

GUARANTY FEE FREQUENTLY ASKED QUESTIONS

Updated March 2008

1. *Why is TDI's name not on the notice and why are they not involved?* Texas Title Insurance Guaranty Association ("TTIGA") has the right and the responsibility to set, collect, and spend Guaranty Fees under Chapter 2602 (formerly Article 9.48) of the Texas Insurance Code (the "Code"). The proper collection and reporting of Guaranty Fees is part of Texas Department of Insurance ("TDI") audits.
2. *When did it come into effect?* The Texas Title Insurance Guaranty Act ("Act") became effective September 1, 1975 creating the TTIGA and authorizing it to collect a policy guaranty fee (the "Guaranty Fee"). Guaranty Fees were collected from January 1, 1988 to March 31, 1992. The fee was reinstated effective January 1, 2004 at \$1.00 and has now been raised to \$5.00 effective April 1, 2008. The Guaranty Fee can be raised or lowered at the direction of the TTIGA Board of Directors annually or more often with a maximum of \$5.00.
3. *For what are the funds used?* Chapter 2602 authorizes Guaranty Fees to be used only to pay covered claims resulting from shortages in the trust funds or escrow accounts of an impaired agent, certain expenses of receivers or conservators, and the expenses of TDI's title examiners.
4. *Are the Insurance Commissioner and TDI involved with the Guaranty Fee?* The Commissioner of Insurance and TDI are aware of the collection of the Guaranty Fee, and assist in the answering of questions relating to the accounting and reporting of the fees. TDI has also posted all notices and the remittance form on their website. The Commissioner of Insurance oversees the activities of TTIGA and appoints its Board of Directors.
5. *Should a separate trust account be set up for the fees?* The Guaranty Fees have to be put into an escrow or trust account. It is highly recommended that a special escrow account be set up for the fees. The agent could probably leave the fees in their regular escrow account if this is an issue. The main thing is that the fees cannot be deposited into (or run through) an agency operating account.

Section V, Minimum Standards of Audit, of the Basic Manual has a section titled "Policy Guaranty Fee and Guaranty Assessment Recoupment Charge" that says the "agent's policy fee escrow account...should be audited annually." It also says the "...fees must be deposited directly into an escrow or trust account..." This section indicates that Guaranty Assessment Recoupment Charge fees and Guaranty Fees should be treated the same way.

6. *How is the Guaranty Fee reported?* The fee should be reported on the Guaranty Fee Remittance Form on a quarterly basis with one form and one check submitted to TTIGA. The form is approved by the TTIGA Board of Directors. If you need a form, please call (512) 474-1587 to request one be sent to you via email or fax. The current Title Basic Manual forms (TDI Form No. PC023 and Basic Manual No. T-G1) are both currently out of date. Please do not use these forms.

There are two annual reports that Texas title agents are required to submit to TDI. The Texas Title Agent Statistical Report (stat report) and the annual audit of the escrow accounts are prepared by an outside CPA.

The Guaranty Fee relates to the two reports as follows:

1. Stat Reports.

Administrative Rule G.1.(II)(D) states, “No policy guaranty fee shall be reported to the TDI as an expense of operation for the purpose of establishing title insurance rates.”

Since the stat report information is used to set rates, the Guaranty Fees are not allowed to be included on the stat report. This should generally not be a problem since the fees are maintained and remitted from an escrow account and the expenses reported on the stat report are expenses paid from the operating account.

2. Annual Escrow Audit Reports.

Section 2651.151 of the Code requires all title agents to submit the annual escrow audit report. The Exhibits used for the annual escrow audit report are found in Section V of the Basic Manual. Exhibit B shows Guaranty Fees on line 7 as a liability, so that indicates that they should also be at the top (part of line 1) as an asset. Any “special” escrow account established to maintain the Guaranty Fees should be shown on Exhibit C along with the regular escrow accounts.

7. *What date determines the collection date?* The closing date determines when the Guaranty Fee is collected. The fee should be collected at closing.
8. *Can an agent just pay the fee without collecting it?* No. Administrative Rule G.1 (II.A.) from Section VI of the Basic Manual states, “...each policy guaranty fee shall be collected directly from the purchaser of each owner and mortgage policy at the closing of the transaction and such itemized charge shall be disclosed on the settlement statement...”
9. *If an agent issues both owner and mortgagee policies in the same transaction, do they collect for both?* If a transaction involves both a mortgagee policy and an owner policy, then the agent collects \$2 for the transaction (\$1 for each policy).
10. *What rules do TDI have that are consistent with Section 6 (d) of Chapter 2602?* Administrative Rule G.1 (II.A.) – from Section VI of the Basic Title Manual states that “Each policy guaranty fee shall be collected directly from the purchaser of each owner and mortgagee policy at the closing of the transaction and such itemized charge shall be disclosed on the settlement statement...”
11. *Is the Guaranty Fee to be collected from the Buyer or Seller?* Section VI of the Basic Manual states that “Each policy guaranty fee shall be collected directly from the purchaser of each owner and mortgagee policy at the closing of the transaction...”
12. *Where on the HUD would the Guaranty Fee be disclosed?* The Guaranty Fee should be shown on line 1111, 1112, or 1113. RESPA rules indicate these lines are for “other title charges not already itemized.”

13. *Does this fee fall in the category with the allowable fees for “title insurance” under Section 342 of the Finance Code?* Administrative Rule G.1 (II.A.) – from Section VI of the Basic Manual states that “Each policy guaranty fee shall be collected directly from the purchaser of each owner and mortgagee policy at the closing of the transaction and such itemized charge shall be disclosed on the settlement statement...” The fee should be shown on line 1111, 1112, or 1113. RESPA rules indicate these lines are for “other title charges not already itemized.”
14. *Because the Guaranty Fee is changing, what amount do we charge for a transaction that closes in March 2008 but does not fund until April 2008?* The Guaranty Fee is determined by closing, or more significantly, what is reflected on the HUD (See also FAQ No. 7, above). For example, if a transaction closing on March 29 but does not fund until April 1, the fee to be collected is \$1.00. If it closes April 1 or later, the fee to be collected is \$5.00.
15. *If my title agency has three offices (or three escrow accounts), can we submit three separate checks for the Guaranty Fees each quarter - one for each office (or account)?* No. Administrative Rule G-1 requires that: “Each Title Insurance Agent/Direct Operation shall report and remit the fees for all of its offices on a single remittance form and payment.”
16. *Is the Guaranty Fee collected on Interim Construction Binders?* No. Only on owners and mortgagee policies.
17. *Can I submit multiple checks with the report?* No. The rule is one form, one check. There should be one reporting form for all licensed locations of the agency (See also question No. 15) and one check for all collected fees from all locations.