

**GUIDELINES FOR APPROVAL FOR MOVING BOOKS AND RECORDS OUT OF THE
STATE OF TEXAS UNDER
TEXAS INSURANCE CODE SECTION 803 (formerly ARTICLE 1.28)**

Requirements:

- Eligible insurer must comply with Section 803.002 (formerly Art. 1.28(1)(b));
- Eligible insurer must be in compliance with the HC Act, Section 823 (formerly Article 21.49-1);
- Eligible Insurer must complete Form TDI BR-93 or equivalent language from 28 TAC § 7.25;
- We must receive one application per domestic company;
- PO Box locations are not acceptable for physical address;
- Form TDI/SOP and Form TDI/SOP-CP must be completed appointing a person in Texas other than the Commissioner of Insurance to accept service of process on their behalf;
- If the ultimate controlling person is an individual, Form TDI/SOP-CP does not have to be completed;
- These forms must be signed by President and Secretary or Asst. Secretary and must be notarized;
- These forms must contains a zip code for Attorney-for-Service;
- Filing fee of \$150.00 if Section 803 (formerly Art. 1.28) application filed alone; if filed with agreement, then there is an additional \$250.00 filing fee (or half that amount, if gross premium receipts for prior year are less than \$450,000).
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- **Section (e) of § 7.25 must be completed if agreement with affiliate is already on file;**
- **Sections (e) & (f) of § 7.25 must be completed if no previous agreement on file;**
- Sections (e),(f) & (g) of § 7.25 must be completed when an Agreement is with a **non-affiliate**;

NOTES: If non-affiliated entity is an agency or a MGA, no Section 803 (formerly Article 1.28) application is required pursuant to Section 803.001 – 803.004 (formerly Article 1.28 § (1)(a)).

No Section 803 (formerly Art. 1.28) applications can be approved if any legal actions are pending or if company is not in compliance with Holding Company Act.

There is a 30-day deemer for this type of filing. The 30 days commences once TDI determines that all required items have been filed and that the application is complete. If additional information is needed, it must be requested within 30 days of notice.

Amended Section 803 (formerly Article 1.28) Applications

A. If the previous Section 803 (formerly Art. 1.28) application is being amended to just change locations (same affiliates but at different locations), the following must be filed:

- File notice of intent (Section d of TDI BR93 Form)
- Filing fee

B. If the previous Section 803 (formerly Art. 1.28) application is being amended to reflect new or different affiliates and their locations, the following must be filed:

- Complete Notice of Intent (all parts) (§ 7.25 (d)(e)(f) and (g – if applicable))
- Filing fee

All notice of intent filings should be mailed to Financial Analysis and Examinations, MC 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099.

FORM TDI/BR-93
28 TEXAS ADMINISTRATION CODE § 7.25
NOTICE OF INTENT OF ELIGIBLE INSURER
TO MOVE ITS BOOKS, RECORDS, ACCOUNTS, AND/OR
PRINCIPAL OFFICE(S) OUTSIDE THE STATE OF TEXAS

- 7.25 (d) **Contents of Notice of Intent to Relocate Records**
(e) **Additional Information Required for the Relocation and Possession of Records with a Person Other than the Eligible Insurer**
(f) **Agreement Between Eligible Insurer and Person to Maintain Records**
(g) **Requirements and Restrictions Applicable to Nonaffiliated Person Maintaining Records**

(d) Contents of Notice of Intent to Relocate Records

1. _____
Name of Company

2. Street address of Eligible Insurer's principal office(s). *(If there is more than one principal office, identify the activities that are performed at each principal office as an attachment to this form).*

Number & Street (Do not use a P.O. Box)

City, State, Zip

3. Street address of the location(s) of the Eligible Insurer's records before the proposed relocation of records. *(If there is more than one location, identify the records that are maintained at each location as an attachment to this form).*

4. Street address of the Eligible Insurer's principal office(s) after the proposed relocation of records. *(If there is more than one principal office, identify the activities that will be performed at each principal office as an attachment to this form).*

5. Street address of the proposed location(s) of the Eligible Insurer's records and a detailed description of the records that will be maintained at these location(s).

6. Mailing address of Eligible Insurer after relocation for Texas Department of Insurance purposes.
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7. The anticipated effective date of the proposed relocation of the Eligible Insurer's records:_____
8. Description of the Eligible Insurer's affiliation with an Insurance Holding Company System or Health Maintenance Organizations or Health Care Providers.
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9. If Eligible Insurer is affiliated with an Insurance Holding Company System, a statement that the Eligible Insurer has made the necessary filings required by Insurance Code Section 823 (formerly Article 21.49-1).
10. If Eligible Insurer is affiliated with an Insurance Holding Company System, a statement that the Eligible Insurer is in compliance with the Insurance Code Section 823 (formerly Article 21.49-1).
11. If Eligible Insurer is a Health Maintenance Organization that is not affiliated with an Insurance Holding Company System, but is affiliated with other Health Maintenance Organizations or Health Care Providers, the Health Maintenance Organization must furnish the information as set forth in 28 TEX. ADMIN. CODE § 7.210.
12. Description of any actual, proposed, or contemplated financial involvement with respect to the relocation of the records by an officer, director or employee or a person who is the beneficial owner, directly or indirectly, of 10% or more of the voting securities of the Eligible Insurer or affiliated Insurance Holding Company System or Health Maintenance Organization.
13. An analysis of the benefits to the Eligible Insurer anticipated as a result of the relocation of the records, including the impact on the location being abandoned.
14. Description of the impact of the relocation of the records on policyholders and claimants.
15. A Service of Process form executed by the Eligible Insurer (Form TDI/SOP).
16. A Service of Process form executed by a controlling person of the Eligible Insurer (Form TDI/SOP-CP).
17. If the records of the Eligible Insurer will be maintained by a person other than the Eligible Insurer, state the name of the person who will be maintaining the records of the Eligible Insurer.
18. If a person is named in paragraph 17 above, provide the information in subsection (e) below.

Note: The Texas Department of Insurance may require additional information to complete application.

(e) Additional Information Required for the Relocation and Possession of Records with a Person Other than the Eligible Insurer

1. Name of the person who will possess and maintain the records:

2. Names of the directors, executive officers, principals or principal shareholders of the person named in 1 above.

3. A statement describing the person's affiliation with the Insurance Holding Company System, Health Maintenance Organization, or Health Care Provider named in subsection (d) above, if any.

4. An explanation and description of control mechanisms in place to assure the effective and efficient reconciliation of the records to be maintained by the person with those corporate records maintained by the Eligible Insurer.

5. An explanation of how the Eligible Insurer will maintain direct supervision, management and control of the records that are relocated.

6. A copy of the agreement between the Eligible Insurer and the person possessing and maintaining the records. The agreement must comply with the requirements of subsection (f) below.

7. A description of the additional management reporting systems and internal controls that the Eligible Insurer will use relative to its arrangement with the person possessing and maintaining the records of the Eligible Insurer.

8. A description of any existing computer link-up that will permit on-line access to the Eligible Insurer by departmental examiners, or an explanation acceptable to the Commissioner of Insurance why such link-up would not be practical.

(f) Agreement Between Eligible Insurer and Person to Maintain Records

1. The agreement shall include:

- (A) A description of the functions to be performed by the person possessing and maintaining the records.
- (B) A provision that requires the records of the Eligible Insurer be under the Eligible Insurer's direct supervision, management and control.
- (C) A provision authorizing the department to examine, at the Eligible Insurer's expense, the records and operations of the person possessing and maintaining the records of the Eligible Insurer at the location of such records, regarding the arrangement with the Eligible Insurer.
- (D) A provision requiring the person possessing and maintaining the records to fully cooperate with the department staff during an examination conducted pursuant to (C) above.

2. The agreement required by this section is subject to the standards in Insurance Code Sections 823.008, 823.101-823.107, 823.053 (formerly Article 21.49-1, § 4).

3. If the person possessing and maintaining the records of the Eligible Insurer is not an affiliate of the Eligible Insurer under Insurance Code Section 823 (formerly Article 21.49-1), the nonaffiliated person must not be an agency and the agreement between the nonaffiliated person and the Eligible Insurer must also comply with subsection (g), below.

(g) Requirements and Restrictions Applicable to Nonaffiliated Person Maintaining Records

There must be a written agreement between the Eligible Insurer and the nonaffiliated person that contains the following provisions:

1. Only records related to policyholder claims, policy administration and related processes may be maintained by the nonaffiliated person.
2. Only active claim files may be maintained by a nonaffiliated person.
3. Claim files, when closed, must be returned to the Eligible Insurer within 60 days of closing.
4. Copies of active claim files will be maintained by the Eligible Insurer at all times, unless the Commissioner's approval of the relocation of the records finds that it would not be practical and specifically waives this requirement.
5. Active claim files maintained by the nonaffiliated person must be provided to examiners representing the Department on-site within 3 days of the request.
6. Representatives of the nonaffiliated person responsible for the maintenance of the Eligible Insurer's records must be reasonably available at the location of the Eligible Insurer's records when examiners representing the Department are at that location.
7. The nonaffiliated person must be licensed by the Department to perform the services contemplated by the arrangement with the Eligible Insurer.
8. A requirement that the Eligible Insurer must audit the nonaffiliated person at least once each 6 months to evaluate the internal controls and compliance with the agreement between the Eligible Insurer and the nonaffiliated person (performance audit) with regard to the records of the Eligible Insurer maintained by the nonaffiliated person. Such audits shall be conducted by persons who are knowledgeable in the claims adjusting process and internal controls; auditors should include representatives of the Eligible Insurer's internal audit department and/or the audit committee of the Board of Directors of the Eligible Insurer; and the audit reports must be reviewed by the Board of Directors of the Eligible Insurer and the nonaffiliated person.

Name of Company

By: _____

Title: _____

Sworn to this _____ day of _____, 2_____.

Notary Public, State of _____

Printed Name of Notary
My Commission Expires: _____

FORM TDI/SOP

SERVICE OF PROCESS FORM FOR DOMESTIC INSURER

STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____, _____ Texas, a _____ insurance company (or Lloyd's Plan or Reciprocal Exchange) incorporated under the laws of the State of Texas, in conformity with the laws thereof, does nominate, constitute and appoint _____ located at _____, in _____, Texas _____ (zip) the true and lawful agent and attorney for said company, for the State of Texas, to acknowledge service of legal process issued by any court of the State of Texas for and on the behalf of said company, or on whom service of such process may be had, according to the laws of the State of Texas; hereby waiving all claim or right of error by reason of such acknowledgement of such service of process, whether intermediate or final. And it is admitted and agreed that such acknowledgement of service of process shall be taken and held to be a valid and sufficient in that behalf as if served upon the company according to the laws of the State of Texas, or any other state.

This instrument and such appointment and power shall continue and remain in full force and effect only so long as the company shall continue and maintain its Insurance Code Section 803 (formerly Article 1.28) status. Upon the termination of the Section 803 (formerly Article 1.28) status, the service of process provisions routinely applied to domestic insurance companies by the provisions of the Insurance Code and other applicable state laws shall immediately become applicable.

In Testimony Whereof, the company has caused these presents to be executed by its duly authorized officers and in attestation thereof has caused its corporate seal to be hereunto affixed, on this _____ day of _____, 20____.

(Corporate Name)

(Seal)

By: _____
Secretary
Printed Name: _____

By: _____
President or Attorney in Fact
Printed Name: _____

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority on this day personally appeared _____ and _____, who are known to me to be the persons and officers whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration and in the capacities therein expressed, and that the same is the act and deed of _____, the corporate entity mentioned in said instrument.

Sworn to this _____ day of _____, 20____

Notary Public, State of _____

Printed Name of Notary: _____

My Commission Expires: _____

Be it resolved by the Board of Directors (or Underwriters or Subscribers) of _____, a corporation (or Lloyd's plan or Reciprocal exchange) duly incorporated (or organized) under the laws of the State of Texas:

That, Whereas, _____, the President (or Attorney in Fact) and _____, the Secretary of the corporation, being duly authorized, did on the _____ day of _____, 20____, duly execute for and on behalf of the corporation the above power of attorney.

Now, therefore, the action of said officers of the corporation and said power of attorney are in all respects approved, ratified and confirmed as the act and deed of said corporation; and it is ordered and directed that said power of attorney and a duly certified copy of this resolution, attested by the President (or Attorney in Fact) and Secretary, and the corporate seal of the corporation, be transmitted to the Commissioner of Insurance of the State of Texas, to be filed in his/her office, there to remain a permanent record of the Texas Department of Insurance.

We, _____, the President (or Attorney in Fact) and _____, the Secretary of _____, a corporation duly incorporated (or organized) under the laws of the State of Texas, do certify that the above instrument is a true and correct copy of a resolution which was duly adopted by the Board of Directors (or underwriters or subscribers) of the corporation on the _____ day of _____ 20____, as shown in Book _____ pages _____, of the minutes of the proceedings of the Board of Directors (or underwriters or subscribers).

In Testimony Whereof, we officially subscribe our names and affix the corporate seal of the corporation, at _____, on this, the _____ day of _____, 20____.

(Seal)

By: _____
Secretary
Printed Name: _____

By: _____
President or Attorney in Fact
Printed Name: _____

TDI/SOP-CP

SERVICE OF PROCESS FORM FOR CORPORATE CONTROLLING PERSON

STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ of _____ the controlling person of the affiliated insurance holding company system of which _____, _____ is a part, does appoint, constitute and designate _____ located at _____, in _____, Texas, _____ (zip), the true and lawful agent and attorney of the company, for the State of Texas, to acknowledge service of legal process issued by any court of the State of Texas and on behalf of the company, or on whom service of such process may be had, according to the laws of the State of Texas; waiving all claim or right of error by reason of such acknowledgement of such services or process, whether intermediate or final. And it is admitted and agreed that such acknowledgement of service of process shall be taken and held to be as valid and sufficient in that behalf as if served upon the company according to the laws of the State of Texas, or any other state.

This instrument and such appointment, agency and power shall continue and remain in full force and effect only so long as _____, _____, Texas, shall continue and maintain its Insurance Code, Section 803 (formerly Article 1.28) status. Upon termination of the Section 803 (formerly Article 1.28) status of _____, this appointment will terminate immediately.

In Testimony Whereof, the company has caused these presents to be executed by its duly authorized officers, and in attestation thereof has caused its corporate seal to be affixed, on this _____ day of _____, 20____.

ATTEST:

(Corporate Name)

(Seal)

By: _____
Secretary
Printed Name: _____

By: _____
President or Attorney in Fact
Printed Name: _____

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority on this day personally appeared _____ and _____, who are known to me as the persons and officers whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration and in the capacities therein expressed, and that the same is the act and deed of _____, the corporation mentioned in said instrument.

Given under my hand and seal of office, at _____, on this, the ____ day of _____, A. D. 20__.

Notary Public, State of _____
Printed Name of Notary: _____
My Commission Expires: _____

Be it resolved by the Board of Directors of _____, a corporation duly incorporated under the laws of the State of _____:

That Whereas, _____, the President and _____, the Secretary of the corporation, being duly authorized, did on the ____ day of _____, 20__, duly execute for and on behalf of the corporation the above power of attorney.

Now, therefore, the action of said officers of the corporation and said power of attorney are in all respects approved, ratified and confirmed as the act and deed of the corporation, and it is ordered and directed that said power of attorney and duly certified copy of this resolution, attested by the President and Secretary, and the corporate seal of the corporation, be transmitted to the Commissioner of Insurance of the State of Texas, to be filed in his/her office, there to remain a permanent record of the Department.

We, _____, the President and _____, the Secretary of _____, a corporation duly incorporated under the laws of the State of _____, do certify that the above instrument is a true and correct copy of a resolution which was duly adopted by the Board of Directors of the corporation on the ____ day of _____, 20__, as shown in Book _____, pages _____, of the minutes of the proceedings of the Board of Directors. In Testimony Whereof, we officially subscribe our names and affix the corporate seal of the corporation, at _____, on this, the ____ day of _____, 20__.

(Seal)

By: _____
Secretary
Printed Name: _____

By: _____
President or Attorney in Fact
Printed Name: _____