

INSURANCE CODE  
CHAPTER 2602. TEXAS TITLE INSURANCE GUARANTY ASSOCIATION  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2602.001. SHORT TITLE. This chapter may be cited as the Texas Title Insurance Guaranty Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.002. PURPOSES AND FINDINGS.

Text of subsection effective until April 1, 2009

(a) This chapter is for:

(1) the purposes and findings stated in Section 1, Article 21.28-A; and

(2) the protection of holders of covered claims.

Text of subsection effective on April 1, 2009

(a) This chapter is for:

(1) the purposes and findings stated in Sections 441.001, 441.003, 441.005, and 441.006; and

(2) the protection of holders of covered claims.

(b) This chapter and the powers granted and functions authorized by this chapter shall be exercised to accomplish the purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.004, eff. April 1, 2009.

Sec. 2602.003. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired title insurance company on December 31 of the year preceding the date the company becomes impaired.

(2) "Agent" includes:

(A) a title insurance agent, as defined by Section 2501.003;

(B) a title attorney, as defined by Section 2552.002; and

(C) a direct operation or a title insurance company's wholly owned subsidiary or affiliate that performs the services usually and customarily performed by a title insurance agent.

(3) "Association" means the Texas Title Insurance Guaranty Association.

(4) "Board" means the board of directors of the association.

(5) "Impaired agent" means an agent that is:

(A) placed in:

(i) temporary or permanent receivership under a court order based on a finding of insolvency; or

(ii) conservatorship after the commissioner determines that the agent is insolvent; and

(B) designated by the commissioner as an impaired agent.

(6) "Impaired title insurance company" means a title insurance company that is:

(A) placed in:

(i) temporary or permanent receivership under a court order based on a finding of insolvency; or

(ii) conservatorship after the commissioner determines that the company is insolvent; and

(B) designated by the commissioner as an impaired title insurance company.

(7) "Net direct written premiums" means the gross amount of premiums paid by policyholders for issuance of title insurance policies insuring risks located in this state and to which this chapter applies, without deduction for premiums for reinsurance ceded to other title insurance companies and not including premiums for reinsurance accepted from other authorized title insurance companies.

(8) "Payment of covered claims" means:

(A) the actual payment of claims; or

(B) the use of money of the impaired title insurance company and money derived from assessments or guaranty fees for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(9) "Trust funds or escrow accounts" includes accounts

subject to annual audit under Subchapter D, Chapter 2651.

(10) "Unauthorized insurer" means a person, firm, association, or corporation that has engaged in activities prohibited by Subchapter C, Chapter 101, while engaging in the business of title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.004. DESCRIPTION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) A person is presumed to control another person if the person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of the other person. This presumption may be rebutted by a showing that the person does not in fact control the other person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.005. APPLICABILITY; CONFLICT WITH OTHER LAWS.

(a) This chapter applies to:

(1) a title insurance company engaging in business under this title;

(2) all title insurance, direct or reinsurance, written by a title insurance company engaging in business under this title; and

(3) trust funds or escrow accounts of:  
(A) title insurance companies engaging in business under this title; or

(B) agents authorized to engage in business in this state and engaging in business under and governed by this title.

Text of subsection effective until April 1, 2009

(b) If this chapter conflicts with another law relating to the subject matter of this chapter or its application, other than Article 21.28 or 21.28-A, this chapter controls. If this chapter conflicts with Article 21.28 or 21.28-A, that article controls.

Text of subsection effective on April 1, 2009

(b) If this chapter conflicts with another law relating to the subject matter of this chapter or its application, other than Chapter 441 or 443, this chapter controls. If this chapter conflicts with Chapter 441 or 443, that chapter controls.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.005, eff. April 1, 2009.

Sec. 2602.006. CONSTRUCTION. (a) This chapter shall be liberally construed to implement the purposes of this chapter described by Section 2602.002, which shall be used to aid and guide interpretation of this chapter.

(b) This chapter does not:

(1) expand or diminish a right or obligation between or among policyholders, title insurance companies, or agents; or

(2) require a person to assign, waive, or relinquish a claim, right, or cause of action arising under Chapter 541 of this code or Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.007. PROHIBITED USE OF PROTECTION PROVIDED BY CHAPTER. (a) A title insurance company or agent may not advertise or refer to this chapter as an inducement to the purchase of title insurance.

(b) The use by a person of the protection provided by this chapter in the sale of insurance is unfair competition and an unfair practice under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.008. IMMUNITY. (a) Liability does not exist and a cause of action does not arise against any of the following persons for a good faith action or omission of the person in exercising the person's powers and performing the person's duties under this chapter:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent or

employee;

(3) a title insurance company or the company's agent or employee;

(4) a board member; and

(5) a special deputy receiver or the special deputy receiver's agent or employee.

(b) The attorney general shall defend any action to which Subsection (a) applies that is brought against a person listed in that subsection, including an action instituted after the defendant's service with the association, commissioner, or department has terminated. This subsection does not require the attorney general to defend a person or entity with respect to an issue other than the applicability or effect of the immunity created by Subsection (a). The attorney general is not required to defend a person listed in Subsection (a)(2), (3), (4), or (5) against an action regarding the disposition of a claim filed with the association under this chapter or any issue other than the applicability or effect of the immunity created by Subsection (a). The association may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this subsection.

(c) A title insurance company that reinsures or assumes the policies of an impaired title insurance company is not liable, and a cause of action does not arise against that company:

(1) for an action or omission by the impaired title insurance company or an officer, director, employee, attorney, or agent of the impaired title insurance company;

(2) by subrogation; or

(3) under any type of indemnity agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.009. ASSOCIATION AND TITLE INSURANCE COMPANIES AS INTERESTED PARTIES. The association and each title insurance company assessed under this chapter are interested parties under Sections 3(h) and 12(b), Article 21.28.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.010. RULES. The commissioner shall adopt reasonable rules as necessary to implement and supplement this chapter and its purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.011. INFORMATION PROVIDED BY AND TO COMMISSIONER. (a) The commissioner shall notify the association of the existence of an impaired title insurance company not later than the third day after the date on which the commissioner gives notice of the designation of impairment. The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a title insurance company at the time the complaint is filed with a court.

(b) The commissioner shall notify the board when the commissioner receives a report from the commissioner of insurance or other analogous officer of another state that indicates that a title insurance company has been designated impaired in another state. The report to the board must contain all significant details of the action taken or the report received.

(c) The commissioner shall report to the board when the commissioner has reasonable cause to believe from a completed or continuing examination of any title insurance company that the company may be an impaired title insurance company. The board may use this information in performing its duties under this chapter. The board shall keep the report and the information contained in the report confidential until it is made public by the commissioner or other lawful authority.

(d) On the board's request, the commissioner shall provide the association with a statement of the net direct written premiums of each title insurance company.

(e) The commissioner may require that the association notify the insureds of the impaired title insurance company and any other interested party of the designation of impairment and of the person's rights under this chapter. Notification by publication in a newspaper of general circulation is sufficient notice under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.012. APPEALS. (a) A title insurance company may appeal to the commissioner an action or ruling of the association relating to an assessment.

(b) An action or ruling of the commissioner under this

chapter may be appealed as provided by Subchapter D, Chapter 36.

(c) A title insurance company appealing an assessment shall pay the assessment. The association may use the money to meet its obligations while the appeal is pending. If the appeal on the assessment is upheld, the association shall return to the company the amount paid in error or excess.

(d) Venue in a suit relating to an action or ruling under this chapter is in Travis County. Each party to the action may appeal, and the appeal is at once returnable to the appellate court and has precedence over all cases of a different character pending before the court. The commissioner or association is not required to give an appeal bond in an appeal of a cause of action arising under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER B. GOVERNANCE OF TEXAS TITLE INSURANCE GUARANTY ASSOCIATION

Sec. 2602.051. ASSOCIATION AS LEGAL ENTITY; SUPERVISION; MEMBERSHIP. (a) The Texas Title Insurance Guaranty Association is a nonprofit legal entity.

(b) The association is subject to the applicable insurance laws of this state and the immediate supervision of the commissioner.

(c) A title insurance company may not engage in the business of title insurance in this state unless the company is a member of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.052. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals appointed by the commissioner.

(b) Three board members must be officers or employees of title insurance companies. Two board members must be officers or employees of agents. Four board members must be public representatives.

(c) Board members other than public representatives shall be chosen to give fair representation to all title insurance companies and agents, considering the following categories:

- (1) premium income;
- (2) geographical location; and
- (3) segments of the industry represented in this

state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.053. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. (a) In this section, "immediate family" includes parents, a spouse, children, brothers, and sisters residing in the same household.

(b) To be eligible to serve as a public representative on the board, an individual must have resided in this state during the five years preceding appointment and may not be:

(1) licensed by or subject to the regulation of the department;

(2) financially involved in an organization subject to the regulation of the department other than by ownership of an insurance policy or contract;

(3) a member of the immediate family of an individual who is financially involved in an organization subject to the regulation of the department;

(4) engaged in or employed by an entity having a contract with an organization subject to the regulation of the department;

(5) employed by, on the board of directors of, or a holder of an elective office by or under the authority of a unit of federal, state, or local government or an organization that receives a significant part of its funding from a unit of federal, state, or local government;

(6) employed by or associated with an organization formed to represent license holders of the department or organizations or individuals subject to the regulation of the department; or

(7) required to register as a lobbyist under Chapter 305, Government Code, because of activities on behalf of an organization representing the regulated industry.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.054. TERM; VACANCY. (a) Board members serve staggered six-year terms, with the terms of three members expiring each odd-numbered year. A member may serve more than one term.

(b) A member shall serve until a successor is appointed.

(c) If a member other than a public representative ceases to be an officer or employee of a title insurance company or agent, the member's office becomes vacant.

(d) The commissioner shall appoint an individual to fill a vacancy on the board for the unexpired term.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.055. COMPENSATION OF BOARD MEMBERS. A board member may not receive compensation for the member's services but is entitled to reimbursement for actual expenses incurred in performing the member's duties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.056. FINANCIAL STATEMENT OF BOARD MEMBER. Each board member shall file with the Texas Ethics Commission a financial statement as provided by Subchapter B, Chapter 572, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.057. RIGHTS OF TITLE INSURANCE COMPANY WITH REPRESENTATIVE ON BOARD. (a) A title insurance company is not prohibited, because the company has an officer, director, or employee serving as a board member, from negotiating for or entering into a contract of reinsurance or assumption of liability or a contract of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired title insurance company or agent.

(b) A conflict of interest does not arise from entering into a contract described by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 2602.101. GENERAL POWERS AND DUTIES. (a) In addition to the other powers and duties provided by this chapter, the association may:

(1) borrow money as necessary to implement this chapter according to the plan of operation;

(2) lend money to an impaired title insurance company;

(3) sue and be sued, including taking any legal action necessary or proper to recover an unpaid assessment;

(4) enter into contracts as necessary or proper to implement this chapter;

(5) ensure payment of the policy obligations of an impaired title insurance company;

(6) negotiate and contract with a rehabilitator, conservator, receiver, or ancillary receiver to exercise the powers and perform the duties of the association;

(7) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, a policy or contract of an impaired title insurance company;

(8) take legal action necessary to avoid the payment of improper claims or to settle claims or potential claims against an impaired title insurance company or the association; and

(9) perform any other acts as necessary or proper to implement this chapter.

(b) The association has standing to appear before a court in this state with jurisdiction over an impaired title insurance company or agent concerning which the association is or may become obligated under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.102. PLAN OF OPERATION. (a) The association shall perform its functions under a plan of operation. The plan of operation must contain provisions necessary or proper for the execution of the association's powers and duties. The plan of operation must, in addition to the other requirements of this chapter:

(1) establish:

(A) procedures for handling the assets of the association;

(B) the amount and method of reimbursing board members;

(C) regular places and times for board meetings;

(D) procedures for maintaining records of all financial transactions of the association, its agents, and the board; and

(E) procedures for determining the amount of guaranty fees, for collecting those fees, and for assessments; and

(2) contain additional provisions necessary or proper

for the execution of the association's powers and duties.

(b) The association shall submit to the commissioner any amendment to the plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The amendment takes effect on the commissioner's written approval.

(c) If the association does not submit a suitable amendment to the plan of operation, the commissioner after notice and hearing may adopt reasonable rules as necessary or advisable to implement this chapter. A rule continues in effect until modified by the commissioner or superseded by an amendment submitted by the association and approved by the commissioner.

(d) Each title insurance company shall comply with the plan of operation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.103. EMPLOYEES AND EXPERTS. (a) The association may employ or retain persons to perform the functions necessary or proper under this chapter, including persons necessary to handle the association's financial transactions.

(b) On the commissioner's request, the association shall retain one or more persons to:

(1) audit and review agent escrow and trust accounts, financial condition, and compliance with applicable statutes and rules; and

(2) report to the commissioner on the accounts, condition, and compliance.

(c) A person retained under Subsection (b) acts solely under the direction of and as assigned by the commissioner.

(d) From the guaranty fee account, the association shall compensate a person retained under Subsection (b) and reimburse the person for the person's reasonable and necessary expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.104. ASSOCIATION RECORDS. (a) The association shall maintain a record of each negotiation or meeting in which the association or the association's representative discusses the association's activities in exercising its powers and performing its duties under this chapter.

(b) A record under Subsection (a) may be made public only on:

(1) termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent title insurance company;

(2) termination of the impairment or insolvency of the title insurance company; or

(3) order of a court.

(c) This section does not limit the association's duty to report on its activities under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.105. MEETING BY CONFERENCE CALL. Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical. The meeting is subject to the notice requirements that apply to other meetings. The notice of the meeting must specify as the location of the meeting the location at which meetings of the board are usually held, and each part of the meeting that is required to be open to the public must be audible to the public at that location and must be tape-recorded. The tape recording shall be made available to the public for 30 days after the meeting date.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.106. ACCOUNTS. For purposes of administration and assessment, the board shall establish:

(1) an administrative account;

(2) a title account; and

(3) a guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.107. ADMINISTRATIVE EXPENSES. (a) The association may use money in the administrative account to pay administrative costs and other general expenses of the association.

(b) The association may transfer income from investment of the association's money to the administrative account.

(c) The association shall assess title insurance companies as provided by Subchapter E for any additional money needed for the administrative account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.108. DEPOSIT OF FEES AND ASSESSMENTS. The association may deposit fees and assessments it collects into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller. The comptroller shall account to the association for the deposited money separately from all other money.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.109. USE OF EXCESS MONEY IN ACCOUNTS. (a) If the association determines that money in the title account exceeds the amount reasonably necessary for efficient future operation under this chapter, the association shall return the excess money pro rata to the holders of participation receipts on which an outstanding balance exists after deducting any credits against premium taxes taken under Section 2602.210. The amount deducted for those credits shall be deposited with the comptroller for credit to the general revenue fund. The association shall transfer to the guaranty fee account any excess money remaining in the title account after the distribution.

(b) If the association determines that money in the administrative account exceeds the amount reasonably necessary for efficient future operation under this chapter, the association shall transfer the excess money to the guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.110. EXPENSES OF RECEIVERSHIP OR CONSERVATORSHIP. The association may advance money necessary to pay the expenses of administering the receivership or conservatorship estate of an impaired title insurance company or agent, on terms the association negotiates, if the company's or agent's assets are insufficient to pay those expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.111. DELEGATION OF POWERS AND DUTIES. (a) The plan of operation may provide that, on approval of the board and the commissioner, a power or duty of the association may be delegated to a corporation or other organization that:

(1) performs or will perform in two or more states functions similar to those of the association or its equivalent; and

(2) provides protection not substantially less favorable and effective than that provided by this chapter.

(b) A power or duty under Section 2602.101(a)(1) or (4), 2602.107, 2602.201, 2602.202, 2602.203, or 2602.205 may not be delegated under this section.

(c) The corporation or other organization shall be:

(1) reimbursed as a servicing facility would be reimbursed; and

(2) paid for its performance of any other functions of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.112. EXEMPTION FROM TAXATION. The association is exempt from payment of all fees and all taxes levied by this state or a subdivision of this state, except taxes levied on real or personal property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.113. DETECTION AND PREVENTION OF IMPAIRMENT. (a) The board may make recommendations to the commissioner for detecting and preventing title insurance company or agent impairments. The board shall advise and counsel with the commissioner on matters relating to the solvency of title insurance companies and agents.

(b) The board may report and make recommendations to the commissioner relating to any matter germane to the solvency, liquidation, rehabilitation, or conservation of a title insurance company or agent. A report or recommendation under this subsection is not a public document until a title insurance company is designated impaired.

(c) The board shall notify the commissioner of any information indicating that a title insurance company or agent may be unable or potentially unable to fulfill its contractual obligations and shall request a meeting with the commissioner. The board may request appropriate investigation and action by the commissioner. The commissioner may investigate and act as the commissioner considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.114. MEETING OF BOARD ON IMPAIRED TITLE INSURANCE

COMPANY OR AGENT. (a) The commissioner:

(1) shall call a meeting of the board when the commissioner determines that a title insurance company or agent is insolvent or impaired; and

(2) may call a meeting of the board when the commissioner determines that a title insurance company or agent is in danger of becoming insolvent or impaired.

(b) The meeting is not open to the public. Only board members, the commissioner, and persons the commissioner authorizes may attend the meeting.

(c) The commissioner may require an officer, director, or employee of the title insurance company or agent to appear before the board for conference or to give testimony.

(d) At the meeting the commissioner may disclose to the board information that the commissioner possesses and may disclose department records, including an examination report or a preliminary report from an examiner that relates to the title insurance company or agent.

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(e) A board member may not disclose information received in the meeting unless authorized by the commissioner or required as witness in court. A board member and the meeting are subject to the confidentiality standard imposed on an examiner under Article 1.18, except that a bond is not required of a board member.

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(e) A board member may not disclose information received in the meeting unless authorized by the commissioner or required as witness in court. A board member and the meeting are subject to the confidentiality standard imposed on an examiner under Sections 401.105 and 401.106, except that a bond is not required of a board member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.006, eff. April 1, 2009.

Sec. 2602.115. ASSOCIATION AND BOARD ADVICE AND ASSISTANCE. (a) On the commissioner's request, the board shall attend hearings before the commissioner and meet with and advise the commissioner or the receiver or the conservator appointed by the commissioner on matters relating to:

(1) the affairs of an impaired title insurance company or agent;

(2) action that the commissioner, receiver, or conservator may take to best protect the interest of holders of covered claims against the company or agent; and

(3) the marshalling of assets.

(b) On the commissioner's request, the association may assist and advise the commissioner concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired title insurance company or agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.116. BOARD ACCESS TO RECORDS. The receiver or statutory successor of an impaired title insurance company shall give the board or its representative:

(1) access to the company's records as necessary for the board to perform its functions under this chapter relating to covered claims; and

(2) copies of those records on the board's request and at the board's expense.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.117. BOARD REPORT AT CONCLUSION OF IMPAIRMENT. At the conclusion of a title insurance company or agent impairment in which the association exercised its powers or performed its duties under this chapter, the board shall prepare, from information available to the association, and submit to the commissioner a report on the history and causes of the impairment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

#### SUBCHAPTER D. POLICY GUARANTY FEES

Sec. 2602.151. PAYMENT OF FEE. (a) An agent or, if there is no agent, the title insurance company shall pay the association a quarterly guaranty fee for each owner or mortgagee title insurance policy that the agent or company is required to report on its statistical report to the department.

(b) The fee is due:

(1) May 1, for the quarter ending March 31;  
(2) August 1, for the quarter ending June 30;  
(3) November 1, for the quarter ending September 30;  
and

(4) February 1, for the quarter ending December 31.

(c) The association shall deposit the fee in the guaranty fee account.

(d) Except as provided by Section 2602.109, money in the guaranty fee account shall be derived only from guaranty fees as provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.152. AMOUNT OF FEE. Annually or more frequently, the board shall determine the amount of the guaranty fee, not to exceed \$5, considering the amount of money to be maintained in the guaranty fee account that is reasonably necessary for efficient future operation under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.153. USE OF FEE. (a) The association shall collect, receive, retain, and disburse the guaranty fees only as specifically provided by this chapter.

(b) The following covered claims shall be paid from guaranty fees only and may not be paid from assessments:

(1) claims against trust funds or an escrow account of an impaired agent under Section 2602.252; and

(2) conservator and receiver expenses under Section 2602.254.

(c) Administrative expenses with respect to the estate of an impaired agent under Section 2602.110 may be paid only from the guaranty fee account.

(d) Guaranty fees may be used only for payment of:

(1) covered claims described by Subsection (b) or (c);  
and  
(2) audit and review expenses under Section 2602.103(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.154. ENFORCEMENT OF FEE. (a) After notice and opportunity for hearing, the commissioner may suspend or revoke the certificate of authority or license to engage in business in this state of a title insurance company or agent that does not comply with this subchapter.

(b) The commissioner shall adopt rules that implement the program created under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

#### SUBCHAPTER E. ASSESSMENTS

Sec. 2602.201. MAKING OF ASSESSMENT. (a) If the commissioner determines that a title insurance company or agent has become impaired, the association shall promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company or agent to pay all covered claims and administrative expenses.

(b) The association shall assess title insurance companies in writing an amount as determined under Section 2602.202. A title insurance company does not incur real or contingent liability under this chapter until the association actually makes the written assessment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.202. AMOUNT OF ASSESSMENT; PRORATION OF PAYMENT. (a) The association shall assess title insurance companies the amount necessary to pay:

(1) the association's obligations under this chapter and the expenses of handling covered claims subsequent to an impairment; and

(2) other expenses authorized by this chapter.

(b) The assessment of each title insurance company must be in the proportion that the net direct written premiums of that company for the calendar year preceding the assessment bear to the net direct written premiums of all title insurance companies for that year.

(c) The total assessment of a title insurance company in a year may not exceed an amount equal to two percent of the company's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment and the association's other assets are insufficient in any one year to make all necessary payments, the money available shall be prorated and the unpaid portion shall be paid as soon as money becomes available.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.203. NOTICE AND PAYMENT. (a) Not later than the 30th day before the date an assessment is due, the association shall notify the title insurance company.

(b) Not later than the 30th day after the date an assessment is made, the title insurance company shall pay the association the amount of the assessment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.204. EXEMPTION FOR IMPAIRED TITLE INSURANCE COMPANY. A title insurance company is exempt from assessment during the period beginning on the date the commissioner designates the company as an impaired title insurance company and ending on the date the commissioner determines that the company is no longer an impaired title insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.205. DEFERMENT. (a) The association may defer in whole or in part an assessment of a title insurance company that would cause the company's financial statement to show amounts of capital or surplus less than the minimum amount required for a certificate of authority in any jurisdiction in which the company is authorized to engage in the business of insurance.

(b) The title insurance company shall pay the deferred assessment when payment will not reduce capital or surplus below required minimums. The payment shall be refunded to or credited against future assessments of any title insurance company receiving a larger assessment because of the deferment, as elected by that company.

(c) During a period of deferment, the title insurance company may not pay a dividend to shareholders or policyholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.206. PARTICIPATION RECEIPTS. (a) On receipt from a title insurance company of payment of an assessment or partial assessment, the association shall provide the company with a participation receipt. A participation receipt creates liability against the impaired title insurance company.

(b) The holder of the receipt is a general creditor of the impaired title insurance company, except that if the amount of assessments the association receives exceeds the amount paid for covered claims, the holders of participation receipts have preference over other general creditors to, and are entitled to share pro rata in, the excess.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.207. ACCOUNTING; REPORTS; REFUND. (a) The association shall adopt accounting procedures to show how money received from assessments or partial assessments is used.

(b) The association shall make interim accounting reports as the commissioner requires.

(c) The association shall make a final report to the commissioner showing how money received from assessments or partial assessments has been used, including a statement of any final balance of that money. As soon as practicable after completion of the final report, the association shall refund the remaining balance to the holders of participation receipts as required by Section 2602.206(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.208. USE OF ASSESSMENTS. (a) Money from assessments is considered to supplement the marshalling of an impaired title insurance company's assets to make payments on the impaired title insurance company's behalf. The association may assess title insurance companies or use money from assessments to pay covered claims before the receiver exhausts the impaired title insurance company's assets.

(b) The association may use money from assessments to negotiate and consummate contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims.

(c) Except as provided by Section 2602.109, money from assessments may not be used for the guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.209. FAILURE TO PAY; COLLECTION BY COMMISSIONER. (a) The association shall promptly report to the commissioner a failure of a title insurance company to pay an assessment when due.

(b) On failure of a title insurance company to pay an assessment when due, the commissioner may either:

(1) suspend or revoke, after notice and hearing, the company's certificate of authority to engage in business in this state; or

(2) assess an administrative penalty as provided by Chapter 84 in an amount not to exceed the greater of five percent of the unpaid assessment each month or \$100 each month.

(c) A title insurance company whose certificate of authority is canceled or surrendered is liable for any unpaid assessments made before the date of the cancellation or surrender.

(d) The commissioner may collect an assessment on behalf of the association through a suit brought for that purpose.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.210. RECOVERY OF ASSESSMENT IN RATES; TAX CREDIT. (a) A title insurance company is entitled to recover in its rates for the succeeding calendar year amounts paid in assessments not to exceed one percent of the company's net direct written premiums. In promulgating or establishing rates the commissioner shall consider assessments and refunds of assessments and shall adjust the rates to allow for recovery under this subsection.

(b) Unless the department determines that all amounts paid as assessments by each title insurance company have been recovered under Subsection (a), for any amount not recovered the title insurance company is entitled to a credit against its premium tax under Chapter 223. The credit may be taken at a rate of 20 percent each year for five successive years following the date of assessment and, if the title insurance company elects, may be taken over an additional number of years.

(c) An amount of a tax credit allowed by this section that is unclaimed may be shown in the title insurance company's books and records as an admitted asset for all purposes, including an annual statement under Section 862.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

#### SUBCHAPTER F. COVERED CLAIMS

Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim is a covered claim if:

(1) the claim is made by an insured under a title insurance policy to which this chapter applies;

(2) the claim arises out of the policy and is within the coverage and applicable limits of the policy;

(3) the title insurance company that issued the policy or assumed the policy under an assumption certificate is an impaired title insurance company; and

(4) the insured real property or a lien on the property is located in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.252. CLAIM AGAINST TRUST FUNDS OR ESCROW ACCOUNT. An unpaid claim is a covered claim if the claim:

(1) is against trust funds or an escrow account of an impaired title insurance company or agent; and

(2) is unpaid because of a shortage of those funds or in that account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.253. CLAIM IN CONNECTION WITH FIDELITY OF AGENT. An unpaid claim is a covered claim if an impaired title insurance company is liable for the claim in connection with the fidelity of the company's agent as authorized by Subchapter A, Chapter 2702.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Text of section effective until April 1, 2009

Sec. 2602.254. CERTAIN CONSERVATOR AND RECEIVER EXPENSES COVERED. Reasonable and necessary administrative expenses incurred by a conservator appointed by the commissioner or a receiver appointed by a court for an unauthorized insurer operating in this state are covered claims if the commissioner has notified the association or the association has otherwise become aware that:

(1) the unauthorized insurer has insufficient liquid assets to pay those expenses; and

(2) insufficient money is available from:

(A) abandoned money under Section 8, Article 21.28; and

(B) department appropriations for use in paying those expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.007, eff. April

1, 2009.

Text of section effective on April 1, 2009

Sec. 2602.254. CERTAIN CONSERVATOR AND RECEIVER EXPENSES COVERED. Reasonable and necessary administrative expenses incurred by a conservator appointed by the commissioner or a receiver appointed by a court for an unauthorized insurer operating in this state are covered claims if the commissioner has notified the association or the association has otherwise become aware that:

(1) the unauthorized insurer has insufficient liquid assets to pay those expenses; and

(2) insufficient money is available from:

(A) abandoned money under Section 443.304; and

(B) department appropriations for use in paying

those expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.007, eff. April 1, 2009.

Sec. 2602.255. CLAIMS NOT COVERED. The following are not covered claims:

(1) an amount due a reinsurer, title insurance company, insurance pool, or underwriting association as a subrogation recovery or otherwise;

(2) a supplementary payment obligation incurred before a determination is made under this chapter that a title insurance company or agent is impaired, including:

(A) adjustment fees or expenses;

(B) attorney's fees or expenses;

(C) court costs;

(D) interest;

(E) enhanced damages, sought as a recovery against the insured, the impaired title insurance company or agent, or the association, that arise under Chapter 541 of this code or Subchapter E, Chapter 17, Business & Commerce Code; and

(F) bond premiums;

(3) a shortage of trust funds or in an escrow account resulting from the insolvency of a financial institution;

(4) exemplary, extracontractual, or bad faith damages awarded against an insured or title insurance company by a court judgment;

(5) a claim under Section 2602.252 by a claimant who has a lien against the real property that was the subject of the transaction from which the claim arises, unless the lien is held to be invalid as a matter of law;

(6) a claim under Section 2602.251, 2602.252, or 2602.253 by a claimant who caused or substantially contributed to the claimant's loss by the claimant's action or omission; and

(7) a claim filed with the association after the final date set by the court for the filing of claims against a receiver of an impaired title insurance company or agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.256. AMOUNT OF COVERED CLAIM; LIMIT. (a) A covered claim under Section 2602.251 or 2602.253 may not exceed the lesser of \$250,000 for each claimant or \$250,000 for each policy.

(b) A covered claim under Section 2602.252 may not exceed the lesser of \$250,000 for each claimant or the amount of money actually delivered to the impaired title insurance company or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises, except that the cumulative amount of covered claims arising from a single transaction may not exceed \$250,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.257. EXHAUSTION OF OTHER RIGHTS REQUIRED. (a) A person having a covered claim that is also a claim against a title insurance company under law or under an insurance policy other than a policy of an impaired title insurance company must exhaust the person's rights under law or the policy before asserting the covered claim under this chapter.

(b) The amount payable on the covered claim is reduced by the amount of any recovery under law or the policy.

(c) Notwithstanding any other provision, to avoid undue hardship to a claimant the association may authorize payment of a covered claim against an impaired agent without regard to the liability of any title insurance company or coverage under any insurance policy, subject to the approval of the receivership court

or commissioner, as applicable. On payment, the association is in all respects subrogated to the rights and claims of the claimant. Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.258. CERTAIN MONEY AUTHORIZED FOR USE IN PAYING COVERED CLAIM; LIMIT. (a) Money from assessments or guaranty fees is liable only for the difference between the amount of covered claims and the amount of assets marshalled by a receiver or conservator for payment to holders of covered claims.

(b) In an ancillary receivership in this state, money from assessments is liable only for the difference between the amount of covered claims and the amount of assets marshalled by receivers in other states for payment of covered claims in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.259. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the receiver or association to properly defend a pending cause of action, a proceeding in which an impaired title insurance company is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or instituted by the receiver, is stayed for:

(1) a six-month period beginning on the later of the date of the designation of impairment or the date an ancillary proceeding is brought in this state; and

(2) any subsequent period as determined by the court.

(b) If a covered claim arises from a judgment, order, verdict, finding, or other decision based on the default of an impaired title insurance company or its failure to defend an insured, the association on its own behalf or on behalf of the insured may apply to the court or administrator that made the decision to have the decision set aside and may defend the claim on its merits.

(c) In a proceeding considering a covered claim, a judgment against an insured taken after the date the delinquency proceeding begins or a conservator is appointed is not evidence of liability or of the amount of damages, and a default or consent judgment against an insured or the impaired title insurance company or a settlement, release, or judgment entered into by the insured or the impaired title insurance company does not bind the association and is not evidence of liability or of the amount of damages in connection with a claim brought against the association or another party under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.260. ADMISSIBILITY OF PAYMENT. In a lawsuit brought by a conservator or receiver of an impaired title insurance company or agent to recover assets of the company or agent, the fact that a claim against the company or agent has been or will be paid under this chapter is not admissible and may not be placed before a jury by evidence, argument, or reference.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

#### SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED CLAIMS

Sec. 2602.301. GENERAL POWERS AND DUTIES OF ASSOCIATION IN CONNECTION WITH PAYMENT OF COVERED CLAIMS.

Text of subsection effective until April 1, 2009

(a) The association shall:

(1) investigate a claim brought against the association, the commissioner, or a special deputy receiver appointed under Article 21.28 if the claim involves or may involve the association's rights and obligations under this chapter; and

(2) adjust, compromise, settle, and pay a covered claim to the extent of the association's obligation, and deny all other claims.

Text of subsection effective on April 1, 2009

(a) The association shall:

(1) investigate a claim brought against the association, the commissioner, or a special deputy receiver appointed under Chapter 443 if the claim involves or may involve the association's rights and obligations under this chapter; and

(2) adjust, compromise, settle, and pay a covered claim to the extent of the association's obligation, and deny all other claims.

(b) The association may review a settlement, release, or judgment to which an impaired title insurance company or agent or its insured was a party to determine the extent to which the settlement, release, or judgment is contested.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 2I.008, eff. April 1, 2009.

Sec. 2602.302. PAYMENT OF COVERED CLAIMS. (a) The association shall pay covered claims:

(1) existing before the determination of impairment; or

(2) arising on or before:  
(A) the date of cancellation of the impaired title insurance company's policies; or

(B) the claim deadline for covered claims against an impaired agent.

(b) The court in which the receivership proceedings are pending shall set, as applicable:

(1) the date of cancellation of the policies, which may not be later than the fifth anniversary of the date of determination of impairment; or

(2) the claim deadline, which may not be later than the first anniversary of the date of determination of impairment.

(c) Subject to the approval of the commissioner, the association shall establish:

(1) procedures for filing claims with the association; and

(2) acceptable forms of proof of covered claims.

(d) The association shall pay claims in the order the association considers reasonable, including payment as claims are received from the claimants or in groups or categories of claims.

(e) The association may not pay a claimant an amount exceeding the amount of the claimant's covered claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.303. SERVICING FACILITY. (a) The association may handle claims through its employees or through one or more title insurance companies or other persons designated, subject to the approval of the commissioner, as a servicing facility.

(b) A title insurance company may decline designation as a servicing facility.

(c) The association shall reimburse a servicing facility for:

(1) obligations of the association paid by the facility; and

(2) expenses incurred by the facility in handling claims for the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.304. ADVANCE AS LOAN. Money advanced by the association under this chapter is considered a special fund loan to the impaired title insurance company or agent for payment of covered claims and does not become an asset of the title insurance company or agent. The loan is repayable to the extent money from the title insurance company or agent is available.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.305. ASSOCIATION IN PLACE OF IMPAIRED TITLE INSURANCE COMPANY OR AGENT. (a) To the extent of the association's obligation on a covered claim, the association stands in the place of the impaired title insurance company or agent and has all the rights, duties, and obligations of the company or agent as if the company or agent were not impaired.

(b) In performing its obligations under this chapter, the association is not considered:

(1) to be engaged in the business of insurance;

(2) to have assumed or succeeded to a liability of the impaired title insurance company or agent; or

(3) to otherwise stand in the place of the impaired title insurance company or agent, including as to whether the association is subject to personal jurisdiction of the courts of another state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.306. ASSIGNMENT OF CLAIMANT'S RIGHTS. (a) Any cause of action or other right of the holder of a covered claim arising from the occurrence on which the claim is based is assigned to the association on the holder's acceptance of:

(1) the association's payment of the claim; or

(2) a benefit of a contract by the association providing for reinsurance or assumption of liabilities or for substitution.

(b) Rights are assigned to the association under Subsection

(a) to the extent of the amount accepted or the value of the benefit provided.

(c) The association may assign the rights acquired under this section to the title insurance company executing the reinsurance, assumption, or substitution agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.307. SETTLEMENT BY ASSOCIATION BINDING; PRIORITY OF CLAIM AND EXPENSES. (a) The settlement of a covered claim by the association binds the receiver or statutory successor of an impaired title insurance company.

(b) The court shall give the covered claim the same priority against assets of the impaired title insurance company that the claim would have had in the absence of this chapter.

(c) The association's expenses in handling claims have the same priority as the receiver's expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.308. REPORT TO RECEIVER. The association shall periodically file with the receiver of an impaired title insurance company a statement of covered claims paid by the association and an estimate of claims anticipated against the association. The statement preserves the rights of the association against the assets of the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER H. CONSERVATOR OR RECEIVER POWERS AND DUTIES RELATING TO COVERED CLAIMS

Sec. 2602.351. DETERMINATION OF CONSERVATOR CONCERNING REINSURANCE, ASSUMPTION, OR SUBSTITUTION. A conservator appointed to handle the affairs of an impaired title insurance company or agent shall determine whether covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.352. NOTICE OF DETERMINATION CONCERNING ACTUAL PAYMENT. (a) On determination by the conservator that covered claims should be actually paid, the conservator shall give notice of the determination to holders of covered claims.

(b) The conservator shall mail the notice to each holder of a covered claim at the most recent address shown in the impaired title insurance company's or agent's records, except that if those records do not show the claimant's address the conservator may give notice by publication in a newspaper of general circulation.

(c) The notice must state a date, not earlier than the 91st day after the date of the mailing or publication of the notice, before which the claimant must file a claim with the conservator.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.353. FILING OF COVERED CLAIM. The conservator may require in whole or in part that claimants file:

(1) sworn claim forms; and

(2) additional information or evidence reasonably necessary for the conservator to determine the legality of or amount due under a covered claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.354. CLAIM BY PERSON WITH CAUSE OF ACTION AGAINST INSURED. (a) On determination by the conservator that covered claims should be actually paid or on order of the court to the receiver to give notice for the filing of claims, a person having a cause of action that constitutes a covered claim against an insured of the impaired title insurance company under a title insurance policy issued or assumed by the company may file the claim with the receiver or conservator, regardless of whether the claim is unliquidated or undetermined.

(b) A claim under this section may be approved as a covered claim if:

(1) it may be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment on the cause of action against the insured;

(2) the claimant provides suitable proof that no valid claim exists against the impaired title insurance company arising from the cause of action other than claims already made; and

(3) the total liability of the impaired title insurance company to all claimants under the same title insurance policy does not exceed the amount of the company's total liability if the company were not in liquidation, rehabilitation, or conservation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.355. REPORT TO ASSOCIATION. (a) A receiver of an impaired title insurance company or agent shall periodically submit a list of claims to the association or a similar organization in another state.

(b) Notice of a claim to the receiver is considered notice to the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER I. OPERATION OF IMPAIRED TITLE INSURANCE COMPANY OR AGENT

Sec. 2602.401. ISSUANCE OR RENEWAL OF POLICIES. (a) If an assessment has been made under this chapter for an impaired title insurance company or association funds have been provided for the company, the company, on release from the conservatorship or receivership, may not issue a new or renewal insurance policy until the company:

(1) has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assignee; and

(2) has repaid in full the amount of guaranty fees paid by the association.

(b) If an assessment has been made under this chapter for an impaired agent or guaranty fees have been provided for the agent, the agent, on release from the conservatorship or receivership, may not issue a new or renewal insurance policy until the agent has repaid in full the amount of guaranty fees paid by the association.

(c) Notwithstanding Subsections (a) and (b), on application of the association and after hearing, the commissioner may permit the impaired title insurance company or agent to issue new policies as provided by a plan of operation for repayment. In approving the plan, the commissioner may restrict the issuance of new or renewal policies as the commissioner considers necessary to implement the plan.

(d) Not later than the 11th day before the date of a hearing under Subsection (c), the commissioner shall give notice of the hearing to the association. The commissioner shall give 10 days' notice of the hearing to title insurance companies to whom participation receipts were issued for an assessment made for the benefit of the released title insurance company. The association and title insurance companies are entitled to appear at and participate in the hearing.

(e) Money recovered against an impaired title insurance company under this section shall be repaid to the title insurance companies that paid assessments in relation to the impaired title insurance company on return of the participation receipt.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.402. DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES. (a) An impaired or insolvent title insurance company may not make a distribution to shareholders until the association has recovered the total amount of valid claims for money spent in exercising the association's powers and performing the association's duties under this chapter with respect to that company, plus interest on that amount.

(b) Except as otherwise provided by this section, the receiver appointed under an order of receivership of a title insurance company domiciled in this state may recover on behalf of the company from an affiliate that controlled the company the amount of a distribution, other than a stock dividend the company paid on its capital stock, made during the five years preceding the date of the petition for liquidation or rehabilitation.

(c) A person who was an affiliate that controlled the title insurance company when the distribution described by Subsection (b) was paid is liable for the amount of the distribution received. A person who was an affiliate that controlled the title insurance company when the distribution was declared is liable for the amount of the distribution the affiliate would have received if the distribution had been paid immediately. Two or more persons liable for the same distribution are jointly and severally liable. If a person liable under this subsection is insolvent, all of the affiliates that controlled the insolvent person when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent person.

(d) The maximum amount recoverable under Subsections (b) and (c) is the amount needed in excess of all other available assets of the insolvent title insurance company to pay the company's

contractual obligations.

(e) The receiver may not recover a distribution under Subsection (b) if the title insurance company shows that:

(1) the distribution was lawful and reasonable on the date of payment; and

(2) the company did not know and could not reasonably have known that the distribution might adversely affect the ability of the company to fulfill its contractual obligations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 728, Sec. 11.079, eff. September 1, 2005.

Sec. 2602.403. ASSETS ATTRIBUTABLE TO COVERED POLICIES.

(a) For the purposes of this section, assets attributable to covered policies are the proportion of the assets that the reserves that should have been established for the covered policies bear to the reserves that should have been established for all insurance policies written by the impaired or insolvent title insurance company.

(b) To perform its obligations under this chapter, the association is considered a creditor of the impaired or insolvent title insurance company to the extent of assets attributable to covered policies, less any amount that the association recovers as a subrogee under this chapter.

(c) Assets of the impaired or insolvent title insurance company attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent company as required by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.