

Guaranty Fund Laws Definitions

2017 SUMMARY OF PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ACTS OF THE VARIOUS STATES & U.S.TERRITORIES

DEFINITION OF TERMS

"Member insurer" refers to an insurance company that is authorized to transact business in the particular state and is writing one or more lines of business covered by the particular guaranty association.

"Person" or "individual" refers to a natural person or a legal entity (such as a corporation, partnership, association or voluntary organization).

"Licensed insurer" is typically defined by a guaranty association act as an insurer authorized to transact business in the particular state either at the time the policy was issued or when the insured event occurred.

DEFINITION OF HEADINGS

NAME

The formal name of the guaranty association is included parenthetically after the name of the state.

CITATION AND EFFECTIVE DATE

This section includes the statutory citation, as well as the session law citation (if available), and the original effective date of the guaranty association act.

MODEL OR SIMILAR ACT

This section is intended to indicate whether the guaranty association act adopted was based on the NAIC Model Act. As previously mentioned, the majority of states have adopted guaranty association acts that are similar in most respects to the NAIC Model Act. A small number of states (California, Michigan, New York and Wisconsin) enacted guaranty association legislation prior to the NAIC Model Act being adopted, and these laws differ in varying degrees from the NAIC Model Act.

COVERED CLAIMS – GENERAL

The purpose of this section is to identify lines of business covered by a guaranty association and to set forth the definition of a covered claim, which usually includes unearned premium claims and loss claims.

COVERED CLAIMS-COVERED LINES OF BUSINESS

Generally speaking, most property and casualty lines of business written by licensed insurers are covered by guaranty associations, subject to the conditions and limitations set forth in the various acts. This section follows statutory language and identifies covered lines of business, usually by indicating what is not covered. That is, the section usually reads "all kinds of direct insurance except...", and the exceptions are usually life and health, title, surety, credit, mortgage guaranty and ocean marine insurance. The term "direct insurance" is used intentionally to exclude reinsurance on covered lines from coverage under the acts.

COVERED CLAIMS-UNEARNED PREMIUM

Provisions concerning whether unearned premium claims are covered claims are included here. Usually the same deductible and statutory maximum apply to loss claims as well as unearned premium claims; however, sometimes the act contains a different deductible and/or statutory maximum for unearned premium claims. In either case, the deductible and statutory maximum that is applicable to unearned premium claims is included here.

COVERED CLAIM

As previously mentioned, a definition, as complete as possible, of covered claim is included under this section. Generally speaking, unpaid claims of residents of the state under most property & casualty lines of business written by an insolvent insurer licensed in the state are covered claims, but only to the extent of policy limits and the statutory limits on covered claim payments. In addition, the various acts typically require that claims, to be covered, must be incurred prior to the determination of insolvency or within 30 days

of determination of insolvency, or before the policy expires or the insured replaces the policy, if either of the latter happens to occur within 30 days of the determination of insolvency. The latter part of this definition has not been included in the details of the summary, but is, almost without exception, included in every guaranty association act. Claims of an affiliate of the insolvent insurer typically are not covered, even if such claims otherwise meet the definition of covered claim.

SEPARATE ACCOUNTS

The guaranty association acts typically provide for member companies to be assessed and claims to be paid using a number of different accounts, the most common arrangement being three accounts: workers compensation, auto and all other. Some states have no separate accounts; others have as many as six separate accounts.

MAXIMUM ANNUAL PERCENTAGE AND BASE YEAR

These sections identify the maximum annual assessment per member insurer in terms of a percentage of that member's net direct written premiums, as well as the particular year's premiums to be used to make the assessment. If separate accounts are involved, the percentage is applied to the member insurer's total net direct written premiums for the base year for the type of business covered by the particular account. If the guaranty association act does not provide for separate accounts, then the maximum annual assessment is calculated in terms of a member insurer's total net direct written premiums for all covered lines of business for the base year involved.

RECOUPMENT PROVISION

This section details the method provided for in the guaranty association act which allows member insurers to recover the cost of assessments; the usual methods being "rates and premiums" or "premium tax offset". The rates and premiums method allows member insurers to recover the cost of assessments by permitting member insurers to include the cost of assessments as a factor in determining rates and premiums that the insurer is allowed to charge for its policies. The premium tax offset method allows member insurers to recover the cost of assessments by permitting a reduction in premium taxes payable by the member insurer.

DEDUCTIBLE OR MINIMUM AMOUNT PER CLAIM

This section identifies the deductible or minimum per claim amount that is applicable to covered claims, and usually applies to loss claims that are covered claims, as well as unearned premium claims. Some states have no deductible; other states have as much as a \$250 deductible, the usual deductible being \$100. Some states have a minimum per claim amount. The usual exception in this section is that claims for workers' compensation benefits are paid in full. If a separate deductible exists for unearned premiums, it is included here as well as in the "Covered Claim - Unearned Premium" section.

MAXIMUM PER CLAIM

This section identifies, unless indicated otherwise, the maximum liability of the association for a single covered claim. The usual exception here is that claims for benefits under workers' compensation policies are paid in full.

NET WORTH PROVISION

This section identifies those provisions that exclude certain entities, such as large insureds or large third party claimants, from the class of covered claimants. If the association has the right to recover from an affiliate, this will be set out within this section. Of the guaranty association acts that contain a net worth provision, roughly half contain the NAIC Model Act provision which gives the association the right to seek reimbursement from an insured for third party claims paid on behalf of that insured if the insured's net worth exceeded \$50,000,000 as of December 31 as of the year preceding the date of the order of liquidation.

LIMITS ON CLAIMS-OTHER

The "Non-Covered Claims" section indicates whether amounts due to any reinsurer, insurer, insurance pool or underwriting association from the insolvent insurer are covered claims. The second paragraph under this section identifies any types of damages and expenses that are non-covered claims, such as punitive damages, non-economic losses, and fees and expenses of adjusters and attorneys incurred prior to the liquidation date. The last section identifies those provisions that provide for: (1) In a situation where a covered claim is also covered by other insurance, claimants to first exhaust all rights under such other insurance, and for a guaranty association's obligation on covered claims to be correspondingly reduced by amounts paid by other insurance; (2) which association is primary in the event of a property claim involving property with a

permanent location -- usually the association of the location of the property; and, (3) which association is primary in the event of a worker's compensation claim -- usually the association of the residence of the claimant. The last section also includes details on those provisions that correspondingly reduce a guaranty association's obligation on covered claims by amounts paid by other guaranty associations.

TERMINATION PROVISION

This section indicates whether the guaranty association act contains a termination provision which would permit the guaranty association to be terminated by the insurance commissioner usually upon a finding that a similar permanent plan had been put in place that provides essentially the same protection as the guaranty association act.

MISCELLANEOUS

This section provides details on any provision included in the guaranty association act that deals with any of the following subjects: The definition of "insolvent insurer"; whether the association is incorporated and unincorporated; whether notice of a claim to a liquidator is deemed notice to the association; whether the receiver of the insolvent insurer is required pursuant to the guaranty association act to file an early access plan; whether expenses of the association or any similar organization in handling claims will be accorded the same priority as the liquidators expenses (the reference to similar organization was not included in the summary but is almost without exception in every act); whether the association is managed or controlled by the insurance department; whether the association receives directly reinsurance proceeds related to covered claim payments; immunity of the association; period of "stay" that the court may impose on litigation involving covered claims; and finally, the date of receipt of the latest materials reviewed in the preparation of the summary.

DISCLAIMER

Although the NCIGF has made every effort to produce the most complete, up-to-date and accurate law summaries possible, this work is meant to be used for reference purposes only. It is not meant as a substitute for an official version of a state statute or for legal advice.

Future updated copies of this summary may be obtained by contacting Robin Webb (rwebb@ncigf.org) of the National Conference of Insurance Guaranty Funds, 300 North Meridian Street, Suite 1020, Indianapolis, Indiana, 46204 (317) 464-8136.

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