No. 2885

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

**Date:** DEC 12 2013

**Subject Considered:**

**2014 Texas Title Insurance Rate Adjustment to Recoup the Assessment for Southern Title Insurance Corporation**

**Docket No. 2753**

The commissioner of insurance adjusts title insurance premium rates for the 2014 calendar year to reimburse Texas title insurers for $2.5 million paid in assessments to the Texas Title Insurance Guaranty Association (Guaranty Association) in 2013. The commissioner held a public hearing to consider the rate adjustment on November 15, 2013, under Insurance Code §2703.202 and §2703.206. The Texas Department of Insurance published notice of the hearing in the September 13, 2013, issue of the *Texas Register* at 38 *TexReg* 6061. TDI also held an informal public meeting on October 21, 2013.

After considering TDI staff's testimony and analysis, and public comments and testimony presented at the public meeting and public hearing, the commissioner adopts the following findings of fact and conclusions of law.

## FINDINGS OF FACT

### Background

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

2. *Assessment.* The Guaranty Association assessed title insurers for $8 million in April 2013, under Insurance Code §2602.201. Section 2602.201 requires the Guaranty

Association to estimate the amount required to pay all covered claims for an impaired title insurance company and to assess title insurers for the needed amount. On August 23, 2013, the Guaranty Association board voted to refund $5.5 million to title insurers, reducing the assessment to $2.5 million.

3. *Public Meeting*. On October 21, 2013, TDI staff held an informal public meeting to receive stakeholder input on the most suitable methods and assumptions for the recoupment. Representatives of title insurers, the Texas Land Title Association, the Office of Public Insurance Counsel, and other stakeholders attended the meeting.

4. *Public Hearing*. On November 15, 2013, the commissioner conducted the public hearing required by Insurance Code §2703.202 and §2703.206, under Docket No. 2753. Interested persons attended the hearing and had the opportunity to present written and oral testimony on the recoupment. TDI staff presented their analyses, rate calculations, and recommendation. A TLTA representative testified in support of staff's recommendation. The commissioner did not receive any written comments.

**Guaranty Assessment Recoupment Charge**

5. *Rate Adjustment Required*. Insurance Code §2602.210 entitles title insurers to recoup the $2.5 million assessment in their rates for the succeeding calendar year, and requires the commissioner to adjust title insurance premium rates to allow for the recoupment.

6. *Public Meeting Comments*. At the October public meeting, TLTA and several title insurers recommended a method of collecting the recoupment charge that mirrors the way the Guaranty Association currently collects the policy guaranty fee under Insurance Code §2602.151. They said that making the collection process for the recoupment charge as similar as possible to the process for the policy guaranty fee would be the fastest way for title agents to implement the one-year rate adjustment, would reduce the possibility of mistakes, and would minimize the extra cost to the agents. The costs of reprogramming computers and collecting the charge fall entirely on title agents.

7. *No Policy Guaranty Fee for 2014*. On October 21, 2013, the Guaranty Association board of directors voted to reduce the amount of the guaranty fee to zero for 2014. The absence of this fee in 2014 will minimize the consumer impact of the recoupment charge. *See* Tex. Title Ins. Guar. Ass'n, *Minutes of the Board of Directors of the Texas Title Insurance Guaranty Association*, October 21, 2013.

8. *Staff Recommendation on Recoupment Method*. TDI staff recommended that the recoupment charge be a flat fee, at a rate for owner's policies and loan policies designed to collect $2.5 million, with a charge of $0 for all other endorsements, binders, and

insuring forms. Staff also recommended that, to minimize consumer impact, the charge be implemented as quickly and efficiently as possible in 2014, to allow it to be spread over the largest number of policies.

9. *Procedural Rule P-30.* 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. Procedural Rule P-30 does not require that the rate be uniform. Applying a zero rate to endorsements, binders, and other forms, and applying a rate designed to recoup $2.5 million to owner's policies and loan policies will, in practice, closely match the policy guaranty fee process, and will also comply with the requirements to charge a rate for each form.

10. *Precedent for Charging a Zero Rate for Title Insuring Forms.* There are currently more than a dozen endorsements without charges, including leasehold owner's policies and loan policy endorsements, minerals and surface damage endorsements for loan policies, and variable rate mortgage loan endorsements.

11. *Calculating the Charge.* TDI actuarial staff testified that they would determine the charge per policy by dividing the amount of the assessment ($2.5 million) by the estimated number of title insurance policies in 2014.

12. *Policy Count Estimate.* To estimate the number of policies in 2014, staff looked at the number of policies from 2000 through the third quarter of 2013. Staff concluded that an estimated policy count of 1.38 million for 2014 is reasonable.

    a. The policy counts from 2000 through 2003 ranged from 894,000 to 1.2 million policies.

    b. The policy counts from 2004 through 2007 ranged from 1.3 to 1.5 million policies.

    c. The economic downturn from 2008 through 2011 led to a significant drop in the number of policies during this period, with fewer than 900,000 policies in 2011. The policy count in 2012 increased after these years to 1.1 million, which is lower than the policy count in 2004.

    d. For the first three quarters of 2013, there were 928,000 policies. Projecting the same level of activity through the end of the fourth quarter would result in about 1.24 million policies.

e. The projected number of policies in 2013 exceeds the average number of policies from 2000 through 2003. It also exceeds the average number of policies during the economic downturn from 2008 through 2012. Additionally, the current pattern of growth in policy counts suggests that the number of policies expected in 2014 will exceed the number of policies in 2013. A low projected policy count would increase the possibility of recouping more than the assessment. As a result, it is reasonable to exclude the periods from 2000 through 2003 and from 2008 through 2012 when calculating the number of policies expected in 2014.

f. It is reasonable to use the policy counts from 2004 through 2007, and the projected policy count for 2013, to estimate an expected policy count for 2014 of 1.38 million policies.

g. For the reasons above, it is reasonable to use 1.38 million policies as the expected number of policies for 2014.

13. *Actuarial Recommendation.* Actuarial staff's recommendation for a charge of $1.80 for each owner's policy and loan policy would reasonably allow title insurers to recoup the $2.5 million assessment. *See* Exhibit A. Dividing the $2.5 million assessment by 1.38 million policies yields about $1.80 per policy.

14. *Public Hearing Testimony.* At the public hearing, TLTA supported TDI staff's recommendation because a method of collecting the recoupment charge that mirrors the collection of the policy guaranty fee helps to avoid potential mistakes and increased expense. TLTA also testified that a flat fee is much easier to program than a percentage.

15. *Stopping the Charge.* Insurance Code Chapter 2602 does not address what happens if the amount collected exceeds the amount of the assessment. It would be very difficult to refund the money to policyholders. If the Guaranty Association's quarterly reports indicate that the amount collected is likely to exceed $2.5 million, TDI may reasonably instruct title agents to stop collecting the charge.

16. *Overcollection.* If title agents remit more than $2.5 million to the Guaranty Association, it is reasonable for the Guaranty Association to hold the money as a credit against future assessments or to pay claims not covered by the $2.5 million assessment.

17. *New Remittance Form.* The current Guaranty Assessment Recoupment Charge remittance form, Form T-G2, requires agents to report and remit 1 percent of premium. Procedural Rule P-30 requires agents to submit a remittance form, and does not specify form T-G2. The 2014 Guaranty Assessment Recoupment Charge remittance form, attached as Exhibit B, is designed for this recoupment.

18. *No Precedential Effect.* 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 order, 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, 2602.210, 2703.151, and 2703.201–2703.208.

2. TDI gave proper and timely notice of the November 15, 2013, Texas Title Insurance Rate Hearing, 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. The Guaranty Assessment Recoupment Charge is necessary to enable those title insurers that were assessed by the Guaranty Association to recoup their assessments.

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

5. A Guaranty Assessment Recoupment Charge of $1.80 charged on each owner's policy and each loan policy, and a rate of $0 charged on every other title insurance insuring form for which a premium is charged is reasonable as to the public, and nonconfiscatory as to title insurers and title insurance agents, as Insurance Code §2703.152 requires.

6. A Guaranty Assessment Recoupment Charge of $1.80 charged on each owner's policy and each loan policy, and a rate of $0 charged on every other title insurance insuring form for which a premium is charged, meets the requirements of Insurance Code §2602.210 and *Title Insurance Basic Manual* Procedural Rule P-30.

7. The Guaranty Assessment Recoupment Charge remittance form in Exhibit B is a reasonable form for title agents to use to remit the charge.

The commissioner orders that:

1. Title agents must collect the Guaranty Assessment Recoupment Charge of $1.80 directly from the purchaser of each owner's policy and loan policy at the closing of the

transaction, from January 1 through December 31, 2014. The charge for all other insuring forms for which a premium is charged is zero, and title agents are not required to list that amount on closing statements.

2. All title insurance agents must use the Guaranty Assessment Recoupment Charge remittance form in Exhibit B to remit the collected charges to the Guaranty Association on a quarterly basis, as required by Procedural Rule P-30.

3. Under Insurance Code §2602.210, if the commissioner of insurance determines that title insurers are likely to recover more than the assessment, the commissioner may instruct title agents to stop collecting the charge.

4. TDI staff must monitor the quarterly amounts that title agents remit to the Guaranty Association. If staff determines that the amount collected is likely to exceed $2.5 million, staff will advise the commissioner or the commissioner's authorized representative to instruct title agents to stop collecting the charge.

5. If title agents remit more than $2.5 million to the Guaranty Association, the Guaranty Association must retain the money as a credit against future assessments, or to pay claims not covered by the $2.5 million assessment.

6. These findings of fact, conclusions of law, and ordering provisions are tailored to the particular facts of this assessment and recoupment. They are not intended to create a standard recoupment method and are not precedent for future recoupments.

Julia Rathgeber

Julia Rathgeber
Commissioner of Insurance

Commissioner's Order No. ________

**EXHIBIT A**

# GUARANTY ASSESSMENT RECOUPMENT CHARGE

**Effective January 1 – December 31, 2014**

A Guaranty Assessment Recoupment Charge of $1.80 applies to each owner's policy and each loan policy. The purpose of this charge is to reimburse Texas title insurers for $2.5 million paid in assessments to the Texas Title Insurance Guaranty Association in 2013. The GARC charge is not part of the basic premium. To determine the total premium to collect in 2014, add the applicable GARC charge to the basic premium. See the rate chart below to determine the basic premium.

# 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 |
| 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 |

| 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 |
|---|---|---|---|---|---|---|---|
| 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

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

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.)**

| (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

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# 2014 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: ____________________, 2014 Ending: ____________________, 2014

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 $1.80): = $____________________

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

______________________________
Printed Name of Notary

**REMIT CHECK MADE PAYABLE TO:**
**Texas Title Insurance Guaranty Association**
P.O. Box 2212
Austin, TX 78768-2212

**FOR OVERNIGHT DELIVERY:**
**Texas Title Insurance Guaranty Association**
106 E. 6th St., Suite 300
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** |