No. 2017- 5297

**Official Order**
*of the*
**Texas Commissioner of Insurance**

**Date:** NOV 3 0 2017

**Subject Considered:**

**2017 Texas Title Insurance Rate Hearing**
**Docket No. 2800**

**General remarks and official action taken:**

The subject of this order is the adjustment of title insurance rates for the 2018 calendar year to reimburse Texas title insurers for amounts paid in assessments to the Texas Title Insurance Guaranty Association (Guaranty Association) in 2017.

## BACKGROUND

In 2011, the state of Virginia appointed a receiver for Southern Title Insurance Corporation (Southern Title), which is domiciled in Virginia. In Texas, the commissioner designated Southern Title as impaired on August 30, 2012. Commissioner's Order No. 12-0721.

Under Insurance Code Chapter 2602, the Guaranty Association is required to pay covered claims for impaired title insurers. Additionally, Insurance Code §2602.202 requires the Guaranty Association to assess title insurers for the amount needed to pay covered claims and the expenses of handling those claims after impairment. In 2013, the Guaranty Association assessed title insurers for $2.5 million to help ensure that it had sufficient funds to pay initial Southern Title claims.

Insurance Code §2602.210 entitles title insurers to recover assessments in their rates for the succeeding calendar year, and requires the commissioner to adjust title insurance rates to allow for the recoupment. In November 2013, the commissioner held a hearing under Docket No. 2753 to adjust the 2014 title insurance rates to allow for recoupment of the assessment. Before the 2013 hearing, TDI staff held an informal public meeting to receive stakeholder input on the most suitable methods and assumptions for the recoupment. TLTA and several title insurers recommended that TDI use a recoupment method that mirrored the way the Guaranty Association collected the policy guaranty fee[1] under Insurance Code §2602.151. Title insurers said that making the collection process for the recoupment similar to the collection process for the guaranty fee was the fastest way for title agents to implement a one-year rate adjustment, while reducing the possibility of mistakes and minimizing extra costs to title agents.

[1] The policy guaranty fee is a flat fee charged on each owner's policy and each loan policy. The fees help pay covered claims and expenses of impaired title agents, but not impaired title insurers.

At the 2013 hearing, TDI staff recommended that the recoupment charge be a flat amount, at a rate for owner's policies and loan policies designed to collect the assessment amount. Staff also recommended a charge of $0 for all other insuring forms. On December 12, 2013, the commissioner issued Commissioner's Order No. 2885, adjusting rates for the 2014 calendar year. The order implemented staff's recommended method.

The 2013 assessment ensured that the Guaranty Association had sufficient funds to pay for initial Southern Title claims. In 2017, the Guaranty Association executed an assumption agreement with First National Title Insurance Company (First National Title). Under the agreement, First National Title assumed the Guaranty Association's liabilities for Southern Title policies. The Guaranty Association assessed title insurers $6 million to pay for the assumption. This assessment is the subject of the current recoupment.

On September 7, 2017, TDI held a public hearing under Insurance Code §2703.206 to consider a rate adjustment for the 2018 calendar year to reimburse Texas title insurers for amounts paid in assessments to the Texas Title Insurance Guaranty Association (Guaranty Association) in 2017. TDI published notice of the hearing in the July 7, 2017, issue of the *Texas Register* (42 TexReg 3515).

The following findings of fact and conclusions of law are adopted:

## FINDINGS OF FACT

1. Insurance Code §2602.208 allows the Guaranty Association to use money from assessments to negotiate and consummate contracts for assumption of liabilities.

2. On February 7, 2017, the Guaranty Association executed an assumption agreement with First National Title. Under the agreement, First National Title assumed the Guaranty Association's liabilities for Southern Title policies.

3. In March 2017, the Guaranty Association assessed title insurers $6 million to pay for the First National Title assumption.

4. On September 7, 2017, TDI held a hearing under Docket No. 2800 to consider the rate adjustment. TDI staff and the Texas Land Title Association (TLTA) commented at the hearing. TDI did not receive any written comments.

5. Because the 2014 recoupment went smoothly, TDI staff recommends using the same recoupment method for the current recoupment.

6. On October 30, 2017, the Guaranty Association board of directors voted to reduce the policy guaranty fee to zero for 2018. The absence of a policy guaranty fee in 2018 will reduce the consumer impact of a recoupment charge on each owner's policy and each loan policy.

**Procedural Rule P-30**

7. The Texas Title Insurance Basic Manual Procedural Rule P-30 requires that title agents collect the recoupment charge on every title insurance policy and every other title insuring form for which a premium is charged, including endorsements and construction loan binders, and remit the collected charges to the Guaranty Association on a quarterly basis. Procedural Rule P-30 does not require that the rate be uniform.

8. Applying a rate designed to recoup $6 million to owner's policies and loan policies, and applying a zero rate to all other insuring forms, will closely match the policy guaranty fee collection process. It will also comply with the requirement to charge a recoupment rate for each form.

9. There are several title insurance endorsements that charge a rate of $0. Examples include:

   a. mineral and surface damage endorsements on loan policies;

   b. Assignment of Rents/Leases Endorsements (Form T-27) on contemporaneously issued loan policies; and

   c. condominium endorsements on contemporaneously issued loan policies.

**Determining the Recoupment Charge**

10. TDI staff recommended that the charge per policy be determined by dividing the amount of the assessment, $6 million, by the expected number of owner's and loan policies in 2018.

11. Policy Count Estimate. To estimate the number of expected owner's and loan policies in 2018, staff reviewed the policy counts from 2004 through 2016, making the following observations:

   a. The average number of policies per year was 1.2 million.

   b. The maximum number of policies occurred in 2006, and was slightly over 1.5 million policies.

   c. The minimum number of policies occurred in 2011, and was slightly under 0.9 million policies.

d. The policy counts in each of the four years from 2004 through 2007 were over 1.3 million.

e. From 2006 through 2011, the number of policies dropped for five consecutive years from a high of 1.5 million policies in 2006 to a low of 0.9 million policies in 2011.

f. From 2011 to 2015, the number of policies rebounded from its low point of 0.9 million to 1.2 million. The policy count for 2016 remained steady at 1.2 million.

g. The first quarter of 2017 experienced the second-highest first-quarter policy count since the first-quarter low point in 2010. This policy count coupled with the market's sustained multi-year rebound suggests that 2017 is on pace to meet or surpass 1.2 million policies.

h. The impact of Hurricane Harvey on the 2018 real estate market is uncertain; it could have either a negative or positive impact on the number of policies in 2018.

i. Based on these observations, it is reasonable to use 1.2 million policies as the expected number of policies in 2018.

12. Dividing the $6 million assessment by 1.2 million policies suggests collecting $5.00 per policy. However, it is reasonable to select a smaller amount per policy in case the policy count is higher than expected.

13. The 2014 rate adjustment order stipulated a recoupment amount of $1.80 per policy. Staff received feedback that the industry preferred a round recoupment number. Representing the title insurance industry, TLTA testified that $4.50 was an acceptably round number.

14. It is reasonable to collect a $4.50 guaranty assessment recoupment charge (GARC) on each owner's policy and each loan policy sold in 2018.

**Collecting the Recoupment Charge**

15. Insurance Code Chapter 2602 does not address a situation in which the amount collected exceeds the amount of the assessment. It would be very difficult to refund the money to policyholders. If title agents collect more than $6 million, it is reasonable for the Guaranty Association to hold the money to pay any of its remaining liability for Southern Title's claims not covered by the First National Title assumption, or as a credit against future assessments for any title insurer impairment.

16. TDI staff will monitor the quarterly amounts that title agents remit to the Guaranty Association. If staff determines that the amount collected is likely to exceed $6 million, staff will advise the commissioner or the commissioner's authorized representative. The commissioner or commissioner's authorized representative may then order title agents to stop collecting the GARC.

17. Under Insurance Code §2602.210(b), for any assessment amount that is not recovered from GARC collections during the 2018 calendar year, a title insurer will be entitled to a tax credit against its premium tax under Insurance Code Chapter 223.

18. The 2018 remittance form, attached as Exhibit B, is designed for this recoupment. It is designed to take the place of the current promulgated Guaranty Assessment Recoupment Charge Remittance Form, Form T-G2, which requires title agents to report and remit 1 percent of premium. Procedural Rule P-30 requires agents to submit a remittance form, but does not specify Form T-G2.

19. Each assessment and recoupment scenario presents a unique set of facts and circumstances. As a result, the recoupment collection methods and assumptions must be tailored to each situation. It is reasonable to apply the methods and assumptions in this order only to this recoupment, and not to assign them any binding precedential value for future recoupments.

## CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter under Insurance Code §§31.021, 36.001, 2501.001-2501.008, 2551.003, 2602.210, and 2703.001-2703.208.

2. TDI gave proper and timely notice of the public hearing on September 7, 2017, as required by Insurance Code §2703.207.

3. Insurance Code §2602.210(a) requires the commissioner to adjust title insurance rates to allow title insurers to recover assessments in their rates over the succeeding calendar year. A GARC is necessary to enable those title insurers to recoup the assessment made by the Guaranty Association in 2017.

4. Insurance Code §2703.151 requires the commissioner to fix and promulgate the premium rates to be charged by title insurers and title agents.

5. A GARC of $4.50 charged on each owner's policy and each loan policy is reasonable as to the public, and nonconfiscatory as to title insurers and title agents, as Insurance Code §2703.152 requires.

6. A GARC of $4.50 charged on each owner's policy and each loan policy meets the requirements of Insurance Code §2602.210 and Procedural Rule P-30.

## ORDER

It is ordered that:

Title agents must collect a GARC directly from the purchaser of each owner's policy and each loan policy at the closing of the transaction, from January 1 through December 31, 2018. The GARC is $4.50 for each owner's policy and each loan policy. The recoupment charge is $0 for all other insuring forms for which a premium is charged.

The GARC will be added to the Schedule of Basic Premium Rates for Title Insurance, Section III, *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. A copy of the schedule is attached as Exhibit A.

All title agents must use the 2018 Guaranty Assessment Recoupment Charge Remittance Form, attached as Exhibit B, to remit the collected recoupment charges to the Guaranty Association on a quarterly basis, as required by Procedural Rule P-30.

If title agents remit more than $6 million to the Guaranty Association, the Guaranty Association may retain the money to pay any of its remaining liability for Southern Title's claims not covered by the First National Title assumption, or as a credit against future assessments for any title insurer impairment.

These findings of fact, conclusions of law, and ordering provisions are not intended to create a standard recoupment method and are not precedent for future recoupments.

Kent C. Sullivan
Commissioner of Insurance

2017- 5297



# EXHIBIT A

## GUARANTY ASSESSMENT RECOUPMENT CHARGE

**Effective January 1 through December 31, 2018**

A Guaranty Assessment Recoupment Charge (GARC) of $4.50 applies to each owner's policy and each loan policy. Title agents must collect the GARC directly from the purchaser of each owner's policy and each loan policy at the closing of the transaction from January 1 through December 31, 2018. The purpose of the GARC is to reimburse Texas title insurers for $6 million paid in assessments to the Texas Title Insurance Guaranty Association in 2017.

## TEXAS TITLE INSURANCE BASIC PREMIUM RATES

**Rates Effective May 1, 2013**

| Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium |
|---|---|---|---|---|---|---|---|
| $10,000 | $238 | $32,500 | $398 | $55,000 | $556 | $77,500 | $716 |
| 10,500 | $242 | 33,000 | $401 | 55,500 | $559 | 78,000 | $720 |
| 11,000 | $244 | 33,500 | $405 | 56,000 | $565 | 78,500 | $725 |
| 11,500 | $248 | 34,000 | $408 | 56,500 | $568 | 79,000 | $729 |
| 12,000 | $252 | 34,500 | $412 | 57,000 | $571 | 79,500 | $730 |
| 12,500 | $255 | 35,000 | $415 | 57,500 | $575 | 80,000 | $734 |
| 13,000 | $260 | 35,500 | $419 | 58,000 | $579 | 80,500 | $738 |
| 13,500 | $264 | 36,000 | $422 | 58,500 | $581 | 81,000 | $742 |
| 14,000 | $267 | 36,500 | $426 | 59,000 | $585 | 81,500 | $744 |
| 14,500 | $270 | 37,000 | $429 | 59,500 | $589 | 82,000 | $748 |
| 15,000 | $272 | 37,500 | $433 | 60,000 | $593 | 82,500 | $753 |
| 15,500 | $276 | 38,000 | $437 | 60,500 | $597 | 83,000 | $757 |
| 16,000 | $280 | 38,500 | $441 | 61,000 | $600 | 83,500 | $759 |
| 16,500 | $284 | 39,000 | $443 | 61,500 | $603 | 84,000 | $762 |
| 17,000 | $288 | 39,500 | $447 | 62,000 | $607 | 84,500 | $767 |
| 17,500 | $292 | 40,000 | $450 | 62,500 | $611 | 85,000 | $770 |
| 18,000 | $296 | 40,500 | $455 | 63,000 | $613 | 85,500 | $773 |
| 18,500 | $298 | 41,000 | $457 | 63,500 | $617 | 86,000 | $776 |
| 19,000 | $301 | 41,500 | $462 | 64,000 | $621 | 86,500 | $781 |
| 19,500 | $304 | 42,000 | $465 | 64,500 | $625 | 87,000 | $785 |
| 20,000 | $309 | 42,500 | $469 | 65,000 | $628 | 87,500 | $788 |
| 20,500 | $312 | 43,000 | $471 | 65,500 | $631 | 88,000 | $791 |
| 21,000 | $317 | 43,500 | $475 | 66,000 | $635 | 88,500 | $795 |

2017- 5297



| Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium | Policies up to and Including | Basic Premium |
|---|---|---|---|---|---|---|---|
| 21,500 | $320 | 44,000 | $479 | 66,500 | $640 | 89,000 | $799 |
| 22,000 | $324 | 44,500 | $483 | 67,000 | $644 | 89,500 | $801 |
| 22,500 | $327 | 45,000 | $487 | 67,500 | $645 | 90,000 | $804 |
| 23,000 | $330 | 45,500 | $490 | 68,000 | $649 | 90,500 | $809 |
| 23,500 | $333 | 46,000 | $493 | 68,500 | $653 | 91,000 | $813 |
| 24,000 | $337 | 46,500 | $497 | 69,000 | $656 | 91,500 | $817 |
| 24,500 | $340 | 47,000 | $499 | 69,500 | $659 | 92,000 | $819 |
| 25,000 | $345 | 47,500 | $503 | 70,000 | $664 | 92,500 | $823 |
| 25,500 | $348 | 48,000 | $508 | 70,500 | $668 | 93,000 | $827 |
| 26,000 | $352 | 48,500 | $512 | 71,000 | $672 | 93,500 | $831 |
| 26,500 | $355 | 49,000 | $515 | 71,500 | $674 | 94,000 | $832 |
| 27,000 | $358 | 49,500 | $518 | 72,000 | $677 | 94,500 | $837 |
| 27,500 | $361 | 50,000 | $522 | 72,500 | $681 | 95,000 | $842 |
| 28,000 | $365 | 50,500 | $525 | 73,000 | $685 | 95,500 | $845 |
| 28,500 | $368 | 51,000 | $527 | 73,500 | $688 | 96,000 | $847 |
| 29,000 | $373 | 51,500 | $531 | 74,000 | $692 | 96,500 | $851 |
| 29,500 | $376 | 52,000 | $536 | 74,500 | $696 | 97,000 | $855 |
| 30,000 | $380 | 52,500 | $540 | 75,000 | $700 | 97,500 | $859 |
| 30,500 | $383 | 53,000 | $543 | 75,500 | $702 | 98,000 | $862 |
| 31,000 | $387 | 53,500 | $547 | 76,000 | $706 | 98,500 | $866 |
| 31,500 | $390 | 54,000 | $550 | 76,500 | $709 | 99,000 | $870 |
| 32,000 | $393 | 54,500 | $553 | 77,000 | $713 | 99,500 | $873 |
| | | | | | | 100,000 | $875 |

## Title Basic Premium Calculation for Policies in Excess of $100,000

**<u>Using the table below, apply these steps to determine basic premium for policies above $100,000</u>:**

Step 1 In column (1), find the range that includes the policy's face value.
Step 2 Subtract the value in column (2) from the policy's face value.
Step 3 Multiply the result in Step 2 by the value in column (3), and round to the nearest dollar.
Step 4 Add the value in column (4) to the result of the value from Step 3.

**(See examples provided following the table.)**

2017- 5297



| (1) Policy Range | (2) Subtract | (3) Multiply by | (4) Add |
|---|---|---|---|
| [$100,001 - $1,000,000] | 100,000 | 0.00554 | $ 875 |
| [$1,000,001 - $5,000,000] | 1,000,000 | 0.00456 | $ 5,861 |
| [$5,000,001 - $15,000,000] | 5,000,000 | 0.00376 | $ 24,101 |
| [$15,000,001 - $25,000,000] | 15,000,000 | 0.00267 | $ 61,701 |
| [Greater than $25,000,000] | 25,000,000 | 0.00160 | $ 88,401 |

**Examples for Policies in Excess of $100,000**

**Example 1:**
(1) Policy is $268,500
(2) Subtract $100,000 ==> $268,500 - $100,000 ==> Result = $168,500
(3) Multiply by 0.00554 ==> $168,500 x 0.00554 ==> $933.49 ==> Result = $933
(4) Add $875 ==> $933 + $875 ==> Final Result = $1,808

**Example 2:**
(1) Policy is $4,826,600
(2) Subtract $1,000,000 ==> $4,826,600 - $1,000,000 ==> Result = $3,826,600
(3) Multiply by 0.00456 ==> $3,826,600 x 0.00456 ==> $17,449.30 ==> Result = $17,449
(4) Add $5,861 ==> $17,449 + $5,861 ==> Final Result = $23,310

**Example 3:**
(1) Policy is $10,902,800
(2) Subtract $5,000,000 ==> $10,902,800 - $5,000,000 ==> Result = $5,902,800
(3) Multiply by 0.00376 ==> $5,902,800 x 0.00376 ==> $22,194.53 ==> Result = $22,195
(4) Add $24,101 ==> $22,195 + $24,101 ==> Final Result = $46,296

**Example 4:**
(1) Policy is $17,295,100
(2) Subtract $15,000,000 ==> $17,295,100 - $15,000,000 ==> Result = $2,295,100
(3) Multiply by 0.00267 ==> $2,295,100 x 0.00267 ==> $6,127.92 ==> Result = $6,128
(4) Add $61,701 ==> $6,128 + $61,701 ==> Final Result = $67,829

**Example 5:**
(1) Policy is $39,351,800
(2) Subtract $25,000,000 ==> $39,351,800 - $25,000,000 ==> Result = $14,351,800
(3) Multiply by 0.00160 ==> $14,351,800 x 0.00160 ==> $22,962.88 ==> Result = $22,963
(4) Add $88,401 ==> $22,963 + $88,401 ==> Final Result = $111,364

2017- 5297



# EXHIBIT B

## 2018 TTIGA Guaranty Assessment Recoupment Charge Remittance Form

By: ______________________________ ______________________
(Name of Reporting Entity) (Phone Number)

______________________________ ______________________
(Address) (Firm ID Number)

______________________________ ______________________
(City, State, and ZIP) (Email address)

☐ Check here if any of the contact information above or below has changed since your last remittance.
☐ Check here if you are ceasing operations and this is a final disbursement to TTIGA.

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**For the Quarter:**

Beginning: ____________________, 2018 Ending: ____________________, 2018

1. Total Owner's and Loan Policies During the Quarter: ____________________

2. Total Guaranty Assessment Recoupment Charges remitted (Multiply the amount shown above in No. 1 by $4.50): = $____________________

If you had no closings during the quarter and you did not collect any Guaranty Assessment Recoupment Charges, please enter "0" and mail this form.

I, ______________________________ of ______________________________________ certify that this information is correct and reflects all owner's and loan policies of title insurance to be reported on my agency's statistical report to TDI.

______________________________________
Signature
Printed Name and Position ________________________
Contact Number ______________________________

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, this the ______ day of ________________________ 20____.

______________________________________
Notary Public in and for the State of Texas

2017- 5297



______________________________
Printed Name of Notary

| | |
|---|---|
| **REMIT CHECK MADE PAYABLE TO:** | **FOR OVERNIGHT DELIVERY:** |
| **Texas Title Insurance Guaranty Association** | **Texas Title Insurance Guaranty Association** |
| P.O. Box 2212 | 500 W. 5th St., Suite 1150 |
| Austin, TX 76768-2212 | Austin, TX 78701 |

**Note: This report and remittance are due as follows:**

| **Calendar Quarter Ending** | **Remittance Due Dates** |
|---|---|
| **March 31** | **May 1** |
| **June 30** | **August 1** |
| **September 30** | **November 1** |
| **December 31** | **February 1** |