instrument shall provide for repayment of principal at least as rapidly as
17 would be required under a repayment schedule calling for repayment of
18 the entire principal within thirty-five years from the date the loan is made,
19 or within the unexpired term of the lease if such unexpired term is less
20 than thirty-five years, or within the actual term of the loan if shorter than
21 either thirty-five years or the unexpired term of the lease, and calling for
22 payment in equal installments at regular intervals not less frequent than
23 annually, commencing no later than five years from the date the loan is
24 made.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2014 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.