

## **CHAPTER 26.1-20 TITLE INSURANCE COMPANIES**

### **26.1-20-01. Title insurance company subject to insurance company requirements.**

Every domestic or foreign corporation organized for the purpose of insuring titles to real property in this state or of insuring against loss by reason of defective titles thereto, or encumbrances thereon, is subject to and shall comply with all the requirements of the laws of this state made applicable to insurance companies generally and the rules of the commissioner, except as provided in this chapter or when the laws and rules are inconsistent with this chapter.

### **26.1-20-02. Capital stock and surplus requirement.**

A domestic corporation organized for the purpose of insuring titles to real property in this state or of insuring against loss by reason of defective titles to real property, or encumbrances on real property, may not be incorporated unless it has an authorized capital of not less than five hundred thousand dollars and a surplus of not less than five hundred thousand dollars if a stock company, and a surplus of not less than five hundred thousand dollars if a mutual company. If the capital or surplus requirements at the time the company was incorporated under this chapter were less than the minimum requirements provided by this section, the company may maintain authorized capital or surplus which satisfies the capital stock or surplus requirements in effect at that time. It may issue no policy or insurance until at least fifty percent of the minimum capital stock required by this section, and all the surplus required, have been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation, but the commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year.

### **26.1-20-03. Surplus to constitute guaranty fund - Deposit.**

The surplus provided for in section 26.1-20-02 constitutes a guaranty fund, which must be invested in securities as provided by section 26.1-05-19, and be duly deposited with the commissioner, and the commissioner's certification of that deposit must be procured, as provided by law. This deposit must be maintained unimpaired and the principal of the fund may be applied only to the payment of losses and expenses by reason of its guaranty and insurance contracts, but the corporation has the right to collect the income from the deposit and to substitute other like securities of equal amount and value from time to time.

### **26.1-20-04. Limitation on risks.**

1. Except as provided in subsection 2, a title insurance company may issue a title insurance policy on property located in this state involving a potential policy liability up to ninety percent of the sum of the company's surplus as regards policyholders and statutory premium reserves as stated in the most recent annual statement of the company.
2. A title insurance company may exceed the limit established in subsection 1 if the excess liability is reinsured in due course with an authorized title insurance company or in compliance with subsection 3 or 4.
3. Notwithstanding contrary provisions of this section, a title insurance company may acquire reinsurance on an individual policy or facultative basis from a title insurance company not authorized to engage in the business of title insurance in this state if the title insurance company from which the reinsurance is acquired:
  - a. Has a combined capital and surplus of at least twenty million dollars as stated in the company's most recent annual statement preceding the acceptance of reinsurance; and
  - b. Is domiciled in another state and is authorized to engage in the business of title insurance in one or more states.
4. Notwithstanding contrary provisions in this section, a title insurance company may obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from the A.M. Best

Company, Inc., or with an alternative rating the commissioner may approve which the commissioner determines is an equivalent rating by another recognized rating organization.

**26.1-20-05. Title evidence - Examination.**

A domestic corporation organized for the purpose of insuring title to real property in this state or of insuring against loss by reason of defective titles to real property, or encumbrances on real property, or a foreign corporation authorized to do business in this state, may not issue any policy, binder, or certificate unless it has secured from a person, firm, or corporation holding a certificate of authority under chapter 43-01 the record title evidence of the title to be insured, and the title evidence has been examined by a person duly admitted to the practice of law as provided by chapter 27-11. The certificate of authority of any corporation violating this section must be revoked as provided by chapter 26.1-02 or 26.1-11.

**26.1-20-06. Judgment against corporation - Enforcement.**

If a corporation fails to satisfy any judgment against it arising out of its liability under any title insurance policy, issued, insured, or assumed by it, within thirty days after the finality of the judgment becomes fixed, the judgment may be enforced against its guaranty fund deposit through the following procedure:

1. The judgment creditor shall petition the court wherein the judgment is entered and as part of the same cause, truthfully setting forth the facts regarding the failure to satisfy the judgment as required by this section.
2. Upon the petition the court shall direct the issuance of a special execution directed to the sheriff of Burleigh County, requiring that the sheriff sell so much of the securities on deposit as may be required to satisfy the judgment and pay the costs of the levy.
3. The special execution must be executed by the sheriff by delivering to the state treasurer and to the commissioner a certified copy of the writ of execution together with a certified copy of the judgment and of the petition and order, and within ten days thereafter there must be delivered to the sheriff sufficient securities to satisfy the judgment in full. The sheriff shall sell the securities upon execution as in the case of sales of personal property upon execution generally.