



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2629

BULLETIN 18-89

July 21, 1989

MORTGAGE INSURANCE CONSOLIDATIONS

In today's marketplace, it has become increasingly common for lending institutions to buy, sell, or otherwise transfer real estate mortgage loans and/or the servicing of those loans. Many of the mortgage loans are insured with optional mortgage life, disability, or accident insurance coverage. Typically, the benefit for mortgage insurance is equal to the balance of the mortgage loan and is payable to the lending institution. An advantage of such insurance is the convenience to the insured/borrower of paying his insurance premium along with the mortgage payment.

When a mortgage loan transfer occurs, the acquiring lending institution may not have or may not desire to establish, an agency relationship with the insurers providing coverage on the acquired loans. Therefore, in order to allow the borrowers to continue paying their mortgage insurance premiums along with their monthly mortgage payments, the acquiring institution typically conducts a mortgage insurance consolidation. A consolidation may also occur when a lending institution chooses to terminate its relationship with all but one or two insurers. In either situation, a mortgage insurance consolidation involves the insurer, through the lending institution, making an offer of new coverage to the borrower which is the same or similar to the old coverage. If the borrower accepts the offer of new coverage, he or she is able to keep the new coverage in force by paying the premium along with the monthly mortgage payment.

It has come to the attention of the Insurance Commissioner that, if the new insurer recalculates the amount of the premium using its own rates when it conducts the consolidation, the premium amount will increase for many insureds. This may occur even though the insured may be receiving the same type and amount of coverage as he or she had prior to the consolidation. Furthermore, if each insured under a group insurance contract who is to receive a certificate of insurance is required to sign an application for coverage with the new insurer, many insureds will inadvertently or unknowingly allow their mortgage insurance coverage to lapse.

The Department recognizes that mortgage loan transfers, and therefore mortgage insurance consolidations, will continue to occur. The Department also recognizes that it is not in the best interest of the insuring public to require the acquiring insurer to recalculate the premium upon issuance of the new coverage. Furthermore, the department recognizes that when there is an offer of new group insurance coverage it is not in the best interest of the insuring public to require the acquiring insurer to obtain a new application signed by the insured. Therefore, the Department has issued this Bulletin to clarify its interpretation of Arkansas law applicable to all mortgage insurance consolidations.

A. FULL DISCLOSURE

Ark. Code Ann. §§ 23-66-206, 23-66-302, and 23-66-306 prohibit false, misleading or incomplete representations or comparisons of insurance policies or companies for the purpose of inducing or intending to induce any person to lapse or replace existing insurance. The foregoing statutes require that full disclosure be given to borrowers in conducting a consolidation, so that an informed and intelligent choice may be made by the borrower.

This Department believes that the purposes of those provisions will be satisfied if the following procedures are followed:

- (1) The offer of new coverage must be made to the borrower not less than thirty (30) days prior to the proposed effective date of the new coverage.
- (2) In conjunction with an offer of new coverage, the new insurer shall disclose in writing to each borrower the following:
 - a. that the offer of new coverage is not conditioned upon either the termination or replacement of the old coverages;
 - 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; and
 - h. the payment of the required premium constitutes acceptance of the new coverage.
- (3) A group certificate or policy must be delivered to each borrower insured under the new plan. The group certificate or policy 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; and
 - f. the beneficiary for the new coverage.
 - g.

B. NEW APPLICATION

Ark. Code Ann. § 23-79-105 provides that no individual life insurance shall be made or effectuated unless at the time of the making of the contract the individual insured applies therefore or has consented thereto in writing. Therefore, any new individual coverage must be issued by the acquiring insurer with a new application signed by the policyholder/borrower. Provided, however, the provisions of this statute do not apply to the issuance of new group insurance coverage.

C. DISCRIMINATION

If an insurer charges borrowers the same premium for the new coverage that they were paying for the old coverage, and, as a result, insured debtors of a single lending institution are charged different premium rates for the same coverage, the rate difference do not constitute unfair discrimination under Ark. Code Ann. § 23-66-206(7), so long as all the applicable requirements of this Bulletin are met.

D. CONVERSION

In some cases, the insurer seeking to consolidate the business has proposed to insure future risks with a group policy, which were previously covered under individual policies. In such instances, insurers are reminded that any such group policy must contain the mandatory conversion privileges specified in Ark. Code Ann. §§23-83-117 and 23-83-118.

E. FILING AND APPROVAL

Contracts, policies, and certificates, applicable to any particular consolidation program must be filed with and approved by this Department prior to use, pursuant to Ark. Code Ann. §§ 23-79-100.

Replacement: This bulletin is intended to and does replace Bulletin 14-85, dated June 6, 1985.

Ron Taylor
INSURANCE COMMISSIONER