

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 19, 2012

COMMONWEALTH OF VIRGINIA *ex rel.*

STATE CORPORATION COMMISSION

v.

SOUTHERN TITLE INSURANCE
CORPORATION, in Receivership,
Defendant.

2012 APR 19 P 4:21

CLERK OF COURT

CASE NO. INS-2011-00239

120430039

ORDER IN AID OF RECEIVERSHIP

On April 4, 2012, Jacqueline K. Cunningham, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission ("Commission"), Commonwealth of Virginia, in her capacity as Deputy Receiver ("Deputy Receiver") of Southern Title Insurance Corporation ("Southern"), in Receivership, filed with the Clerk of the Commission an Application for Order in Aid of Receivership ("Application"), seeking various matters associated with the continuing efforts involved in the receivership proceedings ("Receivership Proceedings") of Southern. Specifically, the Deputy Receiver seeks an order from the Commission that adopts supplemental rules of practice and procedure applicable to the Receivership Proceedings.

NOW THE COMMISSION, having considered this matter, finds that the Deputy Receiver's Application should be, and it is hereby, granted. Accordingly, the Commission now finds as follows:

1. On December 20, 2011, the Circuit Court of the City of Richmond issued its Final Order Appointing Receiver for Rehabilitation or Liquidation ("Receivership Order") appointing the Commission as Receiver of Southern. On the same date, the Commission appointed Commissioner Cunningham as Deputy Receiver and charged her with managing the affairs and operations of Southern.

2. In order to manage effectively the affairs and operations of Southern, including investigating the merit and advisability of instituting litigation against potential debtors of the Receivership, and to investigate, adjudicate, prosecute, and defend claims by and against the Receivership, the Deputy Receiver should be given the ability to conduct investigations and discovery with respect to matters related to the Receivership. Accordingly, supplementation of the Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, of the State Corporation Commission ("Commission Rules") is required in the Receivership Proceedings to allow the Deputy Receiver to carry out her responsibilities.

Accordingly, IT IS ORDERED THAT:

(1) The Commission Rules shall be supplemented, as appropriate, by the Supplemental Rules of Practice and Procedure in Aid of Receivership Proceedings ("Supplemental Rules"), attached as Exhibit A to the Deputy Receiver's Application and as set forth fully below.

(2) In the Receivership Proceedings, Case No. INS-2011-00239, and in any matter ancillary thereto, the Deputy Receiver shall have the authority to utilize the Supplemental Rules to investigate, discover, make, redress, and defend claims and causes of action pursuant to the responsibilities imposed upon her by the Receivership Order. The Deputy Receiver is further directed to continue her efforts to marshal and collect the assets or property for the benefit of the receivership estate.

(3) All questions as to the appropriateness of the Supplemental Rules and all conflicts between the Commission Rules and the Rules of the Supreme Court of Virginia shall be resolved by the Commission. With greater particularity, the Commission Rules are hereby supplemented herein as follows:

**Supplemental Rules of Practice and Procedure
in Aid of Receivership Proceedings**

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**Supplemental Rules of Practice and Procedure
in Aid of Receivership Proceedings**

1. Scope
 - 1:1 Application of Supplemental Rules. These Supplemental Rules of Practice and Procedure in Aid of Receivership Proceedings (the "Supplemental Rule(s)") shall be applicable to matters relating to the receivership (the "Receivership Proceeding(s)") of Southern Title Insurance Corporation ("Southern") as a supplement to the State Corporation Commission's ("Commission") standing Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Commission Rule(s)").
 - 1:2 Application of Certain Rules of the Supreme Court of Virginia. The Commission shall, as set forth herein, apply certain Rules of the Supreme Court of Virginia ("Virginia Rule(s)") as may be necessary to facilitate the orderly investigation,

discovery, and disposition of certain matters in these Receivership Proceedings. To this end, certain terms in the Virginia Rules must be subject to certain interpretations and deemed changes for use in this Receivership Proceeding. These Supplemental Rules, and the adopted Virginia Rules, shall be liberally construed to facilitate a viable procedural mechanism for aiding the orderly investigation, discovery, and disposition of matters involving the Receivership Proceedings.

2. Pretrial Procedures, Depositions, and Production

Subject to interpretations and deemed changes in accordance with Supplemental Rule 1:2, Virginia Rules 4:0, 4:1, 4:2, 4:3, 4:4, 4:5, 4:6, 4:6A, 4:7, 4:7A, 4:8, 4:9, 4:10, 4:11, 4:12, 4:13, and 4:14 shall apply to the Receivership Proceedings.

3. Investigative Subpoena Power; Examination of Witnesses Under Oath in Receivership Proceedings

3:1 Investigative Depositions and Production of Documents. The Commission may, upon good cause shown by the Deputy Receiver, issue, *ex parte*, a subpoena to compel the attendance and testimony of witnesses before a person empowered to administer oaths and the production of any books, accounts, records, papers, and correspondence or other records relating to any matter that pertains to the receivership of Southern and may, upon good cause shown, compel such attendance and production of records at the Deputy Receiver's offices in Richmond, Virginia, or at such other place as the Deputy Receiver may designate in Richmond, Virginia, as well as in cities or counties adjacent to Richmond, Virginia, as the Deputy Receiver may deem necessary to designate.

3:2 Protection from Investigative Depositions and Production of Documents.

Any person served with a subpoena under this section may file a motion with the Commission for a protective order pursuant to Virginia Rule 4:1(c). The filing of such a motion does not relieve the person subject to the subpoena from compliance until such time as a protective order is entered by the Commission.

3:3 Sanctions for Disobedience. In any case of disobedience of (i) a subpoena issued under Rule 3:1 of these Supplemental Rules, including the contumacy of a witness appearing before the Deputy Receiver or her designated representative, or (ii) a subpoena issued under Part 2 of these Supplemental Rules or any other requirement thereunder, the Commission may, pursuant to Virginia Rule 4:12, issue an order requiring the person subpoenaed to obey the subpoena to give evidence or produce books, accounts, records, papers, and correspondence or other records respecting the matter in question. Any failure to obey such an order of the Commission may be punished as contempt by the Commission.

3:4 Application to Witnesses Outside Virginia. If the Deputy Receiver desires to subpoena documents or things, or to take the deposition of a witness who resides outside the Commonwealth of Virginia, such documents may be compelled in accordance with Virginia Rule 4:9A or the deposition taken in accordance with Virginia Rule 4:3, as the case may be, as adopted in these Supplemental Rules and as provided under Virginia Code sections 8.01-412.8 through 8.01-412.15.

4. Discovery Materials Not Filed with the Clerk of the Commission. Unless otherwise directed by the Commission, discovery materials shall not be filed with the Clerk of the Commission.

(4) All authority granted to the Deputy Receiver in this Order is in addition to that accorded to the Deputy Receiver pursuant to prior and other Orders that the Commission has entered or may enter in this case, the insurance laws of the Commonwealth of Virginia, and other applicable law. The grant to the Deputy Receiver of certain authority and power by the terms of this Order may be duplicative of authority and power previously conferred on her by lawful order or by operation of law, and any such grant of express power shall not be construed to imply that the Deputy Receiver did not previously possess such power and authority nor shall it be construed to imply a limitation or revocation of authority previously granted to the Deputy Receiver.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission by REGULAR MAIL and CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to: Donald R. Ferguson, Esquire, Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Bruce McCandless III, Esquire, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., 106 East Sixth Street, Suite 300, Austin, Texas 78701; and Patrick H. Cantilo, Esquire, Cantilo & Bennett, L.L.P., 11401 Century Oaks Terrace, Suite 300, Austin, Texas 78758; and a copy shall be delivered to the Commission's Office of General Counsel and to the Bureau of Insurance in care of Commissioner Jacqueline K. Cunningham.