**§ 6405. Reserves.** (a) Every title insurance corporation organized and doing an insurance business under this article shall establish, segregate and maintain a reinsurance reserve during the period and for the uses and purposes hereinafter provided which shall at all times and for all purposes be deemed and shall constitute unearned portions of the original premiums and shall be charged as a reserve liability of such corporation in determining its financial condition.

(1) Beginning June first, nineteen hundred forty-five, the amount of such reserve shall be cumulative and shall consist of (i) one dollar fifty cents for each risk assumed under a binder or policy of insurance or any certificate or agreement issued under either of them, plus one-eightieth of one percent of the face amount of insurance effected thereby; and (ii) three percent of the gross fees and premiums received by it for guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title not included in item (i) of this paragraph. That portion of the reinsurance reserve established as required by this paragraph more than one hundred eighty months prior shall be released and shall no longer constitute part of the reinsurance reserve and may be used for any corporation purpose.

(2) Beginning January first, nineteen hundred eighty-six, the amount of such reserve provided shall consist of (i) one dollar fifty cents for each risk assumed under a binder or policy of insurance or any certificate or agreement issued under either of them, plus one-eightieth of one percent of the face amount of insurance effected thereby; and (ii) three percent of the gross fees and premiums received by it for guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title not included in item (i) of this paragraph. "Risk assumed" and "insurance effected", as used in this paragraph, shall not include the face amount of a policy insuring a lender to the extent of the face amount of a policy insuring the owner of an interest in the same land under an owner's policy which provides that any amount paid under the lender's policy shall reduce the amount of, and be deemed a payment under, the owner's policy. A title insurer shall release from the reinsurance reserve established as required by this paragraph a sum equal to five percent of the amount added to the reserve during each year following the year in which the sum was added, until the entire amount added has been released.

(b) Every title insurance corporation organized or authorized to do business in this state shall on or before March first each year, file a report in such form as may be prescribed by the superintendent of all unpaid losses and claims upon title insurance policies, guaranteed certificates of title, guaranteed searches and guaranteed abstracts of title (such policies, certificates, searches and abstracts being hereafter in this section called "guarantees") of which the corporation has received due notice in writing from or on behalf of the insured or the guaranteed and keep such records thereof as may be prescribed by the superintendent. Every title insurance corporation doing business under this article shall set up and maintain a loss reserve at least equal to the aggregate estimated amounts due or to become due on account of all such unpaid losses and claims.

(c) The reinsurance reserve required by subsection (a) of this section shall be maintained as follows:

Admitted assets of a value at least equal to the amount required for such reserve shall be continuously held by the corporation as a segregated reserve fund at all times distinct and separate from all its other assets. Cash paid into such fund shall, unless invested, be kept in legal tender or deposited in a separate account. Securities which are a part of such fund shall be kept separate from all other securities and shall be clearly identified as securities belonging to such fund. The net income and profits derived from such fund investments shall be transferred to the general assets of the corporation. Such corporation shall at all times keep a separate record of the cash and securities in such fund, giving complete identification of the assets belonging at any time to such fund and showing full particulars as to withdrawals and additions. No assets of such fund shall be taken or used in satisfaction of any claim against such corporation except as hereinafter provided and such fund shall be held solely for the purpose of satisfying such claims.

(d) The funds constituting the reinsurance reserve required by subsection (a) of this section shall be held in cash or invested only in the types of reserve investments that meet the requirements of paragraphs one, two, and three of subsection (a) of section one thousand four hundred four of this chapter. In no event shall the investment made

under such paragraph three exceed twenty percent of the reinsurance reserve at preceding year-end.

(e) If at any time the superintendent finds from the report of any examiner filed pursuant to section three hundred eleven of this chapter or otherwise, after reasonable notice to and hearing of such corporation, that the value of the cash and investments lawfully in the reserve fund required to be established, segregated and maintained by subsection (c) of this section is less than the amount required to be maintained at such time pursuant to subsection (a) of this section, the superintendent shall determine the amount of such impairment and issue a written requisition to such corporation to remove, repair or make good such impairment within such period as he shall designate, not less than thirty nor more than ninety days from the service of such requisition. If at the expiration of such designated period such impairment has not been removed, repaired or made good, the superintendent shall order such corporation in writing to cease doing any new business. If such corporation, or any officer thereof, having notice of such order of the superintendent, shall thereafter transact or participate in the transaction of any new business, such corporation or person shall be in violation of the provisions of this chapter.

(f) The reinsurance reserve fund required to be maintained pursuant to subsection (c) of this section shall constitute a separate and distinct trust fund for the security of holders of guarantees of the corporation as hereinafter provided.

(g) In the event the superintendent, pursuant to the provisions of article seventy-four of this chapter, obtains an order for the rehabilitation or liquidation of a title insurance corporation, he shall have the power:

(1) to pay out of such reinsurance reserve fund, subject to the approval of the court, the claims for losses sustained by the holders of guarantees of such corporation pending at the time of the making of such order or arising subsequently thereto and up to the time reinsurance is effected, and

(2) to negotiate and enter into a contract with one or more solvent corporations authorized to transact the business of title insurance, subject to the approval of the court, for the reinsurance of the obligations under such outstanding guarantees in accordance with their

terms, covenants and conditions, and

(3) to pay the cost of reinsurance out of said reinsurance reserve fund of such corporation.

(h) After the payments hereinbefore authorized shall have been made by the superintendent, he shall transfer any balance in said reinsurance reserve fund to the general assets of the corporation in rehabilitation or liquidation. The reinsuring corporation shall segregate and maintain the reinsurance reserve fund acquired from the superintendent under the terms of the agreement of reinsurance except that on the first day of the month next succeeding such acquisition and on the first day of each month thereafter, one one-hundred-eightieth of the amount of the said fund so acquired shall be released therefrom and shall no longer constitute part of the reinsurance reserve fund so acquired and may be used for any corporate purpose of the reinsuring corporation.

(i) In the event the superintendent shall be unable to effect a contract for reinsurance as provided in subsection (g) of this section, for the reinsurance of the outstanding guarantees of a title corporation in rehabilitation or liquidation, the reinsurance reserve fund of such corporation shall constitute a separate and distinct trust fund for the payment therefrom by the superintendent, on the approval of the court, in the following order of preference, (i) of all expenses of proceedings incurred under this subsection, (ii) of all allowed claims for losses sustained by the holders of guarantees of such corporation which are unpaid or pending at the time fixed by the court for the filing of claims and (iii) of all allowed claims for losses which shall be asserted at any time within twenty years from the date of the entry of such order of rehabilitation or liquidation and which shall be paid in the order of the date of their allowance by the court. Any balance in the reinsurance reserve fund of a title insurance corporation after payment of allowed claims asserted within twenty years from the date of the entry of the order of rehabilitation or liquidation shall be transferred to the general assets of such corporation. The superintendent shall keep and retain for such period of twenty years all title records of the corporation which he in his discretion shall deem necessary to effectuate the purposes of this trust.

(j) The payments out of the reinsurance reserve fund which shall have been made by the superintendent on allowed claims for losses which shall

have been filed within the time fixed by the court for the filing of claims in a rehabilitation or liquidation proceeding, shall constitute an allowed claim in favor of the reinsurance reserve fund of such corporation entitled to share with general creditors in the dividends directed to be paid and the dividends so paid on such claim shall fall into such reinsurance reserve fund.

(k) In proceedings for the rehabilitation or liquidation of a title insurance corporation which shall not have been declared insolvent, no assets of such corporation shall be distributed to the shareholders of such corporation (i) until all claims allowed in the rehabilitation or liquidation proceedings have been paid in full, and (ii) if such distribution is within twenty years from the date of the entry of the order of rehabilitation or liquidation such distribution shall not be made unless prior to or at the time of the making of such distribution there shall be transferred to the reinsurance reserve fund general assets of the corporation sufficient to restore such fund to its amount on the date of the entry of such order. Upon the expiration of twenty years from the date of the entry of such order of rehabilitation or liquidation any balance in such reinsurance reserve fund after payment of all allowed claims asserted within such twenty year period shall be transferred to the general assets of such corporation.