

September 18, 2013

Mr. David Keleher
Sr. Property and Casualty Insurance Specialist
NAIC
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Comments on Title Insurance Guaranty Association Exposure Drafts

Dear Mr. Keleher:

The NCIGF is a nonprofit association incorporated in December 1989 and designed to provide national assistance and support to the property and casualty guaranty funds located in each of the fifty states and the District of Columbia.

As the NAIC has pointed out in some of its published material on this matter, title insurance is very different from property casualty insurance. See David Keleher, National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *“Title Insurance: Overview and Key Regulatory Concerns,”* July 2012.

We suggest that any guaranty fund coverage provided be administered via a mechanism separate from the property casualty guaranty fund system. Hence, the stand-alone fund approach would be appropriate.

The NCIGF has the following technical comments on the Title Insurance Guaranty Fund exposure draft, Option 1- a separate guaranty fund. These comments are based on our experience handling property-casualty insolvency claims and may or may not be applicable in the context of any title insurance guaranty fund.

Page 1, Purpose. Among the stated purposes of the proposed guideline is “continuation of coverage.” The approach for property casualty insurance insolvencies has been for the guaranty associations to pay unpaid premium refunds and covered claims. Coverage is cancelled on a date set by the Court with the expectation that policyholders would seek coverage from a new carrier. In contrast, continuation of coverage mechanisms are necessary for the Life and Health guaranty fund system as availability of coverage often changes over time as policyholder age increases and/or health deteriorates. We suggest a discussion is in order to determine whether circumstances attendant to title insurance would necessitate a continuation of coverage mechanism. If it is determined that coverage should be continued, a title insurance guaranty association mechanism probably would be more like a life and health guaranty association than the current property-casualty guaranty funds.

Page 2, Section 4, Definition of “Covered Claim.” Covered claim is defined as “a claim in excess of an amount...” (Identified by []). We believe this language would be interpreted to call for no guaranty fund coverage for losses beneath a stated threshold and full coverage for any loss above the threshold amount. For example if the threshold amount were \$100 then any loss of \$100 or less would get no coverage but a loss of \$101 would be paid in full – in this case \$101 dollars. We point this out so that drafters can ensure this is the intent of the guideline.

Page 3, Section 4, Definition of “Member Insurer.” This definition would presumably call for any entity now writing title insurance or writing such business in the past to be subject to assessment. Since assessments are based on premium written in the year preceding the year of assessment, then an insurer would not be liable for assessment if it wrote no title insurance premium in the preceding year.

Page 5, Powers and Duties of the Association. Paragraph B affords broad powers to the association. Not only can it pay covered claims, it can also guarantee or reinsure payments, provide pledges, guarantees or notes to assure payment and loan money to the insurer. Paragraph D suggests that such measures could be taken before the company is declared insolvent. Paragraph E(1) calls for the association, in certain cases, to pay adjuster fees and attorney fees related to claims settlement before the company is declared insolvent. This is unlike the current property casualty guaranty fund system. Property casualty guaranty funds traditionally pay covered claims and unearned premium refunds after a finding of insolvency and a final order of liquidation, with the expectation that the insured would obtain new coverage from another carrier. If the types of powers suggested in the draft bill are needed they could add significant expense to the mechanism. We again suggest that this issue merits further discussion.

We understand that most, if not all, title insurers are mono line companies, but paragraph A(3) must be clarified to require that only title insurance premium be assessable for title insurance claims in the event a title insurer is licensed to write any other line of insurance. The following change could be adopted:

The assessments of each member insurer shall be in the proportion that the net written title insurance premiums of the member insurer for the calendar year preceding the assessment bears to the net written title insurance premiums of all member insurers....

Page 7, Section 9, Powers and Duties of the Commissioner. This section calls for the Commissioner to serve the association with any complaint for a finding of insolvency of an insurer at the same time it is filed with the Court and notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of insolvency. Our experience in such matters, including in some very recent cases, indicates that pre-insolvency communication and planning is critical to the smooth transition to liquidation and we expect that pre-insolvency planning would be equally important for a title insurance insolvency. We encourage commissioners to

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incorporate steps to work with the guaranty fund much earlier than the time frame set out in this statute whenever possible.

Page 10, Section 16, Appeals. This provision suggests that final adjudication of guaranty fund claims determinations would rest with the receivership court – either a court established by a state’s ancillary proceeding or potentially an out of state liquidation court. This is not a practice currently followed for property casualty claims disputes. They are handled in the usual civil court channels. As we understand it, any title insurance guaranty association would be established by a particular state and subject to that state’s laws. We do not understand why a different approach would be taken for title insurer matters.

Many thanks for your attention to our comments. We would be happy to answer any questions you may have and participate in additional discussions in this regard.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara F. Cox". The signature is written in dark ink and is positioned above the typed name.

Barbara F. Cox
Vice President
Legal and Regulatory Affairs