

## **S.1. MINIMUM CAPITALIZATION STANDARDS FOR TITLE AGENTS PURSUANT TO §2651.012 AND CERTIFICATION AND PROCEDURE TO DETERMINE VALUE OF ASSETS PURSUANT TO §2651.158**

### **I. Minimum Capitalization Standards.**

A. A title insurance agent must maintain unencumbered assets with a market value in excess of liabilities, exclusive of abstract plants, as specified in Insurance Code §2651.012(c)(1) - (c)(4).

B. In accordance with Insurance Code §2651.012(a)(2), unencumbered assets are defined as follows:

- (1) cash or cash equivalents;
- (2) liquid assets that have a readily determinable market value and that do not have any lien against them;
- (3) real estate, in excess of any encumbrances;
- (4) investments, such as mutual funds, certificates of deposit, and stocks and bonds;
- (5) a surety bond, the form and content of which shall be prescribed by the commissioner in accordance with this code;
- (6) a deposit made in accordance with Insurance Code §2651.102;
- (7) a letter of credit that meets the requirements of Insurance Code §493.104(b)(2)(C); and
- (8) a solvency account that meets the requirements of Insurance Code §2651.0121.

### **II. Schedule for Compliance With Minimum Capitalization Standards.**

A. A title agent that holds a license on September 1, 2013, and that has held the license for at least three years as of that date is not required to comply with the minimum capitalization standards specified in subsection I of this rule on September 1, 2013. However, the title agent shall increase the unencumbered assets held by the agent, or make and increase the required deposit, until the agent is in compliance with the required capitalization amounts in accordance with the schedule established under this subsection. The agent must hold unencumbered assets, or make a deposit in an amount, such that:

- (1) If, on September 1, 2013, the agent has been licensed less than four years:

(a) the agent has at least 33 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 66 percent of the required capitalization amount on November 1, 2015; and

(c) the agent has at least 100 percent of the required capitalization amount on November 1, 2016;

(2) if, on September 1, 2013, the agent has been licensed at least four years but less than five years:

(a) the agent has at least 25 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 50 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 75 percent of the required capitalization amount on November 1, 2016; and

(d) the agent has at least 100 percent of the required capitalization amount on November 1, 2017;

(3) if, on September 1, 2013, the agent has been licensed at least five years but less than six years:

(a) the agent has at least 20 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 40 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 60 percent of the required capitalization amount on November 1, 2016;

(d) the agent has at least 80 percent of the required capitalization amount on November 1, 2017; and

(e) the agent has at least 100 percent of the required capitalization amount on November 1, 2018;

(4) if, on September 1, 2013, the agent has been licensed at least six years but less than seven years:

(a) the agent has at least 16.66 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 33.32 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 49.98 percent of the required capitalization amount on November 1, 2016;

(d) the agent has at least 66.64 percent of the required capitalization amount on November 1, 2017;

(e) the agent has at least 83.3 percent of the required capitalization amount on November 1, 2018; and

(f) the agent has at least 100 percent of the required capitalization amount on November 1, 2019;

(5) if, on September 1, 2013, the agent has been licensed at least seven years but less than eight years:

(a) the agent has at least 14.29 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 28.58 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 42.87 percent of the required capitalization amount on November 1, 2016;

(d) the agent has at least 57.16 percent of the required capitalization amount on November 1, 2017;

(e) the agent has at least 71.45 percent of the required capitalization amount on November 1, 2018;

(f) the agent has at least 85.74 percent of the required capitalization amount on November 1, 2019; and

(g) the agent has at least 100 percent of the required capitalization amount on November 1, 2020;

(6) if, on September 1, 2013, the agent has been licensed at least eight years but less than nine years:

(a) the agent has at least 12.5 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 25 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 37.5 percent of the required capitalization amount on November 1, 2016;

(d) the agent has at least 50 percent of the required capitalization amount on November 1, 2017;

(e) the agent has at least 62.5 percent of the required capitalization amount on November 1, 2018;

(f) the agent has at least 75 percent of the required capitalization amount on November 1, 2019;

(g) the agent has at least 87.5 percent of the required capitalization amount on November 1, 2020; and

(h) the agent has at least 100 percent of the required capitalization amount on November 1, 2021; and

(7) if, on September 1, 2013, the agent has been licensed at least nine years:

(a) the agent has at least 11.11 percent of the required capitalization amount on November 1, 2014;

(b) the agent has at least 22.22 percent of the required capitalization amount on November 1, 2015;

(c) the agent has at least 33.33 percent of the required capitalization amount on November 1, 2016;

(d) the agent has at least 44.44 percent of the required capitalization amount on November 1, 2017;

(e) the agent has at least 55.55 percent of the required capitalization amount on November 1, 2018;

(f) the agent has at least 66.66 percent of the required capitalization amount on November 1, 2019;

(g) the agent has at least 77.77 percent of the required capitalization amount on November 1, 2020;

(h) the agent has at least 88.88 percent of the required capitalization amount on November 1, 2021; and

(i) the agent has at least 100 percent of the required capitalization amount on November 1, 2022.

B. On or after the effective date of this rule, a title agent that applies for its first license and that does not elect to utilize a solvency account shall be required to hold unencumbered assets or make a deposit in an amount such that the agent has 100% of the required capitalization specified in subsection I of this rule as a condition precedent to the issuance of a new license.

C. With respect to the schedule for compliance with the minimum capitalization amounts, the start date for the time that a title agent has been licensed is the date on which the title agent was first assigned a Firm ID or Title Agent Company ID Number by the Department in connection with the issuance of the title agent's initial license.

(1) When a person acquires a title agent by inheritance, resulting in a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, which requires a new license, the start date of the new license is the date of the Firm ID or Title Agent Company ID Number of the acquired title agent.

(2) In a non-inheritance transfer, when there is a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, and a new license is issued, the commissioner may, upon petition of the acquiring title agent, order that the start date of the new license be the date of the Firm ID or Title Agent Company ID Number of the acquired title agent. The acquiring agent's petition must make and support the following assertions:

(i) that the title agent to be acquired is financially distressed or reasonably likely to become financially distressed; and

(ii) that the acquiring title agent has the means to rehabilitate the distressed title agent and is worthy of the public trust to accomplish that goal. Support for this provision includes evidence that the acquiring title agent has ample funds and experience to accomplish the rehabilitation, and that the acquiring title agent has never before owned or operated a failed title agent.

(3) In the event of the merger, consolidation, or other combination of two or more title agents, the start date of the survivor or new entity resulting from the combination is the date on which the survivor or oldest entity was first assigned a Firm ID or Title Agent Company ID Number by the Department in connection with the issuance of the survivor's or oldest entity's initial license before the consummation of the merger, consolidation, or other combination.

D. The minimum capitalization amounts specified in subsection I of this administrative rule and the schedule for attaining the required capitalization amounts specified in subsection II of this administrative rule shall take effect on July 3, 2014. If the scheduled dates set forth in subsection II of this rule occur before July 3, 2014, those scheduled dates shall be extended so as to give effect to this paragraph.

E. If a title agent utilizes a solvency account in accordance with §2651.0121 of the Insurance Code and Administrative Rule S.2, then the required capitalization may be accumulated in accordance with Administrative Rule S.2.

### **III. Filing Requirements and Forms for Certification of Unencumbered Assets.**

A. Unless a title agent has elected to make a deposit with the Department under Insurance Code §2651.012(f), the agent shall submit to the Department with the annual audit of escrow accounts a certification that the title agent has the appropriate unencumbered assets as specified in subsection IA of this rule on the Title Agent's Unencumbered Assets Certification (Form T-S1).

B. The Title Agent's Unencumbered Assets Certification (Form T-S1) must be submitted annually to the Department between September 1 and September 30 of each year.

C. Form T-S1 may be obtained from the Texas Department of Insurance, Title Examinations, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or from the Department's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

D. Any certification form submitted pursuant to this subsection should be filed with the Texas Department of Insurance, Title Examinations, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701, or by email to [TitleExaminations@tdi.texas.gov](mailto:TitleExaminations@tdi.texas.gov).

E. An agent that has made a deposit with the Department under §2651.012(f) of the Insurance Code is exempt from the certification requirement of this subsection. If an agent elects to utilize a deposit with the Department as the method of complying with the title agent's capitalization requirement, then the agent must at the time of license renewal provide written notice to the Texas Department of Insurance, Title Examinations, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701 that such deposit has been made and that such deposit meets the title agent's statutory capitalization requirement.

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