

GUARANTY FEE QUESTIONS

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 Article 9.48. The proper collection and reporting of Guaranty Fees will also be part of future 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. Guaranty fees were collected from January 1, 1988 to March 31, 1992. The new fee will be collected effective January 1, 2004.
3. *What are the funds used for?* Article 9.48 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 and certain expenses of receivers or conservators and the expenses of the TDI's title examiners.
4. *Is the Insurance Commissioner and the TDI involved with the guaranty fee?* The Commissioner of Insurance and the Texas Department of Insurance are aware of the initiation of the Guaranty Fee, and are assisting in the answering of questions relating to the accounting and reporting of the fees. TDI has also posted the notice and 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 policy guaranty fees have to be put into an escrow 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 can not 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 GARC fees and policy 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 Quarterly Report forms. This is the only report required to TTIGA.

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 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 Texas Department of Insurance as an expense of operation for the purpose of establishing title insurance rates.”

Since the stat report information is used to set rates, the policy 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

Article 9.39 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 policy 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 policy 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 fee is collected. The fee should be collected at closing.
8. *Can an agent just pay the fee without collecting it?* 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 mortgage policy at the closing of the transaction and such itemized charge shall be disclosed on the settlement statement...”
9. *If they issue both owner and mortgagee policies in the same transaction, do they owe for both?* If a transaction involves both a mortgagee policy and an owner policy, then the agent collects \$2 for the transaction (\$1 each).
10. *What rules does TDI have that are consistent with Section 6 (d) of Article 9.48?* 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...”
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 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

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