

**DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION**

P.O. Box 690, Jefferson City, Mo. 65102-0690

TO: Office of the President
Fidelity National Title Insurance Co., Inc.
601 Riverside Ave.
Jacksonville, FL 32204

RE: Missouri Market Conduct Examination #0612-68-PAC
Commonwealth Land Title Insurance Company (NAIC #50012)

**STIPULATION OF SETTLEMENT AND
VOLUNTARY FORFEITURE**

It is hereby stipulated and agreed by John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, hereinafter referred to as "Director," and Commonwealth Land Title Insurance Company, (hereafter referred to as "Commonwealth" or the "Company"), as follows:

WHEREAS, John M. Huff is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereafter referred to as "the Department"), an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State in Missouri; and

WHEREAS, Commonwealth has been granted certificate(s) of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Director conducted a Market Conduct Examination of Commonwealth and prepared report number 0612-68-PAC in accordance with the laws and regulations of the State of Missouri in effect at the time of the actions examined and alleged during the scope of the examination; and

WHEREAS, the report of the Market Conduct Examination stated that:

1. In some instances, Commonwealth failed to maintain its files in such a way that they included adequate information to determine the identity of the agent who conducted work and closed title transactions, in violation of §§375.012.1(12) and 375.041.1, RSMo, 20 CSR 300-2.200(2) (as amended 20 CSR 100-8.040, eff. 7/30/08), and DIFP Bulletin 06-05.
2. In some instances Commonwealth operated agencies and employed producers who did not have a current Missouri agency and producer's licenses as required by §§375.014.1 and 381.031.17, .18, and .19, RSMo, 20 CSR 700-1.010(3)(B), and 20 CSR 700-1.020(1), and DIFP Bulletin 06-05.
3. In some instances, Commonwealth used policy and commitment forms which included language that had not previously been filed with the Department, thereby violating §§381.071 and 381.211, RSMo, and 20 CSR 500-7.100(3)(A).
4. In some instances, Commonwealth's direct operations and its agents failed to timely record the security instrument within three days after closing the transaction, as required by §381.412.2, RSMo.
5. In some instances, Commonwealth's direct operations and its agents used risk rates that were different than the actual risk rate filed by the Company with the Department, thereby violating §381.181, RSMo, and 20 CSR 500-7.100(3)(B), and DIFP Bulletin 93-09.
6. Commonwealth refunded one of its agents fees for services which the producer did not actually perform, in violation of §§381.141 and 381.161, RSMo.
7. Commonwealth failed to list the total charges paid for a policy, thereby violating §381.181, RSMo, and 20 CSR 500-7.100(3)(B).
8. In some instances Commonwealth collected improper fees, including fees that were in excess of the actual amount necessary or for documents that were never recorded, in violation of §486.351.1, RSMo, and the Real Estate Settlement Procedures Act of 1974 (RESPA), §8(b); 12 USCA §2607(a-b).
9. In some instances, Commonwealth's direct agent failed to include certain exceptions to title, which tended to be misleading to the insured, in violation of §§375.1007(1), and 381.071, RSMo, and 20 CSR 100-1.120(1).
10. In some instances, Commonwealth failed to properly determine insurability by using sound underwriting practices when issuing policies, failing to show all outstanding and enforceable recorded liens or other interests against title, and failing to properly document the searches and maintain evidence of the searches in some instances, thereby violating §381.071, RSMo, 20 CSR 500-7.200 and 20 CSR 300-2.200(2) (as amended 20 CSR 100-8.040, eff. 7/30/08).
11. In some instances, agents of Commonwealth used exceptions in title policies and commitment forms that were different than the forms previously filed with the Department, thereby violating §381.211, RSMo, and 20 CSR 500-7.100(3).

12. In some instances, agents of Commonwealth incorrectly calculated the commission and net premium payable to the Company, in violation of §381.181.2, RSMo, and 20 CSR 500-7.100(1)(D).

13. In some instances, agents of Commonwealth collected fees that were in excess of the allowable charge, in violation of §§381.031.4 and .14, and 381.181, RSMo, and 20 CSR 500-7.100(3)(B).

14. In some instances, agents of Commonwealth failed to use sound underwriting practices when issuing policies by failing to include proper exceptions or including improper exceptions to title, thereby violating §381.071.1(2), RSMo.

15. In some instances agents of Commonwealth collected improper fees, including fees that were in excess of the actual amount necessary or for services not performed, and fees for policies that has not been issued, in violation of §§381.131, 381.141, 381.161, 381.181, and 486.351.1, RSMo, and the Real Estate Settlement Procedures Act of 1974 (RESPA), §8(b); 12 USCA §2607(a-b) and 24 CFR §3500.14.

16. A Commonwealth agent received funds that should have been in certified form, thereby violating §381.412, RSMo.

17. A Commonwealth agent improperly disbursed funds in such a manner that it may have misled the lender or that may have resulted in a loss, in violation of §381.071.1(2).

18. In some instances, non-attorney agents for Commonwealth charged excessive notary fees, charged the seller for document preparation, and prepared a settlement statement that failed to accurately disclose the charges, fees, and expenses of the parties, all in violation of §§375.144, 381.071.1(2), and 486.350.1, and 484.020, RSMo, and RESPA, §8(b); 12 USCA §2607(a-b) and 24 CFR §3500.14.

19. In some instances, Commonwealth's agents failed to preserve and retain evidence of title, failed to conduct adequate examinations of title and determinations of insurability, and failed to consider and show all outstanding and enforceable recorded liens or other interests against title, in violation of §381.071, RSMo, and 20 CSR 500-7.100(3).

20. In some instances, Commonwealth failed to promptly acknowledge and properly investigate claims, as required by §375.1007(6), RSMo, and 20 CSR 100-1.030(1) and (3), 20 CSR 100-1.040 (as amended), and 20 CSR 100-1.050(1)(A) and (4).

21. In some instances, Commonwealth failed to promptly set reserves for claims, as required by §381.101, RSMo.

22. In some instances, Commonwealth and its agents failed to maintain its books, records, documents, and other business records and to provide relevant materials, files, and documentation in such a way to allow the examiners to sufficiently ascertain the rating and underwriting and claims handling and payment practices of the company, thereby violating §§374.205.2(2) and 381.071.3, RSMo, and 20 CSR 300-2.200(2) and (3) (as amended 20 CSR 100-8.040, eff. 7/30/08).

23. In some instances, Commonwealth failed to timely provide examiners with requested files and respond to criticisms and formal requests of the examiners, thereby violating §374.205.2(2), RSMo, and 20 CSR 300-2.200(6) (as amended 20 CSR 100-8.040, eff. 7/30/08).

NOW THEREFORE, Commonwealth hereby agrees to take remedial action bringing it into compliance with the statutes and regulations of Missouri and agrees to maintain those corrective actions at all times, including, but not limited to, taking the following actions:

1. Commonwealth agrees to take corrective action to reasonably assure that the errors noted in the above-referenced market conduct examination reports do not recur, including, but not limited to issuing bulletins and other educational materials to its agents regarding their duties and responsibilities relating to the use of accurate risk rates and exceptions in its title policies. Commonwealth will provide a copy of all such bulletins and educational materials to be used to the DIFP within 60 days after a final Order concluding this exam is entered by the Department ; and

2. With regard to the Commercial and Residential Policy files containing incorrect risk rates and other charges, Commonwealth agrees to review those files and refund any overcharge to the consumer. Payments to the consumers will include a letter stating that the payments are being paid “as a result of findings from a market conduct examination performed by the Missouri Department of Insurance, Financial Institutions and Professional Registration,” and evidence will be provided to the DIFP that such payments have been made within 90 days after a final Order concluding this exam is entered by the Department.

WHEREAS, the parties also agree to the following:

1. The Department may initiate a follow-up market conduct examination targeted on the issues raised in the above-referenced market conduct examination after 12 months from the date of the Department’s final Order concluding this exam. Any follow-up examination of the Company shall be conducted using the following criteria:

a. Selections for any follow-up market conduct examination conducted by the Department shall be done consistent with the procedures, guidelines and standards established by the NAIC Market Regulation Handbook (hereafter “Handbook”); and

b. The scope of the follow-up market conduct examination will cover a period starting on or after six months from the date of the Department’s final Order in this examination.

2. The Company acknowledges that it will be subject to a monetary penalty up to twice the amount of the penalty assessed to each section of the report, as outlined in Appendix A which is attached hereto and made a part herein, if the Department's follow-up examination reveals that the Company did not satisfy its obligations in each section of the report reasonably established by this Stipulation of Settlement and Voluntary Forfeiture.

3. The Company shall be deemed in compliance with its obligations established by this Stipulation of Settlement and Voluntary Forfeiture and not subject to a possible penalty as described above unless the Department's follow-up examination of the Company reveals that the Company exceeded the maximum tolerance standard of ten percent (10%) for non-claims related items examined and seven percent (7%) for claims-related items examined as established by the Handbook in regard to the Company's obligations established by this Stipulation of Settlement and Voluntary Forfeiture.

WHEREAS, the parties hereto agree that neither this instrument nor the agreements, settlement and compromise contemplated herein are to be deemed as an admission of any violation, fault, improper conduct or negligence on the part of Commonwealth and that this agreement shall not be interpreted to impair the validity of Commonwealth's existing contracts with its agents in the State of Missouri; and

WHEREAS, the Company's satisfaction of the corrective actions listed above fully and finally resolves its obligations established by this Stipulation of Settlement and Voluntary Forfeiture; and

WHEREAS, this Stipulation of Settlement and Voluntary Forfeiture is a compromise of disputed factual and legal allegations, and that payment of a forfeiture is merely to resolve the disputes and avoid litigation without conceding that the agreements, settlement and compromise contemplated herein settle any question of law asserted by either party; and

WHEREAS, Commonwealth, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, which may have otherwise applied to Market Conduct Exam #0612-68-PAC; and

WHEREAS, Commonwealth hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination #0608-40-TGT further agrees, voluntarily and knowingly to surrender and forfeit the sum of \$188,976.

NOW, THEREFORE, in lieu of the institution by the Director of any action for the SUSPENSION or REVOCATION of the Certificate(s) of Authority of Commonwealth to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Commonwealth does hereby voluntarily and knowingly waive all rights to any hearing, does consent to an ORDER of the Director and does surrender and forfeit the sum of \$188,976, such sum payable to the Missouri State School Fund, in accordance with §374.280, RSMo.

DATED: _____

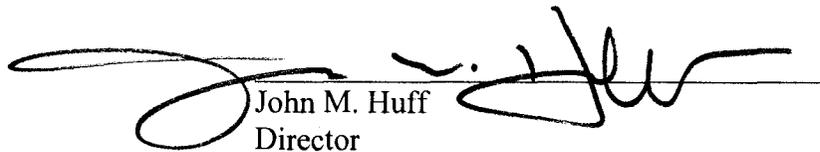
President
Commonwealth Land Title Insurance Company

IT IS FURTHER ORDERED that Commonwealth shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Commonwealth in full compliance with the requirements in the Stipulation and the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times.

IT IS FURTHER ORDERED that Commonwealth shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$190,000.00, payable to the Missouri State School Fund in accordance with §374.280, RSMo.

IT IS SO ORDERED.

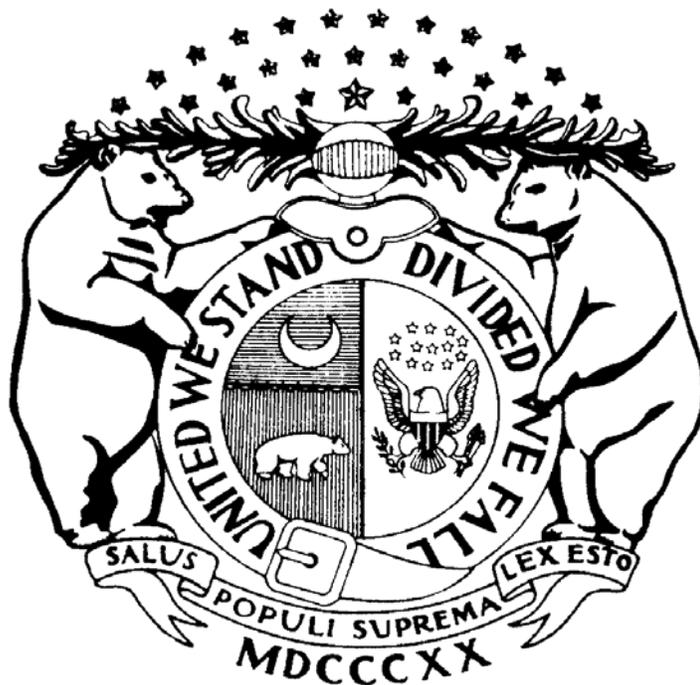
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 1st day of FEBRUARY, 2010.


John M. Huff
Director

STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Final Market Conduct Examination Report
For
Commonwealth Land Title Insurance Company
NAIC # 50083
January 11, 2010



Home Office
5600 Cox Road
Glen Allen, VA, 23060
Examination Number 06-09-40-TGT

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FOREWORD

This market conduct examination report of the Commonwealth Land Title Insurance Company “Commonwealth” is, overall, a report by exception. Examiners cite errors the company made; however, failure to comment on specific files, products, or procedures does not constitute approval by the Missouri Department of Insurance, Financial Institutions, and Professional Registration.

Examiners use the following in this report:

“Commonwealth” and “company” and “CLTIC” to refer to Commonwealth Land Title Insurance Company;

“DIFP” and “Department” to refer to the Department of Insurance, Financial Institutions and Professional Registration;

“NAIC” to refer to the National Association of Insurance Commissioners;

“RSMo.” to refer to the Revised Statutes of Missouri; and

“CSR” to refer to the Code of State Regulation.

SCOPE OF EXAMINATION

The DIFP has authority to conduct this examination pursuant to, but not limited to, Sections 374.110, 374.190, 374.205, 375.445, 375.938, 375.1009, RSMo, and Chapter 381, RSMo. In addition, Section 447.572, RSMo grants authority to the DIFP to determine compliance with the Uniform Disposition of Unclaimed Property Act, (Sections 447.500 et seq., RSMo).

The purpose of this examination is to determine if CLTIC complied with Missouri statutes and DIFP regulations and to consider whether company operations are consistent with the public interest. The primary period covered by this review is July 1, 2005, through June 30, 2006; however, examiners include all discovered errors in this report.

This report focuses on general business practices of CLTIC. The DIFP has adopted the NAIC published error tolerance rate guidelines. Examiners apply a 10% percent error tolerance criterion to underwriting and rating practices and a seven percent (7%) tolerance criterion to claims handling practices. Error rates greater than the tolerance suggest a general business practice.

The examination included, but was not limited to, a review of the following lines of business: Sales and Marketing, Underwriting and Rating, Claims Practices, Consumer Complaints, and Unclaimed Property.

CLTIC was incorporated in Virginia in 1992 as a part of LandAmerica Financial Group, Inc., (“LandAmerica”). As a part of LandAmerica Group, CLTIC is engaged in a host of inter-company agreements with other members of the holding company system. CLTIC’s two largest affiliated title insurers are TTIC, and LTIC. CLTIC and these other two companies re-domesticated to Nebraska in the summer of 2006.

CLTIC provides products and services to facilitate the purchase, sale, transfer and financing of residential and commercial real estate. Such products include title insurance, title search and examination, escrow and closing functions.

Commonwealth has its statutory home office and its main administrative office at 5600 Cox Road, Glen Allen, VA, 23060. The company’s complaint files were reviewed at the DIFP office in St. Louis. Commonwealth maintains a claims office in Dallas, TX. The large claims were reviewed at the Dallas, TX office. Small claims and a portion of the underwriting files were reviewed at the company office located at 2019 Walton Road, St. Louis, MO 63114. The examiners reviewed a portion of the agent underwriting files at the agent offices throughout the state.

The company is licensed by the DIFP under Chapter 381, RSMo, to write title insurance as set forth in its Certificate of Authority.

EXECUTIVE SUMMARY

The examination found the following areas of concern:

- During the examination, Commonwealth agent Guaranty Title, was closed because of mishandling of escrow accounts.
- The examiners found several unlicensed agents.
- The company used several unfilled forms.
- The company's Master Equity Line Loan Policy and Master Equity Loan Title Insurance Agreement provide for Title insurance without regard to the performance of an adequate title search.
- The company's direct operation as well as its independent agents used forms that were not filed with the Department of Insurance
- One of the agent files reviewed contained good funds violations.
- In many files reviewed the agent or the direct operation failed to record the security instrument within three business days of the transaction.
- In some instances the company failed to use the risk rate filed with the DIFP
- In some instances the company and its Agent overcharged for notary fees or recording fees.
- In some instances the company failed to adequately search or to adequately document the search.
- In some instances the company failed to show all known and recorded matters effecting title.

EXAMINATION FINDINGS

I. Sales and Marketing

The examiners were notified on 6/19/07 that LandAmerica had shut down Guaranty Title, an agent for CLTIC, due to unresolved issues with the agent's escrow accounts. LandAmerica's audit estimated \$4.5 million in escrow shortages. The agent had previously been behind in premium payments to the underwriter in the amount of \$400,000. Failure to remit premium in a timely manner is a violation of the agency agreement between the underwriter and the agent. A payment plan for this shortage had been agreed to between the agent and the underwriter.

On 12/9/07, the DIFP filed a complaint requesting the Administrative Hearing Commission find cause for disciplinary action against Guaranty Title Co. and its owners Rick Burton, Kathy Allen, and Stephanie Grey. Department's investigation into this matter is ongoing. On May 20, 2008, this complaint was dismissed with prejudice. A consent order was issued on May 20, 2008, wherein the Business Entity Producer License and the individual's Producer licenses were revoked.

A. Licensing of agents and agencies

One direct operation file reviewed by the examiners did not contain sufficient information to determine who prepared the property report. The company relied on this report in preparing its commitment to insure the title. The property report was produced on letterhead of "LandAmerica." LandAmerica is not licensed as an underwriter or a title insurance agent in the State of Missouri. The examiners can not identify the producer involved in the transaction.

Reference: Section 381.041.1, RSMo, and 20 CSR 300-2.200(3)(A)1.B and, (1)(A) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>File No.</u>
580740

The company provided a list of its agents to the Missouri examiners. GS Closing LLC was contained in that list. GS Closing LLC is not a licensed title insurance agency in the State of Missouri.

Reference: Section 381.031.17, .18, .19, RSMo, 20 CSR 700-1.010(3)(B), and 20 CSR 700-1.020(1)

<u>Agent</u>
GS Closing LLC

The following agents were named by the company as employees who are, or were at one time, involved in sales or marketing. The following individuals are not licensed with the DIFP

Reference: Section 381.031.17, .18, .19, RSMo, 20 CSR 700-1.010(3)(B), and 20 CSR700-1.020(1)

<u>Agent</u>
Susan Sapp-Lawrence
Phil Hutmser
Debbie Jost
Margaret Ayers
Dan Kraemer

The following agent appears as the individual to contact for information regarding the purchase of title insurance in advertisement 42288. This individual is not licensed as a title insurer with the DIFP.

Reference: Section 375.014.1, RSMo, and DIFP Bulletin 06-05 Licensure Requirements for Title Insurance Employees

<u>Agent</u>
Jennifer Fisher

B. Marketing practices

The examiners noted no errors in this review.

II. Underwriting and Rating Practices

In this section of the report, the examiners report their findings of the Company's title insurance underwriting and rating practices. These practices include the use of policy forms, adherence to underwriting guidelines, and premiums charged. Because of the time and cost involved in reviewing each policy file, the examiners use scientific sampling. The most appropriate statistic to measure the company's compliance is the percent of files in error. Errors can include, but are not limited to, any miscalculation of the premium based on file information, failure to timely record a deed of trust, and failure to otherwise observe Missouri statutes or DIFP regulations.

The examiners conducted three separate underwriting samples. The examiners' samples include one for Direct Operations, one for "affiliated" agents, and one for independent agents who sell policies underwritten by CLTIC.

A. Direct Operation

1. Forms and Filing- Direct Operation

The examiners reviewed all of CLTIC's policy forms to determine compliance with filing, approval and content requirements. This helps to assure that the contract language is not ambiguous and is adequate to protect those insured.

The examiners found the following errors in their review of direct underwriting files.

The company used commitment forms and policy forms not filed with the Director. The following commitments and policies contained standard exceptions different than those in the policy forms filed with the DIFP.

Reference: Section 381.211 RSMo, and 20 CSR 500-7.100(3)(A)

File No.	Policy No.	Form not filed	Date issued
215696	215696	owner's policy & commitment	7/22/05
M0601430	M0601430	owner's & loan policy & commitment	2/16/06
215012	215012	commitment, owner's policy	7/18/05
10849192	10849192	Commitment	4/18/06
M0509021	701-1655-0	owner's policy	10/6/05
217426	217426	Commitment	2/26/06
M0601552	M0601552	loan policy	3/8/06
M0603525	M0603525	loan policy	4/20/06
MO509383	M0603525	Commitment	9/23/05

The company has filed a Master Equity Line Loan Policy and a Master Equity Line Loan Title Insurance Agreement. The policy is fully effective when the lender and borrower have satisfied certain conditions and without regard to any information obtained in a search of the title. The insurer, the agency, and the agent may not write a policy of title insurance until a search of the title has been made. The policy of title insurance may not be written unless a determination of insurability of title has been made in accordance with sound underwriting practices. The company indicated they have not issued any of these policies and do not intend to at this time. However, the company declined to withdraw the policy filing with the DIFP so indicating they may wish to issue these policies in the future.

Reference: Section 381.071, RSMo

The company has not filed a risk rate for the Master Equity Line Loan policy. The risk rate provided for the Master Equity Line Loan Title Insurance agreement specifies that the agent will retain ½ of each premium collected as its commission. The net premium received by the company on the proposed risk rate of \$250,000 is \$25.00. The net premium received by the company on a risk of \$500,000.00 is \$60.00. The statutory reserve required for the Missouri risks is \$0.15 per \$1,000.00. The net premium received by the company would not be sufficient to permit establishment of the

required unearned premium reserve on certain risks. The company agrees with this criticism but indicates it has not issued any of these policies at this time. The company further indicated it may wish to issue these policies in the future.

Reference: Sections 381.081 and 381.181, RSMo.

The following loan policies include certain standard exceptions. Standard exceptions are not included in the loan policy forms filed with the DIFP Director.

Reference: Section 381.211, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
601107	601107	Direct

2. Underwriting and General Handling - Direct Operation

Field Size: 16,960
 Sample Size: 99
 Type of Sample: Random
 Number of Errors: 57
 Error Rate: 57.5%
 Within Dept. Guidelines: No

Because one policy was cancelled prior to the completion of the order, it was removed from the sample and field size.

NOTE: A star (*) after a policy number denotes the policy was cited earlier in the underwriting studies for a different error, but was only counted once in the total number of errors

a. Failure to Timely Record

The agency acted as settlement agent and failed to record the security instrument for the following transactions within three business days of the closing after receipt of the funds.

Reference: Section 381.412, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. Business of Days</u>
596468	596468	3/3/06	5/1/06	40
590557	590557	12/29/05	1/30/06	20
585380	585380	10/13/05	11/10/05	22
580740	580740	8/29/05	9/22/05	17
579156	579156	8/1/05	8/23/05	16
579904	579904	9/1/05	9/21/05	13

<u>File No.</u>	<u>Policy No.</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. Business of Days</u>
600771	600771	6/12/06	6/28/06	12
600510	600510	6/02/06	6/20/06	12
593761	593761	4/10/06	4/24/06	10
585486	585486	9/28/05	10/12/05	9
601016	601016	6/15/06	6/28/06	9
602749	602749	6/27/06	7/10/06	8
595277	595277	3/29/06	4/10/06	8
602412	602412	6/28/06	7/10/06	7 (2 deeds)
592838	592838	1/30/06	2/8/06	6
582928	582928	11/21/05	12/1/05	8
592414	592414	3/10/06	3/20/06	5
593199	593199	2/10/06	2/22/06	7
593693	593693	2/10/06	2/22/06	7
582053	582053	9/30/05	10/11/05	7
588819	588819	12/14/05	12/23/05	7
586553	586553	11/8/05	11/14/05	4
603725	603725	7/24/06	7/28/06	4
576501	576501	8/16/05	8/22/05	4
594061	594061	2/21/06	2/27/06	4
591164	591164	1/18/06	1/24/06	4
588365	588365	11/23/05	12/1/05	5
598407	598407	4/28/07	5/4/07	5
586435	586435	11/1/06	11/7/06	4
579718	579718	7/22/05	7/28/05	4
583003	583003	8/29/05	9/2/05	4
571937	571937	7/8/05	7/14/05	4
584772	584772	10/21/05	10/27/05	4
594443	594443	3/7/06	3/13/06	4
591164	591164	1/18/06	1/24/06	4
588615	588615	11/23/05	12/1/05	6

b. Risk Rate

The risk rate for a title insurance policy means the total consideration paid by or on behalf of the insured for a title insurance policy. It includes the title insurance agent's commission but not fees paid for the performance of title related services other than the risk rate. Charges include fees for abstracts, title search and examination, handling of escrows, settlements or closings. The company charged a rate that was different than that filed with the DIFP.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Rate shown on Policy (Rate charged)</u>	<u>Filed Risk Rate for Policy</u>
10849192	10849192	\$105.00	\$125.00
215012	215012	\$1,013.00	\$1,849.20
M0508483	701-16755-L	\$76.82	\$70.80
10791333	10791333	\$140.00	\$160.00
M0512104	701-16755-O	\$500.53	\$658.00
592414*	592414	\$118.70	\$100.00
583003*	583003	\$15.00	\$4.00
571937*	571937	\$142.50	\$85.50
M0510468	M0510468	\$30.48	\$50.80
M0605007	M0605007	\$84.58	\$120.80
M0603304	M0603304	\$110.24	\$145.16
M0603525	M0603525	\$99.73	\$149.15
M0601552	M0601552	\$4.00	\$401.78
M0601430	M0601430	\$264.72	\$449.20
10742369	10742369	\$200.00	\$274.08
585380*	585380	\$336.40	\$200.92
587032	587032	\$278.80	\$167.89
593693*	593693	\$178.20	\$106.92
M0506517	M0506517	\$91.51	\$152.52
583922	2 policies	\$78.00	\$130.20
601107	601107	\$31.92	\$53.20
601016*	601016	\$118.80	\$198.00

Thomson Title closed the following transaction in escrow and disbursed funds on 2/23/06. The only charge collected was a settlement fee of \$350.00. The company's file contains an invoice indicating the agent was given a 30% premium refund on 3/7/06. This refund is a fee paid without receiving services. The company has made an impermissible payment of a rebate, inducement, referral fee or other fee without receiving a service in return.

Reference Sections 381.141, and 381.161, RSMo

<u>File No.</u>	<u>Policy No.</u>
MO601430*	MO601430

c. Total Charges

The following policy did not contain the total charges paid for the policy. No policy, standard form endorsement or simultaneous instrument which provides title insurance shall be issued unless it

contains the total amount to be paid for the issuance of the policy and the risk rate for the policy.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100 (3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Premium</u>	<u>Total Charges</u>
602282	602282	\$671.70	500.00

d. Improper Fees

The company charged third party fees that it does not pay. The company charged notary fees in excess of the statutory maximum. The total overcharges are \$99.00. The company agreed with this Criticism and agreed to refund the overcharge.

Reference: RESPA Section 8, 12 USCA sec. 2607(a-b), and Section 486.350.1, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Overcharge</u>
585486*	585486	\$99.00

The company charged third party fees that it did not pay. The company charged recording fees for instruments it did not record. The company agreed to the criticisms and agreed with refund the amount to the insured.

Reference: RESPA Section 8, 12 USCA sec. 2607(a-b), and Section 486.350.1, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Overcharge</u>
594443*	594443	\$54.00
591164*	591164	\$30.00
588615*	588615	\$107.00
584772*	584772	\$51.00
595140	595140	\$60.00
598811	598811	\$33.00
601016*	601016	\$66.00

The following file was criticized because of an apparent escrow shortage. The company supplied additional information and revised disbursement summaries indicating that the escrow account was balanced at the time of escrow. The criticism regarding the escrow shortage was withdrawn in view of the additional information. However, the file as supplied for review did not contain enough information to permit the examiner to conclude that the escrow was in balance. The company must maintain its books and records in such a manner so that the practices of the insurer in the areas of rating, underwriting, and marketing can be readily determined during market conduct examinations.

Reference: 20 CSR 300-2.200(2) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>File No.</u>
583922*

e. Exceptions

The following loan policy contains numbered exceptions that are not specific to the transaction or the property. The provisions of the 1992 ALTA Loan policy do not permit the company to avoid liability for matters discernable on the record but not specifically excepted by the policy. The practice of inserting generic exceptions may mislead the insured. This practice can be an attempt to conceal the benefits, coverages or other provisions of a policy, a prohibited practice.

Reference Section 375.1007(1), RSMo, and 20 CSR 100-1.120(1)

<u>File No.</u>
MO603525*

f. Miscellaneous

The company failed to use sound underwriting practices by failing to make an exception for a right of occupancy extending for a period of 10 years beginning about six weeks after the date of policy. The borrower executed an affidavit including recitals that the property had been leased.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>
10849192*	10849192

The following owner's policy includes exceptions for survey matters and for unrecorded easements. Both the owner and lender policies include an exception for provisions of statutes making condominiums possible in Missouri. The property is described as a condominium. The exceptions are not appropriate for inclusion in the policies. The loan policy and an exception for the condominium statute is incongruous in a policy issued with the ALTA 4 endorsement.

Reference: Section 381.071.1.2, RSMo

<u>File No.8</u>	<u>Policy No.</u>
M0601430*	M0601430

The company issued an owners policy without showing all outstanding and enforceable recorded liens or other interests against the title to be insured. The recorded survey shows a proposed right of way, although the file does not indicate that the company searched for or made any inquiry as to the status of the proposed right of way. The recorded survey includes a notation that the property is

subject to a blanket waterline easement, but the company made no exception for the matter. The title search only went back to a deed recorded in 1994. The company failed to make a determination of insurability in accordance with sound underwriting practices by failing to show all interests against the title to be insured.

Reference: Sections 381.071.1.2, and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>
215012*	215012

The company failed to conduct a title examination for any period prior to the date of a commitment from another title insurer. The company's examination of title was not sufficient to assure that all known and recorded matters affecting title were reported on the owner's policy of title insurance. The company failed to maintain evidence of examination of title in this file for a period of not less than 15 years.

Reference: Section 381.071, RSMo.

<u>File No.</u>	<u>Policy No.</u>
M0601430*	M0601430*

The loan policy in this file includes an exception for an earlier deed of trust that had also been in favor of the lender insured by the present policy. The company made an exception for the earlier deed of trust and insured over any risk of loss occasioned "by entry of a final decree of a court of competent jurisdiction determining the foregoing to be a lien superior to the estate or interest insured hereunder." The company satisfied the lien of the older deed of trust by payment from escrow and recorded the deed of release. There is no basis for the exception and apparent attempt to limit coverage. The company failed to insure in the manner agreed. This is not a sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>
M0510468*	M0510468

The company closed this escrow transaction on 11/18/05 and is bound by the terms of its commitment to insure the property as a condominium. However, the policy has not yet been issued. The company relied on a document called "Closing Pay-out Scenario" for loan payoff information and other closing related charges. The source of the document is unclear and it is not dated. The escrow agent has a fiduciary responsibility to all parties involved to use only verified information. Failing to use verified information for payoff is not sound underwriting practice. The company agrees with the criticism and indicates that the closing officer now requires payoff statements from the lender.

Reference: Section 381.071.1.2, and .3, RSMo

<u>File No.</u>	<u>Policy No.</u>
582928*	582928

The commitment to insure describes the property as a condominium. The file contains no indication whether the company analyzed potential losses arising by reason of defects in the condominium declarations. The company is required to make a determination of insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, and .3, RSMo.

<u>File No.</u>	<u>Policy No.</u>
582928*	582928

The company failed to preserve and retain evidence of the examination of title for a period of not less than 15 years.

Reference: Section 381.071.1.2, and .3, RSMo

<u>File No.</u>	<u>Policy No.</u>
582928*	582928
10742369*	403036

The company failed to make an adequate search of the title prior to issuing a policy. This is not a sound underwriting practice.

Reference: Section 381.071.1.2, and .3, RSMo

<u>File No.</u>	<u>Policy No.</u>
580740*	580741

In the following files the company failed to show all known and recorded matters affecting title to the property in the owner's policy.

Reference: Section 381.071.1.2, and .2, RSMo

<u>File No.</u>	<u>Policy No.</u>
583346	583346
593693*	563693

An easement is shown on the chain of title but is not reported in the commitment or the policy. In addition, the company failed to adjust for assessments for maintenance of private streets at the escrow closing. The company failed to adequately examine the title and report all known and recorded matters affecting the tile on the owner’s policy.

Reference: Section 381.071.2, RSMo

<u>File No.</u>	<u>Policy No.</u>
583346*	583346*

This file involved a real-estate transaction where the St. Louis County Catholic Church Real Estate Corporation conveyed property. The bylaws of the Corporation reserved powers to the Archbishop of St. Louis. These reserved powers include

- Approval of any borrowing or guaranties by the corporation
- Approval of the purchase, sale or other acquisition, disposition or transfer of real estate, including any interest therein, by the corporation.

In addition, an indenture of trust has been established, labeled St. Louis County Catholic Church Real Estate Trust for buying, selling, and conveying real estate.

The trust and the corporation have no authority to convey title without the Archbishop’s written approval. Nothing in the file demonstrates that the Archbishop authorized the transaction. This is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>
590901	590901

3. Failure to Issue Policies in a Timely Manner

Failure to issue policies in a timely manner is not a violation of any statute or regulation. However, long delays in issuing the policy is not in the best interest of the consumer. The underwriter is not aware of reportable premium until the policy is issued and may be unable to promptly pay premium taxes when due. The company has not fully complied with record maintenance obligations until the policy has been issued. In addition, the insured does not receive notice of how to file a claim or the address and phone number of the underwriter until the policy is issued.

Note: SB 66, Section 381.038.3, RSMo, eff. 1/1/08, will require insurers to issue the policy within 45 days after completion of all requirements of the commitment for insurance.

<u>File No.</u>	<u>Policy</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>No. of Days to Issue</u>	<u>Agency</u>
581005	581005	8/17/05	2/21/07	553	Direct
579645	579645	8/3/05	11/29/06	483	Direct
MO510468	701-1655-L	11/21/05	2/13/07	449	Direct
588615	588615	12/1/05	1/22/07	417	Direct
585380	585380	11/10/05	12/8/06	393	Direct
579156	579156	8/23/05	8/30/06	372	Direct
583346	583346	9/14/05	9/15/06	366	Direct
592838	592838	2/8/06	1/17/07	343	Direct
590557	590557	1/30/06	1/10/07	345	Direct
594804	594804	3/10/06	2/21/07	348	Direct
580740	580740	9/22/05	8/21/06	333	Direct
582684	582684	9/5/05	7/18/06	316	Direct
598407	598407	5/4/06	2/27/07	299	Direct
594061	594061	2/27/06	12/12/06	288	Direct
588819	588819	12/13/05	10/9/06	300	Direct
595140	595140	3/16/06	12/29/06	288	Direct
579718	579718	7/28/05	5/10/06	286	Direct
591164	591164	1/24/06	11/2/06	282	Direct
582053	582053	9/30/05	7/7/06	280	Direct
591164	591164	1/24/06	11/2/06	282	Direct
592106	592106	1/24/06	10/23/06	272	Direct
586008	586008	11/10/05	7/27/06	259	Direct
598811	598811	5/1/06	1/22/07	266	Direct
584171	584171	9/20/05	6/9/06	262	Direct
583509	583509	9/19/05	5/22/06	245	Direct
593761	593761	04/24/06	12/15/06	235	Direct
595924	595924	4/26/05	12/12/06	595	Direct
587032	587032	11/14/05	6/15/06	213	Direct
601107	601107	6/8/06	12/20/06	195	Direct
596972	596972	4/11/06	10/9/06	181	Direct
587448	587448	11/10/05	5/17/06	188	Direct
600771	600771	6/12/06	12/12/06	183	Direct
600510	600510	4/10/06	10/7/06	180	Direct
579396	579396	9/14/05	5/9/06	237	Direct
584510	584510	9/29/05	3/20/06	172	Direct
602282	602282	6/20/06	10/9/06	111	Direct
600510	600510	11/22/06	6/20/06	155	Direct
600510	600510	6/20/06	11/22/06	155	Direct
571937	571937	7/14/05	12/8/05	147	Direct

<u>File No.</u>	<u>Policy</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>No. of Days to Issue</u>	<u>Agency</u>
585172	585172	11/1/05	3/28/06	147	Direct
593693	593693	2/22/06	7/13/06	141	Direct
MO601430	701-16755-O	2/23/06	7/11/06	138	Direct
594443	594443	3/13/06	6/28/06	107	Direct
MO508483	701-16755-L	9/9/05	12/23/05	105	Direct
601016	601016	6/28/06	10/11/06	105	Direct
579904	579904	9/21/05	12/28/05	98	Direct
586202	586202	10/25/05	1/27/06	94	Direct
MO509021	701-16755-O	10/6/05	12/30/05	85	Direct
MO507388	701-16755-O	8/19/05	11/10/05	83	Direct
592414	592414	3/20/06	6/2/06	74	Direct
602749	602749	6/27/06	8/29/06	63	Direct

The company failed to issue any policy in the following files.

<u>File No.</u>	<u>Policy</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>Agency</u>
576501	576501	8/16/05	Not issued	Direct
583922	583922	10/14/05	Not issued	Direct
585486	581005	10/12/05	Not issued	Direct
584348	584348	11/8/05	Not issued	Direct
588365	588365	12/01/05	Not issued	Direct
586435	586435	11/7/07	Not issued	Direct
588221	588221	12/8/07	Not issued	Direct
582928	582928	12/1/05	Not issued	Direct
590901	590901	12/22/05	Not issued	Direct
578213	578213	7/18/05	Not issued	Direct
593199	593199	2/22/06	Not issued	Direct
597258	597258	4/26/06	Not issued	Direct
600320	600320	5/26/05	Not issued	Direct
601883	601883	6/23/06	Not issued	Direct
602412	602412	7/10/06	Not issued	Direct
602412	602412	7/10/06	Not issued	Direct
603725	603725	7/18/06	Not issued	Direct

B. Agent

1. Forms and Filings

The examiners reviewed CLTIC's policy forms to determine compliance with filing approval, and content requirements. This helps to assure that the contract language is not ambiguous and is adequate to protect these insured.

The examiners found several violations of the forms filing and use standards established by the statute and the related regulation. Each of these violations involved use by the agent of general exceptions that are not included in the forms filed by the company with the director. The language used by the company in the general exceptions in its filed forms is quite specific. The examiners assume the company has carefully chosen the language of the general exceptions filed in their commitment and policy forms.

The examiner found that agents used general exceptions in owner's and mortgage policies that were not the same as the general exceptions used in the filed forms. Those policies in violation are listed as follows:

Reference: Section 381.211, RSMo, and 20 CSR 500-7.100(3)

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
H21289	H55-0017579	Mid-West Title
510300	H55-0174985	Willard Title
05COLETAMARA	H55-0127364	Barton County Title
60112662	H55-0188099	Accurate Title
48008	574-0013207	DD Hamilton
15024T	H55-0160617	Boonville Abstract
050619	H55-175932	Network Title
TA74279	H55-0074977	Title Associates
TA75889	H55-075001	Title Associates
0501099KC	H97-0063827	Title America
05-0292	B75-0062937	Wiles Abstract
06-0553	B75-0082581	Wiles Abstract
21707	B75-0068220	Moentmann Abstract
20332	H55-0085936	Moentmann Abstract
51341-05	B75-0073445	Stone County Abstract
00007779	B75-0065848	Preferred Land Title
GR1450	B75-0051416	Great Rivers Title
22828-a	B75-0076144	Thomson Title
21659-a	B75-0046573	Thomson Title
19179-a	B75-0071101	Thomson Title
23168	B75-0076154	Thomson Title

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
33948	B75-0050905	Assured Title
W1305	B75-0055050	Assured Title
06OFFGARNER	B75-0065114 H55-0127430	Barton County Title
AW027728	H55-0161802	Archway Title
05001594	H55-0113178	US Title

The commitments in the following files include certain general exceptions. The company has not included these general exceptions in the Schedule B policy or commitment filed with the DIFP. The company used commitment forms that were not filed with the director.

Reference: Section 381.211, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
AT15996	H55-0141138 B75-0062441	Steelman Abstract
G9587	B75-0020755	Gateway Title
0501099KC	H97-0063827	Integrity Land Title
28337	B75-0031511	Lake of the Ozarks
04FT3290	H55-01255295	Freedom Title
04FT7618	H55-0125283	Freedom Title
04FT8561	H97-0054046	Freedom Title
05FT03815	H44-Z009891	Freedom Title
05FT0422	H97-0054084	Freedom Title
05FT05850	H44-Z004461	Freedom Title
05FT06732	H44-Z006180	Freedom Title
05FT08449	H44-Z007805	Freedom Title
05FT10430	H44-Z007779	Freedom Title
06FT01566	H44-Z007582	Freedom Title
06FT01615	H44-Z005806	Freedom Title
AW023189	H55-0118709	Archway Title
AW023986	H55-0136152	Archway Title
AW024046	H55-0136178	Archway Title
AW024868	H55-0142051	Archway Title
AW026390	H55-0153806	Archway Title
AW027728	H55-0161802	Archway Title
05ET0370	A82-0353403	Equity Title
057041	B75-0029050	Davies County

The following commitment forms contain the following language:

This commitment is not an abstract examination, report or representation of fact or title and does not create and shall not be the basis of any claim for negligence, negligent misrepresentation or other tort claim or action. The sole liability of the Company and Integrity Land Title Company, Inc. shall arise under and be governed by the Conditions of this Commitment and / or any Policy of Title Insurance subsequently issued.

This language is not filed with the DIFP.

Reference: Section 381.211, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
DRIT626202	H97-0039753	Integrity
IT1604204	H44-ZO12560	Integrity
IT1790105	H55-Z005344	Integrity
IT1965005	H44-Z012323	Integrity
IT2154305	H44-Z008466	Integrity
IT2283606	H55-Z006940	Integrity

2. Underwriting General Handling

Field Size: 42,939
Sample Size: 95
Type of Sample: Random
Number of Errors: 59
Error Rate: 62.1%
Within Dept. Guidelines: No

The examiners initially sampled 100 files. Five files to be reviewed were issued by Guaranty Title in Nixa, Missouri. The examiners were notified just prior to their review of those files that the underwriter was closing the offices due to unresolved issues with the escrow accounts of Guaranty Title. Therefore, the five Guaranty Title files were not reviewed and were removed from the sample.

a. Failure to Timely Record

The agency acted as settlement agent and failed to record the security instrument for the following transactions within three (3) business days of closing after receipt of the funds.

Reference: Section 381.412, RSMo.

<u>File No</u>	<u>Policy No</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. of Business of Days</u>	<u>Agent</u>
ATI5996	OB750062441 MH550141138	11/4/05	11/16/05	8	Steelman Abstract
200660073	200660073	2/16/06	2/23/06	5	Platinum Title
0500488STL	H97-0045562	7/8/05	8/5/05	20	Title America
0403085STL	1197-0045527	5/20/04	6/10/04	15	Title America
0400353	B75-0008652 H55-0123454	11/10/04	12/22/04	30	Advanced
0501096	B75-0061028 H55-0172050	6/14/05	7/21/05	29	Advanced
MC050566	B75-0043857 H55-0100544	6/20/05	6/24/05	4	Meridian Title
RM102303	J33-001756	1/24/05	10/28/05	252	Residential Title Services
GR1682	H55-0166402 (2 nd)	8/12/05	8/19/05	5	Great Rivers
7779	B75-0065848 H55-0137968	10/6/05	10/14/05	5	Preferred Land Title
TA67519	H97-0008637 0049528003	6/25/03	7/2/03	5	Title Associates
0501099KC	H97-0063827	10/13/05	10/24/05	7	Title America
33948	B75-0050905 H55-0119329	9/16/05	9/22/05	4	Assured
06121	B75-0045991	4/13/06	4/21/06	6	Oak Hills
TA75889	H55-075001	11/30/04	12/16/04	11	Title Associates
06FT01566	H44-Z007582	4/11/06	4/24/06	9	Freedom
04FT3290	H55-01255295	6/9/04	6/17/04	6	Freedom
AW024868	H55-0142051	3/23/05	3/29/05	4	Archway
AW023189	H55-0118708	10/27/04	11/4/04	6	Archway
AW024046	H55-0136178	1/11/05	1/19/05	6	Archway
06FT01615	H44-Z005806	3/6/06	3/10/06	4	Freedom
05FT10430	H44-Z007779	12/5/05	12/14/05	7	Freedom
04FT7618	H44-0125283	12/15/04	12/22/04	5	Freedom
04FT8561	H97-0054046	12/31/04	1/7/05	4	Freedom
05FT05850	H44-Z004461	7/29/05	8/5/05	5	Freedom
AW027728	B75-0067309 H55-0161802	10/29/05	11/17/05	14	Archway
AW026390	H55-0153806	8/17/05	8/24/05	5	Archway
IT1790105	H55-Z005344	4/13/05	4/20/05	5	Integrity

<u>File No</u>	<u>Policy No</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. of Business of Days</u>	<u>Agent</u>
IT2154305	H44-Z008466	11/28/05	12/08/05	8	Integrity
AW023986	H55-0136152	2/4/05	2/17/05	8	Archway
05001594	H55-0113178	2/24/05	3/9/05	9	US Title
05FT03815	H44-Z0009891	6/13/05	6/17/05	4	Freedom
05FT06732	H44-Z006180	8/31/05	9/9/05	6	Freedom

b. Incorrect Risk Rate on Policy

The agent reported an incorrect risk rate on the policy. The agent is required to use risk rates filed with the DIFP.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy</u>	<u>Amount listed on Policy</u>	<u>Filed Risk Rate</u>	<u>Agent</u>
0501096*	B75-0061028 H55-0172050	\$321.00	\$46.00	Advanced Title
05CXXXX 20060861	H55-0127364 B75-0085751 H55-0154606	\$43.50 None	\$58.00 \$56.00	Barton County Platinum Title
06OXXXX	H55-0127430 B75-0065114	\$79.50	\$106.00	Barton County Title
20051110	205-925367 H44-0006233	\$102.72	\$171.20	Platinum Title
057041	B75-0029050 H55-0135068	\$301.00	\$120.40	Daviess County Title
60112662	H55-0188100	\$75.00	\$18.00	Accurate Title
RM104802	H970050960	\$69.36	\$80.40	Residential Title
RM102303*	J33-001756	\$90.00	\$71.64	Residential Title
6417405	H55-0079369	\$49.13	\$82.00	Tri-lakes
11940	B75-0025943	\$43.80	\$82.00	Bollinger County Abstract
05-0053	B75-0059789	\$120.00	\$137.20	Wiles Abstract

<u>File No.</u>	<u>Policy</u>	<u>Amount listed on Policy</u>	<u>Filed Risk Rate</u>	<u>Agent</u>
05-0053A*	H55-0143995(2 nd)	\$21.80	\$4.00	Wiles Abstract
05-0292	B75-0062937	\$44.80	\$56.00	Wiles Abstract
05-378D	H55-0121257	\$44.00	\$51.60	Cameron Title
CW-2155	H55-0113415	\$90.96	\$151.11	Missouri Abstract
TA67519*	H97-008637	\$54.00	\$89.92	Title Associates
TA74279	H55-0074977	\$160.00	\$96.00	Title Associates
05-25403	B75-0073783 B75-0061844	\$136.08	\$206.00	Abbey
05-C6844	H55-0072515	\$46.40	\$60.40	Abbey
06-25768	H55-0186044	\$42.00	\$58.00	Abbey
05-21501	B75-0054666	\$51.60	\$81.88	Abbey
05391	H55-0123378 B75-0045929	\$12.00	\$4.00	Oak Hills
06121*	H55-0168434 B75-0045991	\$12.00	\$4.00	Oak Hills
H21289	B75-0009465 H55-0017579	\$4.00	\$16.53	Mid-West
AW024868*	H55-0142051	\$79.20	\$89.20	Archway
AW023189*	H55-0118709	\$90.72	\$110.72	Archway
AW024046*	H55-01316178	\$118.65	\$138.65	Archway
AW023986*	H55-0136152	\$67.84	\$77.84	Archway
AW026390*	H55-0153806	\$133.25	\$153.28	Archway
06FT01566*	H44-Z007582	None	\$4.00	Freedom
04FT3290*	H55-01255295	None	\$52.80	Freedom
06FT01615*	H44-Z005806	None	\$116.25	Freedom
05FT10430*	H44-Z007779	None	\$9.60	Freedom
04FT85561*	H97-0054046	None	\$207.60	Freedom
05FT05850*	H44-Z004461	None	\$102.81	Freedom
05FT03815*	H44-Z009891	None	\$50.00	Freedom
05FT0422*	H970054084	None	\$103.30	Freedom
05FT06732*	H44-Z006180	None	\$4.00	Freedom
AW027728	BB75-0067309	\$84.00	\$94.00	Archway
AW027728*	H55-0161802	\$46.08	\$4.00	Archway

The company closed the following transactions. The borrower in the insured deed of trust was

insured by the company as owner in a previously issued policy of title insurance. As such, the loan policy was eligible for the reissue rate. The company failed to charge the correct rate.

The company is required to use the risk rates it has filed with the Director.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy</u>	<u>Amount listed on Policy</u>	<u>Filed Reissue Risk Rate</u>	<u>Agent</u>
48008	574-0013207	\$62.90	\$50.69	DD Hamilton

c. Total Charges

No policy, standard form endorsement or simultaneous instrument which provides title insurance coverage shall be issued unless it contains the total amount paid for the issuance of the policy and the risk rate. Charges include, but are not limited to, fees for document preparation, fees for the handling of escrows, settlements or closing. The following policies were issued in amounts that exceeded the allowable charge.

Reference: Sections 381.181, and 381.031.4 and .14, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy No.</u>	<u>Total on Policy</u>	<u>Total Charged</u>	<u>Agency</u>
AT15996*	B75-0062441 H55-0141138	\$885.00	\$960.00	Steelman Abstract
510300*	B75-0078774 H55-0174985	\$244.00	\$394.00	Willard Title
042163	H55-0088478	\$40.00	\$585.00	Boyd & Boyd
042163(2 nd)*	H55-0088479	\$40.00	\$90.00	Boyd & Boyd
28337*	B75-0031511	\$48.13	\$148.13	Lake of the Ozarks
0501099KC*	H97-0063827	\$245.00	\$345.00	Title America
IT2283606	H55-Z006940	\$348.00	\$423.00	Integrity
06FT01615*	H44-Z005806	\$425.00	\$725.00	Freedom

d. Exceptions

The following file contains a deed of conveyance creating an easement for sewer purposes. The deed is within the chain of title for the subject property. There is no indication in this file that the interests

in the easement have merged or have been terminated. This known exception to title was not reported in the commitment or the policy issued in this file. Omitting a known exception to title is not sound underwriting.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
IT2154305*	H44-Z008466	Integrity Land Title

The loan policy in this file insures a construction loan. The property in question was subject to a contract for sale dated 12/5/05. The purchaser named in the contract for sale had a significant equitable interest in the property. The contract should be shown as an exception to title. It is not sound underwriting practice to omit a known exception to title.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
IT2283606*	455-Z006940	Integrity Land Title

In the following file, the agent closed two simultaneous loans in a refinance transaction, one loan specifically junior to the other. The loan in file AW023986 was for \$84,800.00 and is the subject of the mortgage policy issued in this file. The second loan, in file AWA23986 was for \$10,600.00 and is not covered by a title insurance policy. The policy issued for the first mortgage lien does not report the second mortgage as an exception to the title. It is not sound underwriting practice to omit a known exception to title.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
AW023986*	H55-0136152	Archway

The policy in the following file reports a beneficiary deed as an exception. The beneficiary deed is not an exception to title. It is not a sound underwriting practice to show as an exception a matter that does not affect the title.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
DRIT626202	H97-0039753	Integrity Land Title

e. Improper Fees

In the following files, the agent charged recording fees to the buyer in excess of the actual recording fees. In several of these cases the company refunded the overcharge during the examination.

Reference: RESPA, Sec 8(b), 12 USCA sec. 2607(a-b), and 24 CFR sec. 3500.14.

<u>File No.</u>	<u>Policy</u>	<u>Overcharge</u>	<u>Agent</u>
AW024046*	H55-0136178	\$14.00	Archway
AW026390*	H55-0153806	\$32.00	Archway
<u>File No.</u>	<u>Policy</u>	<u>Overcharge</u>	<u>Agent</u>
05FT05850*	H44-Z004461	\$54.00	Freedom
06FT01615*	H44-Z005806	\$57.00	Freedom
AW024868*	H55-0142051	\$12.00	Archway
TA75889*	H55-075001	\$33.00	Title Associates

In the following files, the agent charged notary fees to the buyer in excess of the actual fee.

Reference: Section 486.350.1, RSMo, RESPA, Sec 8(b); 12 USCA sec. 2607(a-b); and 24 CFR sec. 3500.14.

<u>File No</u>	<u>Charge</u>	<u>Notarized Signature maintained in File</u>	<u>Proper Notary Charge</u>	<u>Agent</u>
AW024046*	\$25.00	3	\$6.00	Archway
AW026390*	\$25	6	\$12.00	Archway
AW024868*	\$25.00	2	\$4.00	Archway

In the following file, the agent charged \$100.00 for a simultaneous lenders policy at the time of the escrow closing, 12/1/03. The agent disbursed the \$100.00 charges for the simultaneous lender's policy to its own accounts on 12/1/03.

The agent issued the owner's policy for the 12/1/03 transaction on 2/4/05, but not the loan policy. The agent file contains a copy of the 12/1/03 deed of trust that was to be insured. That copy includes a handwritten note indicating that 12/1/03 deed of trust had been released and an additional handwritten note reading "No Policy wrote (sic)"

The agent supplied a copy of the owner's policy from the 12/1/03 transaction for this review, by fax of 9/7/07. The cover page accompanying the copy of the owner's policy includes a handwritten note reading "This is the only policy for Commonwealth."

The loan policy has not been issued. The notations indicate the agent does not intend to issue the loan policy. The fee of \$100.00 for the loan policy as collected by the agent on 12/1/03 was for merchandise and services not delivered.

Reference: Section 381.131, RSMo

<u>File No.</u>	<u>Overcharge</u>	<u>Agent</u>
G9587	\$100.00	Gateway

In the following file, the owner's policy has not been issued. The filed risk rate for the owner's policy is \$305.44 and the filed risk rate for the simultaneous loan policy of title insurance was \$4.00, a total risk rate of \$309.44. The settlement statement shows that the agent charged a total of \$100.00 for both policies, an amount substantially less than the filed risk rate for these policies. The purchaser in this sale transaction is a loan officer at a mortgage brokerage firm that is sometimes a customer of the agent.

The company and the agent are not permitted to charge a risk rate that is other than the risk rate filed with the Director.

The discounted premium charged to the purchaser was effectively a rebate, inducement, and referral fee paid for the referral of title insurance business and without receiving any other service in return.

Reference: Sections 381.141, 381.161, and 381.181, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
05FT06732*	H44-Z006180	Freedom

f. Good Funds

The agent conducted the escrow closing on 6/14/05 and disbursed funds on the same date. The agent recorded the deeds on 7/21/05. The settlement statement called for the buyer to provide \$12,585.38 to close the transaction. The agent received a check for that amount drawn on the account of Jobsite Recycling, LLC, dated and deposited it on 6/14/05, the date of disbursement.

Funds not received in certified form and not exempt from the statutory good funds provisions must remain on deposit for 10 days prior to disbursement from escrow.

Reference: Sections 381.071.1.2, and 381.412, RSMo.

<u>File No.</u>	<u>Policy Number</u>	<u>Agent</u>
0501096*	B75-09961028 H55-0172050	Advanced Title

g. Disbursement Violations

The settlement statement required \$12,585.38 to be provided by the buyer. The agent accepted funds from a source other than the buyer. The Settlement statement provided for disbursement of \$258,220.37 to DHP investments LLC, as construction funds. The agent disbursed \$70,000.00 to DHP Investments LLC, and disbursed the balance to parties not identified on the settlement

statement.

The settlement statement provided for disbursement of \$5,000.00 as net proceeds to the seller. The agent disbursed no funds to the seller. Instead, the agent disbursed \$5,000.00 to an individual not identified on the settlement statement.

It is not sound underwriting practice to disburse funds from escrow in a manner that may mislead a lender or that may give rise to a loss under the terms of an insured closing letter.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
0501096*	B75-09961028 H55-0172050	Advanced Title

h. Miscellaneous Issues

Information contained in the search of title done in 2006 indicates that the prior owner was divorced during or prior to 1998. The file contains no evidence of a search for the decree of dissolution and no indication as to the effects of the divorce on interests in the title. The company is required to retain evidence of the examination of title for not less than 15 years.

Reference: Section 381.071.1.2 and .3, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
510300*	B75-0078774 H55-0174985	Willard Title

There is no indication in the following files that the company performed an independent examination of title. The company's examination of title was not adequate to assure all known and recorded matters affecting title would be reported on the owner's policy of title insurance. The company is required to maintain evidence of examination of title in its files for a period of not less than 15 years.

Reference: Section 381.071, RSMo

<u>File No.</u>	<u>Agent</u>
W1363A*	Assured Title
W1158C	Assured Title

The insurer failed to maintain its books, records in a manner so that underwriting practices for the following files may be readily ascertained. The examiner could not determine the insurance producer involved in the transaction. The examiner could not determine who performed the examination of title.

Reference: 20 CSR 300-2.200(2), 20 CSR300-2.200(3)(A)1.B. (as amended 20 CSR 100-8.040, eff. 7/30/08), and 20 CSR 500-7.200(3)(A)

<u>File No.</u>	<u>Agent</u>
51341-05*	Stone County Abstract
R3580	Choice Land Title & Escrow

The following file did not contain a policy. The insurer failed to maintain its books and records in a manner so that underwriting practices may be readily ascertained. The examiner could not determine if the Deed of Trust was recorded, when or if the policy was issued, or if the charge and risk rate were correctly shown on the policy.

Reference: 20 CSR 300-2.200(2), and (3)(A)1.B. (as amended 20 CSR 100-8.040, eff. 7/30/08), and 20 CSR 500-7.200(3)(A)

<u>File No.</u>	<u>Agent</u>
050619*	Network Title

The loan in this transaction was closed in escrow on 12/06/2005. The deed of trust as executed had a face amount of \$220,000.00. The agent issued the loan policy on 12/08/2005. The borrower rescinded the transaction on 12/19/2005. The loan was not funded by the lender, and it appears that the deed of trust was never recorded.

Title in this file vested in a tenancy by the entireties. The deed of trust named both members of the tenancy by the entireties in the grant clause and both executed the deed of trust. However, the policy, as written by the agent, named only one member of the entireties as borrower and vestee.

It is not sound underwriting practice to insure a mortgage prior to a proper determination that the mortgage serves as security for a genuine obligation. Furthermore, it is not sound underwriting to inaccurately name the vested owner or the borrower when issuing a loan policy of title insurance.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
05FT08449*	H44-Z007805	Archway

The following commitment to insure contained a requirement reading: “Clarify the heirs of Rxxx E. Pxxxxxx and Rxxx Exxx Deceased, as stated in an Affidavit as to Heirs, according to instrument recorded in Book 838 Page 1789.” The instrument recorded in Book 838 Page 1789 is not copied to the file. The file contains no information, no notes, and no correspondence on the issue. The file does

not contain sufficient detail to reconstruct pertinent dates and events.

Further, the purchasers signed an affidavit intended to be executed by someone already owning the property. The affidavit is for the benefit of the agent. The affidavit was not appropriate.

The sellers signed an affidavit intended to be for the benefit of the agent. The affidavit contains language warranting title to the real estate. The agent is not in a position to benefit from a warranty of title. These practices do not represent sound underwriting.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
AW027728*	B75-0067309 H55-0161802	Archway

The following files contain no evidence of the examination of title, except for the printed commitment to insure. There is no indication in the file of the source of the commitment. The company and the agent are required to search the title or to have the title searched prior to issuing a commitment to insure. The company is required to maintain evidence of the examination of title and determination of insurability for a period of not less than 15 years.

Reference: Section 381.071, RSMo

<u>File No.</u>	<u>Policy No</u>	<u>Agent</u>
04FT8561*	H97-0054046	Freedom
05FT10430*	H44-Z007779	Freedom
05FT06732*	H44-Z006180	Freedom

The following file contains a commitment to insure that does not show all matters known and recorded that affect the title to be insured. The land described is located in a large-scale development in St. Charles County and is affected by platted easements, a detailed scheme of restrictions, and assessments levied under the terms of the recorded restrictions. None of these matters are reflected in the commitment to insure. Therefore, the examination of title is inadequate.

Reference: Section 381.071.2, RSMo

<u>File No.</u>	<u>Policy</u>	<u>Agent</u>
05FT06732*	H44-Z006180	Freedom

In the following file, both the commitment and the loan policy utilize a land description that appeared in the seller's deed of acquisition of eight or more acres. The deed in which the borrower is grantee describes Lot 12 of a subdivision, not eight acres. The address of the property insured is not on any of the streets referenced in the deed of the remote grantee. The appraiser's invoice indicates

his appraisal is of the subdivision lot 12. There is no evidence of the subdivision of the eight acres. The error in description is significant. Such a description error may be a fatal defect in the mortgage insured. The insured deed of trust may fail to create a lien on the title. Therefore, the company failed to determine insurability using sound underwriting practices.

Reference: Section 381.071.1, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
04FT7618*	H55-0125283	Freedom

An agent issued a check dated 12/15/04 for \$173,216.93 to pay an earlier mortgage. There is no payoff letter from the earlier lender in the file. The file contains no notes recording verbal information, and no written information, indicating that earlier secured lender would accept \$173,216.93 as payment in full of the outstanding mortgage. The loan application copied to the file is dated 12/10/04 and shows the earlier mortgage balance as \$173,216.93. Even if the loan balance shown in the loan application of 12/10/04 was correct, the payoff of 12/15/04 did not account for interest accumulating to 12/15/04 or to the date of receipt by the lender. It is not a sound underwriting practice to pay off an earlier mortgage without some reasonable, documented basis for a belief that the tendered funds will be accepted as payment in full.

Reference: Section 381.071.1, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
04FT7618*	H55-0125283	Freedom

The agent closed the transaction in escrow on 11/19/04. The transaction was funded by 11/30/04 and funds were disbursed on 11/30/04. The real estate taxes were shown as unpaid for the year 2004 as of 11/18/204. The insured lender, by its letter of 11/24/04, advised that the borrower indicated that an escrow had been established for payment of the taxes, and that withholding funds was not necessary. The agent paid the funds held for taxes directly to the borrower. Neither the lender holding the earlier mortgage nor the new lender escrowed for taxes. The new lender did not escrow for taxes. The agent issued the policy without exception for general taxes for the year 2004. Failing to verify that taxes have been paid or that appropriate assurances of payment are in place is not a sound underwriting practice.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
TA75889*	H55-075001	Title Associates

The agent closed two simultaneous loans in this refinance transaction, one loan specifically junior to the other. The first loan policy had a face amount of \$129,600.00, and the second loan policy had a face amount of \$32,000.00. The policy issued for the first mortgage lien did not report the second

mortgage as an exception to the title. The company failed to use sound underwriting in issuing this policy.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
AW023189*	H55-0118709	Archway
AW023042*		

The examiner found several underwriting issues in the following file. The examination of title was deficient, and the underwriting for the risk was inadequate.

The deed of acquisition, the commitment to insure, the insured deed of trust, and the policy of title insurance describe the land as a lot in “Lucille’s Fair Ground Addition.” The St. Louis City Assessor’s records describe the land as a lot in “Lindell’s Fairgrounds Addition.” (emphasis added) An inaccuracy of this type could be a fatal flaw in a land description. There is no indication that the agent explored or resolved this issue. It is not a sound underwriting practice to ignore conflicting land descriptions in a title examination.

The borrower in the insured transaction acquired title by Sheriff’s Deed given after auction in foreclosure of delinquent general taxes. That deed was dated 09/12/03 and recorded 10/10/03. The purchaser had paid \$19,000.00 at the sale. The property sold at auction had been encumbered by a mortgage with a face amount of \$51,000.00, recorded 04/07/99. The agent’s file includes a note deleting the mortgage as an exception on the basis that it was “out by foreclosure.” The deed of trust might have been cut out by foreclosure of the delinquent taxes, but only if the lender had been given proper notice of the suit to foreclose. The agent did not establish that any notice was given to the lender and had no apparent basis for the conclusion that the lien for the 1999 deed of trust did not survive as a lien. It is an unsound underwriting practice to ignore a recorded, unreleased deed of trust in an examination of title.

The auction for the sale of the property for delinquent taxes was held on 07/15/03. Prior to the auction held for the sale for delinquent taxes, the holder of the 1999 deed of trust had sought and obtained a deficiency judgment versus its borrower on 10/10/02, prior to the auction for delinquent taxes. The lender executed that judgment, and the Sheriff seized the property in question on 11/26/02 for that execution. The property was then sold at auction in execution of the judgment on 01/14/03 and was purchased by the lender at the auction. The Sheriff’s Deed from the auction was recorded on 02/14/03, more than five months prior to the auction for foreclosure of delinquent taxes. All of the deeds, lawsuits, and executions referenced in this discussion contain the apparently inaccurate land description discussed above. There is no indication in this file that the agent considered any of the possible effects of the competing and essentially concurrent record claims of title. It is not a sound underwriting practice to fail to consider the possible effects of competing claims of title.

Insuring interests in real estate acquired by way of a tax sale is generally considered of substantially

greater risk than insuring interests acquired by a bona fide purchaser in an arms length transaction. Insuring interests acquired by any means outside of an arms length transaction should include a more thorough review and examination of any issues revealed by examination of the title. This file contains no correspondence, no notes, no record of any phone conversation, no record of any in-office discussion, and no analysis of any sort indicating any thoughtful review of the underwriting issues in this examination. It is not a sound underwriting practice to insure extraordinary risks without proper review of the related issues.

The Sheriff's Deed issued in the tax foreclosure contains a provision requiring that an occupancy permit be obtained prior to any subsequent conveyance and creates a lien in the amount of \$5,000.00 in favor of the Sheriff of the City of St. Louis that is payable in the event that the required occupancy permit is not obtained. The agent did not show this matter as an exception to title. It is not a sound underwriting practice to fail to show known exceptions to title.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Agent</u>
05FT03815*	Freedom

The agent ran the chain of title to a deed recorded 07/01/69, a conveyance by a builder. The platting developer is not established in this file. The platting developer and any later builders and developers in the chain of title may have granted a variety of easements and other interests during the process of development, all of which must be shown when insuring in an owner's policy of title insurance, however, the agent did not establish that the platting owner held title and did not run the chain of title for the development period.

The chain of title in this file includes warranty deeds recorded in 1969, 1976, 1978, and 2002, but the only deed copied to the file and examined by the agent was the deed recorded in 2002. There are also no notes related to the earlier deeds, and no abstracts of any of the earlier deeds in this file. Neither the chain of title nor the examination of deeds in the chain of title prepared by the agent was not sufficient to assure that all matters known and recorded that affect the title would be reported in the owner's policy of title insurance.

The insured owner financed the transaction with two mortgages, the first for \$135,200.00 and the second for \$33,800.00. The second mortgage is not shown as an exception on the owner's policy of title insurance. It is not a sound underwriting practice to omit a known exception to title

The policies in this file, uses an incorrect initial when naming the vestee and the insured owner. It is not a sound underwriting practice to incorrectly name the vestee and insured owner.

The agent and the company must to show all known and recorded matters affecting title when issuing or proposing to issue an owner's policy of title insurance.

Reference: Sections 381.071.1.2, and .2, RSMo.

<u>File No.</u>	<u>Agent</u>
IT1790105*	Integrity

The agent issued a commitment dated 05/03/04 for a loan policy with an expected face amount of \$53,500.00. The commitment described land in a subdivision in Block 4486-SB of the City of St. Louis. The agent recorded a deed of trust on 06/17/04, describing land in a different subdivision in Block 4937 of the City of St. Louis.

The agent recorded an affidavit captioned “Affidavit as to Scrivener’s Error” on 01/26/05. The affiant in the recorded affidavit asserts that a scrivener’s error has been made, and the deed of trust recorded 06/17/04, which described the land in Block 4937 of the City of St. Louis, was intended to describe the land located in Block 4486-SB..

The lender beneficiary named in the deed of trust recorded 06/17/04 assigned its interests in the deed of trust by instrument recorded 05/09/05 and referencing the deed of trust recorded 06/17/04 and describing the land located in Block 4937 of the City of St. Louis. The assignment makes no mention of the land located in Block 4486-SB of the City of St. Louis, even though the affidavit recorded more than three months prior had claimed an error in the description.

The borrower named in the deed of trust recorded on 06/17/04 had (and may still have) interests both in the property located in Block 4486-SB and in the property located in Block 4937.

The agent issued a short form loan policy of title insurance on 07/07/05, almost two months after the original lender had assigned its interests in the deed of trust, indicating that the policy insured an interest in the land described in the recorded deed of trust. The deed of trust describes the land located in Block 4937. The policy as issued also includes an attached Exhibit C with specific recitals that the land referred to in the Policy is the land located in Block 4486-SB. The policy is internally inconsistent. As such, the insured may be in a position to assert a lien on either or both properties under the terms of the policy.

There is no recorded grant of lien or other interest by the deed of trust recorded 06/17/04 as to the land located in Block 4486-SB. There is no demonstrated basis in this file for a policy of title insurance purporting to affect any interest in the land in Block 4486-SB.

It may be that the recorded deed of trust and the subsequent assignment contain one or more errors, but there is no summary in this file of the nature and the extent of any errors, no analysis of appropriate measures for correction of any errors, and no demonstration of a basis for conclusion that the insured deed of trust described the wrong land. Additionally, there is no authority granted to the agency by any party to the deed of trust to reform it in any way.

The agent and the company are obliged to examine the title, to draw reasonable conclusions from the examination of title, and to insure in accordance with sound underwriting practices. It is not a sound

underwriting practice to insure that a recorded deed of trust affects any land that is not described by the deed of trust.

Reference: Section 381.071.1, RSMo.

<u>File No.</u>	<u>Agent</u>
04FT3290*	Freedom

The agent's file does not contain a copy of a chain of title, any deeds recorded prior to the date of commitment, and the agent's file contains no summary of the agent's findings after performing an examination of title. The agent's file contains no information, no copies, no notes, or other data used in preparation of the commitment to insure dated 11/13/03 and used in the agent's closing of this purchase transaction.

The agent failed to perform a title examination based upon evidence that a reasonable and prudent person would rely upon in conducting his own affairs. The evidence of title in this file does not satisfy this standard. Additionally, the agent failed to retain evidence of the examination of title for a period of not less than 15 years.

The owner's policy of title insurance in this file contains an exception reading: "Building lines, easements, covenants, conditions and restrictions, if any of record." No exception of this sort is acceptable when issuing an owner's policy of title insurance. The agent and the company failed to show all known and recorded matters affecting title when issuing an owner's policy of title insurance.

Reference: Sections 381.071.1.2, .2, and .3, RSMo, and 20 CSR 500-7.200

<u>File No.</u>	<u>Agent</u>
G9587*	Gateway

3. Failure to Issue Policy in a Timely Manner

Failure to issue policies in a timely manner is not a violation of any statute, or regulation. However, long delay in issuing the policy is not in the best interest of the consumer. The underwriter is not aware of reportable premium until the policy is issued and may be unable to promptly pay premium taxes when due. The company has not fully complied with record maintenance obligations until the policy has been issued. In addition, the insured does not receive notice of how to file a claim or the address and phone number of the underwriter until the policy is issued.

Note: SB 66, Section 381.038.3, RSMo, eff. 1/1/08, will require insurers to issue the policy within 45 days after completion of all requirements of the commitment for insurance.

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>No. of Days to Issue</u>	<u>Agency</u>
H21543	H55-0140965	8/30/05	11/23/05	85	Midwest Title
0501096	B75-0061028 H55-0172050	7/21/05	5/12/06	295	Advanced Title
2005105201	2005105201	11/3/05	1/20/06	78	Referred Title of St. Joseph
GR1450	B75-0051416 H55-0128958	5/23/05	9/16/05	116	Great Rivers
RM102303	J33-001756	1/24/05	5/15/07	841	Residential Title
64174-05	H55-0079369	9/15/05	5/16/06	243	Tri-Lakes
696299-06	H55-0085936	4/7/06	5/14/07	402	Title One
GR1682	H55-0166402(2 nd)	8/12/05	5/8/06	269	Great Rivers
50619	H55-175923	1/18/06	6/30/06	163	Network
TA67519	H97-008637 0049528003	6/25/03	5/24/07	1,428	Title Associates
TA74279	H55-0074977	10/7/04	9/1/05	329	Title Associates
0501099KC	H97-0063827	10/24/05	3/1/06	128	Title America
20582-a	H55-0118076	3/7/05	6/20/05	104	Thomson
2169-a	H55-0124385	5/23/05	9/27/05	127	Thomson
19179-a	H55-0164429 B75-0071101	10/26/05	2/7/06	104	Thomson
22828-a	B75-0076144	12/29/05	4/11/06	103	Thomson
05235	H55-0133556 B75-005466	6/3/05	8/24/05	82	Abbey
0625768	H55-0186044	3/2/06	6/6/06	96	Abbey
33948	H55-0119329	9/16/05	12/2/05	77	Assured
W1158C	H55-0167808	11/21/05	6/20/06	211	Assured
W1305	H55-0144586	4/6/05	9/8/05	155	Assured
TA75889	H55-075001	11/30/04	5/20/05	171	Bannon
04FT3290	H55-1255295	6/17/04	7/7/05	385	Freedom

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>No. of Days to Issue</u>	<u>Agency</u>
04FT7618	H55-0125283	12/22/04	7/15/05	205	Freedom
04FT8561	H97-0054-46	1/7/05	12/22/05	349	Freedom
05FT03815	H44-Z009891	6/17/05	2/17/06	245	Freedom
05FT0422	H97-0054084	2/8/05	1/18/06	344	Freedom
05FT05850	H44-Z004461	8/5/05	12/22/05	139	Freedom
AW024868	H55-0142051	3/29/05	9/16/05	171	Archway
AW024046	H55-0136178	1/19/05	8/9/05	202	Archway
DRIT626202	H97-0039753	11/7/02	8/8/05	1,005	Integrity
IT1604204	H44-Z012560	12/14/04	5/11/05	148	Integrity
IT1790105	H55-Z05344	4/20/05	3/29/06	343	Integrity
IT1965005	H44-Z012323	8/3/05	4/17/06	257	Integrity
IT2283606	H55-Z006940	2/15/06	5/16/06	90	Integrity
AW023986 AWA23986	H55-0136152	2/17/05	8/8/05	172	Archway
05001594	H55-0113178	2/24/05	6/7/05	103	US Title
AW027728	B75-0067309 H55-0161802	11/17/05	4/19/06	153	Archway Title
G9587	B75-0020755	12/4/03	2/4/05	428	Gateway

The company failed to issue policies in the following files.

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>Agency</u>
7327	7327	6/15/07	Not issued	Nodaway County Abstract
20060861	B75-0085751 H55-0154606	6/15/07	Not issued	Platinum Title
200660073	B75-0040979 H55-0094389	2/16/07	Not issued	Platinum Title
20051110	205-925367 H44-0006233	9/29/05	Not issued	Platinum Title
0500488S TL	50017055 H97-0045562	7/8/05	Not issued	Title America
0403085S TL	1197-0045527	5/20/04	Not issued	Title America

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co. had Enough Information to Issue</u>	<u>Date Issued</u>	<u>Agency</u>
0400353	H55-0123454 B75-0008652	11/10/04	Not issued	Advanced
MC050566	B75-0043857 H55-0100544	6/20/05	Not issued	Meridian
RM104802	H97-0050960	12/20/05	Not issued	Residential Title
5134-05	H55-0152571 B75-0073445	10/26/05	Not issued	Stone County Abstract
W1363A	H55-016782 B75-0068642	11/30/05	Not issued	Assured
05FT6732	H44-Z006180	9/9/05	Not issued	Freedom
06FT1566	H44-Z007582	4/24/06	No issued	Freedom

C. Construction Disbursing, Target Sample-Direct Operation

The company provided a list of construction escrow files open during the time frame of the examination. The list contained 812 files. The examiners reviewed eight construction escrow files from a list.

1. Forms and Filings

No errors were found in this review.

2. Underwriting and General Handling

Field Size: 812
Sample Size: 8
Type of Sample: Systematic
Number of Errors: 5
Error Rate: 62.5%
Within Dept. Guidelines: No

The examiners found the following errors in the target review of the construction disbursing files.

a. Failure to Timely Record

The agency acted as settlement agent and failed to record the security instrument for the following transactions within three business days of closing after receipt of the funds.

Reference: Section 381.412, RSMo.

<u>File No</u>	<u>Policy No</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. of Business of Days</u>	<u>Agent</u>
561044	561044	11/15/04	11/19/04	4	Direct
576651	576651	6/29/05	3/27/06	183	Direct
7171	7171	9/7/05	11/8/05	42	Direct

b. Incorrect Risk Rate

The agent reported an incorrect risk rate on the policies. The agent is required to use risk rates filed with the DIFP. In the following files, the risk rate on the owner’s policy was the correct amount charged. The company charged \$4.00 for a simultaneous issue loan policy. However, the face amount on the loan policy is substantially greater than the face amount of the owner’s policy. Therefore, the company should have charged \$4.00 for the premium up to the amount of the owners’ policy, simultaneously issued with the loan policy, plus the calculated risk rate for the difference in the face amount of the owners’ policy and the loan policy.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Policy</u>	<u>Amount listed on Policy</u>	<u>Filed Risk Rate</u>	<u>Agent</u>
561044*	561044	\$4.00	\$88.64	Direct
562581	562581	\$4.00	\$25,265.20	Direct

The company closed the initial stage of this transaction in escrow on 09/07/05. The company charged the purchaser a premium of \$954.00 for an owner’s policy of title insurance in the amount of \$1.00. The company issued an owner’s policy of title insurance under date of 11/08/05 with a face amount of \$1.00 and showing the charge of \$954.00.

However, the approximate total amount of the construction and development loans approved at the time of the 9/7/05 closing was \$418,000.00. As such, the value of the property, as developed, could be estimated at approximately that amount.

In the event of a total failure of title, the loss to the insured may be reasonably defined as the value of the insured’s monetary loss at the time of the failure of title. A total failure of title following completion of the planned project could easily result in loss to the insured of the full cost of the construction project. The value of the coverage offered by the company under the terms of the policy

should be reasonably related to the dollar amount of the loss that could reasonably be anticipated by the insured and the company. Insuring for substantially less than a reasonably anticipated loss constitutes inadequate policy coverage.

An owner's policy issued with a face amount of \$1.00 in exchange for a premium of \$954.00 does not represent value for charges paid and is not in the best interest of the consumer.

The filed risk rate for an owner's policy of \$418,000.00 was \$384.40. The \$954.00 charged for the \$1.00 policy was 248 percent of the risk rate for a policy of \$418,000.00.

It is not a sound underwriting practice to insure for substantially less than the actual amount of a known risk.

Reference: Sections 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
583556	585336	Direct

The company closed the following purchase transaction in escrow on 11/15/04. The company charged the purchaser a premium of \$374.00 for an owner's policy of title insurance in the amount of \$66,000.00. The company charged \$95.00 for a loan policy in a simultaneous mortgage transaction.

The owner was significantly underinsured. The transaction involved property acquired at \$66,000.00 and a construction project costing more than \$116,000.00, which was disbursed by the company. The value of the completed project was likely at least \$182,000.00. The value of the coverage offered by the company under the terms of the policy should be reasonably related to the dollar amount of the loss that could reasonably be anticipated by the insured and the company.

The filed risk rate for an owner's policy of \$182,000.00 was \$195.60, substantially less than the total amount charged for the policy.

In the event of a substantial loss, where the property has been substantially improved, but the owner's policy does not cover all of the value of the property at the time of the loss, the insured will be able to recover only a fraction of the actual amount of damages. A total loss after completion of the construction would likely result in damages to the insured of about \$182,000.00, although the insured could never recover more than \$66,000.00 under the terms of the policy. In the event of a loss of \$60,000.00 after completion of the construction, if the value of the property is \$182,000.00, the insured could recover no more than \$26,109.89. The co-insurance clause of the 1992 owner's policy form effectively requires that the insured obtain coverage for the property as improved or risk a loss that cannot be recovered.

The company has denied the insured the opportunity to obtain the necessary title insurance coverage for a reasonably anticipated loss. It is not a sound underwriting practice to insure for substantially less than the actual amount of a known risk.

Reference: Sections 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
561044*	561044	Direct

c. Miscellaneous

The construction project in this file was redevelopment of a small tract of land in the City of St. Louis. The examination of title in this file was initiated on 08/24/05. The owner at time of commitment had acquired two adjacent parcels of land by a single deed, the West part and the East part of a single lot. Both parcels were included in the redevelopment project. The company's examiner reported title on only the Western part of the land included in the project. There is no indication the company examiner ever inquired whether the second, adjacent parcel was part of the project.

The company closed on the purchase of the Western parcel on 09/07/05 and insured the lead lender in the construction financing for an amount in excess of \$350,000.00, but only as to the Western portion of the land. The company began disbursing funds for the construction project no later than 09/21/05. The company knew from the inception of the construction disbursing that two separate residences were under construction but did not inquire whether any additional land was to be included.

The redeveloper acquired title to the second, eastern parcel of land by deed recorded 03/06/06. The buyer's acknowledgement on the deed was taken by a company employee on 01/24/06 and the deed was recorded on 03/06/06. (The file gives no reason for the delay in recording.)

The two parcels of land acquired by the redeveloper were divided again into two parcels, a Northern parcel and a Southern parcel.

It is not a sound underwriting practice to fail to include all of the land that is the subject of the transaction, or to fail to advise the insured lender that its deed of trust may not describe all of the affected land.

Reference: Sections 381.071, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
583556*	583556	Direct

The company issued a commitment to insure showing an exception to title reading: "Easement Agreement recorded in Book 10378 Page 831, together with maintenance of decorative fountain." The company received a survey dated 12/05, in which the surveyor notes that the easement is not shown and does not affect the property.

The company omitted the exception. The surveyor's note as to the document was accurate, in that the document created no easement located within the boundaries of the property. However, the document recorded in Book 10378, Page 831 makes the insured land a benefited parcel as to the easement for a fountain created on adjacent land and notifies the owner or owners of the easement. The obligation to pay a calculated share of the taxes was to commence with the construction of improvements within the boundaries of the insured land. The purpose of the construction disbursing project was to provide for construction of substantial improvements. The exception was omitted in error. The company is required to show all recorded and known matters affecting title when issuing an owners policy of title insurance

Reference: Section 381.071.2, RSMo

File No.	Policy No.	Agency
562581*	562581	Direct

3. Failure to Issue Policies in a Timely Manner

Failure to issue policies in a timely manner is not a violation of any statute or regulation. However, long delay in issuing the policy is not in the best interest of the consumer. The underwriter is not aware of reportable premium until the policy is issued and may be unable to promptly pay premium taxes when due. The company has not fully complied with record maintenance obligations until the policy has been issued. In addition, the insured does not receive notice of how to file a claim or the address and phone number of the underwriter until the policy is issued.

Note: SB 66, Section 381.038.3, RSMo, eff. 1/1/08, will require insurers to issue the policy within 45 days after completion of all requirements of the commitment for insurance.

In the following file the company failed to issue a policy.

<u>File No.</u>	<u>Date Co had Enough Information to Issue</u>	<u>Date Issued</u>	<u>Agency</u>
583556	2/28/06	Not issued	Direct

III. Claims Practices

In this section, examiners review claims practices of the company to determine efficiency of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and department regulations. A claim file, as a sampling unit, is an individual demand for payment or action under an insurance contract for benefits that may or may not be payable. The most appropriate statistic to measure compliance with the law is the percent of files in error. An error can include but is not limited to any unreasonable delay in the acknowledgment, investigation, payment, or denial of a claim. Errors also include the failure to calculate benefits correctly or to comply with Missouri laws regarding claim settlement practices.

A. Claim Time Studies

In determining efficiency, examiners look at the duration of time the company used to acknowledge the receipt of the claim, the time for investigation of the claim, and the time to make payment or provide a written denial. DIFP regulations define the reasonable duration of time for claim handling as follows: (1) payment or denial of claim within 15 working days after the company completes investigation, (2) settlement of the claim within 30 days of the receipt of all necessary documentation to determine liability. When the company fails to meet these standards, examiners Criticize files for noncompliance with Missouri laws or regulations.

1. Small Claims

Field Size:	45
Sample Size:	45
Type of Sample:	Census
Number of Errors:	0
Error Rate:	0%
Within Dept. Guidelines	Yes

The examiners noted no errors in this review.

2. Large Claims

Field Size:	580
Sample Size:	56
Type of Sample:	Systematic

The following are the results of the time studies.

Acknowledgement Time

Number of Errors: 2
Error Rate: 3.57%
Within Guidelines Yes

The examiners noted the following error in this review.

The company failed to acknowledge the following claims within 10 working days of notification of the claim. The claim is received when the agent is notified.

Reference: 20 CSR 100-1.010(1)(G), 20 CSR 100-1.030 (1)

<u>Claim No.</u>	<u>Received</u>	<u>Acknowledged</u>	<u>Days</u>
C108767	2/28/05	4/1/05	29
C012765	2/13/01	3/5/01	14

Determination Time

Number of Errors: 0
Error Rate: 0%

The examiners noted no errors in this review.

Investigation Time

Number of Errors: 0
Error Rate: 0%

The examiners noted no errors in this review.

B. General Handling Practices

In addition to the claims time studies, examiners reviewed the company's claims handling processes to determine adherence to unfair claims statutes and regulations and to contract provisions. The same files were reviewed for the general handling practices as were reviewed for the time study.

1. Small Claims

Field Size: 45
Sample Size: 45
Type of Sample: Census
Number of Errors: 7
Error Rate: 15.55 %
Within Dept. Guidelines No

The examiners found the following errors in this review.

The company paid this claim as an escrow matter covered under an insured closing letter. The payment was for a credit account at a department store. The lender in this refinance transaction required payment to several specific creditors for specific amounts. The creditor paid in this claim was not included in the list provided by the lender. There is no indication the lender expected this creditor to be paid. A policy had not been issued at the time of this claim. The company agreed to the criticism and indicated there was not enough information in the file to determine why the claim was paid. The policy had not been issued at the time of examination. The company failed to properly investigate the claim.

Reference: Section 375.1007(6), RSMo

<u>Claim No.</u>
601938

The company insured a deed of trust that had not been executed by the wife member of a tenancy by the entireties. There is no indication the wife was aware her real estate was to be encumbered by the mortgage. The insured deed of trust was assigned to a different lender and the defect in the mortgage was discovered by the trustee in foreclosure.

The company engaged a second agent to examine title and paid the second agent's fee for examination and commitment to insure out of foreclosure. The company paid the small claim in the amount of \$150.00, the amount paid for examination to the second agent.

The commitment to insure issued by the agent makes no exception for the possibility of an unmarketable title, a primary insured matter.

The company is not permitted to insure or to agree to insure in an owner's policy of title insurance without showing all known and recorded matters affecting title.

The company agreed to this criticism and indicated the agent should have made an exception for outstanding marital interest and insured over it.

Reference: Section 381.071.2, RSMo.

<u>Claim No.</u>
S0206148

The following claims were paid without the company issuing a policy. The terms of the policies determine the coverages in the event of a claim. The company is required to maintain a copy of the contract of insurance in the claim file. Note: These agencies were no longer in business during the claim period.

Reference: 20 CSR 300-2.200 (3)(B) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>Claim No.</u>
500596
501465
501721
588573
113891

2. Large Claims

Field Size: 580
Sample Size: 56
Type of Sample: Systematic
Number of Errors: 9
Error Rate: 16.1%
Within Dept. Guidelines No

NOTE: A star (*) after a policy number denotes this policy was cited earlier in the large claim general handling sample for a different error, but was only counted once in the number of errors.

The company failed to promptly set reserves for the following claims. In some cases, no the reserves were set. In some cases, the reserve was set the day of payment of the claim.

Reference: Section 381.101, RSMo

<u>Claim Number</u>
C039032
C035281
C101534
C119563
C119668
C122614

The following claims were paid although the company never issued a policy. The terms of the policies determine the coverages in the event of a claim. The company is required to maintain a copy of the contract of insurance in the claim file. Note: These agencies were no longer in business during the claim period.

Reference: 20 CSR 300-2.200 (3)(B) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>Claim No.</u>	<u>Agent</u>
C119563*	Advanced
C123509	Advanced
C121886	Advanced
C119668*	Advanced
C119875	Advanced
C119563*	Advanced
C101534*	Columbian

3. Indemnity Letters

The company provided a log of all requests for indemnity letters. The company received 47 requests for letters of indemnity in 2006. The examiners reviewed all 47 files. For purposes of determining the timely handling of these requests the claims standards were applied.

The company handled two of the indemnity letter files reviewed by issuing an indemnity letter when it should have treated the matters like claims. The company failed to acknowledge the claim and failed to investigate the claim in a timely manner.

In the following file the agent failed to report two state tax liens and a federal tax lien, all matters of public record. The agent closed the transaction and did not file the deed of trust for 41 days. In that 41 days, a judgment had been entered against the corporate owner of record and in favor of the Missouri Division of Employment Security.

This file should have been treated as a claim instead for a request of indemnity letter. The company received notice of a claim on 5/12/06. They failed to acknowledge receipt of the claim and failed to investigate the claim within 30 days.

References: 20 CSR 100-1.030(1), (3), 20 CSR 100-1.040 (as amended 20 CSR 100-1.050(4), eff. 7/30/08), and 20 CSR 100-1.050(1)(A)

<u>File No.</u>
05FT04627

The insured lender foreclosed on the file's deed of trust. The property was encumbered by a transcribed judgment for \$3,287.94 at the time of foreclosure. That judgment was a superior lien. The company learned of the defect in title by letter dated 3/7/06. The company responded by issuing a letter of indemnity to the agent of another insurer suggesting "insuring over the above item or deleting same...."

There is no information in the file to establish that the judgment lien did not attach to the title, or was satisfied in the closing, or that the lien was paid. There is no indication that the company investigated the status of the lien. The company should have treated this as a claim.

References: 20 CSR 100-1.030(1), (3), 20 CSR 100-1.040 040 (as amended 20 CSR 100-1.050(4), eff. 7/30/08), and 20 CSR 100-1.050(1)(A)

<u>File No.</u>
03FT2554

The following indemnifications were issued without the company issuing a policy. The terms of the policies determine the coverages in the event of an indemnification. The company can not make a determination of liability in the absence of the insuring contract evidenced by the policy.

Reference: 20 CSR 300-2.200 (3)(B) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>Claim No.</u>	<u>Agent</u>
400319	Advanced
M0505025	Wells Abstract

In the following file, the foreclosing trustee sent notice of claim because the senior mortgage had not been released. The insured loan standing in a junior position was a home equity line of credit for a much smaller amount than the earlier mortgage. The policy insuring the line of credit did not show an exception for a senior mortgage. Circumstances of the insured loan indicated a likely outstanding lien, but CLTIC offered to indemnify for any loss arising by reason of the unreleased mortgage. As such, the investigation of this claim was inadequate.

Reference: Section 381.071.1.2, RSMo, and 20 CSR 100-1.040 (as amended 20 CSR 100-1.050(4), eff. 7/30/08),

<u>File No.</u>
03CS0652

4. Claims Errors found during the Review of Underwriting

This claim was discovered in the course of the underwriting review. It was not a part of the claims data supplied, consequently it was not a part of the field size or the sample and is not included in the error ratio.

The company failed to maintain the following claim file, including information in sufficient detail to permit the examiner to reconstruct the claim and its resolution. The insurer is required to maintain its records so that the examiner can readily ascertain practices of the insurer in claims handling and payment. This underwriting file indicates a small claim payment was made by commonwealth in the amount of \$494.00.

Reference: 20 CSR 300-2.200(2), and (3)(B) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>File No.</u>	<u>Agency</u>
581005	Direct

IV. Consumer Complaints

Section 375.936(3), RSMo requires companies to maintain a register of all complaints received for at least three years. The statute requires the record to show the total number of complaints, classified by line of insurance, nature of complaint, disposition, and time to process the complaint.

Commonwealth's records show that it received nine complaints from 7/1/03 to 6/30/06. The company maintains a log of all department complaints. DIFP generated two internal investigations that were not originated by reason of any complaint. The company itself had initiated an advisory to DIFP regarding an agent defalcation.

DIFP received one consumer request for assistance that was not phrased as a complaint. The DIFP consumer affairs division referred the matter to CLTIC for possible resolution.

The examiners found no violations in this review.

V. Unclaimed Property

Prior to 2006, LandAmerica reported the unclaimed property for LTIC, CLTIC and TIC separately. Beginning in 2006, all the unclaimed property held by the company and its subsidiaries were consolidated into one report and reported under the LandAmerica Financial Group.

CLTIC does ask agents about their procedures for handling abandoned property as a part of their quality assurance review. Old outstanding checks and old file balances in the trial balance are discussed with agents when they are noted during a quality assurance review. No errors were found in the unclaimed property reports.

VI. Formal Requests and Criticisms Time Study

A. Criticism time study

<u>Calendar Days</u>	<u>Number of Criticisms</u>	<u>Percentage</u>
0 to 10	429	97%
11-25	4	1%
No Response	<u>8</u>	<u>2%</u>
	441	100%

References: Section 374.205.2(2), RSMo, and 20 CSR 300-2.200(5)(6) (as amended 20 CSR 100-8.040, eff. 7/30/08)

B. Formal request time study

<u>Calendar Days</u>	<u>Number of Requests</u>	<u>Percentage</u>
0 to 10	73	100%

References: Section 374.205.2(2), RSMo, and 20 CSR 300-2.200(5)(6) (as amended 20 CSR 100-8.040, eff. 7/30/08)

The company responded to all the examiners' criticisms and requests within the requisite time frame.

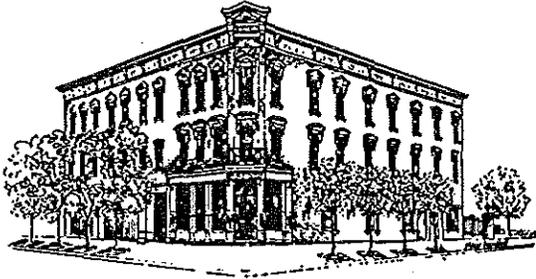
EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Commonwealth Land Title Insurance Company (NAIC #50083), Examination Number 0609-40-TGT. This examination was conducted by Martha (Burton) Long, Joseph Ott, and Ted Greenhouse. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated February 1, 2008. Any changes from the text of the Market Conduct Examiner's Draft Report reflected in this Final Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Report has been reviewed and approved by the undersigned.

Jim Mealer
Chief Market Conduct Examiner

Date

MONROE HOUSE LAW CENTER



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DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

**CONFIDENTIAL AND
FOR SETTLEMENT AND
DISCUSSION PURPOSES ONLY**

Via Hand Delivery & E-mail
December 3, 2009

Carolyn H. Kerr, Senior Attorney, AIE, AIRC
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Missouri Department of Insurance, Financial
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(1906-2004) William Barton

of Counsel:
Andrew Jackson Higgins
Retired
Former Judge:
Sixth Judicial Circuit (1960-1964)
Missouri Supreme Court (1979-1991)

Re: Commonwealth Land Title Insurance Company - Market Conduct Examination

Dear Carolyn:

Attached please find for filing by and on behalf of Commonwealth Land Title Insurance Company ("Commonwealth") the company's formal Response dated December 1, 2009, to the Department's draft Report dated November 3, 2009.

Should you have any questions or wish to discuss this matter, please feel free to contact Mark Warren or me at 634-2522, or at our e-mail addresses of mwarren@englishmonaco.com and awarren@englishmonaco.com.

Thank you for all your courtesies with regard to this matter.

Sincerely,

Ann Monaco Warren
AMW/mjw
Encl.

cc: Michael Rich (via E-mail w/encl)

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DEC 03 2009

DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION

Market Conduct Examination Report

Examination Number 06-09-40-TGT

Commonwealth Land Title Insurance Company
NAIC # 50083

INSURER'S RESPONSE TO
THE DEPARTMENT'S REPORT NOVEMBER 3, 2009

Submitted December 1, 2009

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GENERAL OBJECTIONS

The Market Conduct Examination Report (The Report) of the Missouri Department of Insurance (Department) raises many issues that have never been raised before by the Department in its examinations, notwithstanding that the practices in question have been constant for many years. Many of these criticisms are raised repetitively in the Report and would needlessly burden Commonwealth Land Title Insurance Company's (the Company) response to repeat its position at length each time it applies to an item in the Report.

In the interest of brevity and efficiency, the Company does not re-state the examiner's findings verbatim, but either cites the section of the Report, the applicable file or policy number, or, in the case of multiple criticisms of a particular transaction, the Company will paraphrase or briefly summarize the criticism. However, whether or not referred to specifically in any given response to any given criticism, the Company intends for these general objections to be applicable, as appropriate, to disputed criticisms in the report. Failure to include an objection in a response is not a waiver of the applicability of one or more applicable general objections to a criticism.

1. SOUND UNDERWRITING PRACTICES

The Company acknowledges its statutory obligation to employ sound underwriting practices and, in a few cases, the examiners have pointed out unsound underwriting practices.

However, the examiners have attempted to apply this term much more broadly than the meaning of the term permits. The General Assembly or the Director, by regulation, could define the term, but they have not done so. Therefore, the ordinary, everyday meaning ascribed to that phrase must be applied.

The generally accepted definition of the phrase "sound underwriting practice" is the acceptance of risk in a manner that will not unduly expose the Company to loss, with the potential of depleting its reserves to the detriment of other policyholders. The term has never been used to describe practices that push more of the risk onto the policyholder than might arguably be appropriate. Also, the term does not apply to practices that, while perhaps not technically perfect, do not expose the Company unduly to liability.

The fact that an examiner may reach a different conclusion from the agent or the insurer does not mean that a violation of 381.071 RSMo has occurred. Underwriters may themselves disagree as to the effect of a particular matter. Indeed, there may be some matters which an underwriter will agree to insure over. In some cases, an underwriter is guided by the legal opinion of the underwriter's counsel which may be at variance with the examiner. So long as the title search satisfies the statutory provisions and the exceptions are within the guidelines set forth by the insurer, an agent is not in violation of the statute even if the examiner disagrees with the agent.

The various transactions for which title insurance is provided are as unique as the individual tracts of land the policies insure. Underwriting is much more an art than a science. Just as each transaction and each party is unique, so are the title insurance issues that arise. It follows that the responses to these challenges by the insurer and its title insurance agent will be similarly varied.

The Company and its agents strive to provide title insurance products and close transactions to the satisfaction of all parties. Just as there are numerous ways to interpret any artwork, there are numerous ways of interpreting the responses of the insurer and the agents to these challenges.

2. **ABSENCE OF PRINTED EXCEPTIONS IN LOAN POLICY SCHEDULE B**

Although most loan policies are issued without the general (printed exceptions), the Company is entitled to raise them in the loan policy, because they are in the commitment. (Unless, of course, the insured has bargained for their omission and has tendered the proper proofs to the issuing agent).

The historical reason they are not printed in the loan policy Schedule B is because many years ago, lenders expressed the preference that they not show up in the policies at all. The alternative to not printing the exceptions is to use Schedule B with the printed exceptions and then delete them by note. This requires the lender's document examiner to look for two things: the exception and the note removing it. Lenders claims that this practice creates an unnecessary step, and so many years ago, the title insurance industry acquiesced in the lenders' preferences.

It should be mentioned that the practice cited by the examiners has been followed by every title insurer in every state, including Missouri, for at least 40 years.

3. **UNLAWFUL DELEGATION OF LEGISLATIVE POWER**

The General Assembly has delegated rule-making authority to the Director of the Department of Insurance, and the Company acknowledges that many of the issues raised by the examiners could properly be the subject of valid regulation, but the Director has not seen fit to address them. A case in point cited numerous times in the Report is the use of "hold open" commitments. The Company, as most others in the industry in the latter part of 2004, instructed its agents to cease this practice due to concerns raised by the Department at that time. However, the Department never issued a written regulation prohibiting the practice.

The Company further acknowledges that the examiners have authority under law to not only apply the statute and regulations in their work, but also to formulate reasonable and logical extensions thereof.

The examiners may not, however, regulate through their examination reports. To the extent that the Director has authorized them to do so, the Company believes it is an unlawful delegation of legislative power.

If the examiners encounter what they believe are violations of statute or regulation which have been known to the Department for many years, and never raised on Market Conduct Examination in the past, they should seek the issuance of a ruling or regulation on the subject, with notice to regulated companies and an opportunity to conform. To do less is probably violative of both the United States and Missouri Constitutions.

4. ISSUING AGENCY CONTRACT

The Company is perplexed by the many references to its Issuing Agency Contracts and matters governed by them in its Report in the same contexts as if they were statutes or regulations to which the agency is subject. In a sense, they may be so, but these provisions are for the Company's benefit and their violation is not chargeable to the Company.

The Company objects to any assertion by the Department that the Company can be subject to sanction for breach of an agency or contractual provision that is *for the Company's benefit*.

5. STATUS OF CERTAIN AGENTS

The examination of Phoenix Title, Title Insurers Agency and America's Title Source reveal many alleged violations. The Company believes it is germane to point out to the Department that it has cancelled its Issuing Agency Contracts with those agencies, and, in fact, those agencies are no longer in business. Further, the Company has cancelled its Agency Contracts with Nations Title Agency, U.S. Title Guaranty and Investors Title. The Company is no longer represented by these agencies.

6. DELAY OF POLICY ISSUANCE

While not citing the Company or agent for a violation of law, the Company respectfully states that it is inappropriate to cite a law that became effective after the closing date of the examination to suggest disapproval of a practice that was lawful at the time of occurrence. The Company believes that any references to the issuance of a policy that would violate current §381.038.3 RSMo should be removed from the examination as being extraneous and unfair.

7. FORFEITURE ASSERTED AGAINST UNDERWRITER FOR AGENCY VIOLATIONS

Non-affiliated agencies are independent businesses, over which the Company has only a limited amount of control. The scope of the duties and authority granted to the agent or agency is expressly provided for in the agency agreement. In instances where the agent/agency has an independent obligation to comply with Missouri law, and where that duty is not one assumed by the insurer under the agency agreement, and where such act or omission is outside the scope of his or her agency agreement, the Company is not liable for that violation and is not in violation of its legal obligations under Missouri law.

In some cases, violations of insurance laws and regulations might be suggestive of inadequate supervision by the underwriter. In other cases, however, the underwriter is blameless for the acts or omissions of the agency, and should not be held accountable. An example of this situation is the failure of agencies to furnish files or respond to examiners criticisms in a timely fashion. The Company has advised its agents of the importance of punctual compliance with the examiner's communications. It can do no more. In these cases, any penalty asserted should be against the agency and not the underwriter.

8. **Timely Recording:**

§381.412.1 RSMo reads:

A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. (emphasis added)

This statute was repealed and replaced by §381.026 RSMo on January 1, 2008. The law clearly recognizes that a settlement agent is responsible for timely recordation, not a title agent. A title agent has a limited agency authority from the Company and is an agent for purposes of title issuance, not settlement. The recordation of documents, while required for title issuance purposes, is not time dependent. Even though the State of Missouri may have required recordation within three business days prior to 2008, the failure of a settlement agent to comply did and still does not affect the insurability of the transaction or the legitimacy of the policy. The Company recognizes that under circumstances when its own employees may conduct settlement and arrange for the recordation of the document, a citation for a statutory violation for failure to record within three business days may be appropriate under the terms of the prior law. However, when the failure to record is the result of an act or omission of a person acting outside the scope of his or her agency agreement, the Company is not liable for that violation and is not in violation of its legal obligations under Missouri law.

9. **Applicability of New Regulations**

Numerous portions of the examiner's findings and reports and the stipulations seek to apply provisions of the title insurance act which became effective on January 1, 2008, retroactively for violations which occurred prior to the effective date of the new law. Also, there are numerous citations and use of regulations within 20 CSR 100-8.002 et. seq. which are applied in retroactive fashion. The Market Conduct Regulations effective 11-30-08, likewise are not subject to retroactive applications. The prospective application of a statute is "presumed unless the legislature demonstrates a clear intent to apply the amended statute retroactively, or if the statute is procedural or remedial in nature. *Tina Ball -Sawyers v Blue Springs School District* (2009 WL1181501 Mo App. WD). Substantive laws "fix and declare primary rights and remedies of individuals concerning their person or property, while remedial statutes affect only the remedy provided, including laws that substitute a new or more appropriate remedy for the enforcement of an existing right. *Id citing Files v. Wetteru, Inc.* 998 SW 2nd 95 at 97 (Mo App. 1999). Ergo, to the extent that changes to the title law affect the rights and duties of the companies for which they are held responsible and are subject to penalty, they are Substantive and should not be applied retroactively.

Thus, we request that the Department modify its reports such that retroactive application of laws and regulations which affect substantive rights which result in a violation and forfeiture against the examined company be removed from the reports and the resulting draft stipulations be amended accordingly.

10. Scope of Agency & Statutory Separation of Duties Between Insurer and its Agent.

The Department also issued additional examination warrants to examine title agencies appointed to do business with Fidelity. Because of these examinations, the department examiners found alleged violations of various laws by agents doing business with the company. As a result of these examinations, the department is attempting to hold the company responsible as a principal for violations by its agent or an agent based on the conclusory statement that as the principal, Lawyer's is responsible for the acts of its agent and is bound by agency principals for the agents actions.

In taking this improper position, the department ignores that fact that the company has an agency agreement with the agent which the agent is bound to follow. An "insurance agent, acting within the scope of his authority, actual or apparent, may bind an insurance company..." *Parshall v Buetzer* 195 SW 3rd 515. (Mo. App. W.D. 2006) citing *Voss v American Mutual Liability Insurance Company*, 341 SW 2nd 270, at 275 (Mo App.1960). Actual authority is the "power of an agent to affect the legal relations of the principal by acts done in accordance with the principal's manifestation of consent to him". *Id.*

Because the company is not bound by or responsible for the acts of an agent or agency acting outside the scope of the companies' "manifestation of consent," it is improper for the Department of Insurance to cite and fine the company for alleged acts of its agents which are outside the scope of the authority granted to them in their agency agreement. The attempt by the Department within the scope of a market conduct examination to abrogate well settled case law with respect to the duties of principals and agents is also improper. Further, the position taken by the Department would have the effect of allowing agents to ignore their agency agreements with the principal and violate the law at will knowing they will not be held accountable for their actions. The position of the Department will also act to give agents or agencies apparent authority to commit actions, legal or illegal, with no accountability from the agent or agencies for their actions to the principal. Further, this represents an attempt by the Department to directly interfere with the contractual relationship of the principal and agent.

For example, Section 2 of a Nations Title Agency Agreement (used as an example here) states that the agent "itself and through its employees or officers approved by the company (authorized signatories) shall only have the authority on behalf of company to sign, counter-sign and issue commitments, binders, title insurance policies, and endorsements and under which company assumes liability for the condition of title to land (hereinafter sometimes referred to "title assurances"), and only on forms supplied and approved by company and only on real estate located in the territory and in such other territories as may be designated in writing by the company." Therefore, as can be seen from the above, the agent is required, for example, to only use forms supplied and approved by the company. Thus, and for example only, use of an improper form by an agent is in direct contravention of the agreement with the company. The company should not therefore be held responsible in a market conduct examination (or in any legal proceeding) for an act by an agent which obviously exceeds the scope of the agent or agencies authority.

It should also be noted that the title insurance law found in Chapter 381 nowhere states that a title insurance company is responsible for the acts of its agents outside the scope of their agency agreements. On the contrary, Chapter 381.011 (effective 1/1/08) states at 381.011.3 that "except as otherwise expressly provided in this Chapter and except where the contexts otherwise requires, all

provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents.” Chapter 381 does not, therefore, make title companies responsible for acts of their agents, especially when the acts occur outside the scope of the agent’s authority.

EXAMINATION FINDINGS

I. Sales and Marketing

A. Licensing of agents and agencies

File 580740 (page 6)

Response: LandAmerica One Stop, a division of Lawyers Title Insurance Corporation, CLTIC's sister company, provided the Company with a search since the property was located in a non-core county. The search was examined by the Company and a commitment was issued on the Company's paper and sent to the customer. The Company does agree with the Department in that no update was issued prior to the policy.

GS Closing LLC (page 6)

Response: Denied. Licensure is an obligation of the producer not the insurer. The company is not responsible for a producer's obligation to obtain a license and comply with the Missouri Insurance Code. The Company does not contest a finding that GS Closing LLC was not licensed at the time of the examination.

Unlicensed Agents (pages 6-7)

Response: Denied. The Company, after researching the license status of Susan Sapp-Lawrence, agrees with the determination that Ms. Sapp-Lawrence was not licensed during the period covered by the exam. Although the Company does not have a copy of the license issued by the Department to Phil Hutsler, Mr. Hutsler represents to the Company that he was licensed by the Department during the period covered by the exam and that his license number is PR370775. As to Margaret Ayers, attached as Exhibit A¹ is a photocopy of license number PR370776 issued by the Department on May 15, 2006, to Margaret Elizabeth Ayres. Although the Company does not have a copy of the license issued by the Department to Debbie Jost, Ms. Jost represents to the Company that she was licensed by the Department during the period covered by the exam and states that her license number is PR399731. Attached as Exhibit B is a photocopy of license number PR369226 issued by the Department on April 19, 2006, to Daniel James Kraemer. The Examiner had noted in the Report that a certain individual named Dan Kreamer was not licensed with the DIFP; the correct last name for this agent, who is licensed, is "Kraemer," not "Kreamer."

Jennifer Fisher-unlicensed agent (page 7)

Response: Denied. In response the Company attaches as Exhibit C, a photocopy of the license issued by the Department on July 25, 2006, to Jennifer Fisher.

¹ The Company incorporates by reference the exhibits attached to its initial response dated April 11, 2008.

II. Underwriting and Rating Practices

A. Direct Operation

1. Forms and Filing—Direct Operation

Files 215696, M0601430, 215012, 108749192, M0509021, 217426, M0601552, M0603525, M0509383 (Page 8)

Response: Denied in part: The Company does not contest the criticisms as to File No. 215696, File No. 215012, and File No. 217426 and will file new forms to be in compliance in the future. Regarding File No. M0601430, the Company disagrees with the Examiner's comments and states that this was a seller only transaction and no commitment was issued. As to File No. M0509021, no commitment as issued; US Title issued the policy and that no policy will be issued by the Company. Regarding File No. M0601552 and File No. M0603525, the Company does not dispute the criticisms. File No. M0509383 reflects that it was a canceled duplicate file number and that no policy was issued. Regarding File No. 1084YIY2, the Company has reviewed the policy and the commitment and contends that they are in line with other policies and commitments utilized by the Company. The Company, therefore, disagrees with the Examiner's criticism as to this file. See attached Exhibit D.

Master Equity Line Loan Policy (page 8)

Response: Denied: The Company does not contest but notes that it has not issued any of these type policies during the examination period.

Master Equity Line Loan Risk Rate Filing (pages 8-9)

Response: Denied: The Company does not contest but notes that it has not issued any of these type policies during the examination period.

File 601107 (page 9)

Response: The Company does not contest this criticism.

2. Underwriting and General Handling

a. Failure to timely record

36 files (pages 9-10)

Response: While the Company agrees generally with the criticisms of the various files listed in the Report, the Company specifically disagrees as to File No. 593199 and contends that the documents were mailed to the Company, and the Company recorded them within three days of their receipt by the Company. The three business day statutory recording period has been found to be too short for compliance in standard business practices. The new title statute now allows for a five day recording period, which should help to alleviate the problem.

b. Risk Rate

22 files (pages 10-11)

Response: Denied in part. Regarding File No. 10849192, the Company responds that what appears on the policy is "Total Charge \$690; Premium \$105." The chart included on page 11 of the Report reflects "Rate Shown on Policy (Rate Charged) \$105; Filed Risk Rate for Policy \$125." The Company notes that the amount it charged is well above the risk rate, regardless of how it is figured See attached Exhibit D.

As to File No. 10791333, the Company notes that the chart reflects that the Company did not charge the proper risk rate; however, again the policy states "Total Charge \$270; Premium \$140"; the Report indicates that the risk rate is \$160, and the Company charged \$140. See attached Exhibit E.

Regarding File No. 592414, File No. 583003, File No. 571937, File No. 585380, File No. 583922 (two policies), and File No. 601 10 7, the policy form showed the original rate; however, the reissue rate was collected by the Company.

As to File No. 10742369, the Report signifies that the Company charged only \$200 when the filed risk rate is \$274.08. The Company responds that the transaction was a deed of trust modification for which it issued an endorsement to a previous policy, increasing the coverage. Notes in the closing file indicate that when the order was placed the lender told the Company that the increase would be from \$524,000 to \$624,000, and on that basis, the Company quoted \$200, which would have been the risk rate. The Company believes that it likely was not until after the modification was recorded and payment was received that someone realized the effective increase was more than \$300,000. Apparently at that point, the Company surmises that it must have been a business decision not to attempt to get the lender to send additional funds to the Company. See attached Exhibit F. As to File No. 587032, File No. 593693, and File No. 601016, the Company disagrees with the Report and contends that it did charge the original rate.

Regarding the Examiner's criticisms of Thomson Title in File No. M0601430, the Company responds that it worked jointly with Thomson Title to procure this client. Thomson Title was the primary entity working with the seller on title clearance items, and performing the closing for the sellers, obtaining payoff information, H/A dues, and coordinating the seller's closing times. The Company contends that Thomson Title did significant work on this transaction and was compensated accordingly.

As to Files Nos. M0508483, M0512104, M0510468, M0605007, M0603304, M0603525, M0601552, M0601430, and M0506517, the Company does not dispute the findings.

c. Total Charges

File 602282 (pages 11-12) Policy did not document total charges. See page 8

Response: The Company does not dispute the findings.

d. Improper Fees

File 585486 (page 12)

Response: The Company does not dispute the findings and refunded the amount in question.

Files 594443, 591164, 588615, 584772, 595140, 598811, 601016 (page 12)

Response: The Company does not dispute the findings and refunded the amount in question.

File 583922 (pages 12-13)

Response: Denied. Sufficient information was provided to explain the issue resulting in the withdrawal of the criticism as to the escrow shortage. By establishing the sufficiency of the escrow, the balance of the criticism does not establish a violation under Missouri law.

e. Exceptions

File MO603525 (page 13)

Response: The Company does not dispute the findings.

f. Miscellaneous

File 10849192 (page 13)

Response: Denied. See General Objection 1.

File M0601430 (page 13)

Response: Denied. See General Objection 1.

File 215012 (pages 13-14)

Response: Denied. See General Objection 1.

File M0601430 (page 14)

Response: Denied. See General Objection 1.

File M0510468 (page 14)

Response: Denied. See General Objection 1.

File 582928 (pages 14-15)

Response: Denied. See General Objection 1.

File 582928 (page 15)

Response: Denied. See General Objection 1.

Files 582928 & 10742369 (page 15)

Response: Denied. See General Objection 1.

File 580740 (page 15)

Response: Denied. See General Objection 1.

Files 583346 & 593693 (page 15)

Response: Denied. See General Objection 1.

File 583346 (page 16)

Response: Denied. See General Objection 1.

File 590091 (page 16)

Response: Denied. See General Objection 1.

3. Failure to Issue Policies in a Timely Manner

Files listed on pages 16-18

Response: No admission or denial required. See General Objection 6.

B. Agent

1. Forms and Filing

27 files on pages 19-20

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

23 files on page 20

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

6 files (page 21)

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

2. Underwriting General Handling

a. Failure to timely record (pages 21-23)

Response: No admission or denial required. See General Objection 6.

b. Incorrect Risk Rate on Policy

41 files (pages 23-24)

Response: Denied. See General Objection 7 & 10. When failing to use the risk rates filed with the Department, the agents are acting outside the scope of their authority and instructions.

File 48008 (page 25)

Response: Denied. See General Objection 7 & 10. When failing to use the risk rates filed with the Department, the agents are acting outside the scope of their authority and instructions.

18 files (pages 25-26)

Response: Denied. See General Objection 7 & 10. It appears that the Examiner has confused risk rate with our contract rate. Our contract rate is not a rate used to determine charges for the issuance of title policies and is not required to be filed with the DIFP. This issue has surfaced in previous market conduct exams. In order to comply with the Department's suggestion, the Company modified its agency contracts to indicate that the remittance by agents was an underwriting fee as opposed to the agents retaining a net commission. Therefore, the Company disagrees with the criticism as it applies to the contract rate.

c. Total Charges

Response: Denied. See General Objection 7 & 10.

d. Exceptions

File IT2154305 (pages 26-27)

Response: Denied. See General Objections 1, 7 & 10.

File IT2283606 (page 27)

Response: Denied. See General Objections 1, 7 & 10.

File AW023968 (page 27)

Response: Denied. See General Objections 1, 7 & 10. The policy issued insures the lender that the lien of the mortgage has priority over other matters. It would be improper underwriting to list a 2nd deed of trust as an exception thereby indicating that it had priority over the 1st deed of trust. Therefore, the Company disagrees with this criticism

File DRIT626202 (page 27)

Response: Denied. See General Objections 1, 7 & 10.

c. Improper Fees

6 files (pages 27-28)

Response: Denied. See General Objections 1, 7 & 10.

Files AW024046, AW026390 & AW024868 (page 28)

Response: Denied. See General Objections 1, 7 & 10.

File G9587 (page 28)

Response: Denied. See General Objections 1, 7 & 10.

File 05FT06732 (pages 28-29)

Response: Denied. See General Objections 1, 7 & 10.

File 0501096 (page 29)

Response: Denied. See General Objections 1, 7 & 10.

f. Good Funds

File 0501096 (page 29)

Response: Denied. See General Objections 1, 7 & 10.

g. Disbursement Violation

File 0501096 (pages 29-30)

Response: Denied. See General Objections 1, 7 & 10.

h. Miscellaneous Issues

File 510300 (page 30)

Response: Denied. See General Objections 1, 7 & 10.

Files W1363A & W1158C (page 30)

Response: Denied. See General Objections 1, 7 & 10.

Files 51341-05 & R3580 (pages 30-31)

Response: Denied. See General Objections 7 & 10.

File 050619 (page 31)

Response: Denied. See General Objections 7 & 10.

File 05FT08449 (page 31)

Response: Denied. See General Objections 1, 7 & 10.

File AW027728 (pages 31-32)

Response: Denied. See General Objections 1, 7 & 10.

Files 04FT8561, 05FT10430 & 05FT06732 (pages 32)

Response: Denied. See General Objections 1, 7 & 10.

File 05FT06732 (page 32)

Response: Denied. See General Objections 1, 7 & 10.

File 04FT7618 (pages 32-33)

Response: Denied. See General Objections 1, 7 & 10.

File 04FT7618 (page 33)

Response: Denied. See General Objections 1, 7 & 10.

File TA75889 (page 33)

Response: **Denied.** See General Objections 1, 7 & 10.

Files AW023189 & AS023042 (pages 33-34)

Response: **Denied.** See General Objections 1, 7 & 10.

File 05FT03815 (pages 34-35)

Response: **Denied.** See General Objections 1, 7 & 10.

File IT1790105 (page 35)

Response: **Denied.** See General Objections 1, 7 & 10.

File 04FT3290 (pages 36-37)

Response: **Denied.** See General Objections 1, 7 & 10.

File G9587 (page 37)

Response: **Denied.** See General Objections 1, 7 & 10.

3. Failure to Issue Policy in a Timely Manner

40 files (pages 37-39)

Response: **Denied.** See General Objections 6, 7 & 10.

13 files (failure to issue policy) (pages 39-40)

Response: **Denied.** See General Objections 7 & 10.

C. Construction Disbursing, Target Sample-Direct Operation

1. Forms and Filing (page 40)

No response required

2. Underwriting and General Handling

a. Failure to Timely Record

Files 561044, 576651 & 7171 (pages 40-41)

Response: **No admission or denial required.** See General Objection 6.

b. Incorrect Risk Rate

Files 561044 & 562581 (page 41)

Response: The Company does not contest the findings.

File 583556 (pages 41-42)

Response: The Company does not contest the findings.

File 561044 (pages 42-43)

Response: The Company does not contest the findings, however the original purchaser did not require an owner's policy since the property was a rehab and was re-sold within six months of purchase.

c. Miscellaneous

File 583556 (page 43)

Response: **Denied.** See General Objection 1.

File 562581 (pages 43-44)

Response: **Denied.** See General Objection 1.

3. Failure to Issue Policies in a Timely Manner

File 583556 (page 44)

Response: **No admission or denial required.** See General Objection 6.

III. Claims Practices

A. Claim Time Studies

1. Small Claims

No response required.

2. Large Claims (note that the error rate was below the level required to assess a penalty)

Acknowledgment Time

Files C108767& C012765 (page 46)

Response: Denied as to both. Regarding C108767, the Examiner comment references 20 C.YR 100-1.030 (I), which requires acknowledgement of claim within ten working days. 20 CSR 100-1.010 (G) defines notification of claim as "...any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent...." 20 CSR 100-1010 (A) defines agent as an "individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim."

The policy forms the Company filed in Missouri and elsewhere requires the insured to provide written notice of claim to the Company at its National Headquarters in Glen Allen, Virginia. This is the only means acceptable under the terms of the policy to provide notification of claim to the Company. In this case, no such notice was sent to the Company. It also does not appear that notice was sent to the policy issuing agent, but even if it had, it would not be effective notice to the Company. The policy issuing agent is appointed as a policy issuing agent only and is not authorized to and in fact, is prohibited from, representing the Company with respect to claims.

Regarding C012765, the Examiner comment references 20 CSR 100-1.030 (I), which requires acknowledgement of claim within ten working days. 20 CSR 100-1.010 (G) defines notification of claim as "...any information, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent" The policy forms the Company filed in Missouri and elsewhere requires the insured to provide written notice of claim to the Company at its National Headquarters in Glen Allen, Virginia This is the only means acceptable under the terms of the policy to provide notification of claim to the Company. In this case, the insured sent a fax to the Company's office in St. Louis, Missouri, which is not an acceptable means under the policy to present notice of claim to the Company. However, it was received by an individual in that office whose practice was to call the insured to discuss the matter with them prior to forwarding it to the Company's Claims Center in Dallas, Texas for further investigation and processing. The Claims Center received the matter on March 9, 2001, and confirmed acknowledgement of the Company's receipt of claim that very same day.

B. General Handling Practices

1. Small Claims

File 601938 (page 47)

Response: Denied. This "claim" was handled as an escrow matter under the insured closing protection matter and therefore should not be counted as a claim file for purposes of this examination since no policy had been issued at the time of the claim.

File S0206148 (pages 47-48)

Response: Denied. See General Objection1.

Files 500596, 501465, 501721, 588573 & 113891 (page 48)

Response: Denied. The claims identified by the Examiner (500596, 501465, 501721, 588572 and 113591) were based upon commitments issued by the Company's former policy issuing agents. The Company determined from reviewing the documents provided by the insureds and former agents that the commitments had been issued, the transactions had closed and premiums were collected. Accordingly, the Company resolved coverage in favor of the consumers. See General Objections 7 and 10.

2. Large Claims

Files C039032, C035281, C101534, C119563, C119668 & 122614 (page 48)

Response: Denied. Regarding C039032: Section 381. 101, RSMo provides that title insurers shall establish and maintain reserves against unpaid losses and loss expenses. The statute further provides that the title insurer shall determine the amount to be added to the reserve, "which amount shall reflect a careful estimate of the loss or expense likely to result by reason of the claim". In addition, the statute provides that the reserves may be revised from time to time. On March 16, 2004, the Company received notice of claim from the insured lender regarding a mechanic's lien lawsuit. On March 30, 2004, the Company acknowledged the claim, accepted coverage and agreed to provide a defense pursuant to the terms and conditions of the policy. The Company retained counsel to represent the insured lender providing this defense. It was not until July 27, 2004, that retained counsel provided an opinion that there were no viable defenses to the mechanic's lien. Upon receipt of that information, the Company established the appropriate reserves and quickly settled the case. As such, the Company does not believe that it acted inconsistent with the referenced statute.

Regarding Claim C035281: On or about November 7, 2003, the insured owner presented the Company with notice of claim regarding a mechanic's lien foreclosure lawsuit. On November 13, 2003, the Company sent a letter to the insureds, advising that the claim had been received, coverage was accepted and that a defense would be provided. The seller/developer agreed in writing to defend its purchaser, the Company's insured, at the seller/developer's expense; and further agreed to pay the mechanic's lien claimants and amounts found to be owed to them. The lawsuit was not expected to and did not proceed, as the developer and the mechanic's lien claimants agreed to submit their dispute to binding arbitration. As such, the Company had a reasonable basis to expect that the claim would likely not result in a loss to the Company. Accordingly, the Company does not believe that it acted inconsistent with the referenced statute.

Regarding Claim C101534: Two mechanic's liens were asserted against the title to the property. The insured lender presented notice of claim to the Company. The Company accepted the claim and retained counsel to defend the insured. On or about May 23, 2006, retained counsel advised the Company that after evaluating discovery responses from the lien claimants, he had discovered the lien was not properly perfected. After considering the matter and working out issues regarding settlement with the other parties, the matter was settled. The reserves were posted and the check prepared on June 29, 2006. Until then, the facts indicated that it was not likely the claim would result in a loss to the Company. Accordingly, it does not appear the Company acted inconsistent with the referenced statute.

Regarding Claim C119563: This claim was received from the insured by facsimile on February 9, 2006 at 4:3R P.M. The foreclosure of a prior deed of trust was scheduled for the very next morning. The Company investigated the matter, including any defenses or settlement possibilities that could be utilized to establish the title as insured. After determining that it could not cure the title, the Company agreed to compensate its insured pursuant to the terms and conditions of the policy. It was not until it obtained appraisal information on March 30, 2006, that the Company was able to determine the amount of loss. The reserves were established on April 4, 2006 and the settlement check was prepared. Based upon these facts, the Company does believe that it acted consistent with the referenced statute.

Regarding Claim C119668: The claim was accepted and a quiet title action initiated on behalf of the insured lender, seeking to cure the title. At the time of the examination, the title was being defended and it had not yet been determined that a loss would be incurred. The expense reserves were maintained under a separate related file.

Regarding Claim C122614: The Company's policy issuing agent issued a commitment proposing to issue a loan policy to the Bank. On May 11, 2006, the Bank presented the Company with notice of claim regarding several prior deeds of trust purporting to encumber the title to the property. The Company responded with a written acknowledgement of claim on May 16, 2006 and thereafter retained counsel to defend the Bank's lien. A quiet title action was commenced on behalf of the Bank for this purpose. The expense reserves were maintained under a related file. No loss reserves for this particular file had been established at the time of the examination as it appeared there were defenses to the prior deeds of trust. As such, the Company does not believe that it acted inconsistent with the referenced statute.

Files C119563, C123509, C121886, C119668, C119875, C119563 & C101534 (pages 49)

Response: Denied. Five of the claims identified by the Examiner (C119563, C123509, C121886, C119668, and C119875) were based upon commitments issued by the Company's former policy issuing agent, Advanced Title Company. The Company determined from reviewing the documents provided by the insureds and Advanced Title's closing files that the commitments had been issued, the transactions had closed and premiums were collected. Accordingly, the Company resolved coverage in favor of the consumers.

Regarding Claim C101534: This claim was based on a commitment issued by the Company's former policy issuing agent, Columbian Title Company. After the agent went out of business, the Company closed the transaction at one of its own offices, collecting \$95.00 for the premium related to the loan policy. Based upon this information, the Company determined it was obligated to issue the policy and that the proposed insured was entitled to the protection afforded by the policy committed to be issued. The Company accepted the claim and protected the consumer.

3. Indemnity Letters

File 05FT04627 (page 49)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

File 03FT2554 (pages 49-50)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

Files 400319 & 6 M0505025 (page 50)

Response: The Company does not contest these findings.

File 03CS0652 (page 50)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

4. Claims errors found during the Review of Underwriting

File 581005 (pages 50-51)

Response: The Company does not contest this finding.

IV. Consumer Complaints

No response required.

V. Unclaimed Property

No response required

VI. Formal Requests and Criticisms Time Study

A. Criticism Time Study

No response required

B. Formal request time study

No response required

Respectfully submitted,

Commonwealth Land Title Insurance Company



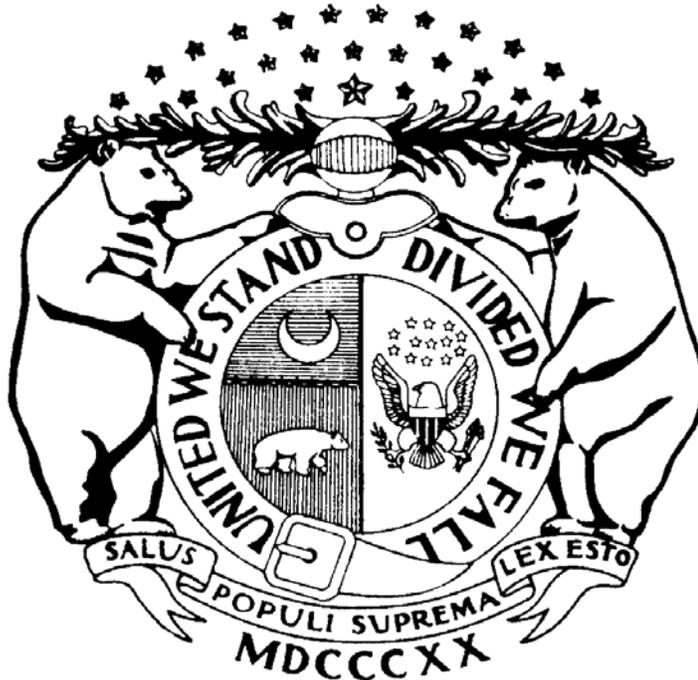
Michael J. Rich
Vice President and Regulatory Counsel

STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Final Market Conduct Examination Report ADDENDUM Commonwealth Land Title Insurance Company NAIC # 50083

January 11, 2010



Home Office
5600 Cox Road
Glen Allen, VA, 23060
Examination Number 06-09-40-TGT

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FOREWORD

This market conduct examination report of the Commonwealth Land Title Insurance Company is, overall, a report by exception. Examiners cite errors the Company made; however, failure to comment on specific files, products, or procedures does not constitute approval by the Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP).

Examiners use the following in this report:

- “Company” or “CLTIC” or “Commonwealth” to refer to Commonwealth Land Title Insurance Company;
- “DIFP” or “Department” to refer to the Missouri Department of Insurance, Financial Institutions and Professional Registration;
- “NAIC” to refer to the National Association of Insurance Commissioners;
- “RSMo” to refer to the Revised Statutes of Missouri; and
- “CSR” to refer to the Code of State Regulations.

SCOPE OF EXAMINATION

The DIFP has authority to conduct this examination pursuant to, but not limited to, Sections 374.110, 374.190, 374.205, 375.445, 375.938, 375.1009 RSMo, and Chapter 381, RSMo.

This portion of the examination is a result of a warrant issued by the Director reopening examination 0609-40-TGT. The purpose of this examination is to determine if Commonwealth complied with Missouri statutes and DIFP regulations.

The examination of Commonwealth Land Title Company, NAIC # 50083, was expanded by an examination warrant issued on March 10, 2008. It included the following Commonwealth agents to be examined for the time frame of January 1, 2006, to February 29, 2008.

- American Land Title, LLC
- Accurate Title Company, LLC
- Davis Title and Abstract Co.
- NRT Settlement Services of Missouri, LLC (US Title)
- Residential Title Services, Inc
- Tri-Lakes Title and Escrow
- Freedom Title
- An additional warrant issued on April 14, 2008, expanded the examination to include Great American Title-Group. However, their policies are written on Lawyers Title Insurance Corporation, a sister LandAmerica company, the files reviewed are reported in the Addendum to report 0612-67-PAC.
- An additional warrant issued on June 24, 2008, expanded the examination to include TitleAmerica, Inc.

EXECUTIVE SUMMARY

Examiners found the following areas of concern.

In some instances, deeds from escrow transactions were not recorded within the statutory time frame.

In some instances, the risk rate charged was not shown on the policies, or the rate shown was not the filed risk rate in 13 files.

In some instances, title insurance policies were not issued within 60 days. These files were for transactions prior to January 1, 2008. If they had been for transactions occurring after January 1, 2008, the company would be in violation of §381.038.3, RSMo.

EXAMINATION FINDINGS

American Land Title, LLC

American Land Title, LLC, was included in the warrant, however, based on information provided by the Company, they have never been an agent for LandAmerica. The examiners have no evidence that American Land Title, LLC has ever used LandAmerica paper. Therefore, this agent was not reviewed.

Accurate Title Company, LLC

Six Accurate Title files were reviewed. Four of those files were underwritten by Commonwealth. No errors were noted in that review.

Davis Title

Davis Title was not an agent for the underwriter during the time frame covered in this warrant and was not reviewed as a part of this examination.

NRT Settlement Services of Missouri LLC (US Title)

No Commonwealth files were reviewed at this agency. They have a small percentage of business written on Commonwealth paper. They place most of their LandAmerica policies with Transnation and merged into Lawyers Title Insurance Corporation.

Residential Title Services, Inc.

Residential Title Services, Inc. is a national agent. The agent processed its last Missouri order on 5/2/2007. They officially ceased business in the State of Missouri on 5/31/2007. Residential Title Services, Inc. entered into a consent order with the DIFP on 7/17/ 2007. No files were reviewed for purposes of this examination.

Tri-Lakes Title and Escrow

Tri-Lakes is a member of LandChoice. The examiners reviewed six files.

The examiners found the following errors in their review of Tri-Lakes files.

File: 70415-07

Owners Policy: B75-0127998

Loan Policy: H55-0245927

The examiners found the following concern in this file.

1. The transaction was funded on 10/19/2007, and funds were disbursed on 10/19/2007. The policy was not sent to the insured until 12/26/2007, 68 calendar days after disbursement. Long

delays in issuing the policy are not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation, but had the transaction taken place after 1/1/2008, the agency would have been cited for violating §381.038.3, RSMo, (Supp. 2007), and 20 CSR 500-7.090(2) & (3).

File: 70746-07

Owners Policy: B75-0123547

The examiners found one violation in this file.

1. The risk rate reported on the policy was \$349.23. The risk rate filed with DIFP is \$325.20. The agent must charge the risk rate filed with DIFP.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100

Freedom Title

The examiners reviewed six complaint files and the policy files associated with those complaints. The examiners requested and received an additional 11 files involving transactions where Century Mortgage was involved. The examiners also reviewed six files where Morrison Capital was involved.

The examiners found the following errors in their review of Freedom Title files.

File: 07FT00776

Loan Policy: H44-Z020556

The examiners found three violations in this file.

1. The agent made two mortgage payoffs in this transaction. Both of the lender payoff letters were sent to fax numbers belonging to the mortgage brokerage. An employee of the mortgage broker advised the title agent that the borrowers wanted to pay off their home equity line of credit but did not wish to deactivate the account. There is no indication the agent took any steps to assure that the home equity line of credit would be terminated and the deed of trust released. The agent failed to exercise control of the payoff data used in the transaction. The agent did not handle payoff of the home equity line of credit in accordance with sound underwriting practices. Sound underwriting practices include taking appropriate measures to assure release of existing encumbrances.

Reference: §381.071.1.2, RSMo, (1994)

2. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same as the form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

3. The agent closed this sale transaction in escrow on 2/28/2007. The transaction was funded on 3/5/2007, and funds were disbursed on 3/6/2007. The agent recorded the deeds on 3/13/2007, five business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

File: 06FT05474

Owners Policy: C330004365

Loan Policy: H4-Z015749

The examiners found two violations in this file.

1. The title was encumbered by a deed of trust affecting several properties. The agent did not satisfy the deed of trust in whole or in part and did not arrange to obtain a partial deed of release. The file contains no documentation that the deed of trust was released at the time of closing or later. The agent did not pay the deed of trust. The file offers no basis for belief that the bank completed a planned substitution of collateral or that the deed of trust did not continue as an encumbrance on the title, but the agent insured the title free of the lien. (The deed of trust also encumbered three other titles closed by the agent and included in this examination, namely the files numbered 06FT05472, 06FT05473, and 06FT05487.) It is not a sound underwriting practice to insure title while ignoring a known encumbrance on title. The company indicated that the bank “agreed” to release the subject properties and replace them with other properties owned by the seller. However, there is no documentation that this was completed.

Reference: §381.071.1.2, RSMo, (1994); 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08)

2. The agent closed this sale transaction in escrow on 8/3/2006. The transaction was funded on 8/3/2006, and funds were disbursed on 8/4/2006. The agent recorded the deeds on 8/15/2006, seven business days after disbursing from escrow. The agent failed to record the deeds within three business days.

Reference: §381.412.1, RSMo, (1994)

3. The funds were disbursed on 8/8/2006. The agent issued the owner’s policy on 10/15/2007, 426 calendar days after recording. A long delay in issuing the policy is not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation but had the transaction taken place after 1/1/08, the agency would have been cited for violating §381.038.3, RSMo, (Supp. 2007).

File: 06FT05472

Owners Policy: Not issued
Loan Policy: H44-Z017342

The examiners found two violations in this file.

1. The property was encumbered by a deed of trust affecting several properties. The agent did not satisfy the deed of trust in whole or in part and did not arrange to obtain a partial deed of release. The file contains a copy of a letter dated 8/28/2006, the day of closing, purportedly from a "Loan Servicing Associate" at the bank, but the letter is not signed. The letter indicates that the bank planned to release its lien on 10 different properties upon completion of a plan that would substitute different collateral for the loan. The file offers no basis for belief that the bank completed the plan for substitution of collateral or that the deed of trust did not continue as an encumbrance on the title. However, the agent insured the title free of the lien. (The deed of trust is also encumbered three other titles closed by the agent and are included in this examination, namely the files numbered 06FT05487, 06FT05473, and 06FT05474.) It is not a sound underwriting practice to insure ignoring a known encumbrance on title.

Reference: §381.071.1.2, RSMo, (1994)

2. The agent closed this sale transaction in escrow on 8/28/2006. The transaction was funded on 8/30/2006, and funds were disbursed on 8/30/2006. The agent recorded the deeds on 9/8/2006, six business days after disbursing from escrow. The agent failed to record the deeds within three business days.

Reference: §381.412.1, RSMo, (1994)

3. The agent issued the owner's policy on 4/9/2007, 213 calendar days after recording. A long delay in issuing the policy is not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation, but had the transaction taken place after 1/1/08, the agency would have been cited for violating §381.038.3, RSMo, (Supp. 2007).

File: 06FT05473

Owners Policy: C33-0004364
Loan Policy: H44-Z017343

The examiners found eight violations in this file.

1. The property was encumbered by a deed of trust affecting several properties. The agent did not satisfy the deed of trust in whole or in part and did not arrange to obtain a partial deed of release. The file offers no basis for belief that the deed of trust did not continue as an encumbrance on the title, but the agent insured the title free of the lien. (The deed of trust also encumbered three other titles closed by the agent and included in this examination, namely the files numbered 06FT05472, 06FT05474, and 06FT05487.) It is not a sound underwriting practice to insure ignoring a known encumbrance on title. The Company indicated the bank "agreed" to

release the subject property and replace them with other properties owned by the seller. This file includes no documentation this was accomplished.

Reference: §381.071.1.2, RSMo, (1994); 20 CSR 700-2.200(2005)

2. The agent closed this sale transaction in escrow on 7/12/2006. The transaction was funded by the lender on 7/18/2006, and funds were disbursed on the same day. The agent recorded the deeds on 8/2/2006, 11 business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

3. The owner's policy shows the total amount charged for the policy as \$451.00. The actual total amount charged for the owner's policy was \$601.00, including the charge of \$150.00 for search of the title. Neither the owner's policy nor the loan policy reflects the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100

4. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant. The search prepared for the title examination does not extend to any date earlier than 1995. The information used in examining the title was not sufficient to assure that all known and recorded matters affecting title would be reported in the owner's policy of title insurance.

Reference: §381.071.1 and .2, RSMo, (1994), 20 CSR 300-2.200(2005) (as amended 20 CSR 100-8.040, eff. 7/30/08) and 20 CSR 500-7.200.

5. The purchaser in this transaction obtained a purchase money mortgage from an institutional lender in the amount of \$57,600.00 and gave the seller a junior mortgage in the amount of \$6,400.00. Neither mortgage is shown as an exception to title in the owner's policy of title insurance. The junior mortgage is not shown as an exception in the lender's policy of title insurance. The agent failed to show or report known exceptions to title when issuing an owner's policy of title insurance, an unsound underwriting practice.

Reference: §381.071.1.2, and .2, RSMo, (1994)

6. The settlement statement prepared by the agent for the seller calls for payments to be made from escrow to W*** Enterprises in the amount of \$33,517.00 and calls for a net payment

to the seller in the amount of \$20,000.00. The actual relevant payments made by the agent from escrow were for \$5,517.00 to Robert W*** and \$48,000.00 to R T*** M****. The net amount paid to the seller in the transaction was \$0.00. The charge for payoff to W*** Enterprises in the amount of \$33,517.00 as shown on the settlement statement is not supported by any document, notation, or record of any sort appearing in the file. The sales contract in this file contains a provision reading: "Seller agrees to pay up to 6% closing costs." The agent prepared a settlement statement charging the seller for \$3,840.00 of the purchaser's settlement charges which was 6% of the full sale price of the property and more than 1/2 of the buyer's total settlement charges. The agent expended certain funds of the seller in a manner contrary to written instructions. The result may be an unsubordinated vendor's lien for the difference in favor of the seller. It is not a sound underwriting practice to conduct a settlement in a manner contrary to the written instructions of the parties.

Reference: §381.071.1.2, RSMo, (1994), 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08)

7. Certain payments made by the agent from escrow were not demonstrably for the purpose of satisfying the obligations of the buyer in acquiring title. Buyer and lender funds may have been used in a manner not intended by the parties. The agent made or facilitated false statements of material facts in connection with an insurance transaction. The agent failed to prepare a settlement statement that accurately discloses the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §375.144, RSMo, and 12 USC 2603 (RESPA)

8. In issuing the commitment to insure, the agent used a Schedule B-II that is not the form filed by the insurer with the director of the DIFP. Schedule B of the owner policy form used by the agent in this file is not the form filed by the insurer with the director. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994,) and 20 CSR 500.7-100.

9. The lender's policy was issued on 11/5/2006, a delay of 95 calendar days after deeds were recorded. The owner's policy was issued on 10/8/2007, a delay of 432 calendar days after deeds were recorded. A long delay in issuing the policy is not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation but had the transaction taken place after 1/1/08, the agency would have been cited for violating §381.038.3, RSMo, (Supp. 2007).

File: 06FT05487

Owners Policy: C33-0002271

Loan Policy: H44-Z017344

The examiners found eight violations in this file.

1. The property was encumbered by a deed of trust affecting several properties. The agent did not satisfy the deed of trust in whole or in part and did not arrange to obtain a partial deed of release. The file contains a copy of a letter dated 8/28/2006, the day of closing, purportedly from a "Loan Servicing Associate" at the bank, but the letter is not signed. The letter indicates the bank planned to release its lien on 10 different properties upon completion of a plan that would substitute different collateral for the loan. The file offers no basis for belief that the bank completed the plan for substitution of collateral or that the deed of trust did not continue as an encumbrance on the title, but the agent insured the title free of the lien. (The deed of trust also encumbered three other titles closed by the agent and included in this examination, namely the files numbered 06FT05472, 06FT05473, and 06FT05474.) The Company indicated, the bank "agreed" to release the subject property and replace them with other properties owned by the seller. However, there is no documentation that this was accomplished. It is not a sound underwriting practice to insure title ignoring a known encumbrance on title.

Reference: §381.071.1.2, RSMo, (1994)

2. The agent closed this sale transaction in escrow on 8/28/2006, and funds were disbursed on 8/29/2006. The agent recorded the deeds on 9/7/2006, six business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

3. The loan policy issued in this file does not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, and 20 CSR 500-7.100.

4. The agent's search of title was not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant. The information used in examining the title was not sufficient to assure that all known and recorded matters affecting title would be reported in the owner's policy of title insurance.

Reference: §381.071.1 and .2, RSMo, (1994), 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08) and 20 CSR 500-7.200

5. In issuing the commitment to insure, the agent used a Schedule B-II that is not the form filed by the insurer with the director of the DIFP. Schedule B of the owner policy form used by the agent in this file is not the form filed by the insurer with the director. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994), and 20 CSR 500.7-100.

6. Robert W*** signed a mechanic's lien waiver on the day of closing for \$9,000.00. R. T*** Mc*** signed a mechanic's lien waiver on the day of closing for \$28,314.21. The seller's final affidavit indicates there were no recent improvements to the property. The agent paid W*** and Mc*** the amounts specified in the mechanic's lien waivers. The agent made substantial payments for improvements that the seller asserted did not exist. The agent had no real basis for the payments to W*** and Mc***. The payments made by the agent for the apparent purpose of obtaining mechanic's lien waivers were not demonstrably for the purpose of satisfying the obligations of the buyer in acquiring title. The seller's final affidavit indicates the seller had not performed or authorized any improvements. The payments were not for the purpose of satisfying obligations of the seller. Payments made based upon false pretenses cause buyer and lender funds to be used in a manner not intended by the parties.

Reference: §381.071.1.2, RSMo, (1994)

7. The agent made payments to parties based upon information known to the agent to be contrary to the seller's sworn statement of no improvements to the property. It is not a sound underwriting practice to disburse buyer and lender funds in a manner not intended. The agent made or facilitated false statements of material facts in connection with an insurance transaction. The agent prepared a settlement statement that did not accurately disclose the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §375.144, RSMo, and 12 USC 2603 (RESPA)

8. The agent charged \$52.00 for notary fees. An employee of the agent notarized four signatures and witnessed perhaps 10 additional signatures. The maximum notary fees chargeable by the agent were \$28.00. Notary fees are established by statute.

References: §486.350.1, RSMo, and §324 CFR 3500.14(c) (RESPA)

File: 06FT10562

Loan Policy: K60-0017775

The examiner identified two violations.

1. The agent closed the transaction in escrow on 1/26/2007, disbursed the funds on 1/31/2007, and recorded the deeds on 2/8/2007. The agent recorded the deeds six business days after disbursing funds from escrow. The agent failed to record the deeds within three business days.

Reference: §381.412.1, RSMo, (1994)

2. The policy does not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100(3)(B)

File: 06FT04924

Owners Policy: C33-0002262

Loan Policy: H44-Z016960

This file was the subject of DIFP complaint file numbered 07A000142. It was one of six complaints reviewed and summarized by the examiners.

The examiners found two violations in the file.

1. The agent closed the transaction in escrow 7/13/2006, disbursed the funds on 7/14/2006, and recorded the deeds on 7/24/2006. The agent recorded the deeds six business days after disbursing funds from escrow. The agent failed to record the deeds within three business days.

Reference: §381.412.1, RSMo, (1994)

2. The policies dated do not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100(3)(B)

3. The agent did not issue the owner's policy of title insurance until 4/9/2007, a delay of 259 calendar days after recording. A long delay in issuing the policy is not in the best interest of the consumer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation, but had the transaction taken place after 1/1/2008, the agency would have been cited for violating §381.038.3, RSMo, (Supp. 2007).

File: 06FT00765

Owner Policy: C33-0037335

Loan Policy: K73-0007130

This file was the subject of DIFP complaint file numbered 07A000137. It was one of six complaints reviewed and summarized by the examiners.

The examiner found the following seven violations in this file.

1. The agent closed this sale transaction in escrow on 3/23/2006. The agent disbursed funds from escrow on 3/24/2006, and recorded the deeds on 3/30/2006, a delay of four business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

2. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant. The search prepared for the title examination does not extend to any date earlier than 1976. The 1976 deed of conveyance includes a recital indicating that title was subject to a mortgage. The file contains no information establishing that the referenced mortgage was released or satisfied. The information used in examining the title was not sufficient to assure that all known and recorded matters affecting title would be reported in the owner's policy of title insurance.

Reference: §381.071.1 and .2, RSMo, (1994), and 20 CSR 300-2.200 (2005) (as amended 20 CSR 100-8.040, eff. 7/30/08), and 20 CSR 500-7.200.

3. The agent charged \$26.00 for notary fees. No signature was notarized or witnessed by any employee of the agency. Notary fees are established by statute. A party performing no notary services may not collect any notary fee. The agent charged the seller a document preparation fee of \$50.00. No person other than an attorney may charge a fee for preparation of deeds in Missouri.

References: §486.350.1, RSMo, 24 CFR 3500.14(c) (RESPA), and *Eisel v Midwest BankCentre*, 230 SW3d 335 (Mo, 2008)

4. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. Schedule B of the owner policy form used by the agent in this file is not the same form filed by the insurer with the director. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

5. The agent recorded and paid a charge on the seller's settlement statement labeled "payoff" to a person named R. T*** Mc*** in the amount of \$27,942.00. The agent made a similar "payoff" to a person named Robert W*** in the amount of \$2,000.00. There are no documents in this file evidencing any mortgage, obligation, fee, or debt owed by the seller in this transaction to either Mc*** or W***. The agent had no real basis for the payments to W*** and Mc***. Payments purportedly made on behalf of the seller but not for the purpose of satisfying obligations of the seller cause buyer and lender funds to be used in a manner not intended by the parties. The sales contract in this file contains a provision reading: "Seller agrees to pay up to 6% of closing costs." The buyer's total settlement charges as shown on the settlement statement were \$5,903.14. Six percent of \$5,903.14 is \$354.19. The agent prepared a settlement statement charging the seller for \$3,210.00 of the purchaser's settlement charges. That was six percent of the full sale price of the property and more than 1/2 of the buyer's total settlement charges. The

agent prepared a settlement statement showing seller charges that were not for satisfaction of any obligation of the seller. The agent prepared a settlement statement that inaccurately reflected and substantially inflated an obligation of the seller to pay a portion of the buyer's costs of closing. The agent made or facilitated false statements of material facts in connection with an insurance transaction. The agent prepared a settlement statement that did not accurately disclose the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §§381.071.1.2, and 375.144, RSMo, and 12 USC 2603 (RESPA)

6. The purchaser in this transaction obtained a purchase money mortgage. The mortgage is not shown as an exception to title in the owner's policy of title insurance. The agent failed to show a known exception to title, an unsound underwriting practice. The agent failed to report a known exception to title when issuing an owner's policy of title insurance.

Reference: §381.071.1.2, and .2, RSMo, (1994)

7. The policies issued in this file do not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100.

8. The agent recorded the deeds on 3/30/2006. The agent supplied an electronic copy of this file on or about 4/12/2008. The electronic file did not include copies of any issued policies. The agent later supplied copies of both the owner and the lender policies for this file. The agent also supplied a copy of a file status report labeled as current through 4/17/2008. That report did not indicate that policies had been issued. The examiner is treating the policies as issued on 4/18/2008. The policies were issued 750 days, more than two years, after the agency had all information needed for issuance of the policy. The examiner also addressed a request to the underwriter on 5/20/2008 asking for the posting date shown by the underwriter for the policies in this and certain other files. The underwriter will ordinarily post policies within a few days of receipt. Neither of the policies reported by the agent for this file have ever been posted by the underwriter. A long delay in issuing the policy is not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation, but had the transaction taken place after 1/1/08, the agency would have been cited for violating §381.038.3, RSMo (Supp. 2007).

File: 07FT02774

Loan Policy: K73-Z010904

The examiner found three errors in this file.

1. The agent closed this sale transaction in escrow on 4/26/2007. The agent disbursed funds from escrow on 5/1/2007 and recorded the deeds on 5/7/2007. The agent recorded the deeds four business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

2. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not previously filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100

3. The policy in this file, dated shows the total amount charged for issuance of the policy as \$280.00. The actual total amount charged for issuance of the policy was \$310.00, including the charge of \$30.00 for endorsements. The policy does not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100

File: 06FT04930

Owners Policy: C33-0004341

Loan: H44-Z016982

This file was the subject of DIFP complaint file numbered 07A000138. It was one of six complaints reviewed and summarized by the examiners.

The examiner found six errors in this file.

1. The owner's policy, dated shows total amount charged for the policy as \$422.00. The actual total amount charged for the policy was \$622.00, including the charge of \$150.00 for a title search fee and a title examination fee of \$50.00. The owner's policy does not reflect the risk rate charged by the insurer. The loan policy does not show the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This topic was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100

2. At the time of the commitment to insure, the title was encumbered by a deed of trust that the agent did not satisfy in whole or in part and for which the agent did not obtain a deed of

release. The agent insured the title free of the deed of trust. It is not a sound underwriting practice to insure ignoring a known encumbrance on title.

Reference: §381.071.1.2, RSMo, (1994)

3. The purchaser in this transaction obtained a purchase money mortgage from an institutional lender in the amount of \$52,200.00 and a second mortgage from the seller in the amount of \$5,800.00. Neither mortgage is shown as an exception to title in the owner's policy of title insurance. The second mortgage is not shown as an exception in the loan policy of title insurance. The agent failed to show a known exception to title, an unsound underwriting practice. The agent failed to report a known exception to title when issuing an owner's policy of title insurance.

Reference: §381.071.1.2, and .2, RSMo

4. The agent recorded and paid a charge on the seller's settlement statement to a person named R. T*** Mc*** in the amount of \$24,931.45. The agent recorded and paid a charge on the seller's settlement statement to a person named Robert W*** in the amount of \$6,573.94. There are no documents in this file indicating or evidencing any mortgage, obligation, fee, or debt owed by the seller in this transaction to either Mc*** or W***. The agent had no real basis for the payments to W*** and Mc***. These payments made by the agent from escrow were not demonstrably for the purpose of satisfying the obligations of the buyer in acquiring title. Payments purportedly made on behalf of the seller but not for the purpose of satisfying obligations of the seller cause buyer and lender funds to be used in a manner not intended by the parties. By preparing a settlement statement providing for payments not a part of the real estate transaction, the agent made or facilitated false statements of material facts in connection with an insurance transaction. The agent prepared a settlement statement that did not accurately disclose the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §§375.144 and 381.071.1.2, RSMo (1994), and 12 USC 2603 (RESPA)

5. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant. The search prepared for the title examination does not extend to any date earlier than 1995. The information used in examining the title was not sufficient to assure that all known and recorded matters affecting title would be reported in the owner's policy of title insurance.

Reference: §381.071.1 and.2, RSMo, (1994), and 20 CSR 500-7.200.

6. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. Schedule B of the owner policy form

used by the agent in this file is not the same form filed by the insurer with the director. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

7. The agent closed this sale transaction in escrow on 6/30/2006. The agent disbursed funds from escrow on 7/5/2006. The agent recorded the deeds on 7/10/2006 and issued the loan policy on 9/30/2006, 82 calendar days after recording. The agency issued the owner's policy on 10/8/2007, 455 calendar days after recording. A long delay in issuing the policy is not in the best interest of the consumer or the insurer. Note that §381.038.3, RSMo, effective 01/01/2008, requires insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance. In this case, there was no statutory violation, but had the transaction taken place after 1/1/2008, the agency would have been cited for violating §381.038.3, RSMo (Supp. 2007).

File: 06FT02400

Owners Policy: C33-0037343

Loan Policy: H44-Z013204

This file was the subject of DIFP complaint file numbered 07A000139. It was one of six complaints reviewed and summarized by the examiners.

The examiners found four violations in this file.

1. The agent closed this sale transaction in escrow on 3/23/2006. The agent disbursed funds from escrow on 3/24/2006 and recorded the deeds on 3/30/2006, four business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

2. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant.

Reference: §381.071.1 and .2, RSMo, (1994), and 20 CSR 500-7.200.

3. The agent charged \$26.00 for notary fees, \$13.00 to the buyer and \$13.00 to the seller. No signature was notarized or witnessed by an employee of the agency. Notary fees are established by statute. A party performing no notary services may not collect any notary fee. The agent charged the seller a document preparation fee of \$50.00. No person other than an attorney may charge a fee for preparation of deeds in Missouri.

References: §486.350.1, RSMo, 24 CFR 3500.14(c) (RESPA), and *Eisel v Midwest BankCentre*, 230 SW3d 335 (Mo, 2008)

4. The agent recorded and paid a charge on the seller's settlement statement to a person named R. T*** Mc*** in the amount of \$27,942.00. The agent recorded and paid a charge on the seller's settlement statement to a person named Robert W*** in the amount of \$2,000.00. There are no documents in this file indicating or evidencing any mortgage, obligation, fee, or debt owed by the seller in this transaction to either Mc*** or W***. The agent had no real basis for the payments to W*** and Mc***. These payments made by the agent from escrow were not demonstrably for the purpose of satisfying the obligations of the buyer in acquiring title. Payments purportedly made on behalf of the seller but not for the purpose of satisfying obligations of the seller cause buyer and lender funds to be used in a manner not intended by the parties. By preparing a settlement statement providing for payments not a part of the real estate transaction, the agent made or facilitated false statements of material facts in connection with an insurance transaction. The sales contract in this file contains a provision reading: "Seller agrees to pay up to six percent of closing costs." The buyer's total settlement charges as shown on the settlement statement were \$5,902.64. Six percent of \$5,902.64 is \$354.16. The agent prepared a settlement statement charging the seller for \$3,210.00 of the purchaser's settlement charges. That was six percent of the full sale price of the property and in fact more than 1/2 of the buyer's total settlement charges. A contractual obligation of the seller to pay up to six percent of the buyer's closing costs was inaccurately reflected and substantially inflated, from \$354.16 to \$3,210.00, when shown by the agent on the settlement statement. Such an inaccurate entry on the settlement statement results in an artificial reduction in the net funds required of the buyer at time of closing. The agent prepared a settlement statement that did not accurately disclose the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §§375.144, and 381.071.1.2, RSMo, and 12 USC 2603 (RESPA).

File: 06FT01810

Owners Policy: C33-0037336

Loan Policy: H44-Z013324

This file was the subject of DIFP complaint file numbered 07A000140. It was one of six complaints reviewed and summarized by the examiners.

The examiners found six violations in this file.

1. The agent closed this sale transaction in escrow on 3/15/2006. The agent disbursed funds from escrow on 3/17/2006 and recorded the deeds on 3/27/2006, six business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

2. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

3. The agent recorded and paid a charge on the seller's settlement statement to a person named R. T*** Mc*** in the amount of \$18,935.44. The agent recorded and paid a charge on the seller's settlement statement to a person named Robert W*** in the amount of \$15,038.07. There are no documents in this file indicating or evidencing any mortgage, obligation, fee, or debt owed by the seller in this transaction to either Mc*** or W***. The agent had no real basis for the payments to W*** and Mc***. These payments made by the agent from escrow were not demonstrably for the purpose of satisfying the obligations of the buyer in acquiring title. Payments purportedly made on behalf of the seller but not for the purpose of satisfying obligations of the seller cause buyer and lender funds to be used in a manner not intended by the parties. The sales contract contains a provision reading: "Seller agrees to pay up to 6% of closing costs." The buyer's total settlement charges as shown on the settlement statement were \$4,988.56. Six percent of \$4,988.56 is \$299.31. The agent prepared a settlement statement charging the seller for \$3,720.00 of the purchaser's settlement charges. That was six percent of the full sale price of \$62,000.00 and in fact more than 1/2 of the buyer's total settlement charges. The agent made or facilitated false statements of material facts in connection with an insurance transaction. A contractual obligation of the seller to pay up to six percent of the buyer's closing costs was inaccurately reflected and substantially inflated, from \$299.31 to \$3,720.00, when shown by the agent on the settlement statement. Such an inaccurate entry on the settlement statement results in an artificial reduction in the net funds required of the buyer at time of closing. The agent prepared a settlement statement that did not accurately disclose the charges, fees, and expenses of parties in a residential real estate transaction.

Reference: §§375.144, and 381.071.1.2, (1994), and 12 USC 2603 (RESPA)

4. The owner's policy issued in this file shows the total amount charged for issuance of the policy as \$441.00. The actual total amount charged for issuance of the owner's policy was \$471.00, including a charge of \$30.00 as a "binder fee." The owner's policy does not reflect the risk rate charged by the insurer. The loan policy issued in this file does not show the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100.

5. The agent charged a document preparation fee of \$50.00 to each side in this transaction. No person other than an attorney may charge a fee for preparation of deeds in Missouri. The agent collected a recording release fee of \$30.00 on the seller's side in this transaction. The agent did not satisfy any mortgage in this transaction, did not request a payoff from any lender, and did not arrange to obtain a mortgage release from any lender. The title agent had no basis

for any belief that a release would be sent to the agent for recording, and the agent had no basis for collecting the release recording charges. The agent may not charge a fee for which no or nominal services are performed.

References: *Eisel v Midwest BankCentre*, 230 SW3d 335 (Mo, 2008) and 24 CFR 3500.14(c) (RESPA)

6. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant.

Reference: §381.071.1 and .2, RSMo, and 20 CSR 500-7.200

File: 07FT02393

Loan Policy: K73-Z010828

The examiner found four violations in this file.

1. The policy issued in this file shows the total amount charged for issuance of the policy as \$280.00. The actual total amount charged for issuance of the policy was \$310.00, including the charge of \$30.00 for endorsements. The policy does not reflect the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was handled in a consent order dated 10/10/1007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100

2. The agent made one mortgage payoff in this transaction. The lender's payoff letter was sent to a fax number belonging to the mortgage brokerage. There is no indication the agent took any steps to independently verify the mortgage payoff. The agent failed to exercise control of the important payoff data used in the transaction. Relying upon unverified information in satisfying a mortgage is not a sound underwriting practice.

Reference: §381.071.1.2, RSMo, (1994)

3. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100

4. The mortgage lender charged and collected a release recording fee. The agent also collected a fee for recording the release. Having been paid a fee for recording the release, the lender is required to actually record the release. However, the title agent had no basis for any belief that release would be sent to the agent for recording, and the agent had no basis for collecting release recording fees. The agent may not charge a fee for which no or nominal services are performed.

References: §443.130, RSMo, (2004) and 24 CFR 3500.14(c) (RESPA)

File: 06FT10250

Loan Policy: H44-Z020389

The examiner identified five violations in this file.

1. The agent closed this sale transaction in escrow on 12/22/2006. The agent disbursed funds from escrow on 12/28/2006 and recorded the deeds on 1/4/2007, four business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994)

2. The policy issued in this file shows the total amount charged for issuance of the policy as \$324.00. The actual total amount charged for issuance of the policy was \$354.00, including a charge of \$30.00 as an endorsement fee. The policy does not list the risk rate charged by the insurer. The policy may not be issued unless it lists the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100.

3. The agent satisfied one mortgage from escrow. The lender in that mortgage charged and collected a release recording fee. The lender's payoff letter included an assurance that the lender would record the deed of release. The agent also collected a fee of \$30.00 for recording the release. Having been paid a fee for recording the release, the lender is required to actually record it. However, the title agent had no basis for any belief that release would be sent to the agent for recording, and the agent had no basis for collecting the release recording charges. The agent may not charge a fee for which no or nominal services are performed.

References: §443.130, RSMo, (2004) and 24 CFR 3500.14(c) (RESPA)

4. The agent made one mortgage payoff in this transaction. The lender's payoff letter was sent to a fax number belonging to the mortgage brokerage. There is no indication that the agent took any steps to independently verify the mortgage payoff. Relying upon unverified information in satisfying a mortgage is not a sound underwriting practice.

Reference: §381.071.1.2, RSMo, (1994)

5. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

File: 07FT00867

Loan Policy: H44-Z020600

There were six violations in this file.

1. The agent closed this transaction in escrow on 2/19/2007. The agent disbursed funds from escrow on 2/23/2007 and recorded the deeds on 3/2/2007, five business days after disbursing from escrow. The agent failed to record the deeds from the transaction within three business days.

Reference: §381.412.1, RSMo, (1994).

2. The agent made one mortgage payoff in this transaction. The lender's payoff letter was sent to a fax number belonging to the mortgage brokerage. There is no indication that the agent took any steps to independently verify the mortgage payoff. Relying upon unverified information in satisfying a mortgage is not a sound underwriting practice.

Reference: §381.071.1.2, RSMo, (1994).

3. The agent satisfied one mortgage from escrow. The lender in that mortgage charged and collected a release recording fee, but the agent also collected a fee of \$30.00 for recording the release. Having been paid a fee for recording the release, the lender is required to do so. The agent may not charge a fee for which no or nominal services are performed.

References: §443.130, RSMo, (2004) and 24 CFR 3500.14(c) (RESPA)

4. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant.

Reference: §381.071.1 and .2, RSMo, (1994), and 20 CSR 500-7.200.

5. In issuing the commitment to insure, the agent used a Schedule B-II that is not the same form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

6. The policy issued in this file shows the total amount charged for issuance of the policy as \$295.00. The actual total amount charged for issuance of the policy was \$325.00, including a charge of \$30.00 as an endorsement fee. The policy does not show the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100.

File: 06FT09659

Loan Policy: H44-Z019214

The examiner identified three violations in this file.

1. The policy issued in this file shows the total amount charged for issuance of the policy as \$283.00. The actual total amount charged for issuance of the policy was \$313.00, including a charge of \$30.00 as an endorsement fee. The policy does not show the risk rate charged by the insurer. The policy may not be issued unless it contains the total amount paid for issuance of the policy and the risk rate.

This issue was addressed in a consent order dated 10/10/2007.

Reference: §381.181, RSMo, (1994), and 20 CSR 500-7.100.

2. The agent obtained a search of title not prepared from the records of a qualified title plant. The agent's file contains no information indicating that a search of title prepared from the records of a qualified title plant was not available at reasonable cost. The examination of title was not based upon evidence of title that a reasonable and prudent person would rely upon in the conduct of his own affairs. The file is not documented to show that the agent was exempted from the ordinary necessity of obtaining the search using a title plant.

Reference: §381.071.1 and .2, RSMo, and 20 CSR 500-7.200.

3. The commitment form, specifically Schedule B-II, used by the agent in this file is not the same commitment form filed by the insurer with the director of the DIFP. The agent and the insurer are not permitted to use forms not filed with the director.

Reference: §381.211, RSMo, (1994) and 20 CSR 500.7-100.

TitleAmerica. An additional warrant issued on June 24, 2008, expanded the examination to include TitleAmerica. Issues involving TitleAmerica are under the jurisdiction of Consumer Investigations. Commonwealth canceled their Missouri Contract with TitleAmerica on July 18, 2008. A report provided by Commonwealth on October 6, 2008, indicates that premiums due to LandAmerica are \$28,460.38. No TitleAmerica files were reviewed.

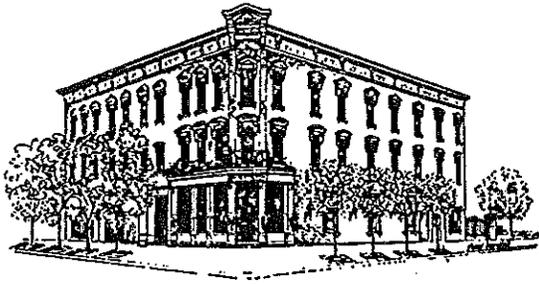
EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Addendum Report of the examination of Commonwealth Land Title Insurance Company (NAIC #50083), Examination Number 0609-40-TGT. This examination was conducted by Martha B. Long, Joseph Ott, and Ted Greenhouse. The findings in the Final Addendum Report were extracted from the Market Conduct Examiner's Draft Addendum Report, dated January 6, 2009. Any changes from the text of the Market Conduct Examiner's Draft Addendum Report reflected in this Final Addendum Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Addendum Report has been reviewed and approved by the undersigned.

Jim Mealer
Chief Market Conduct Examiner

Date

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Retired
Former Judge:
Sixth Judicial Circuit (1960-1964)
Missouri Supreme Court (1979-1991)

Re: Commonwealth Land Title Insurance Company - Market Conduct Examination

Dear Carolyn:

Attached please find for filing by and on behalf of Commonwealth Land Title Insurance Company ("Commonwealth") the company's formal Response dated December 1, 2009, to the Department's draft Addendum Report dated November 3, 2009.

Should you have any questions or wish to discuss this matter, please feel free to contact Mark Warren or me at 634-2522, or at our e-mail addresses of mwarren@englishmonaco.com and awarren@englishmonaco.com.

Thank you for all your courtesies with regard to this matter.

Sincerely,

Ann Monaco Warren
AMW/mjw
Encl.

cc: Michael Rich (via E-mail w/encl)

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DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

STATE OF MISSOURI
DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION

Market Conduct Examination Report

Examination Number 06-09-40-TGT

Commonwealth Land Title Insurance Company
NAIC # 50083

INSURER'S RESPONSE TO
THE DEPARTMENT'S ADDENDUM REPORT NOVEMBER 3, 2009

Submitted December 1, 2009

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GENERAL OBJECTIONS

The Market Conduct Examination Report (The Report) of the Missouri Department of Insurance (Department) raises many issues that have never been raised before by the Department in its examinations, notwithstanding that the practices in question have been constant for many years. Many of these criticisms are raised repetitively in the Report and would needlessly burden Commonwealth Land Title Insurance Company's (the Company) response to repeat its position at length each time it applies to an item in the Report.

In the interest of brevity and efficiency, the Company does not re-state the examiner's findings verbatim, but either cites the section of the Report, the applicable file or policy number, or, in the case of multiple criticisms of a particular transaction, the Company will paraphrase or briefly summarize the criticism. However, whether or not referred to specifically in any given response to any given criticism, the Company intends for these general objections to be applicable, as appropriate, to disputed criticisms in the report. Failure to include an objection in a response is not a waiver of the applicability of one or more applicable general objections to a criticism.

1. SOUND UNDERWRITING PRACTICES

The Company acknowledges its statutory obligation to employ sound underwriting practices and, in a few cases, the examiners have pointed out unsound underwriting practices.

However, the examiners have attempted to apply this term much more broadly than the meaning of the term permits. The General Assembly or the Director, by regulation, could define the term, but they have not done so. Therefore, the ordinary, everyday meaning ascribed to that phrase must be applied.

The generally accepted definition of the phrase "sound underwriting practice" is the acceptance of risk in a manner that will not unduly expose the Company to loss, with the potential of depleting its reserves to the detriment of other policyholders. The term has never been used to describe practices that push more of the risk onto the policyholder than might arguably be appropriate. Also, the term does not apply to practices that, while perhaps not technically perfect, do not expose the Company unduly to liability.

The fact that an examiner may reach a different conclusion from the agent or the insurer does not mean that a violation of 381.071 RSMo has occurred. Underwriters may themselves disagree as to the effect of a particular matter. Indeed, there may be some matters which an underwriter will agree to insure over. In some cases, an underwriter is guided by the legal opinion of the underwriter's counsel which may be at variance with the examiner. So long as the title search satisfies the statutory provisions and the exceptions are within the guidelines set forth by the insurer, an agent is not in violation of the statute even if the examiner disagrees with the agent.

The various transactions for which title insurance is provided are as unique as the individual tracts of land the policies insure. Underwriting is much more an art than a science. Just as each transaction and each party is unique, so are the title insurance issues that arise. It follows that the responses to these challenges by the insurer and its title insurance agent will be similarly varied.

The Company and its agents strive to provide title insurance products and close transactions to the satisfaction of all parties. Just as there are numerous ways to interpret any artwork, there are numerous ways of interpreting the responses of the insurer and the agents to these challenges.

2. ABSENCE OF PRINTED EXCEPTIONS IN LOAN POLICY SCHEDULE B

Although most loan policies are issued without the general (printed exceptions), the Company is entitled to raise them in the loan policy, because they are in the commitment. (Unless, of course, the insured has bargained for their omission and has tendered the proper proofs to the issuing agent).

The historical reason they are not printed in the loan policy Schedule B is because many years ago, lenders expressed the preference that they not show up in the policies at all. The alternative to not printing the exceptions is to use Schedule B with the printed exceptions and then delete them by note. This requires the lender's document examiner to look for two things: the exception and the note removing it. Lenders claim that this practice creates an unnecessary step, and so many years ago, the title insurance industry acquiesced in the lenders' preferences.

It should be mentioned that the practice cited by the examiners has been followed by every title insurer in every state, including Missouri, for at least 40 years.

3. UNLAWFUL DELEGATION OF LEGISLATIVE POWER

The General Assembly has delegated rule-making authority to the Director of the Department of Insurance, and the Company acknowledges that many of the issues raised by the examiners could properly be the subject of valid regulation, but the Director has not seen fit to address them. A case in point cited numerous times in the Report is the use of "hold open" commitments. The Company, as most others in the industry in the latter part of 2004, instructed its agents to cease this practice due to concerns raised by the Department at that time. However, the Department never issued a written regulation prohibiting the practice.

The Company further acknowledges that the examiners have authority under law to not only apply the statute and regulations in their work, but also to formulate reasonable and logical extensions thereof.

The examiners may not, however, regulate through their examination reports. To the extent that the Director has authorized them to do so, the Company believes it is an unlawful delegation of legislative power.

If the examiners encounter what they believe are violations of statute or regulation which have been known to the Department for many years, and never raised on Market Conduct Examination in the past, they should seek the issuance of a ruling or regulation on the subject, with notice to regulated companies and an opportunity to conform. To do less is probably violative of both the United States and Missouri Constitutions.

4. ISSUING AGENCY CONTRACT

The Company is perplexed by the many references to its Issuing Agency Contracts and matters governed by them in its Report in the same contexts as if they were statutes or regulations to which the agency is subject. In a sense, they may be so, but these provisions are for the Company's benefit and their violation is not chargeable to the Company.

The Company objects to any assertion by the Department that the Company can be subject to sanction for breach of an agency or contractual provision that is *for the Company's benefit*.

5. STATUS OF CERTAIN AGENTS

The examination of Phoenix Title, Title Insurers Agency and America's Title Source reveal many alleged violations. The Company believes it is germane to point out to the Department that it has cancelled its Issuing Agency Contracts with those agencies, and, in fact, those agencies are no longer in business. Further, the Company has cancelled its Agency Contracts with Nations Title Agency, U.S. Title Guaranty and Investors Title. The Company is no longer represented by these agencies.

6. DELAY OF POLICY ISSUANCE

While not citing the Company or agent for a violation of law, the Company respectfully states that it is inappropriate to cite a law that became effective after the closing date of the examination to suggest disapproval of a practice that was lawful at the time of occurrence. The Company believes that any references to the issuance of a policy that would violate current §381.038.3 RSMo should be removed from the examination as being extraneous and unfair.

7. FORFEITURE ASSERTED AGAINST UNDERWRITER FOR AGENCY VIOLATIONS

Non-affiliated agencies are independent businesses, over which the Company has only a limited amount of control. The scope of the duties and authority granted to the agent or agency is expressly provided for in the agency agreement. In instances where the agent/agency has an independent obligation to comply with Missouri law, and where that duty is not one assumed by the insurer under the agency agreement, and where such act or omission is outside the scope of his or her agency agreement, the Company is not liable for that violation and is not in violation of its legal obligations under Missouri law.

In some cases, violations of insurance laws and regulations might be suggestive of inadequate supervision by the underwriter. In other cases, however, the underwriter is blameless for the acts or omissions of the agency, and should not be held accountable. An example of this situation is the failure of agencies to furnish files or respond to examiners criticisms in a timely fashion. The Company has advised its agents of the importance of punctual compliance with the examiner's communications. It can do no more. In these cases, any penalty asserted should be against the agency and not the underwriter.

8. **Timely Recording:**

§381.412.1 RSMo reads:

A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. (emphasis added)

This statute was repealed and replaced by §381.026 RSMo on January 1, 2008. The law clearly recognizes that a settlement agent is responsible for timely recordation, not a title agent. A title agent has a limited agency authority from the Company and is an agent for purposes of title issuance, not settlement. The recordation of documents, while required for title issuance purposes, is not time dependent. Even though the State of Missouri may have required recordation within three business days prior to 2008, the failure of a settlement agent to comply did and still does not affect the insurability of the transaction or the legitimacy of the policy. The Company recognizes that under circumstances when its own employees may conduct settlement and arrange for the recordation of the document, a citation for a statutory violation for failure to record within three business days may be appropriate under the terms of the prior law. However, when the failure to record is the result of an act or omission of a person acting outside the scope of his or her agency agreement, the Company is not liable for that violation and is not in violation of its legal obligations under Missouri law.

9. **Applicability of New Regulations**

Numerous portions of the examiner's findings and reports and the stipulations seek to apply provisions of the title insurance act which became effective on January 1, 2008, retroactively for violations which occurred prior to the effective date of the new law. Also, there are numerous citations and use of regulations within 20 CSR 100-8.002 et. seq. which are applied in retroactive fashion. The Market Conduct Regulations effective 11-30-08, likewise are not subject to retroactive applications. The prospective application of a statute is "presumed unless the legislature demonstrates a clear intent to apply the amended statute retroactively, or if the statute is procedural or remedial in nature. *Tina Ball -Sawyers v Blue Springs School District* (2009 WL1181501 Mo App. WD). Substantive laws "fix and declare primary rights and remedies of individuals concerning their person or property, while remedial statutes affect only the remedy provided, including laws that substitute a new or more appropriate remedy for the enforcement of an existing right. *Id citing Files v. Wetteru, Inc.* 998 SW 2nd 95 at 97 (Mo App. 1999). Ergo, to the extent that changes to the title law affect the rights and duties of the companies for which they are held responsible and are subject to penalty, they are Substantive and should not be applied retroactively.

Thus, we request that the Department modify its reports such that retroactive application of laws and regulations which affect substantive rights which result in a violation and forfeiture against the examined company be removed from the reports and the resulting draft stipulations be amended accordingly.

10. Scope of Agency & Statutory Separation of Duties Between Insurer and its Agent.

The Department also issued additional examination warrants to examine title agencies appointed to do business with Fidelity. Because of these examinations, the department examiners found alleged violations of various laws by agents doing business with the company. As a result of these examinations, the department is attempting to hold the company responsible as a principal for violations by its agent or an agent based on the conclusory statement that as the principal, Lawyer's is responsible for the acts of its agent and is bound by agency principals for the agents actions.

In taking this improper position, the department ignores that fact that the company has an agency agreement with the agent which the agent is bound to follow. An "insurance agent, acting within the scope of his authority, actual or apparent, may bind an insurance company...." *Parshall v Buetzer* 195 SW 3rd 515. (Mo. App. W.D. 2006) citing *Voss v American Mutual Liability Insurance Company*, 341 SW 2nd 270, at 275 (Mo App.1960). Actual authority is the "power of an agent to affect the legal relations of the principal by acts done in accordance with the principal's manifestation of consent to him". *Id.*

Because the company is not bound by or responsible for the acts of an agent or agency acting outside the scope of the companies' "manifestation of consent," it is improper for the Department of Insurance to cite and fine the company for alleged acts of its agents which are outside the scope of the authority granted to them in their agency agreement. The attempt by the Department within the scope of a market conduct examination to abrogate well settled case law with respect to the duties of principals and agents is also improper. Further, the position taken by the Department would have the effect of allowing agents to ignore their agency agreements with the principal and violate the law at will knowing they will not be held accountable for their actions. The position of the Department will also act to give agents or agencies apparent authority to commit actions, legal or illegal, with no accountability from the agent or agencies for their actions to the principal. Further, this represents an attempt by the Department to directly interfere with the contractual relationship of the principal and agent.

For example, Section 2 of a Nations Title Agency Agreement (used as an example here) states that the agent "itself and through its employees or officers approved by the company (authorized signatories) shall only have the authority on behalf of company to sign, counter-sign and issue commitments, binders, title insurance policies, and endorsements and under which company assumes liability for the condition of title to land (hereinafter sometimes referred to "title assurances"), and only on forms supplied and approved by company and only on real estate located in the territory and in such other territories as may be designated in writing by the company." Therefore, as can be seen from the above, the agent is required, for example, to only use forms supplied and approved by the company. Thus, and for example only, use of an improper form by an agent is in direct contravention of the agreement with the company. The company should not therefore be held responsible in a market conduct examination (or in any legal proceeding) for an act by an agent which obviously exceeds the scope of the agent or agencies authority.

It should also be noted that the title insurance law found in Chapter 381 nowhere states that a title insurance company is responsible for the acts of its agents outside the scope of their agency agreements. On the contrary, Chapter 381.011 (effective 1/1/08) states at 381.011.3 that "except as otherwise expressly provided in this Chapter and except where the contexts otherwise requires, all

provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents.” Chapter 381 does not, therefore, make title companies responsible for acts of their agents, especially when the acts occur outside the scope of the agent’s authority.

EXAMINATION FINDINGS

I. Sales and Marketing

A. Licensing of agents and agencies

File 580740 (page 6)

Response: LandAmerica One Stop, a division of Lawyers Title Insurance Corporation, CLTIC's sister company, provided the Company with a search since the property was located in a non-core county. The search was examined by the Company and a commitment was issued on the Company's paper and sent to the customer. The Company does agree with the Department in that no update was issued prior to the policy.

GS Closing LLC (page 6)

Response: Denied. Licensure is an obligation of the producer not the insurer. The company is not responsible for a producer's obligation to obtain a license and comply with the Missouri Insurance Code. The Company does not contest a finding that GS Closing LLC was not licensed at the time of the examination.

Unlicensed Agents (pages 6-7)

Response: Denied. The Company, after researching the license status of Susan Sapp-Lawrence, agrees with the determination that Ms. Sapp-Lawrence was not licensed during the period covered by the exam. Although the Company does not have a copy of the license issued by the Department to Phil Hutsler, Mr. Hutsler represents to the Company that he was licensed by the Department during the period covered by the exam and that his license number is PR370775. As to Margaret Ayers, attached as Exhibit A¹ is a photocopy of license number PR370776 issued by the Department on May 15, 2006, to Margaret Elizabeth Ayres. Although the Company does not have a copy of the license issued by the Department to Debbie Jost, Ms. Jost represents to the Company that she was licensed by the Department during the period covered by the exam and states that her license number is PR399731. Attached as Exhibit B is a photocopy of license number PR369226 issued by the Department on April 19, 2006, to Daniel James Kraemer. The Examiner had noted in the Report that a certain individual named Dan Kreamer was not licensed with the DIFP; the correct last name for this agent, who is licensed, is "Kraemer," not "Kreamer."

Jennifer Fisher-unlicensed agent (page 7)

Response: Denied. In response the Company attaches as Exhibit C, a photocopy of the license issued by the Department on July 25, 2006, to Jennifer Fisher.

¹ The Company incorporates by reference the exhibits attached to its initial response dated April 11, 2008.

II. Underwriting and Rating Practices

A. Direct Operation

1. Forms and Filing—Direct Operation

Files 215696, M0601430, 215012, 108749192, M0509021, 217426, M0601552, M0603525, M0509383 (Page 8)

Response: Denied in part: The Company does not contest the criticisms as to File No. 215696, File No. 215012, and File No. 217426 and will file new forms to be in compliance in the future. Regarding File No. M0601430, the Company disagrees with the Examiner's comments and states that this was a seller only transaction and no commitment was issued. As to File No. M0509021, no commitment as issued; US Title issued the policy and that no policy will be issued by the Company. Regarding File No. M0601552 and File No. M0603525, the Company does not dispute the criticisms. File No. M0509383 reflects that it was a canceled duplicate file number and that no policy was issued. Regarding File No. 1084YIY2, the Company has reviewed the policy and the commitment and contends that they are in line with other policies and commitments utilized by the Company. The Company, therefore, disagrees with the Examiner's criticism as to this file. See attached Exhibit D.

Master Equity Line Loan Policy (page 8)

Response: Denied: The Company does not contest but notes that it has not issued any of these type policies during the examination period.

Master Equity Line Loan Risk Rate Filing (pages 8-9)

Response: Denied: The Company does not contest but notes that it has not issued any of these type policies during the examination period.

File 601107 (page 9)

Response: The Company does not contest this criticism.

2. Underwriting and General Handling

a. Failure to timely record

36 files (pages 9-10)

Response: While the Company agrees generally with the criticisms of the various files listed in the Report, the Company specifically disagrees as to File No. 593199 and contends that the documents were mailed to the Company, and the Company recorded them within three days of their receipt by the Company. The three business day statutory recording period has been found to be too short for compliance in standard business practices. The new title statute now allows for a five day recording period, which should help to alleviate the problem.

b. Risk Rate

22 files (pages 10-11)

Response: Denied in part. Regarding File No. 10849192, the Company responds that what appears on the policy is "Total Charge \$690; Premium \$105." The chart included on page 11 of the Report reflects "Rate Shown on Policy (Rate Charged) \$105; Filed Risk Rate for Policy \$125." The Company notes that the amount it charged is well above the risk rate, regardless of how it is figured See attached Exhibit D.

As to File No. 10791333, the Company notes that the chart reflects that the Company did not charge the proper risk rate; however, again the policy states "Total Charge \$270; Premium \$140"; the Report indicates that the risk rate is \$160, and the Company charged \$140. See attached Exhibit E.

Regarding File No. 592414, File No. 583003, File No. 571937, File No. 585380, File No. 583922 (two policies), and File No. 601 10 7, the policy form showed the original rate; however, the reissue rate was collected by the Company.

As to File No. 10742369, the Report signifies that the Company charged only \$200 when the filed risk rate is \$274.08. The Company responds that the transaction was a deed of trust modification for which it issued an endorsement to a previous policy, increasing the coverage. Notes in the closing file indicate that when the order was placed the lender told the Company that the increase would be from \$524,000 to \$624,000, and on that basis, the Company quoted \$200, which would have been the risk rate. The Company believes that it likely was not until after the modification was recorded and payment was received that someone realized the effective increase was more than \$300,000. Apparently at that point, the Company surmises that it must have been a business decision not to attempt to get the lender to send additional funds to the Company. See attached Exhibit F. As to File No. 587032, File No. 593693, and File No. 601016, the Company disagrees with the Report and contends that it did charge the original rate.

Regarding the Examiner's criticisms of Thomson Title in File No. M0601430, the Company responds that it worked jointly with Thomson Title to procure this client. Thomson Title was the primary entity working with the seller on title clearance items, and performing the closing for the sellers, obtaining payoff information, H/A dues, and coordinating the seller's closing times. The Company contends that Thomson Title did significant work on this transaction and was compensated accordingly.

As to Files Nos. M0508483, M0512104, M0510468, M0605007, M0603304, M0603525, M0601552, M0601430, and M0506517, the Company does not dispute the findings.

c. Total Charges

File 602282 (pages 11-12) Policy did not document total charges. See page 8

Response: The Company does not dispute the findings.

d. Improper Fees

File 585486 (page 12)

Response: The Company does not dispute the findings and refunded the amount in question.

Files 594443, 591164, 588615, 584772, 595140, 598811, 601016 (page 12)

Response: The Company does not dispute the findings and refunded the amount in question.

File 583922 (pages 12-13)

Response: Denied. Sufficient information was provided to explain the issue resulting in the withdrawal of the criticism as to the escrow shortage. By establishing the sufficiency of the escrow, the balance of the criticism does not establish a violation under Missouri law.

e. Exceptions

File MO603525 (page 13)

Response: The Company does not dispute the findings.

f. Miscellaneous

File 10849192 (page 13)

Response: Denied. See General Objection 1.

File M0601430 (page 13)

Response: Denied. See General Objection 1.

File 215012 (pages 13-14)

Response: Denied. See General Objection 1.

File M0601430 (page 14)

Response: Denied. See General Objection 1.

File M0510468 (page 14)

Response: Denied. See General Objection 1.

File 582928 (pages 14-15)

Response: Denied. See General Objection 1.

File 582928 (page 15)

Response: Denied. See General Objection 1.

Files 582928 & 10742369 (page 15)

Response: Denied. See General Objection 1.

File 580740 (page 15)

Response: Denied. See General Objection 1.

Files 583346 & 593693 (page 15)

Response: Denied. See General Objection 1.

File 583346 (page 16)

Response: Denied. See General Objection 1.

File 590091 (page 16)

Response: Denied. See General Objection 1.

3. Failure to Issue Policies in a Timely Manner

Files listed on pages 16-18

Response: No admission or denial required. See General Objection 6.

B. Agent

1. Forms and Filing

27 files on pages 19-20

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

23 files on page 20

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

6 files (page 21)

Response: Denied. See General Objection 7 & 10. Many agents have or subscribe to software systems that use forms that substantively comply but may not have forms that match identically with those filed by the Company. When doing so, the agents are acting in conflict with the express directions of the Company.

2. Underwriting General Handling

a. Failure to timely record (pages 21-23)

Response: No admission or denial required. See General Objection 6.

b. Incorrect Risk Rate on Policy

41 files (pages 23-24)

Response: Denied. See General Objection 7 & 10. When failing to use the risk rates filed with the Department, the agents are acting outside the scope of their authority and instructions.

File 48008 (page 25)

Response: Denied. See General Objection 7 & 10. When failing to use the risk rates filed with the Department, the agents are acting outside the scope of their authority and instructions.

18 files (pages 25-26)

Response: Denied. See General Objection 7 & 10. It appears that the Examiner has confused risk rate with our contract rate. Our contract rate is not a rate used to determine charges for the issuance of title policies and is not required to be filed with the DIFP. This issue has surfaced in previous market conduct exams. In order to comply with the Department's suggestion, the Company modified its agency contracts to indicate that the remittance by agents was an underwriting fee as opposed to the agents retaining a net commission. Therefore, the Company disagrees with the criticism as it applies to the contract rate.

c. Total Charges

Response: Denied. See General Objection 7 & 10.

d. Exceptions

File IT2154305 (pages 26-27)

Response: Denied. See General Objections 1, 7 & 10.

File IT2283606 (page 27)

Response: Denied. See General Objections 1, 7 & 10.

File AW023968 (page 27)

Response: Denied. See General Objections 1, 7 & 10. The policy issued insures the lender that the lien of the mortgage has priority over other matters. It would be improper underwriting to list a 2nd deed of trust as an exception thereby indicating that it had priority over the 1st deed of trust. Therefore, the Company disagrees with this criticism

File DRIT626202 (page 27)

Response: Denied. See General Objections 1, 7 & 10.

c. Improper Fees

6 files (pages 27-28)

Response: Denied. See General Objections 1, 7 & 10.

Files AW024046, AW026390 & AW024868 (page 28)

Response: Denied. See General Objections 1, 7 & 10.

File G9587 (page 28)

Response: Denied. See General Objections 1, 7 & 10.

File 05FT06732 (pages 28-29)

Response: Denied. See General Objections 1, 7 & 10.

File 0501096 (page 29)

Response: Denied. See General Objections 1, 7 & 10.

f. Good Funds

File 0501096 (page 29)

Response: Denied. See General Objections 1, 7 & 10.

g. Disbursement Violation

File 0501096 (pages 29-30)

Response: Denied. See General Objections 1, 7 & 10.

h. Miscellaneous Issues

File 510300 (page 30)

Response: Denied. See General Objections 1, 7 & 10.

Files W1363A & W1158C (page 30)

Response: Denied. See General Objections 1, 7 & 10.

Files 51341-05 & R3580 (pages 30-31)

Response: Denied. See General Objections 7 & 10.

File 050619 (page 31)

Response: Denied. See General Objections 7 & 10.

File 05FT08449 (page 31)

Response: Denied. See General Objections 1, 7 & 10.

File AW027728 (pages 31-32)

Response: Denied. See General Objections 1, 7 & 10.

Files 04FT8561, 05FT10430 & 05FT06732 (pages 32)

Response: Denied. See General Objections 1, 7 & 10.

File 05FT06732 (page 32)

Response: Denied. See General Objections 1, 7 & 10.

File 04FT7618 (pages 32-33)

Response: Denied. See General Objections 1, 7 & 10.

File 04FT7618 (page 33)

Response: Denied. See General Objections 1, 7 & 10.

File TA75889 (page 33)

Response: Denied. See General Objections 1, 7 & 10.

Files AW023189 & AS023042 (pages 33-34)

Response: Denied. See General Objections 1, 7 & 10.

File 05FT03815 (pages 34-35)

Response: Denied. See General Objections 1, 7 & 10.

File IT1790105 (page 35)

Response: Denied. See General Objections 1, 7 & 10.

File 04FT3290 (pages 36-37)

Response: Denied. See General Objections 1, 7 & 10.

File G9587 (page 37)

Response: Denied. See General Objections 1, 7 & 10.

3. Failure to Issue Policy in a Timely Manner

40 files (pages 37-39)

Response: Denied. See General Objections 6, 7 & 10.

13 files (failure to issue policy) (pages 39-40)

Response: Denied. See General Objections 7 & 10.

C. Construction Disbursing, Target Sample-Direct Operation

1. Forms and Filing (page 40)

No response required

2. Underwriting and General Handling

a. Failure to Timely Record

Files 561044, 576651 & 7171 (pages 40-41)

Response: No admission or denial required. See General Objection 6.

b. Incorrect Risk Rate

Files 561044 & 562581 (page 41)

Response: The Company does not contest the findings.

File 583556 (pages 41-42)

Response: The Company does not contest the findings.

File 561044 (pages 42-43)

Response: The Company does not contest the findings, however the original purchaser did not require an owner's policy since the property was a rehab and was re-sold within six months of purchase.

c. Miscellaneous

File 583556 (page 43)

Response: Denied. See General Objection 1.

File 562581 (pages 43-44)

Response: Denied. See General Objection 1.

3. Failure to Issue Policies in a Timely Manner

File 583556 (page 44)

Response: No admission or denial required. See General Objection 6.

III. Claims Practices

A. Claim Time Studies

1. Small Claims

No response required.

2. Large Claims (note that the error rate was below the level required to assess a penalty)

Acknowledgment Time

Files C108767& C012765 (page 46)

Response: Denied as to both. Regarding C108767, the Examiner comment references 20 C.YR 100-1.030 (I), which requires acknowledgement of claim within ten working days. 20 CSR 100-1.010 (G) defines notification of claim as "...any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent..." 20 CSR 100-1.010 (A) defines agent as an "individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim."

The policy forms the Company filed in Missouri and elsewhere requires the insured to provide written notice of claim to the Company at its National Headquarters in Glen Allen, Virginia. This is the only means acceptable under the terms of the policy to provide notification of claim to the Company. In this case, no such notice was sent to the Company. It also does not appear that notice was sent to the policy issuing agent, but even if it had, it would not be effective notice to the Company. The policy issuing agent is appointed as a policy issuing agent only and is not authorized to and in fact, is prohibited from, representing the Company with respect to claims.

Regarding C012765, the Examiner comment references 20 CSR 100-1.030 (I), which requires acknowledgement of claim within ten working days. 20 CSR 100-1.010 (G) defines notification of claim as "...any information, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent" The policy forms the Company filed in Missouri and elsewhere requires the insured to provide written notice of claim to the Company at its National Headquarters in Glen Allen, Virginia This is the only means acceptable under the terms of the policy to provide notification of claim to the Company. In this case, the insured sent a fax to the Company's office in St. Louis, Missouri, which is not an acceptable means under the policy to present notice of claim to the Company. However, it was received by an individual in that office whose practice was to call the insured to discuss the matter with them prior to forwarding it to the Company's Claims Center in Dallas, Texas for further investigation and processing. The Claims Center received the matter on March 9, 2001, and confirmed acknowledgement of the Company's receipt of claim that very same day.

B. General Handling Practices

1. Small Claims

File 601938 (page 47)

Response: Denied. This "claim" was handled as an escrow matter under the insured closing protection matter and therefore should not be counted as a claim file for purposes of this examination since no policy had been issued at the time of the claim.

File S0206148 (pages 47-48)

Response: Denied. See General Objection1.

Files 500596, 501465, 501721, 588573 & 113891 (page 48)

Response: Denied. The claims identified by the Examiner (500596, 501465, 501721, 588572 and 113591) were based upon commitments issued by the Company's former policy issuing agents. The Company determined from reviewing the documents provided by the insureds and former agents that the commitments had been issued, the transactions had closed and premiums were collected. Accordingly, the Company resolved coverage in favor of the consumers. See General Objections 7 and 10.

2. Large Claims

Files C039032, C035281, C101534, C119563, C119668 & 122614 (page 48)

Response: Denied. Regarding C039032: Section 381. 101, RSMo provides that title insurers shall establish and maintain reserves against unpaid losses and loss expenses. The statute further provides that the title insurer shall determine the amount to be added to the reserve, "which amount shall reflect a careful estimate of the loss or expense likely to result by reason of the claim". In addition, the statute provides that the reserves may be revised from time to time. On March 16, 2004, the Company received notice of claim from the insured lender regarding a mechanic's lien lawsuit. On March 30, 2004, the Company acknowledged the claim, accepted coverage and agreed to provide a defense pursuant to the terms and conditions of the policy. The Company retained counsel to represent the insured lender providing this defense. It was not until July 27, 2004, that retained counsel provided an opinion that there were no viable defenses to the mechanic's lien. Upon receipt of that information, the Company established the appropriate reserves and quickly settled the case. As such, the Company does not believe that it acted inconsistent with the referenced statute.

Regarding Claim C035281: On or about November 7, 2003, the insured owner presented the Company with notice of claim regarding a mechanic's lien foreclosure lawsuit. On November 13, 2003, the Company sent a letter to the insureds, advising that the claim had been received, coverage was accepted and that a defense would be provided. The seller/developer agreed in writing to defend its purchaser, the Company's insured, at the seller/developer's expense; and further agreed to pay the mechanic's lien claimants and amounts found to be owed to them. The lawsuit was not expected to and did not proceed, as the developer and the mechanic's lien claimants agreed to submit their dispute to binding arbitration. As such, the Company had a reasonable basis to expect that the claim would likely not result in a loss to the Company. Accordingly, the Company does not believe that it acted inconsistent with the referenced statute.

Regarding Claim C101534: Two mechanic's liens were asserted against the title to the property. The insured lender presented notice of claim to the Company. The Company accepted the claim and retained counsel to defend the insured. On or about May 23, 2006, retained counsel advised the Company that after evaluating discovery responses from the lien claimants, he had discovered the lien was not properly perfected. After considering the matter and working out issues regarding settlement with the other parties, the matter was settled. The reserves were posted and the check prepared on June 29, 2006. Until then, the facts indicated that it was not likely the claim would result in a loss to the Company. Accordingly, it does not appear the Company acted inconsistent with the referenced statute.

Regarding Claim C119563: This claim was received from the insured by facsimile on February 9, 2006 at 4:30 P.M. The foreclosure of a prior deed of trust was scheduled for the very next morning. The Company investigated the matter, including any defenses or settlement possibilities that could be utilized to establish the title as insured. After determining that it could not cure the title, the Company agreed to compensate its insured pursuant to the terms and conditions of the policy. It was not until it obtained appraisal information on March 30, 2006, that the Company was able to determine the amount of loss. The reserves were established on April 4, 2006 and the settlement check was prepared. Based upon these facts, the Company does believe that it acted consistent with the referenced statute.

Regarding Claim C119668: The claim was accepted and a quiet title action initiated on behalf of the insured lender, seeking to cure the title. At the time of the examination, the title was being defended and it had not yet been determined that a loss would be incurred. The expense reserves were maintained under a separate related file.

Regarding Claim C122614: The Company's policy issuing agent issued a commitment proposing to issue a loan policy to the Bank. On May 11, 2006, the Bank presented the Company with notice of claim regarding several prior deeds of trust purporting to encumber the title to the property. The Company responded with a written acknowledgement of claim on May 16, 2006 and thereafter retained counsel to defend the Bank's lien. A quiet title action was commenced on behalf of the Bank for this purpose. The expense reserves were maintained under a related file. No loss reserves for this particular file had been established at the time of the examination as it appeared there were defenses to the prior deeds of trust. As such, the Company does not believe that it acted inconsistent with the referenced statute.

Files C119563, C123509, C121886, C119668, C119875, C119563 & C101534 (pages 49)

Response: Denied. Five of the claims identified by the Examiner (C119563, C123509, C121886, C119668, and C119875) were based upon commitments issued by the Company's former policy issuing agent, Advanced Title Company. The Company determined from reviewing the documents provided by the insureds and Advanced Title's closing files that the commitments had been issued, the transactions had closed and premiums were collected. Accordingly, the Company resolved coverage in favor of the consumers.

Regarding Claim C101534: This claim was based on a commitment issued by the Company's former policy issuing agent, Columbian Title Company. After the agent went out of business, the Company closed the transaction at one of its own offices, collecting \$95.00 for the premium related to the loan policy. Based upon this information, the Company determined it was obligated to issue the policy and that the proposed insured was entitled to the protection afforded by the policy committed to be issued. The Company accepted the claim and protected the consumer.

3. Indemnity Letters

File 05FT04627 (page 49)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

File 03FT2554 (pages 49-50)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

Files 400319 & 6 M0505025 (page 50)

Response: The Company does not contest these findings.

File 03CS0652 (page 50)

Response: Denied. An indemnity letter is a customary and reasonable response in a situation where the liability is potential but where there is no current obligation to make a claim payment.

4. Claims errors found during the Review of Underwriting

File 581005 (pages 50-51)

Response: The Company does not contest this finding.

IV. Consumer Complaints

No response required.

V. Unclaimed Property

No response required

VI. Formal Requests and Criticisms Time Study

A. Criticism Time Study

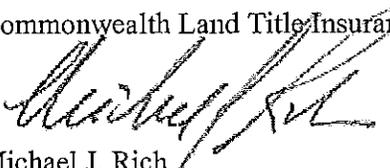
No response required

B. Formal request time study

No response required

Respectfully submitted,

Commonwealth Land Title Insurance Company


Michael J. Rich
Vice President and Regulatory Counsel