

## TITLE INSURANCE CONSUMER PROTECTION FUND GUIDELINE

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### **Section 1. Title**

This Act may be cited as the “[State] Title Insurance Guaranty Association – Title Insurance Consumer Protection Fund.”

### **Section 2. Purpose**

The purpose of this Act is to provide a mechanism for continuation of coverage; to provide payment of covered claims under certain insurance policies; to avoid excessive delay in payment; to avoid financial loss to policyholders because of the insolvency of a title insurer; and to provide an Association to assess the costs of such protection.

### **Section 3. Scope**

This Act applies to all title insurers authorized to transact insurance in this state.

### **Section 4. Definitions**

- A. “Association” means the title insurance guaranty association.
- B. “Authorized to transact insurance” means a title insurer as defined in [insert appropriate citation to the state insurance code].
- C. “Commissioner” means the chief regulatory insurance official of this state, whether referred to as Director, Superintendent, Commissioner, or other similar title.

- D. "Covered claim" means an unpaid claim of an insured covered under, and not in excess of, the applicable limit of the policy insuring in

- K. “Receiver” means receiver, liquidator, rehabilitator, or conservator as the context may require.
- L. “Servicing facility” means a person or persons delegated by the Board of Directors to settle or compromise claims and to expend Association assets to pay claims.

**Section 5. Organization of Association**

There is hereby created a nonprofit legal entity to be known as the [State] Title Insurance Guaranty Association. All member insurers shall maintain membership in the Association as a condition of their authority to transact title insurance in this state. The Association may take any appropriate form of legal entity available under the laws of this state, including, but not limited to, a corporation or receivership association as approved by the Commissioner.

**Section 6. Board of Directors**

- A. The Board of Directors of the Association shall consist of not less than five (5), and not more than ten (10) members, of whom not more than three (3) shall be representatives of member insurers.

- (2) Have no liability for the alleged bad faith of the insolvent insurer in the handling of any claim prior to the determination of insolvency or for any exemplary or punitive damages;
- (3) Investigate claims made against the policies of an insolvent insurer and adjust, negotiate, resolve, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. The designation of a servicing facility is subject to the approval of the Board of Directors, but the designation of such insurer may be declined by the member insurer; and
- (4) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the covered claims and expenses, including loss adjustment expenses, and receivership expenses for the coming year if, at the end of any calendar year, the Board of Directors finds that the assets of the Association in the fund exceed the liabilities of that account.

B. The Association may, subject to approval by the Board of Directors:

- (1) Employ or retain persons or companies as servicing facilities necessary to handle claims and perform other duties of the Association;
- (2) Review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to in order to determine the extent to which such settlements, releases, and judgments may be properly contested;
- (3) Borrow funds necessary to affect the purposes of this Act in accordance with the Plan of Operation;
- (4) Sue or be sued and intervene in any court or arbitration forum having jurisdiction over an insolvent member insurer;
- (5) Negotiate and become a party to contracts necessary to carry out the purposes of this Act, including assumption or reinsurance agreements relating to the title policies of an insolvent insurer;
- (6) Take actions as provided in Subsection A and Subsection B of this section prior to an insurer being declared insolvent by a court, where an insurer is potentially unable to fulfill its contractual obligations or is determined to be impaired; and
- (7) Perform other acts necessary or proper to effectuate the purposes of this Act.

C. If the Association fails to act within a reasonable time, the Commissioner shall assume the powers and duties of the Board of Directors of the Association and cause it to act as appropriate.

**Section 8. Plan of Operation**

- A. The Association shall submit to the Commissioner a Plan of Operation and any amendments thereto necessary or suitable to ensure the fair, reasonable, and equitable administration of the Association. The Plan of Operation and any amendments thereto shall become effective upon the approval in writing by the Commissioner. If, at any time, the Association fails to submit suitable amendments to the Plan of Operation, the Commissioner shall, after notice and hearing, adopt rules necessary or advisable to effectuate the provisions of this Act. The rules shall continue in force until modified by the Commissioner or superseded by a plan or amendments submitted by the Association and approved by the Commissioner.
- B. All member insurers shall comply with the Plan of Operation, subject to the provisions of this Act.
- C. The Plan of Operation, among other things, shall establish procedures for conducting the business of the Association, for handling its assets, for keeping records, and for the conduct of other activities necessary for execution of the powers and duties of the Association.
- D. The Plan of Operation may provide that any and all powers and duties of the Association, except those under Section 6 and Section 7 of this Act that are to be performed by the Board of Directors, or be delegated to a corporation, association or other organization that performs, or will perform, functions similar to those of the Association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility

**Section 10. Coordination Among Guaranty Associations**

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**Section 13. Examination of Association; Financial Reports**

The Association is subject to examination and shall complete audited financial statements. The Board of directors shall submit to the Commissioner and its member insurers, not later than June 30 of each year, a financial report for the preceding year in a form approved by the Commissioner.

**Section 14. Assessment Authority of Commissioner and Association**

A. Making of Assessment

- (1) If the Commissioner determines that a title insurance company has become insolvent, the Association shall promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company to pay all covered claims and administrative expenses.
- (2) The Association shall assess title insurance companies in writing an amount as determined under Subsection B of this section. A member insurer does not incur real or contingent liability under this Act until the Association provides the member insurer with a written assessment.

B. Amount of Assessment: Proration of Payment

- (1) The Association shall assess member insurers the amount necessary to pay: (a) the Association's obligations under this Act and the expenses of handling covered claims subsequent to an insolvency; and (b)





I. Recovery of Assessment in Rates; Tax Credit

- (1) The surcharge on title insurance policies shall be based on historical need and include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurers, less any amounts returned to the member insurers by the Association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurers.
- (2) Unless the Commissioner determines that all amounts paid as assessments by each member insurer have been recovered under Subsection A of this section, for any amount not recovered the member insurer is entitled to a credit against its premium tax [include reference to state law providing for premium taxes]. The credit may be taken at a rate of twenty percent (20%) each year for five (5) successive years following the date of assessment and, if the member insurer elects, may be taken over an additional number of years.

**Drafting Note:** State law may not permit this tax offset, as premium taxes are for general fund purposes and assessments as provided in this Act are for a specific purpose.

- (3) An amount of a tax credit allowed by this section that is unclaimed may be shown in the member insurer's books and records as an admitted asset for all purposes, inc acl6 (d)-0.7 ( )11.14-1

