



SPONSOR: Rep. Bush & Sen. Mantzavinos
Sen. Walsh

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 168

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE INVESTMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 18 of the Delaware Code by making deletions as shown by strikethrough and insertions as
2 show by underline as follows:

3 § 1323. Real estate mortgages.

4 (a) An insurer may invest in bonds, notes or other evidences of indebtedness secured by first or second mortgages
5 or deeds of trust representing first or second liens upon real estate, perpetual leases thereon or leasehold estates when the
6 remaining term of such leasehold and enforceable renewals is not less than the term of such first or second lien, as the case
7 may be, in the United States or Canada, subject to the following conditions:

8 (1) The amount loaned or the aggregate amount of bonds or other evidences of indebtedness issued upon the
9 security of a mortgage or deed of trust (when added to the amount unpaid upon any prior first mortgage or deed of
10 trust) shall not at the time of the investment exceed 75% of the fair market value of the real estate, as such value has
11 been determined by a qualified appraiser for the purposes of the investment or at the time of issuance of the bonds or
12 other evidences of indebtedness.

13 (2) In applying the limitation under paragraph (a)(1) of this section above, there may be excluded from the
14 amount invested that portion of the investment which is guaranteed by the Administrator of Veterans' Affairs pursuant
15 to the Servicemen's Readjustment Act of 1944 [38 U.S.C. § 1802 et seq.], as amended, or insured by the Federal
16 Housing Administrator or other United States or Canadian government agency.

17 (3) Insurance not less comprehensive than fire and extended coverage must be carried on the improvements, if
18 any, on the real estate, in an amount not less than 75% of the insurable value of the improvements or the unpaid
19 balance of the investment, whichever is the lesser amount, and the policy or policies evidencing such insurance shall be
20 endorsed to show the interest of the lender.

(4) No mortgage loan upon a leasehold shall be made or acquired by an insurer pursuant to this section unless the terms thereof shall provide for such payments of principal, whatever the period of the loan, so that at no time during the period of the loan shall the aggregate payments of principal theretofore required to be made under the terms of the loan be less than would have been necessary for a loan payable completely by the end of the lesser of a period of $\frac{4}{5}$ of the period of the leasehold, inclusive of the period or periods which may be provided by enforceable options of renewal, which is unexpired at the time the loan is made or 40 years, through payments of interest only for 5 years and equal payments applicable first to interest and then to principal at the end of each year thereafter.

(5) The total investments of any insurer permitted under this subsection in bonds, notes or other evidences of indebtedness secured by second mortgages or deeds of trust, ~~and~~ under subsection (e) of this section regarding participations evidencing participating interests in bonds, notes or other evidences of indebtedness which are so secured and under subsection (f) of this section, shall not exceed 5% of its assets, and no such investment shall be made or acquired by an insurer if the mortgagor, without the approval of the insurer, may increase the principal amount of the indebtedness secured by the prior first mortgage except to the extent that the amount of such increase is applied in reduction of the investment held by the insurer.

(b) For the purposes of this section real estate shall not be deemed to be encumbered by reason of the existence of taxes or assessments which are not delinquent, instruments creating or reserving mineral, oil or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, or by reason of building restrictions or other restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(c) An insurer may invest in purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to § 1324 of this title.

(d) In addition to the foregoing and supplemental to § 1320 of this title, any such insurer may, to an aggregate amount not in excess of 5% of the assets of such insurer, make and hold loans upon real property, including leasehold estates therein, in any state of the United States, or in the District of Columbia or Puerto Rico, or in any province of the Dominion of Canada, notwithstanding the fact that such loans and the mortgages securing the same do not comply with the provisions of this section.

(e) A permissible investment under this section shall include a participation (meaning an instrument evidencing a participating interest in a bond, note or other evidence of indebtedness secured by first or second mortgage or deed of trust) if the entire indebtedness would qualify for investment under subsection (a) of this section and:

(1) The entire indebtedness secured by the same mortgage or deed of trust is held by such insurer; or

50 (2) The insurer holds a senior participation giving it substantially the rights of a first or second mortgagee and
51 a position of priority over the other holders of participations in such indebtedness; or

52 (3) If each participation is of equal rank, the aggregate amount of the insurer's investment under this
53 paragraph in all such participations does not exceed 20% of its assets.

54 (f) An insurer may invest in bonds, notes or other evidences of indebtedness secured by first or second mortgages
55 or deeds of trust representing first or second liens upon perpetual leases on real estate or leasehold estates in the
56 jurisdictions approved by the Commissioner, provided that the maturity date of the loan occurs on a date that is no later
57 than 40 years prior to the leasehold termination date (inclusive of the period or periods which may be provided by
58 enforceable options of renewal) and the loan to value ratio of the leasehold as of the date of acquisition of such loan does
59 not exceed 70%. Bonds, notes or other evidences of indebtedness acquired pursuant to this subsection shall be subject to
60 the applicable limitations of § 1321 of this title. After a thorough and appropriate review on a case-by-case basis, the
61 Commissioner may grant authority to invest in bonds, notes or other evidences of indebtedness secured by first or second
62 mortgages or deeds of trust representing first or second liens upon leasehold estates in any jurisdiction that otherwise meets
63 the requirements of this subsection.

SYNOPSIS

This bill would allow insurance companies to invest in mortgages on long-term leaseholds in the jurisdictions approved by the Department of Insurance. It is the intent of the Department of Insurance that the first approved jurisdiction be the United Kingdom. In the United Kingdom real estate typically is held not in fee simple (like the US) but long-term land leases. Thirty three other states including Maryland, New Jersey, and New York have similar statutes.