

**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 #0311-32-TLE  
Fidelity National Title Insurance Company (NAIC #51586)

**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 Fidelity Title Insurance Company, (hereafter referred to as "Fidelity"), 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" or the "Company"), 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 of Missouri; and

WHEREAS, Fidelity 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 Fidelity and prepared report number 0311-32-TLE 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. Some of Fidelity's agencies employed individuals who were engaged in the business

of title insurance, but who were not appointed by Fidelity as producers as required by §§375.022 and 381.031.17 and .19, RSMo.

2. Some of Fidelity's agencies employed producers who did not have a current producer's license as required by §§375.022 and 381.031.17 and .19, RSMo.

3. Some of Fidelity's agencies failed to report the employment of certain individuals who were engaged in the business of insurance to the Department as required by §375.061, RSMo.

4. In some instances, Fidelity used policy forms which included language that had not previously been filed with the Department, thereby violating §§381.071.1(2), and 381.211, RSMo, and Missouri Regulation 20 CSR 500-7.100(3)(A).

5. In some instances, Fidelity used risk rates and policy charges that were incorrect, not the actual risk rate charged by the Company, and not previously filed with the Department, thereby violating §381.181, RSMo, Missouri Regulation 20 CSR 7.100(1)(D), (2), and (3)(B), and MDI Bulletin 93-09.

6. In some instances, Fidelity used exceptions in its title policies that were inappropriate, generic in form, or not specific to the property or the transaction, thereby violating §381.071.1(2) and .2, RSMo.

7. In some instances, Fidelity failed to properly determine insurability by using sound underwriting practices when issuing certain policies, thereby violating §§381.071.1(2) and .2, RSMo, and the Company's own underwriting policy.

8. In some instances, Fidelity's file documentation failed to indicate that it maintained evidence of the examination of title and its determination of insurability for at least 15 years, as required by §381.071.3, RSMo.

9. In some instances, Fidelity and its agencies failed to record the security instrument(s) within three (3) business days after the closing of the transaction, thereby violating §381.412.1, RSMo.

10. In some instances, Fidelity's agencies accepted non-certified funds into escrow and disbursed those funds from the escrow account within 10 calendar days, thereby violating §381.412, RSMo.

11. In some instances, Fidelity's producers used an indemnification form identifying himself or his agency as a title insurer, although he was not as that term is defined by §381.031.21, thereby violating §381.041, RSMo.

12. In some instances, Fidelity failed to notify the insured of its acceptance or denial of certain claims within 15 working days of receipt of the claims, as required by §375.1007(3), RSMo, and 20 CSR 100-1.050(1)(A).

13. In some instances, Fidelity failed to complete its investigation of certain claims within 30 days of the receipt of the claims, as required by §375.1007(3), RSMo, and 20 CSR 100-1.040.

14. In some instances, Fidelity failed to acknowledge receipt of certain claims within 10 working days of their receipt, as required by §375.1007(3), RSMo, and 20 CSR 100-1.030(1).

15. In some instances, Fidelity failed to send a status letter to its claimants explaining why claims were still open after 45 days from the date of notice of the claim, as required by 20 CSR 100-1.050(1)(C).

16. In some instances, Fidelity failed to properly disclose to first-party claimants that the unmarketability of title or other relevant facts or policy provision entitled the insured to certain types of coverage under the policy, thereby violating §375.1007(1), RSMo, and 20 CSRS 100-1.020(1).

17. In some instances, Fidelity failed to promptly reply to its claimants within 10 days of receiving communications from the claimants which reasonably suggested a response was expected, thereby violating 20 CSR 100-1.030(2).

18. In some instances, Fidelity denied claims without first conducting a reasonable investigation as required by §375.1007(6), RSMo.

19. In some instances, Fidelity failed to provide claim forms, instructions, and reasonable assistance to first-party claimants so that they could comply with policy conditions and the insurer's reasonable requirements for submitting a claim, as required by 20 CSR 100-1.030(3).

20. In some instances, Fidelity 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, complaint handling, termination, and marketing practices of the company, thereby violating §374.205.2(2), RSMo, and 20 CSR 300-2.200(2) and (3).

21. In some instances, Fidelity 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).

NOW THEREFORE, Fidelity 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. Fidelity 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. Fidelity

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, Fidelity 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.” Evidence will be provided to the DIFP that such payments have been made within 120 days after a final Order concluding this exam is entered by the Department. The report to the DIFP shall include the total number of policies reviewed, the total number of policies affected by the incorrect charge, the dollar amount refunded on each affected policy, and the total dollar amount refunded overall, as a result of this review.

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 immediately subject to a monetary penalty equal to ½ of the “DIFP demand,” as outlined in Appendix A which is attached hereto and made a part herein. Upon completion of the follow-up examination, the Company acknowledges that it will be subject to a monetary penalty equal to ½ of the “DIFP demand” plus any applicable restitution if the follow-up examination reveals an error rate that exceeds an error rate of 7% for claims errors and 10% for non-claims related errors. The additional monetary penalty shall not exceed ½ of the “DIFP demand” for each “report section.”

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 Fidelity and that this agreement shall not be interpreted to impair the validity of Fidelity's existing contracts with its agents in the State of Missouri; and

WHEREAS, Fidelity'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, Fidelity, 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 #0311-32-TLE; and

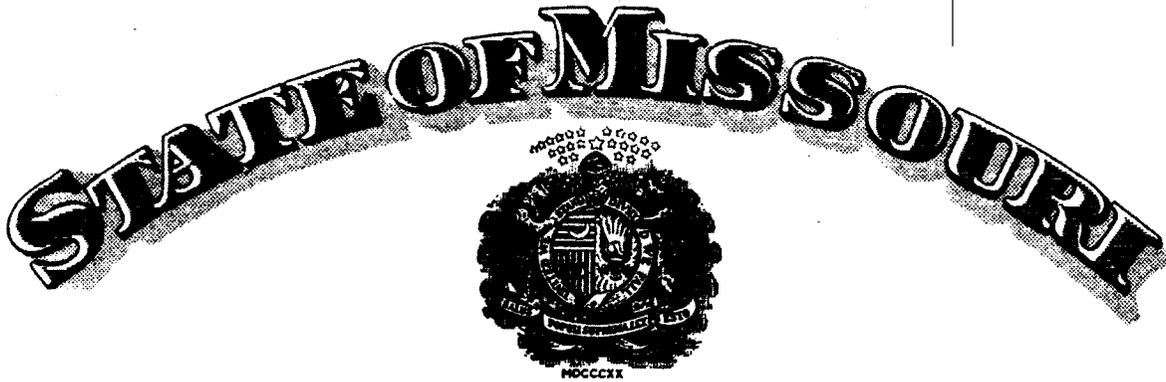
WHEREAS, Fidelity hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination # 0311-32-TLE further agrees, voluntarily and knowingly to surrender and forfeit the sum of \$73,113.07.

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 Fidelity to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Fidelity 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 \$73,113.07, such sum payable to the Missouri State School Fund, in accordance with §374.280, RSMo.

DATED: \_\_\_\_\_

\_\_\_\_\_  
President  
Fidelity National Title Insurance Co., Inc.



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

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

In re: )  
 ) Examination No. 0311-32-TLE  
Fidelity National Title Insurance Company )  
(NAIC #51586) )

**ORDER OF DIRECTOR**

NOW, on this 1<sup>st</sup> day of FEBRUARY, 2010, Director John M. Huff, after consideration and review of the market conduct examination report of Fidelity National Title Insurance Company. (NAIC #51586), (hereafter referred to as "Fidelity") report numbered 0311-32-TLE, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), RSMo, and the Stipulation of Settlement and Voluntary Forfeiture ("Stipulation") does hereby adopt such report as filed. After consideration and review of the Stipulation, report, relevant workpapers, and any written submissions or rebuttals, the findings and conclusions of such report is deemed to be the Director's findings and conclusions accompanying this order pursuant to §374.205.3(4), RSMo.

This order, issued pursuant to §§374.205.3(4) and 374.280, RSMo and §374.046.15. RSMo (Supp. 2008), is in the public interest.

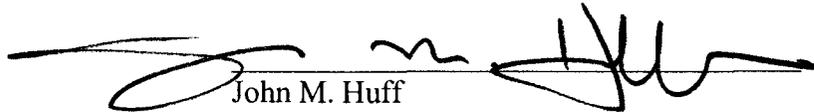
IT IS THEREFORE ORDERED that Fidelity and the Division of Insurance Market Regulation have agreed to the Stipulation and the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Fidelity shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Fidelity 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 Fidelity shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$50,000.00, 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 15<sup>th</sup> day of FEBRUARY, 2010.

  
John M. Huff  
Director

**STATE OF MISSOURI  
DEPARTMENT OF INSURANCE, FINANCIAL  
INSTITUTIONS & PROFESSIONAL  
REGISTRATION**

**FINAL MARKET CONDUCT EXAMINATION REPORT  
OF  
FIDELITY NATIONAL TITLE INSURANCE  
COMPANY INC.**

**NAIC 51586**

**Home Office**

**601 Riverside Avenue**

**Jacksonville, FL 32204**

**January 11, 2010**

**EXAMINATION NUMBER: 0311-32-TLE**

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## **FOREWORD**

This market conduct examination report of the Fidelity National 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 DIFP, Financial Institutions and Professional Registration (DIFP).

Examiners use the following in this report:

“Company” or “Fidelity” to refer to Fidelity National Title Insurance Company;

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

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

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

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

“AmTitSource” to refer to America’s Title Source; and

“FidTitSpring” to refer to Fidelity Title of Springfield.

## **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 of the Missouri Insurance Code. In addition, Section 447.572, RSMo, grants authority to the DIFP to determine compliance with the Uniform Disposition of Unclaimed Property Act.

The purpose of this examination is to determine if Fidelity 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 January 1, 2002, through December 31, 2002; however, examiners include all discovered errors in this report.

Although examiners report the errors discovered in individual files, this report focuses on general business practices of Fidelity. The DIFP has adopted the NAIC published error tolerance rate guidelines. Unless otherwise noted, examiners apply a 10 percent error tolerance criterion to underwriting and rating practices and a seven percent tolerance criterion to claims handling practices. Error rates greater than the tolerance suggest a general business practice.

This examination is primarily directed to the following company operations:

- Sales and Marketing,
- Underwriting and Rating,
- Claims Practices,
- Consumer Complaints, and
- Unclaimed Property

Fidelity has its statutory home office and its main administrative office at 601 Riverside Avenue, Jacksonville, FL 32204. These offices had been relocated in a series of moves during 2004 with the official date of relocation being July 1, 2004. Previously the principal administrative offices

had been located at 4050 Calle Real, Santa Barbara, CA 93110. The company's primary location of books and records is also at the Jacksonville location. For purposes of this examination of the company, Fidelity arranged to deliver a certain number of its files for examiner review to the home office of Chicago Title Insurance Company, a related company. Fidelity maintains a regional claims office at the Chicago Title office at 171 N. Clark Street, 8th Floor, Chicago IL 60601. The Missouri claims of Fidelity, Chicago Title Insurance Company, Ticor Title Insurance Company, and Security Union Title Insurance Company are all administered from the Chicago Title location. Fidelity also has agent offices throughout the State of Missouri. The title policy files are maintained at the offices of the issuing agents, so the underwriting review was conducted at those offices.

Examiners conducted this examination at the regional claims office in Chicago, at the two major agent offices in Springfield, and at numerous other agent offices in Missouri and at the one agent office in Kansas.

## **EXECUTIVE SUMMARY**

Examiners found the following areas of concern:

1. An agent collected fees for policy endorsements not issued and for services not provided.
2. Marketability issues in a limited number of claims were not resolved.
3. The company had unlicensed agents.
4. Some agents failed to appoint a number of their employees.
5. Agents issued policies and failed to identify Fidelity as the insurer.
6. Agents issued commitments with standard exceptions that were not filed by the Company with the DIFP.
7. Agents issued policies with standard exceptions that were not filed by the Company with the DIFP.
8. A limited number of agents issued residential policies with generic, inappropriate and/or irrelevant exceptions.
10. Agents issued commercial policies with inadequate legal descriptions.
11. Some of the Company's agents used incorrect risk rates on a number of the residential policies. Some agents failed to disclose the risk rate on any policies issued and others used an incorrect rate on some or all categories of policies issued. Several of these other agents also collected total charges on residential policies that were less than the filed risk rates.
12. Agents used and reported incorrect and ambiguous risk rates, policy charges, and total charges.
13. The review of the agents' commercial policies disclosed underwriting deficiencies.
14. Agents failed to record the security documents in a timely manner on residential policies.

15. Agents reported inaccurate vesting on some of their residential policies.
16. Agents reported an incorrect effective date on some of their residential policies.
17. Agents failed to report known exceptions. Many agents issued policies reporting exceptions that were not appropriate or were simply inaccurate.
18. Agents failed to prepare and maintain records listing accurate effective dates of the policies.
19. The Company failed to accept or deny some claims on a timely basis. In addition, the Company failed to complete the investigation of some claims within the required time period.
20. Agents failed to perform adequate examinations and use sound underwriting practices on several residential policies.
21. Agents periodically failed to follow the good funds statute.

# EXAMINATION FINDINGS

## I. SALES AND MARKETING

### A. Licensing of Agents and Agencies

#### 1. LICENSING AND APPOINTMENT OF AGENTS

##### a. Agency – Hogan Land Title

The agency identified two individuals as agents who did not have a Missouri title agent license for the year 2002: Denise E. Reed, who obtained a title agent license in 2004; and Thomas F. Wiles, who obtained a license in 2003.

Hogan Land Title employed 10 individuals as agents who were not appointed agents by Fidelity. They are listed below.

References: Sections 375.022, 381.031.17 and 19, RSMo.

Bailey, Nathan J.	Hayter, Janice K.
Boyd, Kimberly M.	Rea, Glenda L.
Brooks, Fred A.	Reed, Denise E.
Chaffin, Michael K.	Smith, Ellen G.
Coon, Karen	Wiles, Thomas F.

##### b. Agency - Fidelity Title Agency of Springfield

Fidelity Title Agency of Springfield employed the following 17 individuals as agents, but Fidelity did not appoint them as agents.

(The examiner notes that four of the 17 agents of Fidelity Title Agency not appointed by Fidelity were also agents employed at Hogan Land Title.)

References: Sections 375.022, 381.031.17 and .19, RSMo.

Bailey, Jill C.	Coon, Karen S.	LaPlante, Theresa A.
Bailey, Nathan J.	Culp, Lena S.	McCandless, Nicole F.
Baird, Christina A.	Fisher, Bennie J.	Payne, Lori P.
Barr, Nedra A.	Gill, Angie F.	Smith, Ellen G.
Chaffin, Michael K.	Hanmore, Kim D.	Trupp, Judy K.
Clinkenbeard, Robert L.	Hutchens, Evelyn D.	

**c. Other Agencies**

**(1) Agency – Investors Title Company**

The agent identified 132 individuals employed during the review period, in response to our request. Sixty-nine employees of the agency acting in a fiduciary capacity had no license for the year 2002.

(See Appendix C for list.)

References: Sections 375.022, 381.031.17 and .19 RSMo.

The agency was required to report to the Director of the DIFP the employment of all staff engaged in the business of title insurance as agents, but failed to report the employment of these 69 individuals.

Reference: Section 375.061, RSMo.

Fidelity did not appoint any of the 132 identified employees that were engaged in the business of title insurance as agents of Investors Title Company.

(See Appendix C for list.)

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(2) Agency – Nations Title Agency of Missouri**

Nations Title Agency of Missouri employed the following nine individuals as agents during the year 2002, but these individuals were not licensed as title agents by the Director of the DIFP.

Boyle, Elizabeth	Rivera, Dixsi
Johnston, Heather	Rodawald, Richard
Laney, Don	Schellhase, Sandra
Maguire, Molly	Zoellner, Cynthia
McDonald, Rodrick	

Nations Title Agency of Missouri employed the following 40 individuals as agents during the year 2002, but these individuals were not appointed as agents by Fidelity.

References: Sections 375.022, 381.031.17 and .19, RSMo.

Aylesworth, Matthew	Littlejohn, Kelly	Schellhase, Sandra*
Bean, Devin	Luer, Christine	Schenk, Keva
Bettorf, Penny	Maguire, Molly*	Tapley, Bobbie Jo
Boyle, Elizabeth*	McComish, Shawna	Thole, Debora
Brown, Dana	McDonald, Rodrick	Thompson, Lori
Craig, Roberta	Miles, Vannetta	Trigg, Steve
Craven, Peggy	Mueller, Susan	Wach, Betty Jeane
D'Angelo, Christina	O'Brien, Kelly	Wayne, Ronda
Denton, Amy	Overstreet, Kevin	Weiss, Carrie
Fendell, Matthew	Pense, Lorna	Williams, Catherine
Johnston, Heather*	Princivalli, Kimberly	Wojjeck, Michael
Knight, Chandra	Rivera, Dixsi*	Zoellner, Cynthia*
Kuchta, Lisa	Roberts, Christine	
Laney, Don*	Rodawald, Richard*	

### **(3) Agency – Title Insurers Agency**

Title Insurers Agency employed the following 13 individuals as agents during the year 2002, but these individuals were not licensed as title agents by the Director of the DIFP.

Areno, Tera D.	Hufmann, Marlene F.
Bennett, Tabitha M.	Myers, Jennifer
Bess, Dawn O.	Nuernberger, Kay Lynn
Broderick, Angela	Rossi, Chris C.
Buettner, June C.	Solomon, Frances P.
Chilton, Melanie	Tindle, Kimberly S.
Crowley, Patricia	

The following nine Title Insurers Agency employees were not appointed as agents by Fidelity in the calendar year 2002.

References: Sections 375.022, 381.031.17 and .19, RSMo

Thomas C. Kurzenberger, the owner of the agency;  
 Thomas B. Kurzenberger, a son of the owner of the agency who runs the construction disbursing department;  
 Todd C. Kurzenberger, a son of the owner of the agency who is a title examiner;  
 Kathryn A. Barnes, sales representative  
 Marlene F. Hufmann, sales representative\*  
 Mary M. Lawton, sales representative

Fred S. Levin, sales representative  
Kay Lynn Nuernberger, and sales representative\*  
Norma R. Reidel, sales representative

**(4) Agency – Netco Title**

Netco Title employed the following five individuals as title agents during the year 2002, but these individuals were not licensed as title agents by the Director of the DIFP.

Green, Kelly Jo	Ruble, Candace
Harper, Brijette	Stone, Jennifer
Jablonowski, Julie	

Netco Title employed the following 83 individuals as agents during the year 2002, but these individuals were not appointed as agents by Fidelity. Netco Title employed a total of 89 individuals during the year 2002. Five of the employees were in positions appearing not to require agent licensure. Only one of the remaining 83 was appointed as an agent by Fidelity.

Adams, Jason	Harper, Brijette*	McQuire, Tara
Alexander, Sherry	Haug, Christopher	Meers, Christopher
Boden, Sharon	Haug, Renee	Meyer, Chrystal
Braun, Kenneth	Haviland, Wallace II	Meyer, Scott
Brown, Jennifer	Heitman, Natalie	Milack, Leah
Brown, Shannon	Hester, Christopher	Moellman, Erin
Brummit, Ira	Higgins, Jeremy	Moore, Steven
Campbell, Amy	Hubbard, Carissa	Mordvar, John
Collins, Krystal	Inman, Jaime	Mund, Stephanie
Cooksey, Michelle	Jablonowski, Julie*	Northcutt, Heather
Daviess, Lisa	Johns, Paul	Payne, Carrie
Davis, Heather	Jordan, Eric	Peaslee, Andrew
Davis, Joseph	Joyce, Steven	Puhl, Cheryl
Dietrich, Kara	Kish, Neil	Relic, John III
Doyle, Carl	Koop, Sara	Renner, Randall
Ellis, Justin	Kralemann, Eric	Roberts, Christine
Firth, Lori	Kraus, Amy	Roland, Julia
Forbis, Amanda	Kutscher, Andrew	Rosenblatt, Michael
Gee, Toby	Lamar, Douglas	Ruble, Candace*
Green, Joshua	Lewis, Jamie	Schaeffer, Melissa
Green, Kelly Jo*	Lewis, Jennifer	Schembre, Bobby
Hablutzel, Emily	Luer, Christine	Sebastian, Branon
Hall, Jennifer	Maris, Michael	Sheffer, Trent

Sommerkamp, Catherine  
Stehr, Angie  
Stone, Jennifer\*  
Streicher, Robert  
Stricker, Rowena

Summa, Theresa  
Thompson, James  
Tierney, Kathleen  
Vanbebber, Marcia  
Vanover, Michael

Wilson, Nicole  
Woodruff, Patricia  
Young, Dana  
Young, Elizabeth

References: Sections 375.022, 381.031.17 and .19, RSMo.

#### **(5) Agency – Phoenix Title**

Phoenix Title had reported the employment of 11 title insurance agents during 2002 to the DIFP. Of these nine agents, Fidelity had appointed only two. The following nine agents were not appointed by Fidelity

Burke, Angela N.  
Corliss, Jessica M.  
Gillette, Deborah A.  
Johnson, Derrick L.  
Krebs, Diana E.

Mason, Sherre L.  
Price, Sharon B.  
Salyer, Robert A.  
Silvagni, Judy A.

References: Sections 375.022, 381.031.17 and .19, RSMo.

#### **(6) Agency – First Financial Title**

First Financial Title employed the following two individuals as agents during the year 2002, but these individuals were not licensed as title agents by the Director of the DIFP.

Ehrenberg, Jan  
Koonce, Nate

First Financial Title employed the following seven individuals as agents during the year 2002, but these individuals were not appointed as agents by Fidelity.

Ehrenberg, Jan\*  
Wilmes, Becky  
Koonce, Nate\*  
Crowley, Tricia

Jenkins, Alisha  
Taylor, Gloria  
Reid, Tiffany

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(7) Agency – Archer Land Title**

Archer Land Title employed the following seven individuals as agents during the year 2002, but these individuals were not licensed as title agents by the Director of the DIFP.

Barton, Kathleen	Pentland, Kimberly
Clayton, Jennifer	Tegeler, Cory
Isaac, Tracy	Tindle, Kim
Martin, Esther	

Archer Land Title employed the following eight individuals as agents during the year 2002, but these individuals were not appointed as agents by Fidelity. The examiner was not able to identify any individual employed by Archer Land Title who was also appointed as an agent by Fidelity.

Barton, Kathleen*	Pentland, Kimberly*
Clayton, Jennifer*	Tegeler, Cory*
Isaac, Tracy*	Tegeler, Courtney L.
Martin, Esther*	Tindle, Kim*

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(8) Agency – Troy Title Company**

Troy Title Company employed an individual named Michele T. Schroeder, who was properly licensed as a title agent by the Director of the DIFP but who was not appointed as an agent by Fidelity.

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(9) Agency – Assured Title Company**

Assured Title Company employed the following seven individuals as agents during the year 2002, but these individuals were not appointed as agents by Fidelity.

Lemery, Teresa	Paneitz, Loretta
Loyd, Kay	Rowland, Mardene
Lynner-Wood, Alexis	Wood, Kevin
Mintert, Janice	

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(10) Agent – Emory Melton**

Virginia L. Weatherman was employed by Emory Melton as an agent during 2002 but was not licensed as a title agent by the Director of the DIFP.

Virginia L. Weatherman and Cordelia F. Herrin were employed by Emory Melton as agents during 2002 but were not appointed as agents by Fidelity.

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(11) Agency – Barry County Abstract & Title**

Barry County Abstract & Title employed the following four individuals as agents during 2002, but these individuals were not appointed as agents by Fidelity. The examiner was not able to identify any individual employed by Barry County Abstract & Title who was also appointed as an agent by Fidelity.

Andrews, Kathy  
Coones, Angela  
Dotson, Denise  
Williams, Cheryl

References: Sections 375.022, 381.031.17 and .19, RSMo.

**(12) Agency – Wright County Title**

Wright County Title Company employed Charity D. Collins and Cynthia Rene Bocio, who were licensed title insurance agents in the state of Missouri, but they were not appointed as agents by Fidelity.

References: Sections 375.022, 381.031.17 and .19, RSMo.

**2. LICENSING OF AGENCIES**

The examiners did not find any unlicensed agencies representing Fidelity.

## **B. Marketing Practices**

The examiners did not discover any unacceptable marketing practices.

## **II. UNDERWRITING AND RATING PRACTICES**

### **A. Forms and Filings**

#### **1. EXCEPTIONS ON COMMITMENTS**

##### **a. Agency – Hogan Land Title - All Commitments Reviewed**

The standard exceptions in the commitments issued by the agent are not those filed by Fidelity with the Director of the DIFP.

The agent and the insurer are not permitted to use forms not filed with the DIFP.

Reference: Section 381.211, RSMo.

##### **b. Other Agencies**

###### **(1) Agency – Miller County Title**

The standard exceptions in the commitments issued by the agent are not those filed by Fidelity with the Director of the DIFP.

Reference: Section 381.211, RSMo.

###### **(2) Agency – Nations Title Agency**

Files reviewed: 10

Files in error: 10

The standard exceptions in all of the commitments issued by the agent are not those filed by Fidelity with the Director of the DIFP.

The agent is not permitted to use forms other than those filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

###### **(3) Agency – Archer Land Title**

Files reviewed: 3

Files in error: 3

The standard exceptions in all of the commitments issued by the agent are not those filed by Fidelity with the Director of the DIFP.

The agent is not permitted to use forms other than those filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

#### **(4) Agency – Assured Title Company**

Files reviewed: 3

Files in error: 3

<u>File</u>	<u>Policy</u>
25533	1312- 246428
26360	and 1412-476727
26705	1412- 476783
	1412- 581186

The standard exceptions in all of the commitments issued by the agent are not those filed by Fidelity with the Director of the DIFP.

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

References: Section 381.211, RSMo.

## **2. EXCEPTIONS ON POLICIES**

### **a. Agency – Hogan Land Title**

#### **(1) Commercial Policies**

The following loan policies were issued with standard exceptions. There are no standard exceptions included in the ALTA 1992 loan policy as filed by Fidelity with the Director of the DIFP.

<u>File</u>	
1206276	0108632
	0112199

0112406	1412-496359
0111490	1412-551303
<u>Policy</u>	1412-531100
1412-515912	1412-496586

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

The following owner’s policies were issued with certain standard exceptions that are not those appearing in the ALTA 1992 owner’s policy filed by Fidelity with the Director of the DIFP.

<u>File</u>	<u>Policy</u>
0104153	1312-240880
0205279	1312-256313
0201006	1312-240787
0108032	1312-247021
0110438	1312-230617
0110901	1312-247294

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

The following policies were issued showing “gap language,” language that should be included only in the commitment to insure. “Gap language” is included in the commitment in order to avoid coverage for matters first appearing of record between the date of the commitment and the date of the policy but for which the insurer has not accepted liability.

<u>File</u>	<u>Policy</u>
0112199	1312-2564021 and 1412-551303
0110438	1312-230617
0112406	1412-531100

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

## **(2) Residential Policies**

The agencies routinely issue owner policies with certain standard exceptions that are not those appearing in the ALTA 1992 owner's policy filed by Fidelity with the Director of the DIFP.

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

### **b. Agency – Fidelity Title Agency of Springfield**

#### **(1) Commercial Policies**

Policy 1412-543668 in file 2002060007

This loan policy was issued with one or more standard exceptions. There are no standard exceptions included in the ALTA 1992 loan policy as filed by Fidelity with the Director of the DIFP.

The agent and the underwriter may not use forms not filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

#### **(2) Residential Policies - All Residential Owner Policies Reviewed**

The agent issued an inflation endorsement with owner policies of title insurance that was not the same as the form filed by the Company with the Department.

The agent and the underwriter may not use forms not filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

### **c. Agency – Nations Title Agency of Missouri**

The following loan policies were issued with standard exceptions. There are no standard exceptions included in the ALTA 1992 loan policy as filed by Fidelity with the Director of the DIFP.

<u>File</u>	<u>Policy</u>
025282	1312-238040 and 1412-537372
0111805	1412-490566

The agent and the underwriter may not use forms not filed with the Director.

Reference: Section 381.211, RSMo.

**d. Other Agencies**

**(1) Agency - Ozark Abstract and Loan**

Files Reviewed: 10

Files in Error: 10

The agent issued all of the reviewed policies using Schedule B inserts that are not those filed by the Company with DIFP. This error was found in all owner polices reviewed and all lender policies reviewed.

<u>File No.</u>	<u>Policy No.</u>
302B5520	1312-228295 and 1412-477957
502B5683	1312-228386 and 1412-495997
602B5742	1412-496043 and 1312-234670
702B5841	1412-509483
902B5907	1412-509538
1002B5997	1412-529562
1102B6096	1412-529650 and 1312-246586
103B6189	1412-555074
303B6314	1312-257705
403B6469	1312-268652

The agent and the underwriter may not use forms that have not been filed with the Director.

Reference: Section 381.211, RSMo.

**(2) Agency – Landmann Title Company**

Files reviewed: 10

Files in error: 6

The examiner found two loan policies issued with standard exceptions. There are no standard exceptions included in the ALTA 1992 loan policy as filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
22202	1412-542162
21128	1412-474875

The examiner found four owner policies issued with certain standard exceptions not those appearing in the ALTA 1992 owner's policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
22361	1312-246150
21879	1312-240380
21406	1312-231047
21384	1312-230974

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

**(3) Agency – Miller County Title**

Files reviewed: 6

Files in error: 4

The examiner found four owner policies issued with certain standard exceptions not those

appearing in the ALTA 1992 owner's policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
1076	1312-238952
1043	1312-238968
782	1312-218849
1325	1312-239016

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

**(4) Agency – Troy Title Company**

Files reviewed: 5

Files in error: 1

The policy includes certain standard exceptions not appearing in the ALTA 1992 owner's policy filed by Fidelity with the Director of the DIFP.

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
002949	1312-264671

Reference: Section 381.211, RSMo.

**(5) Agency – Netco Title**

The owner's policy contains certain standard exceptions that are not the same as the standard exceptions used by Fidelity.

The loan policy contains certain standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
KC257710	1312-84492 and 1412-594303

References: Section 381.211, RSMo.

**(6) Agency – Nations Title Agency**

Files reviewed: 9

Files in error: 7

The standard exceptions used in the owner's policy were not those filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy</u>
0206598	1312-217044

Six of the loan policies issued by the agent contain standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
02KS12005	1412-470273
0215994	1422-47060
0204849	1412-503553
0207675	1412-503680
0207766	1412-503836
0209160	1412-503922

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

References: Section 381.211, RSMo.

The following exception appears in all of the loan policies issued by the agent:

In the event the security instrument to be used in connection with this transaction is a Trust Deed, the final policy will provide no coverage for any loss arising from the lack of qualifications of the Trustee therein named.

<u>File No.</u>	<u>Policy No.</u>
02KS12005*	1412-470273
02KS13459	1412-470486
0215994*	1412-470600
0209222	1412-470901
0204849*	1412-503553
0207675*	1412-503680
0207766*	1412-503836
0209160*	1412-503922

The exception is not a part of the forms filed by Fidelity with the Director of the DIFP.

Reference: Section 381.211, RSMo.

**(7) Agent – Emory Melton**

Files reviewed: 1

Files in error: 1

The loan policy contains standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy</u>
2002-006	1412-386288

Reference: Section 381.211.1, RSMo.

**(8) Agent – Alberty & Deveny**

Files reviewed: 1  
Files in error: 1

The loan policy contains standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
31-01	1412-488664

Reference: Section 381.211.1, RSMo.

**(9) Agent – Maness & Miller**

Files reviewed: 1  
Files in error: 1

The loan policy contains standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
02210	1412-559514

Reference: Section 381.211.1, RSMo.

**(10) Agency – Wright County Title Company**

Files reviewed: 3

Files in error: 2

<u>Policy No.</u>	<u>File No.</u>
1412-477561	0212928
1412-504276	0212926

These loan policies contain standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

Reference: Section 381.211.1, RSMo.

### **3. GENERIC EXCEPTIONS**

#### **a. Agency –Hogan Land Title -Residential Policies**

These loan policies include an exception for matters disclosed by a survey. The exception is not a special exception. There are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

<u>File No.</u>	<u>Policy No.</u>
0205306	1412- 515861
0111138.	1412-484874

Reference: Section 381.211, RSMo.

#### **b. Other Agencies**

##### **Agency – Wright County Title Company**

Files reviewed: 3

Files in error: 1

<u>File No.</u>	<u>Policy No.</u>
0212926	1312-228036 and 1412-504276

The owner’s policy includes an exception for “Rights of the public in any portion of the property within public roads, streets or highways.”

This exception is not specific to the property or the transaction. It is not a general exception filed by Fidelity as a part of its 1992 ALTA owner's policy and may not be used as a general exception.

Reference: Section 381.211, RSMo.

#### **4. EXCEPTIONS ON SPECIFIC POLICIES**

##### **a. Agency –Hogan Land Title -Commercial Policies**

Policy 1412-551366 in file 0108178

The policy was issued showing “gap language,” that should be included only in the commitment to insure. “Gap language” is included in the commitment in order to avoid coverage for matters first appearing of record between the date of the commitment and the date of the policy but for which the insurer has not accepted liability.

The policy contains standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

Reference: Section 381.211, RSMo.

Policy 1412-531191 in file 0208842

The policy was issued with a usury endorsement, and the usury endorsement is considered contrary to public policy in Missouri. Fidelity has not filed its usury endorsement in Missouri.

The agent and the underwriter may not use forms that have not been filed with the Director of the DIFP.

Reference: Section 381.211, RSMo.

##### **b. Agency - Fidelity Title Agency of Springfield -Residential Policies**

Lender's Policy 1412-543652 in file 2002040295.

The policy contains a standard exception, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity with the Director of the DIFP.

Reference: Section 381.211, RSMo.

## **B. Underwriting and Rating**

Examiners reviewed the title policies issued by the Company to determine the accuracy of rating and adherence to prescribed underwriting criteria, Missouri statutes, and DIFP regulations.

This section contains results from reviews of the Company underwriting and rating practices of title insurance. Policies were selected from a listing of all policies issued during the examination period.

**Hogan Land Title:** The Company failed to deliver responses to 161 of the 206 examiner criticisms of these policies within 10 calendar days. The time required to respond is further analyzed at **Appendix A**.

Reference: Section 374.205.2(2), RSMo.

**Fidelity Title Agency:** The Company failed to deliver responses to 92 of the 170 examiner criticisms within 10 calendar days. The time required to respond is further analyzed at **Appendix A**.

Reference: Section 374.205.2(2), RSMo.

### **1. COMMERCIAL POLICIES**

These policies have face amounts over \$5,000,000.

Field Size:	12
Sample Size:	12
Type of Sample:	Census
Number of Errors:	10
Error Rate:	83 %
Within Dept. Guidelines:	No

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 number of errors.

#### **a. Problems Related to Other Policy Exceptions**

In the following policies, the agent reported as exceptions to title matters that were no longer of any effect or did not affect the property insured.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0108632	1412-496359	Hogan

**b. Risk Rates**

The agent's total charges were less than the risk rate filed by Fidelity with the Director of the DIFP on these files.

References: Section 381.181, RSMo, and 20 CSR 500 – 7.100

<u>File No.</u>	<u>Policy No.</u>	<u>Charges</u>	<u>Rates</u>	<u>Agency</u>
0108632*	1412496359*	\$8,322.00	\$12,434.50	Hogan
0205279	1312-256313	\$6,360.00	\$11,100.00	Hogan
0102746	1312230871	\$6172.00	\$10,225.00	Hogan
0208842	1412-531191	\$15,839.10	\$31,575.00	Hogan
0110438	1312-230617	\$6,232.00	\$11,275.00	Hogan
0110438	1412-485155	unknown	\$7.50	Hogan

The risk rates shown on these policies were incorrect.

References: Section 381.181, RSMo, and 20 CSR 500 – 7.100

<u>File No.</u>	<u>Policy No.</u>	<u>Rate Shown</u>	<u>Actual Rate</u>	<u>Agency</u>
2002020344	1312-252726	\$14,337.50	\$19,956.00	FidTitSpring
2002060007	1412-543668	\$17075.00	\$16,375.00	FidTitSpring
01019817	1312-167876	\$2850.00	\$6450.00	US TitGuranty
0205193	1312-217038	\$24775.00	\$58250.00	Nations Title

**c. Total Charges**

Charges for these policies were not accurately shown on the face of the policy.

References: Section 381.181, RSMo, and 20 CSR 500 – 7.100

File No.	Policy No.	Reported	Actual	Agency
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0102746*	1312-230871* 1412-496651*	\$6,312.00	\$6,172.00	Hogan
0208842*	1412-531191*	\$13,581.00	\$15,839.10	Hogan
0205279*	1312-256313* 1412-550409	\$6,710.00	\$6,360.00	Hogan
0110438*	1312-230617* 1412-485155*	\$6,539.50	\$6,232.00	Hogan
<u>File No.</u>	<u>Policy No.</u>	<u>Reported</u>	<u>Actual</u>	<u>Agency</u>
2002020344*	1312-252726 * 1412-54743*	\$1,497.50	\$14,547.5	FidTitSpring
0205193*	1312-217038*	unknown	\$24,775.00	Nations Title

**d. Various Underwriting Issues**

The file indicates the insured loan would be used in part to finance future construction. The policy as issued contains no exception for this specific mechanic's lien risk.

The agent closed the transaction leading to the policies on 03/30/01. The agent's file contains a few miscellaneous pages from a contract of sale for the transaction. Parts of the contract are missing from the file, including the first page of the contract and the execution pages. The agent closed the transaction without written instructions for the escrow. The agent failed to use sound underwriting practice by closing this transaction in escrow without instructions.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy Nos.</u>	<u>Agency</u>
0102746*	1312-230871* and 1412-496651*	Hogan

The policy copies in the file do not include complete legal descriptions. The insurer and the agent are required to retain in their files complete evidence of the examination of title and determination of insurability for a period of not less than 15 years.

Reference: Section 381.071.3, RSMo, and 20 CSR 300-2.200 (as amended 20 CSR 100-8.040, eff. 7/30/08).

<u>File No.</u>	<u>Policy Nos.</u>	<u>Agency</u>
0102746*	1312-230871* and 1412-496651*	Hogan

The owner's policy was issued for \$6,200,000.00 and the lender's policy for \$6,200,000.00. The

agent closed the transaction in escrow without obtaining a copy of the sales contract or any other written instructions. The company failed to use sound underwriting practices by closing a transaction in escrow without written instructions.

<u>File No.</u>	<u>Policy Nos.</u>	<u>Agency</u>
0205279*	1312-256313* and 1412-550409*	Hogan

Reference: Section 381.071, RSMo.

The agency issued an endorsement to the policy offering assurances that the land described in the policy is the same as the land described in a certain survey but failed to reference the survey. The file does not contain a copy of any survey. The endorsement is meaningless.

The agency issued an endorsement to the policy insuring that access to the property is available by way of an easement insured by the policy. The policy does not insure any easement rights.

The agent included an exception for a city ordinance annexing certain land, a matter excluded by the terms of the policy. The agent made exception for an easement affecting an area not within the boundaries of the land described.

The company failed to use sound underwriting practices in that it included matters as exceptions that do not affect the property or are excluded by the terms of the policy. The agent is required to make a determination of insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0208842*	1412-531191*	Hogan

The agent issued an owner's policy that included coverage for a parcel of land acquired by the insured several years prior to the date of the policy. The agent failed to consider to issues related to insuring the owner at a date later than the date of acquisition.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0110438*	1312-230617* and 1412-485155*	Hogan

The owner policy covers two parcels of land. The sale transaction for Tract I, the location of a

hotel, was valued by contract at \$5,718,000.00. The property described as Tract II (which had been acquired by the insured several years earlier) is also the location of a hotel.

The face amount of the owner's policy (\$6,300,000.00), in view of the aggregate value of the properties, and in the event of a claim, could result in reductions of the face amount of the policy to a coverage limit less than the value of either of the properties. Controversy could arise under the terms of the policy allocation of coverage amounts to the covered parcels. For some claims, the underwriter might also invoke the co-insurance clause of the policy on the grounds that the face of the policy is in an amount less than 80 percent of the value of the property. There is no indication in the file that the insured owner had requested coverage for the parcel of land previously acquired.

The insurer has provided coverage to the insured owner for both parcels of land but is not free to provide less coverage to the insured owner by reason of its error in including the extra property.

By the terms of the Contract for Sale of Assets dated October 11, 2001, the buyer agreed to complete a planned sale of a part of the property for development of a restaurant. The buyer additionally agreed to re-convey the proposed restaurant property to the seller in the event the sale of the restaurant property did not occur.

Although the buyer acquired bare legal title to the restaurant parcel, the buyer acquired no equitable interests in the restaurant property. The unacquired equitable interests in the restaurant property were properly an exception to title but the exception is not recognized by the policies.

By the terms of both the Contract for Sale of Assets dated October 11, 2001, and the Partial Assignment of Contract dated November 21, 2001, the insured owner had agreed to enter into certain cross access and parking agreements as well as maintain a fire service water line located on an adjacent property. These matters should have been raised as exceptions to the title but were not.

The provisions of a Sewer Line Agreement dated November 21, 2001, obligate the insured owner to grant a sewer line easement to the City of Springfield at a later date. That same agreement permits the seller in the transaction to later conduct and contract for certain construction activities affecting the property. These matters should have been raised as exceptions to the title but were not. There is no information in the file indicating any basis for omission of these exceptions to title.

The agent failed to use sound underwriting practices in that they omitted known exceptions to title.

The agent and the insurer failed to show all matters known to affect title when issuing an owner's policy of title insurance.

References: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0110438*	1312-230617* and 1412-485155*	Hogan

The owner policy has a face amount of \$9,852,939.00. The loan policy has a face amount of \$3,754,006.00. The company insured the current property owner under the terms of two separate policies of title insurance, the earlier policy for \$150,000.00 and the later policy for \$9,852,939.00. There is no indication the previous owner's policy was surrendered.

The company failed to use sound underwriting practices in that they insured title in the same owner on two separate policies of title insurance.

The insured parcels were sold at a sheriff's sale foreclosing on a deed of trust in 1991. The trustee's deed under power of foreclosure recorded in Book 1394, Page 951 recites the property was sold for \$200,000.00. The party acquiring title in the 1991 foreclosure conveyed title to the current owner by deed dated 08/09/01 and recorded in Book 1677, Page 844. Fidelity Title Agency of Springfield had agreed to insure the current owner for \$150,000.00 in its commitment to insure dated 04/26/01. That commitment was issued in Fidelity Title Agency of Springfield, file 2001050360. The policy register provided to the examiners by Fidelity National Title Insurance Company indicates that owner's policy numbered 1312-227444 was issued in Fidelity Title Agency of Springfield, file 2001050360, under date of 03/07/02, with a face amount of \$150,000.00.

In the more recent transaction, the insured lender made a loan for \$3,754,006.00 described in a Disbursement Request and Authorization dated 06/10/02, as providing funds for "the construction of a new 57 unit low income senior housing development." The draft of the agreement of limited partnership for the current owner indicates that the total of capital contributions by all partners was a nominal \$100.00. If accurate, it might serve as a basis for an owner's policy with a face amount of approximately \$4,000,000.00.

The company failed to use sound underwriting practices in that it insured title for amounts grossly in excess of any evidence of actual value.

The owner's policy was issued with an endorsement captioned "Homeowner's Inflation Endorsement." The endorsement is not effective in instances where the property consists of

more than four residential units. The property is being developed as an apartment complex with 57 units. The company failed to use sound underwriting practices in that it issued an endorsement providing coverage not intended under the terms of the endorsement.

The agent issued the owner's policy with an ALTA 3.1 zoning endorsement. Documents in the file indicate the purpose of the lender's funds in the simultaneous loan transaction was for "the construction of a new 57 unit low income senior housing development." The ALTA 3.1 zoning endorsement is designed for use only when the improvements involved have already been constructed. Issuing an endorsement providing coverage not intended under the terms of the endorsement is not sound underwriting practice.

The agent issued the owner's policy with an ALTA 8.1 Environmental Protection Lien Endorsement. This endorsement is designed for use only on a lender's policy. Issuing an endorsement providing coverage not intended by the endorsement is not sound underwriting.

All of the transactions creating the insured mortgage were finished by the date of recording on 06/20/02. The loan policy issued by the agent is dated 09/13/02. This date is not relevant to any part of the transaction leading to the policy. Extending coverage to a date beyond the date of recording of relevant instruments is not sound underwriting practice.

The agent obtained approval 03/07/02 from Fidelity to issue its commitment to insure for a proposed owner's policy in the amount of \$9,374,580.00, an amount less than the amount of the final policy issued. In addition to being a larger amount, the final policy of title insurance extends coverages beyond those given by the standard form of owner's policy. The final policy issued by the agent was different from the policy approved by the underwriter.

The owner's policy includes an endorsement offering assurances that improvements located on the land are apartments. The file contains information indicating that 57 apartment units are to be built but no information demonstrating that there were any apartments on the land at the date of the policy. Providing coverage based upon inaccurate information or information not supported by the file is not sound underwriting practices.

The owner's policy was initially dated 09/12/02, a date more than a year after the date of acquisition. The date of the policy was subsequently changed by a series of endorsements, to 02/20/03, to 06/04/03, to 11/14/03, and to 12/12/03. Dating an owner's policy of title insurance at any date after the date of acquisition is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002020344*	1312-252726* and 1412-543743*	FidTitSpring

The property insured in this transaction is located adjacent to an interstate highway. Neither the commitment prepared for this transaction nor the final policy includes any of the applicable exceptions for lack of right of direct access to the adjacent interstate highway. The insurer, the agency, and the agent failed to report all known and recorded matters affecting the land when issuing an owner's policy of title insurance.

Reference: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
01019817*	1312-167876*	US Title Guaranty

## **2. COMMERCIAL POLICIES**

These policies have face amounts between \$1,000,000 and \$5,000,000.

Field Size:	103
Sample Size:	23
Type of Sample:	Random
Number of Errors:	19
Error Rate:	82.6 %
Within Dept. Guidelines:	No

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

### **a. Problems Related to Legal Descriptions.**

The appended language has the effect of excepting out a strip of land in which a right of way easement had previously been created. The company failed to use sound underwriting practice by excluding from coverage land in which no right greater than an easement has been conveyed.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002030082	1312-240024 and 1412-520716	FidTitSpring

### **b. Problems Related to Other Policy Exceptions**

The agent reported matters that were no longer of any effect or that did not affect the property insured as exceptions to title.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0108032	1312-247021 and 1412-530429	Hogan
0104153	1312-240880	Hogan
0203721	1412-515390	Hogan

The company failed to use sound underwriting practice by inserting special exceptions without basis. For example, the policy includes an exception for general taxes for the year 1989 and thereafter. There is no documentation in the file providing any basis for the exception. In addition, the policy contains an exception for a right of way described as located in Section 9. None of the land described in the policy is located in Section 9. There is no documentation in the file for this exception.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0108178	1412-551366	Hogan

Exception numbered 7 in the owner's policy (exception numbered 3 in the lender's policy) is a deed of conveyance recorded in Book 2171, Page 951 that includes a description of an easement running through part of the insured land. However the deed recorded in Book 2171, Page 951 does not create the easement. The referenced deed does not identify the source of the exception. The company failed to use sound underwriting practice by failing to identify instruments creating known exceptions to title.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002030082*	1312-240024* and 1412-520716*	FidTitSpring

**c. Risk Rates**

The risk rate shown on the following policies was incorrect.

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

File No.	Policy No.	Rate Shown	Actual Rate	Agency
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0109596	1312-220585 1412-174535	\$1,239.00/10.00	\$1,035.00/7.50	Hogan
0110798	1312-230761	\$4,825.00	\$4,362.50	Hogan
0190271	1412-530642	\$1,516.00	\$1,635.00	Hogan
0206276	1312-241026	\$1,500.00	\$2,875.00	Hogan
0108032*	1312-247021* 1412530429*	\$1,300.00/10.00	\$2,035.00/7.50	Hogan
0104153*	1312-240880* 1412-515707*	\$2,740.00/10.00	\$5,062.50/7.50	Hogan
0203721*	1412-515390*	\$3,000.00	\$4,675.00	Hogan
0201006	1312-240787	\$2,825.00	\$2,612.50	Hogan
0112199	1312-256402	\$2,135.00	\$2,008.75	Hogan
0110901	1312-247294 1412-530852	\$9,925.00/0	\$6,375.00/7.50	Hogan
0202104	1412-515138	\$1,000.00	\$1,675.00	Hogan
0112406	1412-531100	\$1,016.00	\$1,699.00	Hogan
0108178*	1412-551366*	\$1,040.00	\$1,735.00	Hogan
0111490	1412-496586	\$1,790.00	\$3,175.00	Hogan
2001120270	1312-243119	\$2,701.00	\$3,361.25	FidTitSpring
2002030082*	1312-240024*	\$2,425.00	\$2,262.50	FidTitSpring
2003010316	1312-268195	\$5,342.00	\$5,430.00	FidTitSpring
002961	1312-248159 1412-533702	\$1,378.20/7.50	\$2,150.33/478.80	Troy

The agent's total charges were less than the risk rate filed by Fidelity with the Director of the DIFP.

References: Section 381.181, RSMo, and 20 CSR 500-7.100

File No	Policy No.	Charges	Rate Shown	Agency
0109596*	1312-220585* 1412-174535*	\$510.00	\$1,035.00/7.50	Hogan
0206276*	1312-241026*	\$1,500.00	\$2,875.00	Hogan
0108032*	1312-247021*	\$1,030.00	\$2,035.00	Hogan
0203721*	1412-515390*	\$3,000.00	\$4,675.00	Hogan
0104153*	1312-240880*	\$2,890.00	\$5,062.50	Hogan
0205621	1412-516008	\$5,475.00	\$7,987.50	Hogan

**d. Total Charges**

In the following files, the charges for the policy were not accurately shown on the face of the policy.

References: Section 381.181, RSMo, and 20 CSR 500–7.100

File No.	Policy No.	Shown	Actual	Agency
0109596*	1312-220585* 1412-174535*	\$1,399.00	\$510.00	Hogan
0110798*	1312-230761*	\$4975.00	\$6,225.00	Hogan
0112199*	1312-256402* 1412-551303*	\$2,455.00	\$2155.00	Hogan
0110901*	1312-247294* 1412-530852*	\$10,535.00	\$3,300.00	Hogan
2001080303	1312-268195 1412-566714	\$5,752.00	\$6,542.00	FitTitSpring
2002030082*	1312-240024* 1412-520716*	\$2,735.00	\$2,585.00	FitTitSpring

**e. Various Underwriting Issues**

The owner’s policy was issued for \$2,750,000.00 and the loan policy for \$2,339,871.21. The insured owner requested a policy for an amount greater than the purchase price in order to include the value of certain planned improvements. The owner obtained a loan for \$6,011,000.00, an amount substantially greater than the purchase price of the property, indicating that loan proceeds would be used for a construction project. The agent issued the loan policy without a special exception for mechanic’s lien risk, without a pending disbursements clause, and without obtaining the underwriter’s authorization for coverage of this extraordinary risk. The examiner’s pencil sheet shows certain exceptions that do not appear on the commitment or the policies.

The insured deed of trust has a face amount of \$6,011,000.00, and the lender’s check for loan proceeds was in the amount of \$5,578,550.48. However, the agent’s accounting ledger in this file shows an escrow deposit for only \$2,339,871.21. The bulk of the loan proceeds were not accounted for in the escrow transaction in this file. The file contains no instructions from the lender allocating a particular portion of the loan proceeds to this transaction. The agent did not respond to the examiner’s request for an accounting for the disposition of the loan proceeds.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
0104153*	1312-240880* and 1412-515707*	Hogan

The lender's letter of instruction dated 04/18/02 required deletion of an exception referring to documents purporting to release certain restrictions. The agent apparently did not object to the lender's instructions but continued to show the referenced restrictions as an exception. The lender's instructions also required a survey endorsement. The agent issued an endorsement offering assurances that the land described in the policy is the same as the land depicted on a survey but failed to describe or reference the survey. The agent failed to issue the policy as agreed.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
0203721*	1412-515390*	Hogan

The land description for the tenth parcel in tract I does not close. The description of the first easement referenced in tract II in the policies includes two calls referring to degrees as if directional information, but the intention is to refer to feet, a measure of distance. The integrity of the land descriptions is crucial to underwriting the risks being transferred by the policy. Tract II of the policies describes two insured easements, but the easements are not clearly defined. The examiner is unable to determine whether the rights insured are those reserved by a grantor or granted to a grantee. It is not clear if any of the fee simple interests insured by the policies represent dominant estates relative to the easements.

In addition, it appears that the first easement described is entirely within the boundaries of the fee simple parcels, and the examiner suspects that the second easement parcel is also entirely located within the fee simple parcels, in which case the easements may be proper exceptions to the title but would not be insurable interests. There is no indication in the file that the easement parcels have been examined. The company failed to use sound underwriting practice to insure ill-defined interests in easements, nor to insure without examination, nor to insure an easement interest that is located entirely within a fee simple interest vested in the same party.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
0112199*	1312-256402* and 1412-551303*	Hogan

The owner's policy was issued with a face amount of \$3,500,000.00. The cost of acquisition of the property was only \$1,000,000.00. The purchaser obtained a new mortgage in the amount of

\$2,300,000.00. The amount of the owner policy is greater than the total cost of acquisition plus the amount of the new loan. The characteristics of the transaction indicate a strong possibility of mechanic's lien risk. The file contains no analysis of mechanic's lien risk, but the agent issued the loan policy without taking any exception for this known risk. The agent is required to make all determinations of insurability of title in accordance with sound underwriting practices.

The insured owner acquired title by deed of the Bank of America, N.A. recorded 11/05/01 in Book 2874, Page 2293. That deed excepts out "the rights of Smitty's Supermarket, Inc. under paragraphs 13(a) and 13(b)(i) of that certain Contract of Sale dated April 16, 2001, between Smitty's Supermarkets, Inc. and Warren Davis Properties XII, L.L.C." The policy, as issued, includes no exception for this matter, nor is there any indication the agent made any inquiry as to the status of the rights of Smitty's Supermarket. Bank of America acquired title to the property by deed of Smitty's Supermarkets, Inc. recorded 11/05/2001 in Book 2874, Page 2274. That deed includes restrictions regulating the use of the property. The policy as issued includes no exception for this matter. There is no information in the file indicating any basis for omission of these exceptions to title. The company failed to use sound underwriting practices by omitting known exceptions to title.

The agent and the insurer failed to show all matters known to affect title when issuing an owner's policy. The file does not contain a copy of the sales contract for the transaction leading to the policy. The agent closed escrow without having any written instructions. The company failed to use sound underwriting practices by closing real estate transactions in escrow without any written instructions.

References: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
0110901*	1312-247294* and 1412-530852*	Hogan

Special exception numbered 17 in the following policy refers to an option to purchase that has expired by its terms. Special exception numbered 18 in the policy repeats special exception numbered 16. The company failed to use sound underwriting practice by including exceptions that do not affect the property or are not clear as to the specific matter excepted.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
0111490*	1412-496586*	Hogan

The owner's policy was issued with a face amount of \$3,035,000.00. The policy insures as owner a lender who had acquired by a deed in lieu of foreclosure. The agent's commitment

appears to have treated the transaction as a routine sale of property. The agent made no special requirements that might have been appropriate for a transaction with a deed in lieu of foreclosure. The agent did not require recording of the assignment of the mortgage from the record mortgagee to the actual beneficiary. The agent did not require an estoppel agreement from the lender. The agent made no inquiry as to possession of the property after conveyance. The agent made no inquiry as to any side agreements between the borrower and the lender. The agent did not inquire as to the solvency of the borrower proposing to convey title. Therefore, the agent failed to make a determination of insurability in accordance with sound underwriting practices.

The file contains a copy of the operating agreement for the limited liability company that conveyed title to its lender. By the terms of the operating agreement of 1994, it was to be effective for seven years after filing with the Secretary of State, which occurred 11/10/1994. The transaction in this file occurred more than seven years after 11/10/1994, but there is no indication that the operating agreement was still in effect. The operating agreement required all members of the limited liability company agree to any sale of the company's property. There is no indication that all named members of the company had agreed to the transaction. (The deed is executed by three individuals identified as all of the members of the company, but one member named in the operating agreement did not execute the deed.) The agent's examination was not sufficient to assure a determination of insurability in accordance with sound underwriting practices.

The recorded release of deed of trust does not appear to contain language for full release of the mortgage, nor is there any indication the agent obtained proof that the promissory note had been cancelled, marked paid, and delivered to the borrower.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
2001120270*	1312-243119*	FidTitSpring

The owner policy in file 2003010316 was issued with a face amount of \$2,960,000.00, and the loan policy in file 2001080303 was issued with a face amount of \$1,716,508.00. Though issued in two separate files, the agency treated the policies as simultaneously issued, which led the examiners to review both policies.

The owner's policy was issued with an endorsement offering coverage against certain risks notwithstanding any prior actual knowledge of certain members of the owning organization, but the insurer's requirement of advance approval for the non-imputation endorsement was ignored. The owner policy has no special exception for a known risk for mechanic's liens. Information in the file indicates an intention to construct substantial new improvements. The owner's policy was issued without any pending disbursements clause.

The owner's policy was issued with an endorsement deleting the policy exclusion for certain losses arising by reason of creditors' rights issues. The insured owner acquired title to the property by deed recorded 07/29/02. The owner's policy was initially dated 03/03/03, a date several months after the date of acquisition. The date of the policy was subsequently changed by a series of endorsements, to 04/11/03, to 06/20/03, and to 07/15/03. The agent failed to use sound underwriting practice by dating an owner's policy of title insurance at any date after the date of recording of the deed of acquisition.

The owner's policy in this file was issued with some improper endorsements. The owner's policy was issued with an endorsement captioned "Homeowner's Inflation Endorsement." By its terms the endorsement is not effective in instances where the property consists of more than four residential units. The property is being developed as an apartment complex with 40 units. The agent issued the owner policy with an ALTA 8.1 Environmental Protection Lien Endorsement. This endorsement is designed for use only with a lender's policy.

The agent issued the owner policy with a comprehensive endorsement form intended to be used only with a lender's policy. The agent failed to use sound underwriting practices by issuing an endorsement providing coverage not intended under the terms of the endorsement, or that provides coverage never intended.

The owner's policy was endorsed 07/23/03 to change the legal description to match a new plat recorded 02/04/03. The description now used in the policy includes within its boundaries all of a dedicated street, none of which was within the boundaries of the land originally described in the policy. The agent did not examine the underlying fee simple title to the street included within the boundaries of the land. The agent failed to use sound underwriting practices by insuring title to land without first performing an examination of the title.

As endorsed, the policy contains no exception for streets dedicated by the earlier plat, no exception for various easements created by the earlier plat, no exception for building lines depicted on the earlier plat, and no exception for restrictions referenced on the earlier plat. Nor does the agent's file contain any evidence that the streets have been vacated, or that easement rights have been released by the various utilities, or that the lots have been released from the effects of any building lines or restrictions previously imposed. The insurer and the agency are required to show all known matters affecting title when issuing an owner's policy of title insurance. The agent failed to use sound underwriting practices by omitting known exceptions to title.

Reference: Section 381.071.1.2 and .2, RSMo.

File No.

Policy No.

Agent

2001080303*	1412-566714*	FidTitSpring
2003010316*	1312-268195*	FidTitSpring

**3. RESIDENTIAL POLICIES**

These policies have a face value of less than \$1,000,000.

Field Size:	32,630
Sample Size:	255
Type of Sample:	Random
Number of Errors:	232
Error Rate:	91%
Within Dept. Guidelines:	No

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

**a. Risk Rates**

The agent reported incorrect risk rates on the following 62 simultaneously issued lender policies in the files sampled. The filed risk rate for a simultaneously issued loan policy is \$7.50.

Reference: Section 381.181 RSMo, and 20 CSR 500-7.100(3)(B)2

File No.	Policy No.	Agency
102369	1412-484484	Hogan
104153	1412-515707	Hogan
108032	1412-530429	Hogan
108414	1412-484649	Hogan
109596	1412-453886	Hogan
110529	1412-484723	Hogan
111138	1412-484874	Hogan
111811	1412-485065	Hogan
112305	1412-496337	Hogan
203102	1412-515258	Hogan
203147	1412-515231	Hogan
203165	1412-515110	Hogan
204126	1412-515352	Hogan
204538	1412-515488	Hogan
204557	1412-516049	Hogan
204680	1412-515672	Hogan

205065	1412-515602	Hogan
205279	1412-550409	Hogan
205303	1412-515731	Hogan
205306	1412-515861	Hogan
205627	1412-530311	Hogan
File No.	Policy No.	Agency
206180	1412-530438	Hogan
206243	1412-530560	Hogan
206276	1412-515912	Hogan
206505	1412-530682	Hogan
207374	1412-530950	Hogan
207389	1412-530824	Hogan
207394	1412-530595	Hogan
208379	1412-530824	Hogan
209193	1412-550813	Hogan
2000120213	1412-487682	FidTitSpring
2001040089	1412-506059	FidTitSpring
2001040416	1412-471598	FidTitSpring
2001050142	1412-471683	FidTitSpring
2001050252	1412-476153	FidTitSpring
2001050469	1412-471746	FidTitSpring
2001060059	1412-476278	FidTitSpring
2001060150	1412-487541	FidTitSpring
2001070318	1412-487666	FidTitSpring
2001100387	1412-516746	FidTitSpring
2001110101	1412-509757	FidTitSpring
2001110625	1412-520889	FidTitSpring
2001110687	1412-520692	FidTitSpring
2001120006	1412-516881	FidTitSpring
2002010119	1412-509940	FidTitSpring
2002010213	1412-520982	FidTitSpring
2002020379	1412-532095	FidTitSpring
2002020406	1412-531887	FidTitSpring
2002030258	1412-516975	FidTitSpring
2002040215	1412-543840	FidTitSpring
200204095	1412-543652	FidTitSpring
200205016	1412-543828	FidTitSpring
2002050464	1412-535440	FidTitSpring

2002060124	1412-544017	FidTitSpring
2002060168	1412-554174	FidTitSpring
2002060100	1412-554866	FidTitSpring
2002080506	1412-566647	FidTitSpring
2002090014	1412-681557	FidTitSpring
602B5742	1412-496043 1312-234670	Ozark
1102B6096	1412-4529650 1312-246586	Ozark
File No.	Policy No.	Agency
302B5520	1312-228295 1412-477957	Ozark
502B5683	1312-228386 1412-495997	Ozark

The agent reported incorrect risk rates on the following 70 policies.

Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)2.

File No.	Policy No.	Reported	Actual	Agency
0107679	1412-453806	\$87.50	\$28.00	Hogan
0109174	1412-496496	\$293.00	\$192.00	Hogan
0110897	1412-485001	\$251.25	\$145.00	Hogan
0203192	1412-515476	\$239.00	\$262.10	Hogan
0208895	1412-550716	\$151.00	\$92.76	Hogan
0209032	1412-531193	\$225.00	\$151.00	Hogan
0209289	1312-256464	\$233.00	\$333.00	Hogan
200210055	1412-552596	None	\$87.12	Hogan
0111529	1312-230432	\$167.50	\$157.50	Hogan
2002090014*	1312-289142	\$280.00	\$256.00	FidTitSpring
2001100185	1412-502556	\$144.45	\$240.30	FidTitSpring
2001080363	1412-487786	\$13540	\$214.00	FidTitSpring
2001050087	1412-471562	\$295.00	\$132.60	FidTitSpring
2001100718	1412-509699	\$13128	\$21886	FidTitSpring
2001110300	1412-516830	\$379.00	\$335.73	FidTitSpring
2001120055	1412-535265	\$183.00	\$114.98	FidTitSpring
2002020379*	1312-249237	\$447.00	\$287.44	FidTitSpring
64677	1312-212866	\$77.00	\$313.00	Investors
83911	1312-259529	\$110.50	\$267.00	Investors

83835	1312-212961 1412-442946	\$53.00	\$217.00	Investors
51533	1412-443242	\$69.50	\$196.70	Investors
50141	1312-523328	\$55.25	\$95.80	Investors
74174	1412-602129	\$176.00	\$437.73	Investors
85126	1412-603269	\$117.20	\$277.85	Investors
84607	1312-212718 1412-638167	\$120.80	\$393.00	Investors
57064	1312-212752	\$548.00	\$1570.30	Investors
2500	1222-38793	\$210.00	\$356.25	America's Title Source
File No.	Policy No.	Reported	Actual	Agency
100612	1312-228859 1412-480309	\$4300.00	\$4625.00	Title Insurers
46341	1412-480309 1412-563042	\$2,288.75	\$1200.00	Title Insurers
45429	1412-563008	342.50	\$325.00	Title Insurers
70B5841	1412-509483	\$102.50	\$112.50	Ozark Abstract
103B6189	1412-555074	\$84.00	\$110.000	Ozark
303B6314	1312-257705	\$220.00	\$230.50	Ozark Abstract
F25583	1312-215596 1412-489775	\$10.00	\$7.50	United Title
F25997	1312-215639 1412-508713	\$10.00	\$7.50	United Title
F26216	1312-215688 1412-536372	\$10.00	\$13.27	United Title
F2673	1412-565463 1412-565462	\$10.00	\$81.25	United Title
22202	1412-542162	\$2627.59	\$1657.20	Landmann
21128	1412-474875	\$30.00	\$18.00	Landmann
21406	1312-231047	\$214.00	\$164.40	Landmann
KC257710	1312-84492	\$25.75	\$180.75	Netco
STL2281511	1412-463122	\$40.22	\$186.00	Netco
STL232010	1412-464535	\$22.40	\$112.02	Netco
STL2338	1412-464845	\$71.00	\$298.50	Netco
STL2353251	1412-499612	\$5.10	\$25.50	Netco
KC237495	1412-499893	\$35.25	\$166.00	Netco
STL247532	1412-500155	\$57.92	\$252.83	Netco
STL2393731	1412-500368	\$35.00	\$165.00	Netco

STL518541	1412-524728	\$80.00	\$235.00	Netco
STL246504	1412-524945	\$10.11	\$50.70	Netco
STL2060751	1412-525235	\$11.25	\$56.25	Netco
STL252572	1412-525462	\$84.00	\$344.00	Netco
STL2199151	1412-552829	\$55.50	\$244.25	Netco
STL259730	1412-553064	\$28.05	\$137.20	Netco
KC26810	1412-561920	\$74.25	\$309.88	Netco
STL264796	1412-565162	\$6.00	\$30.00	Netco
KC264444	1412-57642	\$64.50	\$275.75	Netco
KC271984	1412-577757	\$74.00	\$309.00	Netco
STL274248	1412-578010	\$61.40	\$264.90	Netco
STL278040	1412-578322	\$57.50	\$251.25	Netco
015882	1412-565095	\$344.00	\$7.50	Phoenix
0165995	1412-565220	\$199.40	\$7.50	Phoenix
015348	1412-521766	\$210.60	\$7.50	Phoenix
File No.	Policy No.	Reported	Actual	Agency
016535	1412-565350	\$14.40	\$7.50	Phoenix
017741	1412-580924	\$46.25	\$7.50	Phoenix
015055	1412-498882	\$369.00	\$7.50	Phoenix
99T00452	1312-227928	\$52.50	\$202.50	First Financial
25533	1312-246428	\$260.00	\$356.80	Assured
26705	1412-581186	\$225.00	\$267.00	Assured
26630	1312-246441 1412-476783	\$82.00/4.00	\$205.00/11.10	Assured

The agent did not report risk rates on the policies in the following 12 files.

References: Section 381.181 RSMo, and 20 CSR 500-7.100

<u>File No</u>	<u>Policy No.</u>	<u>Agency</u>
0213489	1412-584397	Nations
1656	1222-27805	America's Title Source
1554	1222-31703	America's Title Source
2338	1222-34750	America's Title Source
2500*	1222-38793	America's Title Source
2673	1222-39990	America's Title Source
2002080029	1222-32079	Archer Land Title
2002100577	1222-34584	Archer Land Title
2002091273	1412-537759	Archer Land Title
02KS13459	1412-470486	Nations

0207766      1412-503836      Nations  
02305      1312-216932 & 1412-449992 Barry County

The agent reduced the premium in the following two refinance transactions to a reissue rate without establishing that the mortgagor had been insured as an owner.

Reference: Section 381.181, RSMo.

<u>File No</u>	<u>Policy No.</u>	<u>Rate Used</u>	<u>Actual</u>	<u>Agency</u>
002801	1412-481639	\$229.50	\$382.50	Troy
00090A	1412-481693	\$130.20	\$217.00	Troy

**b. Total Charges**

The following 66 policies were issued without stating the correct total amount to be paid for the policy. In some instances, the amount is incorrect. In other cases, the amount was not stated at all.

Reference: 20 CSR 500-7.100(3)(B)1. and 2.

File No.	Policy No.	Reported Charges	Actual Charge	Agency
0101321	1414-485124	\$342.50	\$242.50	Hogan
0109174*	1412-496496	\$393.00	\$293.00	Hogan
0110897*	1412-485001	\$401.25	\$251.25	Hogan
0112489*	1412-530427	\$343.00	\$193.00	Hogan
0204538*	1312-240727	\$385.00	\$245.00	Hogan
0208379*	1312-256248	\$533.00	\$383.00	Hogan
200210055*	1412-552596	None	\$85.00	Hogan
0111529*	1312-230432	\$477.50	\$317.50	Hogan
64677*	1312-212866	\$150.00	\$245.00	Investors
683911*	1312-259529	\$462.00	\$367.00	Investors
1153	1212-29969	None	None	America's Title Source
1656*	1222-27805	None	None	America's Title Source
1554*	1222-31703	None	None	America's Title Source
2338*	1222-34750	None	None	America's

				Title Source
2500*	1222-38793	None	None	America's Title Source
2673*	1222-39990	None	None	America's Title Source
100612*	1312-228859 1412-480309	\$3625.00	\$4300.00	Title Insurers
302B5520*	1312-228295 1412-477957	None	None	Ozark Abstr.
502B5683*	1312-228386 1412-495997	None	None	Ozark Abstr.
602B5742*	1312-234670 1412-496043	None	None	Ozark Abstr.
702B5841	1412-509483	None	None	Ozark Abstr.
902B5907	1412-509538	None	None	Ozark Abstr.
1002B5997	1412-529562	None	None	Ozark Abstr.
1102B6096*	1312-246586 1412-4529650	None	None	Ozark Abstr.
103B6189*	1412-555074	None	None	Ozark Abstr.
33B6314	1312-257705	None	None	Ozark Abstr.
403B6469	1312-268652	None	None	Ozark Abstr.
1076	1312-23852	\$338.50	\$466.00	Miller Count.
File No.	Policy No.	Reported Charges	Actual Charge	Agency
1043	1312-238968	\$200.50	\$590.00	Miller Count.
227	1412-468466	\$135.80	\$335.00	Miller Count.
1053	1412-489260	\$95.70	\$245.30	Miller Count.
1325	1412-572523	\$1905.00	\$635.00	Miller Count.
1593	1412-631116	\$214.80	\$314.80	Miller Count.
KC257710*	1312-84492	\$127.00	\$365.50	Netco
STL2281511*	1412-463122	\$343.00	\$328.00	Netco
STL232010*	1412-464535	\$112.50	\$247.00	Netco
STL23382*	1412-464845	\$300.25	\$526.00	Netco
STL2353251*	1412-499612	\$253.00	\$210.00	Netco
KC237495*	1412-499893	\$368.00	\$165.00	Netco
STL247532*	1412-500155	\$448.00	\$253.00	Netco
STL2393731*	1412-50368	\$310.00	\$165.00	Netco
STL518541*	1412-524728	\$580.00	\$331.75	Netco
STL246504*	1412-5524945	\$50.00	\$431.50	Netco
STL2060751*	1412-525235	\$317.00	\$55.00	Netco

STL252572*	1412-525462	\$386.00	\$345.75	Netco
STL2199151*	1412-552829	\$445.86	\$246.00	Netco
STL259730*	1412-553064	\$346.00	\$271.00	Netco
STL264796*	1412-56162	\$87.50	\$437.50	Netco
KC271984*	1412-577757	\$524.00	\$310.75	Netco
STL274248*	1412-578010	\$719.00	\$265.25	Netco
STL278040*	1412-578322	\$253.00	\$445.00	Netco
015882*	1412-565095	\$100.00	\$75.00	Phoenix
016595	1412-565220	\$100.00	\$75.00	Phoenix
015348*	1412521766	\$100.00	\$75.00	Phoenix
016535*	1412-575350	\$100.00	\$75.00	Phoenix
017741*	1412-580924	\$100.00	\$75.00	Phoenix
0150055	1412-498882	\$100.00	\$75.00	Phoenix
2002080029*	1222-32079	None	None	Archer
2002100577*	1222-34584	None	None	Archer
200200173	1412-537759	None	None	Archer
02KS13459*	1412-470486	None	None	Nations
0207766*	1412-503836	None	None	Nations
02304	1312-216932 1412-449992	None	None	Barry
22-1778	1412-544517	None	None	ISJ Land Title
03-01	1412-488664	None	None	Alberty & Deveny
2002-006	1412-386288	None	None	Emory Melton

In the following five files, the agent's total charges were less than the risk rate filed by the Company with the DIFP.

Reference: 20 CSR 500-7.100

File No	Policy No	Rate	Charges	Agency
83835*	1312-212961 1412-442946	\$217.00	\$100.00	Investors
74174*	1412-602129	\$437.73	\$200.00	Investors
85126*	1412-603269	\$277.85	\$125.00	Investors
84607*	1312-212718 1412-638167	\$393.00	\$250.00	Investors
57064*	1312-212752	\$1570.30	\$1200.00	Investors

The agency did not include its separate charges for search and examination when reporting the total amount charged for the policy. No policy is to be issued unless the total amount charged for the policy is shown.

Reference: 20 CSR 500 – 7.100(3)(B)1.

Note: This error was found in 22 of the 23 Phoenix Title files reviewed.

File No.	Policy No.	Reported Total	Actual Total	Agency
015089	1412-494052	\$224.00	\$274.00	Phoenix
015348*	1312-236164	\$300.00	\$450.00	Phoenix
016535*	1312-260719	\$350.00	\$500.00	Phoenix
017741*	1312-267091	\$370.00	\$520.00	Phoenix
015262	1412-494201	\$200.00	\$250.00	Phoenix
015055*	1312-220946	\$349.00	\$499.00	Phoenix
015542*	1412-507408	\$150.00	\$200.00	Phoenix
014842	1412-521786	\$100.00	\$150.00	Phoenix
016132	1412-521957	\$300.00	\$350.00	Phoenix
016207	1412-560634	\$167.79	\$217.79	Phoenix
016219	1412-560760	\$184.00	\$234.00	Phoenix
016981	1412-560891	\$150.00	\$200.00	Phoenix
015962	1412-564974	\$242.00	\$292.00	Phoenix
015882*	1412-565095	\$400.00	\$550.00	Phoenix
016595*	1412-565220	\$173.00	\$323.00	Phoenix
016586	1412-565373	\$157.00	\$175.00	Phoenix
017626	1412-571526	\$150.00	\$150.00	Phoenix
File No.	Policy No.	Reported Total	Actual Total	Agency
017340	1412-580638	\$150.00	\$200.00	Phoenix
014916	1412-580860	\$170.00	\$220.00	Phoenix
017542	1412-587534	\$154.00	\$204.00	Phoenix
017691	1412-595657	\$200.00	\$350.00	Phoenix
014844	1412-612521	\$150.00	\$200.00	Phoenix

### **c. Recording Delays**

The settlement agent failed to record 49 security instruments for a real estate closing within

three business days after receipt of certified funds.

Reference: Section 381.412.1 RSMo.

File No.	Policy No.	Failed to file	Number of Days	Agency
0102369*	1412-484484	Security Inst.		Hogan
2002040476	1412-535385	Security Inst	23	FidTitSpring
2002070267	1312-2575752	Deed	9	FidTitSpring
2002060281	1412-566523	Finance Docs	10	FidTitSpring
2002090014*	1312-289142	Finance Docs	16	FidTitSpring
2001050142*	1412-471673	Finance Docs	21	FidTitSpring
0204977	1412-518248	Security Inst	6	Nations Mo
0206079	1412-528484	Security Inst	6	Nations Mo
020284	1412-561170	Security Inst	7	Nations Mo
0201173	1412-510471	Security Inst.	14	Nations Mo
021662	1412-510710	Security Inst	9	Nations Mo
021699	1312-193278	Security Inst.	21	Nations Mo
025282*	1312-238040	Security Inst	15	Nations Mo
019897	1412-500631	Security Inst	39	Nations Mo
0112030*	1412-506924*	Security Inst.	14	Nations Mo
200436	1412-510352	Security Inst	6	Nations Mo
021622	1412-513173	Security Inst.	8	Nations Mo
0211763	1412-583952	Security Inst	15	Nations Mo
57064*	1312-212752	Security Inst.	7	Investors
83835*	1412-442946	Security Inst	9	Investors
84607*	1412-638167	Security Inst.	12	Investors
50141*	1412-523328	Security Inst	13	Investors
683911*	1312-259529	Security Inst.	13	Investors
64677*	1312-212866	Security Inst	14	Investors
74174*	1412-602129	Security Inst.	24	Investors
File No.	Policy No.	Failed to file	Number of Days	Agency
2338*	1222-34750	Security Inst	16	Am. Title Source
2673*	1222-3990	Security Inst.	20	Am. Title Source
1153*	1212-2969	Security Inst	23	Am. Title Source
2500*	1222-38793	Security Inst.	32	Am. Title Source
1554*	1222-31703	Security Inst	65	Am. Title Source
1656*	1222-27805	Security Inst.	92	Am. Title Source
00045626	1312-229069	Security Inst	10	Title Insurers

110186	1312-261184	Security Inst.	39	Title Insurers
60785	1412-563277	Security Inst.	42	Title Insurers
502B5683*	1312-228386	Security Inst.	6	Ozark Abst.
602B5742*	1412-496043	Security Inst.	7	Ozark Abst.
STL2353251	1412-499612	Security Inst.	10	Netco
STL159730	1412-553064	Security Inst.	6	Netco
014680	1412-513933	Security Inst.	12	Phoenix
016132*	1412-521957	Security Inst.	8	Phoenix
015962*	1412-564974	Security Inst.	8	Phoenix
015882*	1412-565095	Security Inst.	11	Phoenix
014916*	1412-580860	Security Inst.	7	Phoenix
017542*	1412-587534	Security Inst.	10	Phoenix
014844*	1412-618521	Security Inst.	9	Phoenix
2002080029*	1222-32079	Security Inst.	56	Archer
2002100577*	1222-34584	Security Inst.	13	Archer
2002091273*	1412-537759	Security Inst.	14	Archer
0209222	1412-470901	Security Inst.	19	Nations Title

d. Problems Related to Effective Dates of the Policies

The policy is dated three months prior to the correct date of coverage.

Reference: Section 381.071.1 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0105152	1412-496622	Hogan

The policy is dated a full year after its correct date. The company provided coverage for an additional year.

Reference: Section 381.071.1 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0109011	1412-485251	Hogan

The policy was issued with an effective date of 09/07/02, but this date does not appear to be relevant to any part of the transaction. The correct date for the policy is 08/22/02.

Reference: Section 381.071.2 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
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**e. Problems Related to Improper Exceptions**

The company failed to use sound underwriting practices by including the following exception in the loan policies listed below.

The exception “General and Special Taxes for the municipality or city, if any, which may be encompassed herein have not been examined” is a matter of record. Having elected to not examine the record for any applicable city real estate tax, the agent may, in a loan policy, elect to insure over the risk by omission, but the agent and the insurer may not attempt to avoid liability by insertion of a generic expression.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0207478	1412-560390	Nations MO
0209284	1412-561170	Nations MO
0210817*	1412-566381	Nations MO
0209726*	1412-576203	Nations MO
0201173*	1412-510471	Nations MO
0211494	1412-576467	Nations MO
0111124*	1412-500968	Nations MO
0111553*	1412-506798	Nations MO
021662*	1412-510701	Nations MO
0213489*	1412-584397	Nations MO
0110356	1412-492962	Nations MO
0111805	1412-490566	Nations MO
019897*	1412-500631	Nations MO
0112030*	1412-506924	Nations MO
0200028*	1412-506932	Nations MO
0200436*	1412-510352	Nations MO
022435*	1412-510849	Nations MO
021622*	1412-513173	Nations MO
023081*	1412-513331	Nations MO
023506*	1412-513505	Nations MO

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
023890	1412-517981	Nations MO
0211763*	1412-583952	Nations MO

0212730*	1412-584179	Nations MO
025359*	1412-518377	Nations MO

The insurer, the agency, and the agent failed to show all known matters affecting title and all matters of record affecting title when issuing an owner’s policy of title insurance. The insurer and the agent are not free to add exceptions to the owner’s policy without basis. This is evidenced in the following exceptions contained in the owner’s policies.

- Terms and conditions of lease agreements, recorded or unrecorded, affecting said property, if any.
- Terms and conditions of any ordinances affecting said property, if any.
- Assessment for sanitary sewer maintenance, if any.
- Assessments by the trustees of said subdivision, if any.
- Marital/homestead rights of the spouse(s) of the party(ies) in title, if any.
- Any acreage shown in the legal description cannot be relied upon without proper survey information supplied to this company.
- General and Special Taxes for the municipality or city, if any, which may be encompassed herein have not been examined.

The existence of recorded lease agreements, sewer service and maintenance assessments, if lienable, and assessments levied by the trustees of a subdivision are all readily ascertainable by a search of the records. The effects of ordinances are generally excluded by the terms of the policy. The agent has no basis for raising an exception for ordinances.

The company failed to use sound underwriting practices by including these exceptions in the owners’ policy.

Reference: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
025282*	1312-238040	Nations MO
019897*	1312-193196	Nations MO
0112030*	1312-193213	Nations MO
025359*	1312-238064	Nations MO

This lender's policy includes an exception for any taxes levied by a city. Whether the property is located within a city is easily determined, and the amount of any city real estate tax that is lienable is a matter of public record. The agent may show known liens as special exceptions or insure by omission in a mortgage policy. The company failed to use sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
026049*	1412-599992	Nations MO

The company failed to use sound underwriting guidelines. This owner's policy omits any special exception for matters reflected on the recorded plat. The policy contains no special exception for restrictions a matter of record, although the settlement statement indicates that the agent paid delinquent subdivision trustee assessments from escrow.

The owner's policy was issued based on an examination of title that did not include an examination of recorded restriction documents, or include examination of any document recorded prior to 1970.

The insurer, the agency, and the agent are not permitted to issue an owner's policy of title insurance unless all known and recorded matters affecting the property are reported in the policy.

Reference: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
021699*	1312-193278	Nations MO

The examiners found seven loan policies issued by the agent that include the following generic exception:

Conditions, covenants, restrictions, declarations, agreements, zoning, existing highway, sewer, water, electric, pipeline and gas easements or claims of easements affecting the subject property, dependent upon recording within appropriate public records.

The agent and the insurer are obliged to perform an examination of title sufficient to permit determination of insurability and are free to show exceptions for all known matters specific to the property or the transaction. In the event that the agency and the insurer are not satisfied that the examination of title is sufficient to determine insurability, they are obliged to enhance the

examination of title until they are satisfied that the examination is adequate and that the risk assumed is not unreasonable. However, the agency and the insurer are not free to add generic exceptions in an effort to eliminate or minimize any risks not otherwise identified in the examination of title.

The insurer, the agency, and the agent failed to determine insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
02KS12005	1412-470273	Nations Title
0215994	1412-470600	Nations Title
0209222*	1412-470901	Nations Title
0204849	1412-503553	Nations Title
0207675*	1412-503680	Nations Title
0207766*	1412-503836	Nations Title
0209160	1412-503922	Nations Title

**f. Incorrect Exceptions**

Each of these policies takes exception for a prior deed of trust that was paid at closing from escrow. The agent failed to issue the policies as agreed.

Reference: Section 381.071.1.2 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
01124*	1412-530437	Hogan
0110897*	1412-485001	Hogan

The agent issued the policy insuring an earlier, satisfied deed of trust. The deed of trust resulting from the more recent transaction remains uninsured. The agent failed to issue the policy as agreed. The agent indicated they will issue a new policy insuring the correct deed of trust.

Reference: Section 381.071.2 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0110576	1412-515982	Hogan

The agent failed to show the purchase money deed of trust as an exception on the owner's policy of title insurance.

Reference: Section 381.071.1.2 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0204126*	1312-235299	Hogan

The agent's commitment to insure contained the following requirement: "An Accurate Survey of the premises in question will be required in order to issue survey coverage on our Final Title Policy(s), when issued." The mark-up to policy includes an adjacent marginal notation reading "we have," but the owner's policy was issued with the standard exception for survey matters.

The agent failed to issue the policy as agreed.

Reference: Section 381.071.1.2, RSMo, and 20 CSR 300-2.200 (2)

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
200112006*	1312-239966	FidTitSpring

This lender's policy includes an exception for a deed of trust recorded 04/19/1997 that was released on the record 08/07/1997. The file contains no information indicating that the release of 08/07/1997 was not effective. Showing a released deed of trust as an exception is not a sound underwriting practice.

The policy also contains an exception reading "General Real Estate Taxes for the year 2001 and thereafter, none now due and payable." The policy is dated 01/22/02. General taxes for the year 2001 were past due, fully payable, and delinquent at the date of the policy.

Insuring a title encumbered by delinquent general taxes is not sound underwriting practice. The insurer, agency, and agent failed to determine insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0111805*	1412-490566	Nations MO

The insured title is subject to a deed of trust in favor of the seller executed by the buyer for the purpose of financing a portion of the purchase price. The policies as issued by the agent do not show the deed of trust in favor of the seller as an exception to title.

Reference: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
025282*	1312-238040 and 1412-537372	Nations MO

The agent failed to report a known exception for rights of tenants in possession.

Reference: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
45455	1312-261210 and 1412-563085	Title Insurers

The agent omitted a specific exception for a known matter, the rights of tenants and lessees in possession in a trailer park.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
22202*	1412-542162	Landmann

The examiner found six files with policies containing an exception for “Any portion of described premises used as streets, alleys, right of ways and/or easements . . .,” a generic format that is not included as a standard exception in the policy forms filed by Fidelity with the Director of the DIFP.

The agent and the insurer are not free to except for matters that are neither standard exceptions nor special to the property or the transaction.

References: Sections 381.071.1.2 and 381.211, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
21384	1312-230974	Landmann
21406*	1312-231047	Landmann
21879	1312-240380	Landmann
21128*	1412-474875	Landmann
21672	1412-513702	Landmann

The agency issued policies in this file showing an exception for a first right of refusal that does not affect the land described

Reference: Section 381.071.1.2, RSMo, and 20 CSR 300–2.200(2) (as amended 20 CSR 100-8.040, eff. 7/30/08).

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
1076*	1312-238952 and 1412-507878	Miller County

The agent failed to except for the assignment of certain potential interests relevant to the insured deed of trust.

The agent did not show the second mortgage and a related modification agreement as an exception on the policy insuring the first mortgage. The second mortgage probably should be shown as a subordinate matter.

The agent failed to show two deeds of trust on the owner’s policy of title insurance.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
1325*	1312-239016, 1412-57224	Miller County
1325A*	1412-572523	Miller County

The agent continued to show general taxes for the year 2001 as an exception after paying the taxes from escrow. The agent omitted a known exception for a scheme of restrictions. The agent included an advisory note as an exception in the policy of title insurance. The agent failed to use sound underwriting practices by omitting exceptions, or by failing to insure as agreed, or reporting irrelevant matters as exceptions.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
002949*	1312-264671 and 1412-581940	Troy

The agent made an exception for an instrument recorded in 1940, but there is no evidence in the file that the document affects the property. The agent made an exception for a deed of trust that is no longer a lien. The extent of examination in this file was not sufficient to assure accurate reporting of exceptions.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
KC257710*	1312- 84492 and 1412-594303	Netco

The agency failed to report a known exception for a deed of trust subordinated on the record to the insured deed of trust.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
A27426	1412-513933	Phoenix

The agency failed to except for the seller's known lien for the unpaid portion of the sale price, shown on the settlement statement as \$6,100.00. Taking exception for matters of no effect on the vested title is not sound underwriting practice. Failing to except matters affecting the title is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
015055*	1412-498882 and 1312-220946	Phoenix

The agent closed the transaction in escrow and satisfied an earlier mortgage by disbursement of funds from escrow, but the agent continued to show the earlier mortgage as an exception to the title.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
01KS06598	1312-217044	Nations Title

The policy includes an exception for judgments "if any" against the vested tenancy by the entireties. Judgments are a matter of record. The agent is not free to make a generic exception for matters of record.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
01KS04849	1412-503553	Nations Title

The policy includes an exception for judgments "if any" against the vested owner. Judgments are a matter of record. The agent is not free to make a generic exception for matters of record.

The policy contains an exception reading: "A judgment search was done (sic) on (name of

person, here omitted) and none were found except those shown on Schedule B of this commitment.” The policy is not a commitment. The affirmative assurance in this exception is extraneous.

The agent and the insurer are obliged to make a determination of insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
02KS07766	1412-503836	Nations Title

The owner’s policies in files 0213188\* and 0212926\* include the following generic exceptions:

- Zoning and building regulations enacted by the City of Mtn. Grove, Missouri.
- Municipal taxes, assessments or liens of the City of Mtn. Grove, Missouri.

Zoning and building regulations are matters excluded by the terms of the policy. It is not a sound underwriting practice to except for matters not otherwise covered by the policy. These matters may be researched and specifically excepted, but liability may not be avoided by means of a generic exception. The agent and the insurer must show all known and recorded matters affecting title when issuing an owner’s policy of title insurance.

The loan policy in file 0212928\* contains an exception reading “Rights of the public in any portion of the property within public roads, streets or highways.” The agent may not formulate the exception in this manner because it is not specific to the property or the transaction. There is indication that some of the land may be affected by existing rights of way, but the language should be specific rather than general.

Failing to make specific exception for matters known to affect the property is not sound underwriting practice.

References: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0213188*	1312-253573	Wright County
0212926*	1312-228036	Wright County
0212928*	1412-477561	Wright County

The commitment prepared for the transaction leading to the policy contains three exceptions that are not in the prior title evidence copied to the file, that do not appear in the chain of title copied to the file, and that are not on the pencil sheet written by the examiner for the commitment. The file offers no basis for the exceptions.

The commitment also contains an exception for “Minutes of Special Meeting as shown of record.” There is little clue in the phrasing of the exception as to its significance. There are no abstractor’s notes as to the contents of any such document, no such document is referenced on the prior title information copied to the file, and there is no copy of any such document in the file.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
26705*	1412-581186	Assured

The owner’s policy includes exceptions for mechanic’s liens, survey issues, riparian rights, matters not disclosed by a spot survey, and the customary ALTA gap language that appears in commitments to insure. The property is described by the policy as a condominium. Assuming that the agent has established that the condominium was properly created and is correctly described as a condominium, there should be no survey exception in the policy.

The gap language should never appear in a policy of title insurance. The examiner can find no basis in this file for retention of any of the standard exceptions in the owner’s policy of title insurance.

Both the owner’s policy and the lender’s policy include an exception reading: “Limitations and Conditions imposed by the Uniform Condominium Act of the State of Missouri.” The policy does not protect the insured from violations of statutes. If the insurer is not satisfied that the condominium is properly created, then the examination is not adequate or appropriate.

Include inappropriate exceptions in title insurance policies is not sound underwriting practice. The insurer and the agent are required to make a determination of insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
26360*	1312-246441 and 1412-476783	Assured

**g. Inadequate Examinations**

The agent issued a commitment offering to issue an owner’s policy of title insurance. The commitment was based on an examination of title that did not include an examination of the recorded plat, did not include an examination of the recorded restrictions, and did not include examination of any document recorded prior to 1996. The extent of the examination in this file was not sufficient to assure that all known exceptions to title have been identified and shown in the owner’s policy.

Unless all known and recorded matters affecting title are reported, the insurer and the agent are not permitted to issue a commitment for a proposed owner’s policy of title insurance.

Reference: Section 381.071.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0111124*	Policy 1412-500968	Nations MO

The owner’s policy does not include any special exception for matters reflected on the recorded plat. The policy contains no special exception for covenants, conditions, restrictions, easements, or servitudes of any sort found as a matter of record during examination of the title. There is no indication that the agent examined any instrument recorded prior to 1979. The extent of the examination was not sufficient to assure that all matters known to affect title were reported in the owner’s policy of title insurance.

Unless all known and recorded matters affecting the title are reported in the policy, the insurer and the agent are not permitted it issue an owner’s policy.

Reference: Section 381.071.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
025282*	312-238040 and 1412-537372	Nations MO

The owner’s policy does not include any special exception for matters reflected on the recorded plat. The policy contains no special exception for covenants, conditions, restrictions, easements, or servitudes of any sort found as a matter of record during examination of title. There is no indication that the agent examined any instrument recorded prior to 1990.

The examination was not sufficient to assure that all matters known to affect title were reported in the owner’s policy of title insurance. Unless all known and recorded matters affecting title are reported, the insurer and the agent are not permitted to issue an owner’s

policy of title insurance.

Reference: Section 381.071.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
019897*	1312-193196 and 1412-500631	Nations MO

The owner's policy does not include any special exception for matters reflected on the recorded plat. The policy contains no special exception for covenants, conditions, restrictions, easements, or servitudes of any sort found as a matter of record during examination of title. The chain of title copied to the file indicates that it encompasses a period beginning 01/01/1973 but does not show the seller's deed of acquisition. The file contains no copy of any recorded deed, nor any abstract of a recorded deed. There is little indication in the file of any factual basis for the commitment to insure.

In closing the transaction, the agent paid certain delinquent homeowner's assessments levied by the trustee of the subdivision, but the agent made no exception for restrictions to be enforced by trustees, nor any instrument granting a power of assessment to trustees.

The examination was not sufficient to assure that all matters known to affect title were reported in the owner's policy of title insurance. The insurer and the agent are not permitted to issue an owner's policy of title insurance unless all known and recorded matters affecting title are reported.

Reference: Section 381.071.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
025359*	1312-238064 and 1412-518377	Nations MO

The contract for sale named parties A, B, and C as sellers. The agent's examination of title indicated that party A had conveyed her interest to parties B and C by deed recorded 03/22/01, a date several months before the date of the contract to sell. The file contains no evidence the agent researched the interests claimed by party A at the time of the contract. Further, the interests of party A had been acquired by her as a member of a tenancy by the entirety in a deed recorded in 1953. There is no information in the agent's file suggesting that the husband of party A had died by the time of party A's conveyance in 2001. At closing, the agent obtained conveyances only from parties B and C.

The agent's examination of title was not sufficient to determine whether title had been successfully conveyed.

The insurer and the agent are obliged to determine eligibility in accordance with sound

underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
506924*	1312-193213 and 1412-506924*	Nations MO

When closing a transaction in escrow, the agent failed to check the records for intervening matters arising between the date of the commitment and the date of the closing.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
1153*	1212-29969	America's Title Source
1656*	1222-27805	America's Title Source
2338*	1222-34750	America's Title Source
2500*	1222-38793	America's Title Source

Title on the record is not marketable. The person named as vested owner in the policy may be vested only in an undivided ½ interest. Insuring a transaction without establishing marketable title is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
STL2060751*	1412-525235	Netco

The agent insured the title as free of an earlier mortgage without establishing that the earlier mortgage had been satisfied.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
KC264444*	1412-573642	Netco

The agent vested title on the owner's policy in two individuals, but only one of the two had acquired any interest in the property.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
017741*	1312-267091 and 1412-580924	Phoenix

The agent issued owner policies of title insurance in the following six files on properties in St. Louis City and St. Louis County based upon insufficient examination or an examination that is not properly documented. None of the files contained copies of recorded documents, or of abstracts of recorded documents, or notes made from documents reviewed, of sufficient detail to permit the examiner to conclude that all recorded matters and all known matters affecting the property had been reported in the policies.

The agent is required to report all known and recorded matters affecting title when issuing an owner's policy of title insurance. The agent failed to retain evidence of the title examination in the file for a period of not less than 15 years.

References: Section 381.071.2 and .3, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
015348*	1312-236164	Phoenix
016535*	1312-260719	Phoenix
017741*	1312-267091	Phoenix
015055*	1312-220946	Phoenix
015882*	1312-260668 and 1412-565095	Phoenix
016595*	1312-260692 and 1412-565220	Phoenix

In the following eight files, the agent issued a loan policy based upon an abbreviated chain of title. The agent reported certain matters as exceptions that did not appear on the chain of title. There is no information in the agent's file indicating a basis for excepting for the matters not appearing in the chain.

The agent is obliged to determine insurability in accordance with sound underwriting practices. It is not sound underwriting practice to report exceptions without basis.

The agent is obliged to retain evidence of the title examination in the file for a period of not less than 15 years.

Reference: Section 381.071.2 and .3, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
016207*	1412-560634	Phoenix
016219*	1412-560760	Phoenix
016981*	1412-560891	Phoenix
015962*	1412-564974	Phoenix
017626*	1412-571526	Phoenix
014916*	1412-580860	Phoenix

017542*	1412-587534	Phoenix
017691*	1412-595657	Phoenix

There is no indication that the agent obtained up to date title information prior to closing the transactions, disbursing funds, or recording.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002080029*	1222-32079	Archer
2002091273*	1412-537759	Archer

The chain of title in this file was continued from the date of a lender's policy issued in 1999. The examination of title in this file was not sufficient to assure that all matters affecting title were reported on the owner's policy of title insurance.

The insurer and the agent are required to show all known and recorded matters affecting title when issuing an owner's policy of title insurance.

Reference: Sections 381.071.1.2 and .3, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0212926*	1312-228036 and 1412-504276	Wright County

**h. Other Deficiencies Noted**

An exception to title indicates that the agent has not searched city taxes for the City of Battlefield. The agent is required to show all known, outstanding and enforceable recorded liens or other interests against the title when issuing an owner's policy of title insurance. The agent may not avoid liability under the policy by failure to search for a lien.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0203102*	1312-235253 and 1412-515258	Hogan

The agency issued a commitment to for a mortgage policy in favor of a commercial lender in the amount of \$35,000.00 under date of 07/19/01. The borrower's mortgage to the named lender was dated 08/10/01 in the anticipated amount and was recorded 08/20/01. The requested premium of \$187.50 was paid on 08/31/01 with a request that policy be issued.

The premium paid for the 08/10/01 transaction was applied to a policy issued in connection with a later September 2001 transaction. There is no indication in this file that the agent ever prepared an examination or a commitment for the later September 2001 transaction.

Failing to insure as agreed is not sound underwriting practice. Insuring a transaction without examination is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo, and 20 CSR 300-2.200 (2) (as amended 20 CSR 100-8.040(2), eff. 7/30/08)

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0107679*	1412-453806	Hogan

The agent did not deliver the escrow portion of these files.

Reference: 20 CSR 300-2.200(6)(A) (as amended 20 CSR 100-8.040(6)(A), eff. 7/30/08)

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0205306*	1412-515861	Hogan
0206446	1412-531073	Hogan

The agent accepted non-certified funds into escrow and disbursed those funds from escrow in less than 10 calendar days.

Reference: Section 381.412 RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0110897*	1412-485001	Hogan

The agency failed to report an open mortgage on both the owner's policy and the lender's policy. (The unreported mortgage may have been subordinate to the insured deed of trust.)

Reference: Section 381.071.1.2, and .2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agency.</u>
0111529*	1312-230432 and 1412-484804	Hogan

The owner policy in this file is dated more than a month after acquisition by the insured. There

is no information in the file establishing that the insured was a bona fide purchaser for value, nor is there any underwriting analysis to establish that the face amount of the owner's policy is reasonable.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002020406*	1312-246318 and 1412-531887	FidTitSpring

The agent accepted non-certified funds into escrow and disbursed those funds from escrow in less than 10 calendar days.

Reference: Section 381.412, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002080506*	1312-261891 and 1412-566647	FidTitSpring

The settlement statement in this file shows a sale price of \$85,000.00, but the policy was issued for \$77,000.00. There are no underwriting notes in the file explaining the difference.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002090014*	1312-289142 and 1412-681557	FidTitSpring

The former spouse had obtained an order in decree of dissolution that the property owner would pay him a price for his interest in the real estate, an equitable lien in favor of the vendor. The agent failed to obtain release of the lien.

Failing to obtain a release of a lien is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002050337	1412-543951	FidTitSpring

The agent sometimes charged a "funding fee" in escrow transactions. Nations Title did not advance any funds for these 19 listed transactions. The fee did not represent a charge for any services performed by the agent.

The agent is not permitted to charge fees that do not represent compensation for any services

performed.

Reference: 20 CSR 500-7.100

<u>File No</u>	<u>Policy No</u>	<u>Funding Fee</u>	<u>Agency</u>
0204977*	1412-518248	\$35.00	Nations MO
0206717*	1412-543072	\$20.00	Nations MO
0207734*	1412-534169	\$25.00	Nations MO
0209284*	1412-566381	\$20.00	Nations MO
0210817*	1412-561170	\$20.00	Nations MO
0209726*	1412-576203	\$20.00	Nations MO
0201173*	1412-510471	\$20.00	Nations MO
0207009	1412-537279	\$25.00	Nations MO
0111124*	1412-500968	\$20.00	Nations MO
021699*	1312-193278	\$20.00	Nations MO
025282*	1312-238040	\$20.00	Nations MO
019897*	1412-500631	\$20.00	Nations MO
0112030*	1412-506924*	\$30.00	Nations MO
0200436*	1412-510352	\$20.00	Nations MO
0201178*	1412-510473	\$20.00	Nations MO
021622*	1412-513173	\$30.00	Nations MO
023081*	1412-513331	\$20.00	Nations MO
025359*	1312-238064	\$20.00	Nations MO
023890*	1412-517981	\$35.00	Nations MO

Closing documents in the following four files identify the agent as the settlement agent, but the actual closing agents were the lenders. The agent disbursed funds from escrow but did not conduct the closing. The agent received loan proceeds into escrow. The settlement statement for the closing was typed on the lender's forms but names Nations Title Agency of Missouri as the settlement agent.

Nations Title Agency of Missouri disbursed funds from its escrow account to payees identified by the lender. The mortgage and all related documents were prepared by the lender and acknowledged by an employee of the lender.

Although not the settlement agent, Nations Title Agency of Missouri issued the title insurance policy in full reliance on the closing it did not conduct. A sub-escrow transaction may be permissible but the agent should not permit the documents to identify the agent as having acted to close the transaction.

Reliance upon a closing conducted by an interested party when issuing the policy of title insurance is not sound underwriting practice. In this type of transaction, the agent must issue the policy based on the record title. The agent must require production of deeds of release for any satisfied mortgages.

The insurer, the agency, and the agent must determine insurability in accordance with sound underwriting practices.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0209866	1412-566040	Nations MO
0209083	1412-566160	Nations MO
0210245	1412-566255	Nations MO
0207218	1412-543289	Nations MO

In the following eight files, the agent had agreed to issue one or more endorsements to the policy, but failed to do so.

Failing to issue the policy as agreed is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0201178*	1412-510473	Nations MO
0201622	1412-513173	Nations MO
0212730*	1412-584179	Nations MO
0211763*	1412-583952	Nations MO
0202435	1412-510849	Nations MO
0111124*	1412-500968	Nations MO
0203081	1412-513331	Nations MO
0203506	1412-513505	Nations MO

The settlement statement provided to the borrower omits a charge to the borrower in the amount of \$2,995.00. The borrower paid the additional charge but the agent has not sent a corrected settlement statement to the borrower. An accurate settlement statement is of importance to the borrower in filing one or more income tax returns.

Failing to properly account for funds handled in an escrow transaction is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0112030*	1312-193213 and 1412-506924*	Nations MO

The settlement statement shows payoff of a second mortgage loan in the amount of \$7,943.82 and payoff of a third mortgage loan in the amount of \$8,808.82. There is no indication in the file of the existence of any second or third mortgage to be paid. The agent made payments from escrow with no written instruction to do so and with no apparent basis. The agent did not obtain release of the second or third mortgage.

Satisfying mortgages in an escrow transaction without any assurance that such payment is satisfactory and without obtaining appropriate releases is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
021699*	1312-193278 and 1412-510727	Nations MO

The contract for sale of the property included an agreement that the seller would provide part of the financing for the purchase and a provision that the purchasers, at their own expense, would provide a loan policy to the seller. The agent closed each transaction and apparently prepared the deed of trust securing the various vendor liens, but did not insure the seller mortgages.

Each contract also included an agreement that a request for notice of sale would be prepared and recorded for the seller at the expense of the buyer. The forms were not prepared or recorded.

The agent failed to comply with written escrow instructions. Failing to issue the policy of title insurance in the agreed manner is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0112030*	1312-193213 and 1412-506924*	Nations MO
0111124*	1412-500968	Nations MO
025282*	1312-238040 and 1412-537372	Nations MO

The agent charged a fee of \$27.00 for recording a deed of release. The lender holding the lien had already charged the fee. This fee does not represent a charge for any services performed by the agent.

The agent is not permitted to charge fees not related to any service performed.

Reference: 20 CSR 500-7.100.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
021662*	1412-510701	Nations MO

The agent's commitment to insure reported a second mortgage recorded in May of 1997. The agent deleted the exception for the 1997 mortgage at the request of the mortgage broker. The mortgage broker had submitted page 2 of 6 of a credit report as the basis of the request for deletion. This single page out of six reflected a bank credit line account labeled "secured, revolving" had been closed. There is no indication in the file that the 1997 deed of trust had been released or that release would be forthcoming.

In addition to the recorded deed of trust, the borrower's loan application, copied to the file, indicates that the real estate offered as security had a value of \$800,000.00, that the borrower had no other real estate assets, and that the borrower was in debt to two different mortgage companies, one for \$373,000.00 and one for \$346,000.00.

In the closing transaction, the agent paid only one mortgage. Omitting a recorded mortgage from a commitment to insure based upon information found in a fragment of a credit report is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
0111553*	1412-506769	Nations MO

The owner's policy was issued for \$77,000.00 and the lender's policy for \$68,000.00. The selling builder in this transaction retained a vendor's lien for a portion of the purchase price. The agent failed to show the vendor's lien as an exception to title. It is not sound underwriting practice to omit known exceptions to title.

The agent is obliged to shown all know and recorded matters affecting title when issuing an owner's policy of title insurance.

References: Section 381.071.1.2 and .2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2002090014*	1312-289142 and 1412-681557	Fidelity Title

The agent issued a loan policy insuring access in the usual manner, but the land as described has no access to a public street.

The agent omitted an exception for a mortgage based solely upon information supplied by the insured.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
85126*	1412-603269	Investors Title

The agent utilized an indemnification form identifying itself as the title insurer.

Reference: Sections 381.031.21 and 381.041, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
683911*	1312-259529 and 1412-586501	Investors Title

The real estate is located in St. Charles County, Missouri, but the agent recorded the deed of trust in St. Louis County, Missouri.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
2500*	1222-38793	America's Title Source

The owner's policy was issued for \$122,875.00 and the lender's policy for \$110,587.00. The previous owners of this property held in a tenancy by the entireties but both the husband and wife had died. The estate of the last spouse to die was being probated in St. Charles County.

The agency missed a deed conveying a portion of the property in 1960. In addition to missing this conveyance, the agency failed to properly examine the county real estate tax information at the offices of the assessor and the collector for St. Charles County. Careful review of those records would have revealed that the seller was not being taxed for all of the land described in the title report. The St. Charles County assessor also maintains an extensive record of conveyance deeds for the various parcels of land in that county. A careful review of those records would have permitted the abstractor to discover the deed of conveyance missed in running the name indices at the recorder's office.

The order for title work indicated the name of the seller and included a copy of a contract for sale

executed by that seller. The name of the last grantee identified by the abstractor from recorded deeds was not the person who signed the contract for sale. The executing seller was the personal representative of the deceased party who had owned the real estate and whose estate was being probated in St. Charles County. The agent failed to check the probate records and did not examine the probate estate files, which would have included an inventory of the property of the estate and a description of the real estate being sold. The agent missed another opportunity to detect its error.

The purchaser of the property in this transaction had obtained a full survey of the property being purchased. The surveyor who prepared the survey issued a report reflecting an easement not reported in the agent's commitment to insure. Simple due diligence should have caused the agent to review the examination of title, giving the agent an opportunity to discover that the additional easement was not granted by the reported owner. The agent missed another opportunity to detect its error.

The insurer, the agency, and the agent must prepare an examination of title that is adequate to permit insuring in accordance with sound underwriting practices. Ignoring repeated indications of errors in a title insurance examination is not sound underwriting practice.

Reference: Section 381.071, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
60785*	1312-261293 and 1412-563277	Title Insurers

The file does not contain enough information to permit determination of insurability for an owner's policy. Access to the land appears to be by private right of way, but the file includes no examination of the easement.

A Surveyor's Real Property Report was supplied to the agent for this transaction. None of the three boundary lines shown in the survey match the lines described in the policy. The agent performed no additional research and made no special exceptions for the issues raised by the surveyor's report.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
120020	1312-272210 and 1412-601190	Title Insurers

The owner's policy in this file has a face amount of \$425,000.00. The lender's policy has a face amount of \$1,275,000.00.

A Realtor sent the contract for this transaction by telefax on 10/02/02. An agency employee

forwarded the contract to the agency's processing department with a note reading "I quoted 1200.00 for 1,200,000.00 O/P and M/P."

The contract for sale was an agreement to purchase a lot for \$425,000.00, and an agreement that the buyer would engage the seller to construct a new residence. The agency had agreed to insure both the purchaser and the lender, each of them, for at least \$1,200,000.00.

The agency issued a commitment to insure the purchaser for \$425,000.00 and the lender for an amount "to come." The amount of the loan was later changed to \$1,275,000.00 and the policy of title insurance for the lender was issued in that amount. The policy of title insurance for the owner was issued for \$425,000.00. The owner's policy of title insurance should have been issued for at least the same amount as the lender's policy of title insurance as originally agreed. There is no indication that the purchaser expressed any desire that his title be insured for an amount less than the costs of acquisition and construction.

The contract for sale in this transaction included a provision in which the seller agreed to deliver "an affidavit or other undertaking as may be reasonably required by the Title Company and/or Purchaser to remove from Purchaser's Owner's Policy of Title Insurance the standard exceptions for unfiled mechanics' liens, materialmen's liens or other liens for services, labor or materials furnished and for parties in possession...." The agency closed the transaction in escrow. The seller executed an affidavit captioned "Affidavit to be Signed by Seller or Mortgagor in Connection with Title Insurance Policy," apparently at the request of the agency, indicating that the property was vacant, unimproved and unoccupied, and that there were no unpaid bills that might lead to mechanics' liens. There is no indication that the agency requested any other assurances from the seller.

The commitment to insure the purchaser and the lender included language reading "Pending Disbursement of the full proceeds of the loan secured by the Deed of Trust to be insured, any policy issued pursuant to this Commitment insured (sic) only to the extent of the amount actually disbursed. At the time of each disbursement of the proceeds of the insured loan an endorsement to the policy may be requested by the insured increasing the amount insured hereunder, up to the face amount of the policy...." (Emphasis added. The examiner has elsewhere commented that the owner's policy of title insurance was issued for less than the agreed amount.)

The agency issued the lender's policy of title insurance without any exception for mechanic's liens, apparently in reliance upon the seller's affidavit as executed at time of closing, and upon the agency's direct knowledge of funding status for construction of improvements, and in compliance with the agreement to do so as evidenced by the commitment to insure.

The owner's policy of title insurance includes exceptions for mechanics' liens and for parties in possession. The agency should consider issuing an appropriate endorsement to the owner's

policy of title insurance.

Failure to issue the policy of title insurance as agreed is not sound underwriting.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
46341*	1312-261112 and 1412-563042	Title Insurers

The agent closed the transaction without any written instructions and issued a policy without any apparent basis for the amount of coverage.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
302B5520 *	1312-228295 and 1412-477957.	Ozark Abstract

The owner of the land mortgaged only a part of his property. The mortgaged property includes that specific part of the owner's land through which access is obtained. The agent failed to include an exception in the mortgage policy for the known risk of claim of a right of prescriptive easement for access to the land not covered by the mortgage. This is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
21426	1412-542221	Landmann

The lender requested that the agency add a third parcel of land to a commitment. The agent examined title to the third parcel and agreed to include the land in its policy but did not add the third parcel to the commitment. The agent later closed the loan transaction in escrow and included the third parcel in the policy.

Insuring title pursuant to a verbal commitment to insure is not sound underwriting.

Reference: Section 381.071.1.2, RSMo, and 20 CSR 300-2.200(2) (as amended 20 CSR 100-8.040, eff. 7/30/08)

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
227*	1412-468466	Miller County

The agent failed to insure the lender in an earlier transaction closed by the agent on 03/05/02. The agent issued a commitment to insure the lender for \$100,000.00, closed the transaction in escrow, and collected premium for both an owner's policy and a lender's policy. However, the agent failed to insure the lender as agreed.

Failure to insure as agreed is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
002728A*	1412-526615	Troy

The agent closed a transaction intended to carry out the terms of a contract for deed. The agent failed to obtain any information confirming the balance due under the terms of the contract for deed. The agent paid no funds to the party named as seller in the contract for deed.

Releasing funds and documents from escrow without first determining that conditions for release have been satisfied is not sound underwriting practice.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
STL259730*	1412-553064	Netco

The buyer in this transaction had agreed by the terms of the sale contract to give a second mortgage to the seller, to arrange for a lender's title insurance policy in favor of the seller, and to arrange for a recorded request for notice to be sent to the seller in the event of foreclosure of the first deed of trust. The agent did not insure the seller's deed of trust and did not prepare or record the required request for notice of foreclosure. The agent committed to insure the buyer in the transaction but did not do so. There is no indication the buyer had decided to not obtain a policy of title insurance.

The agent failed to pro-rate the lienable charges for sewer and water services. Ignoring the written escrow instructions is not sound underwriting.

Reference: Section 381.071.1.2, RSMo.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
STL2060751*	1412-525235	Netco

The agent charged a fee for recording a release of deed of trust in the following three files, even

though the lender releasing its deed of trust had already charged the fee.

The agent is not permitted to charge fees for services not performed.

Reference: Section 381.071.1.2, RSMo, and 20 CSR 500-7.100.

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
KC237495*	1412-499893	Netco
STL259730*	1412-553064	Netco
STL247532*	1412-500155	Netco

The agent received and recorded the insured mortgage, which names Fidelity as the trustee. The agent closed the transaction in escrow.

The agent charged a “Trustee” fee of \$50.00 to the borrower in the transaction. The agent is not permitted to charge a fee for services not rendered.

Reference: 20 CSR 500-7.100

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
016207*	1412-560634	Phoenix

The agent insured a junior mortgage and issued the policy with a schedule for the Short Form Residential Limited Coverage Junior Loan Policy. The agent issued the schedule as an insert to an ALTA 1992 loan policy. The 1992 ALTA loan policy is not the correct form for the Residential Limited Coverage Junior Loan Policy. The agent should have used FNTIC FORM 1466 (3/97), the appropriate form filed by the Company with the Director of the DIFP.

The mortgage insured by the policy in this file is not described in the policy as issued by the agent. The agent neglected to attach endorsement FORM 27-E-JR1-96(4/97). This form is used for description of the mortgage insured by the Residential Limited Coverage Junior Loan Policy and is filed by Fidelity with the Director of the DIFP.

Using unfamiliar forms without first obtaining the necessary instructions is not sound underwriting practice.

In addition, failure to describe the insured mortgage is not sound underwriting practice. The agent used forms not filed by the Company with the Director of the DIFP.

Reference: Sections 381.071.1.2 and 381.211, RSMo.

File No.            Policy No.            Agency  
016132\*            1412-521957            Phoenix

The agent closed the transaction in escrow and charged \$40.00 for recording releases, but the agent was not expected to record any releases and did not do so. The agent is not entitled to fees for services not rendered.

Reference: 20 CSR 500-7.100.

File No.                    Policy No.                    Agency  
2002080029\*            1222-32079                    Archer

The agent failed to deliver two complete files requested by the examiners.

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

File No.	Policy No.	Status	Agency
0206696	1312-217045	Not delivered	Nations Title
0215994*	1412-470600	Escrow missing	Nations Title

**C. Practices Considered not in the Best Interest of the Consumer**

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. Fidelity has not fully complied with record maintenance obligations until the policy has been issued.

In the following instances the agency took greater than 60 days to issue a policy after they had all the information needed.

Agency	Number of Policies Issued	Number of Policies Reviewed	Number of Policies Issued after 60 days
Hogan	5,859	72	46
FidTitSpring	5,965	56	51
Nations MO	5,496		1
Nations Title	1,071	10	4
Investors Title	1,003	9	8

America's Title Source	740	6	6
Ozark Abstract	1,186	10	6
United Title	588	5	5
Miller County	622	6	3
Troy	535	5	3
Phoenix	2,751	23	17
US Title Guaranty	50	2	1
Archer	355	3	2
Maness & Miller	145	1	1
Wright	326	3	2
Assured	382	3	3

(For detail see **Appendix B**)

#### **D. Other Comments**

##### **1. BOOKS AND RECORDS**

###### **a. Effective Dates of Policies**

###### **(1) Agency – Hogan Land Title**

The agent periodically reports policy information to the underwriter, data that is intended to include date of the policy. Generally, the policy date reported by the agent to the underwriter was actually the date the policy was issued and sent to the insured. Because of significant delay in issuing policies, this practice of reporting issue dates as policy dates caused many of the policies in this agent's sample list to be from years prior to the specified examination period.

The policy register provided to the examiners included 5,859 policies shown as dated during 2002 and issued by this agent. Of the 72 files selected for review, one was dated in 2000, 34 in 2001, and 37 in 2002.

The agent indicated that its policy underwriting and office procedures were similar during both 2001 and 2002. To avoid undue delay the examiners elected to accept as valid the files delivered by the agent, even though many were from a period outside of the specified period of 01/01/02 through 12/31/02.

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

**(2) Agency - Fidelity Title Agency of Springfield**

The agent periodically reports policy information to the underwriter, data that is intended to include date of the policy. Generally, the policy date reported by the agent to the underwriter was actually the date the policy was issued and sent to the insured. Because of significant delay in issuing policies, the practice of reporting issue dates as policy dates caused many of the policies in this agent's sample list to be from years prior to the specified examination period.

The policy register provided to the examiners included 5,966 policies shown as dated during 2002 and issued by this agent.

Of the 56 files selected for review, one was dated in 2000, 20 in 2001, and 35 in 2002.

The agent indicated that its underwriting practices and office procedures were similar during both 2001 and 2002. In order to avoid undue delay the examiners elected to accept as valid the files delivered by the agent, even though many were from a period outside of the specified period of 01/01/02 through 12/31/02.

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

**(3) Agency – Phoenix Title Company**

The agent periodically reports policy information to the underwriter, data that is intended to include date of the policy. Sometimes the policy date reported by the agent to the underwriter was incorrect.

Of the 23 files selected for review, three were dated at a time outside of the examination period. At the suggestion of the examiner, the agent provided substitute files from the 2002 exam period.

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

### **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, and (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.

The examiners reviewed (1) closed title claims with payments; (2) closed title claims without payments; and (3) title claims that were open but not closed within the review period.

The Company failed to deliver responses to 52 of the 56 examiner criticisms of these files within the 10 calendar days as required. A listing of the time intervals required to deliver these responses is listed on **Appendix A**.

Reference: 374.205.2(2), RSMo.

#### **1. CLOSED TITLE CLAIMS WITH PAYMENT**

Field Size: 42

Sample Size: 14

Type of Sample: Systematic

Number of Errors: 4

Error Rate: 28.6 %

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

#### Exam Findings

The Company failed to accept or deny this claim within 15 working days. The claim was received on 9/22/00, but was not accepted until 9/7/01.

Reference: 20 CSR 100-1.050(1)(A)

<u>File No.</u>	<u>Policy No.</u>
93977	1312179336

The Company failed to complete its investigation within 30 days of the receipt of these claims.

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

<u>Policy No.</u>	<u>Days To Investigate</u>
1412419026	113
1312106954	137
1312179336	342

## 2. CLOSED TITLE CLAIMS WITHOUT PAYMENT

Field Size: 318  
Sample Size: 31  
Type of Sample: Systematic  
Number of Errors: 8  
Error Rate: 25.81 %

#### Exam Findings

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

The Company failed to complete its investigation within 30 days of the receipt of these claims.

Reference: Section 375.1007(3), RSMo, and 20 CSR 100-1.040 (as amended 20 CSR 100-1.050(4), eff. 7/30/08)

<u>Claim File No.</u>	<u>Policy No.</u>	<u>Days to Investigate</u>
107425	1412300518	61
99489	No Policy Issued	161
91770	1412225544	61
105679	1412300523	302
106302	1412174535	49
103129	Unknown Policy	803

The Company failed to notify the insured within 15 working days whether the claim was accepted or denied.

Reference: 20 CSR 100-1.050(1)(A)

<u>Claim File No.</u>	<u>Policy Number</u>	<u>Days</u>
99489*	No Policy Issued	153
108805	1412204848	44
107841	1412361205	24
107425*	1412300518	58
91770*	1412225544	61

### **3. TITLE CLAIMS THAT WERE OPEN BUT NOT CLOSED WITHIN THE REVIEW PERIOD**

Field Size: 123

Sample Size: 24

Type of Sample: Systematic

Number of Errors: 5

Error Rate: 20.83 %

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

#### Exam Findings

Fidelity failed to acknowledge the claims within 10 working days after receipt.

Reference: Section 375.1007(2), RSMo, and 20 CSR 100-1.030(1)

<u>File No.</u>	<u>Policy Numbers</u>	<u>Days</u>
72302 a	1312129547/1412139192	48
111143	029DA23823	589

The Company did not complete an investigation of these claim files within 30 days after notification of the claims.

Reference: Section 375.1007(3), RSMo, and 20 CSR 100-1.040 (as amended 20 CSR 100-1.050(4), eff. 7/30/08)

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
120009	1412341578	267
120188	G520062762	203

The Company failed to notify the insured within 15 working days whether the claim was accepted or denied.

Reference: 20 CSR 100-1.050(1)(A)

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
95121	1412407265	554
120188*	G520062762	176
72302*	1312129547/1412139192	48

## **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 examiners reviewed (1) closed title claims with payment, (2) closed title claims without payment, and (3) title claims that were open but not closed within the review period.

### **1. CLOSED TITLE CLAIMS WITH PAYMENT**

Field Size: 42

Sample Size: 14

Type of Sample: Systematic

Number of Errors: 5

Error Rate: 35.7%

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

Exam Findings

The insurer failed to update the insured at intervals of not more than 45 days as to the status of the claim in two files.

Reference: 20 CSR 100 – 1.050(1)(C).

<u>Claim File</u>	<u>Policy No.</u>
93977	1312-179336
104841	1412-419638

The insured had learned that title might be unmarketable on the record as to an undivided ½ interest, so advised the Company, and requested an investigation of the issue. The insurer did not establish or demonstrate marketable title but nevertheless led the insured to believe that title was free of defect.

The insurer failed to disclose to the first-party claimant that title on the record might be unmarketable, a matter covered under the policy, and that the insured could be entitled to certain coverages under the terms of the policy.

Reference: 20 CSR 100 – 1.020(1).

<u>File No.</u>	<u>Policy No.</u>
104841	1412-419638

The Company issued its letter of indemnification to Old Republic Title Insurance Company care of one of its agents. The Old Republic agent was preparing its commitment to insure a refinancing of the mortgage insured by the Fidelity policy. The Fidelity letter of indemnification offered protection to Old Republic for “claims or losses that may arise as a result of the above-mentioned title matter, as covered by THE FIDELITY TITLE POLICY.”

Because the Fidelity policy referenced by the letter of indemnification insured only a mortgage, and because that insured mortgage was being satisfied in the transaction handled by Old Republic, the letter of indemnification issued by Fidelity would become void by its terms as soon as the policy to be issued by Old Republic became effective. Fidelity’s letter of indemnification was misleading, without value, and inappropriate.

The Company misrepresented to the claimant relevant facts or policy provisions relating to coverages at issue.

Reference: Section 375.1007(1), RSMo.

File No.  
114272

Policy No.  
1412-165768

The insurer failed to make appropriate reply within 10 days on all communications from the claimant which reasonably suggested that response was expected.

Reference: 20 CSR 100-1.030(2).

File No.  
82555

Policy No.  
412-419026

Questions arose in a refinancing transaction as to whether the interests of an heir of an earlier owner had passed by mesne conveyance or other means to the party now shown as vestee in the policy. The Company has not demonstrated that title has passed; therefore the investigation remains incomplete.

The Company has issued a letter of indemnification to permit an expeditious refinancing for their insured but has not established that title is marketable, a covered matter.

Closing the file after taking no measures beyond issuing a letter of indemnification is tantamount to denial of the claim. The Company has denied the claim without first conducting a reasonable investigation.

Reference: Section 375.1007(6), RSMo.

File No.  
114272\*

Policy No.  
1412-165768

## **2. CLOSED TITLE CLAIMS WITHOUT PAYMENT**

Field Size: 318

Sample Size: 31

Type of Sample: Systematic

Number of Errors: 6

Error Rate: 19%

Exam Findings

The insurer failed to update the insured at intervals of not more than 45 days as to the status of the claim.

Reference: 20 CSR 100 – 1.050(1)(C).

File No.  
98393

Policy No.  
1412-424438

The warranty deed and deed of trust leading to the insured transaction had been delivered to the agent but were never recorded. The Company had written to counsel for the insured agreeing to pay certain expenses of foreclosure under certain circumstances. By letter of 09/04/02, counsel for the insured advised the Company to contact the insured directly to inquire as to the amount of any claimable loss. The Company did not inquire of the insured as to the amount of any loss after the foreclosure process was complete.

The Company has failed to make a good faith effort to effectuate prompt, fair and equitable settlement of the claim.

Reference: Section 375.1007(4), RSMo.

The insurer failed to make appropriate reply within 10 days on all communications from the claimant which reasonably suggested that response was expected.

Reference: 20 CSR 100 – 1.030(2).

File No.  
99489

Policy No.  
policy (number not available),  
commitment # 99MO09319.

The insured raised a marketability issue after discovering that certain earlier mortgages were not released of record and may not have been satisfied. Fidelity's agent handled the escrow transaction. Fidelity requested information from its agent on four occasions, but the agent was unresponsive. Fidelity did not perform any independent investigation of the status of the unreleased mortgages. Fidelity wrote to the insured offering to issue certain letters of indemnification based on a conclusion that the unreleased mortgages were "most likely" paid off.

The insurer failed to properly disclose to the first-party claimant that unmarketability of title is a matter for which the insured is entitled to coverage under the policy.

Reference: 20 CSR 100 – 1.020(1).

File No.  
105679

Policy No.  
1412-300523

The insured lender made a claim under the policy after discovering that an earlier mortgage had not been released. The Company wrote to its agent on 02/11/02 requesting information but received no answer from its agent. Fidelity did not perform any independent investigation of the status of the earlier mortgage.

Fidelity wrote to the insured offering to issue certain letters of indemnification based on a conclusion that the unreleased mortgage was “most likely” paid off.

The insurer failed to properly disclose to the first-party claimant that unmarketability of title is a matter for which the insured is entitled to coverage under the policy.

Reference: 20 CSR 100 – 1.020(1).

File No.  
106302

Policy No.  
1412-174535

The insured lender made a claim under the policy after discovering that certain notices of delinquent subdivision assessments levied by trustees had been recorded during a previous ownership and had not been released. The Company did not examine any of the related documents.

The Company wrote to the insured on 04/02/02 advising that its agent “considered the lien and notices out by Foreclosure because they were inferior liens at that time and did not request to be notified regarding Foreclosure proceedings.” The priority of liens for trustee assessments is not determined necessarily or solely by the recording date of a notice of delinquent assessment. Priority is determined by the provisions of the subdivision indenture creating authority for the assessments. The indenture likely predates the insured deed of trust. The Company has developed no information to support its position.

The insurer has denied a claim on a covered matter without conducting a reasonable investigation.

Reference: Section 375.1007(6), RSMo.

File No.  
108358

Policy No.  
1412-341590

The Company issued a letter of indemnification referencing a policy of title insurance that does

not insure the title at issue in the claim. The file contains no information establishing that the insurer has ever issued a policy pursuant to which an indemnity might be issued. The indemnity at issued is meaningless.

The Company failed to apply reasonable standards for the prompt investigation and settlement of the claim.

Reference: Section 375.1007(3), RSMo.

File No  
103129

Policy No.  
(no known policy issued)

### **3. TITLE CLAIMS THAT WERE OPEN BUT NOT CLOSED WITHIN THE REVIEW PERIOD**

Field Size: 123  
Sample Size: 24  
Type of Sample: Systematic  
Number of Errors: 3  
Error Rate: 12.5%

#### Exam Findings

The insurer failed to update the insured at intervals of not more than 45 days as to the status of the claim.

Reference: 20 CSR 100 – 1.050(1)(C).

File No.  
95121

Policy No.  
1412-407265

The daughter and surviving spouse of a deceased individual had held title since 1990. The surviving daughter had conveyed on the record but the surviving spouse had not.

The insured lender made claim under the policy after becoming aware of this marketability issue during the process of a foreclosure. The Company did not research the status of the interests of the surviving spouse; nevertheless the Company did issue a letter of indemnification for losses arising by reason of any lack of conveyance of the interests of the surviving spouse.

The insurer failed to properly disclose to the first-party claimant that unmarketability of title is a

matter for which the insured is entitled to coverage under the policy.

Reference: 20 CSR 100 – 1.020(1).

File No.  
118390

Policy No.  
1412-303302

The Company failed to provide claim forms, instructions and reasonable assistance for a first-party claimant to comply with policy conditions and the insurer's reasonable requirements.

Reference: 20 CSR 200 – 1.030(3).

File No.  
111143

Policy No.  
(number not available)

#### **IV. CONSUMER COMPLAINTS**

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

Fidelity records show it received one complaint from January 1, 2000, to December 31, 2002, and the Company maintains a log of all department complaints. The examiners found no discrepancies in their review of these complaint records.

#### **V. UNCLAIMED PROPERTY**

The examiners conducted a review of the Fidelity procedures for recording and reporting unclaimed property to determine compliance with Missouri's Uniform Disposition of Unclaimed Property Act, Section 447.500 et seq., RSMo.

The Company filed no reports during the review period.

## APPENDIX A

Time required to respond to Examiner criticisms regarding claims.

<u>Days</u>	<u>Calendar Days to Respond</u>
0-10 Calendar Days	4
11-29 Calendar Days	7
30-49 Calendar Days	21
50-69 Calendar Days	20
70-89 Calendar Days	0
<u>90-or More Calendar Days</u>	<u>4</u>
TOTAL RESPONSES	56

### AGENCY – HOGAN LAND TITLE

Time required to respond to Examiner criticisms.

<u>Days</u>	<u>Calendar Days to Respond</u>
0-10 Calendar Days	45
11-19 Calendar Days	8
20-49 Calendar Days	70
50-69 Calendar Days	57
70-89 Calendar Days	18
<u>90 and Over</u>	<u>8</u>
TOTAL RESPONSES	206

### AGENCY – FIDELITY TITLE AGENCY

Record of Time Required to Respond to Examiner Criticisms

<u>Time</u>	
0-10 Calendar Days	78
11-19 Calendar Days	5
20-49 Calendar Days	74
50-69 Calendar Days	5
70-89 Calendar Days	8
90 and Over	<u>0</u>
	170

## APPENDIX B

### **II. UNDERWRITING AND RATING PRACTICES**

#### **C. Practices Considered not in the Best Interest of the Consumer**

##### **1. AGENCY - HOGAN LAND TITLE**

Nineteen of the 46 delayed policies were issued in less than 100 days, while the remaining 27 were not issued until at least 100 days after all required information was available.

The delayed policies are listed below.

<u>File No.</u> (< 100)	<u>Policy No.</u> (< 100)	<u>Days</u> (< 100)
0204126	1412-515352	66
0205627	1412-530311	67
0206180	1312-247029	70
0207389	1412-530824	70
0203102	1312-235253	71
0204557	1312-241102	71
0209289	1312-256464	71
0205303	1412-515731	71
0112489	1412-530437	71
0206243	1412-530560	72
0203165	1412-515110	77
0204680	1312-240855	79
0110798	1312-230761	79
0209193	1412-550813	80
0203147	1412-515231	81
0111529	1312-230432	88
0204706	1312-240980	88
0111811	1312-230557	94
0111138	1412-484874	94

<u>File No.</u> (100 +)	<u>Policy No.</u> (100 +)	<u>Days</u> (100 +)
0110897	1412-485001	100
0201218	1312-230840	100
0202104	1412-515138	109
0112305	1312-230714	114
0109596	1312-220585	116
0204116	1412-530260	118
0110438	1312-230617	121
200210055	1412-552596	126
0110529	1412-484723	128
0109011	1412-485251	145
0108414	1312-220708	151
0112406	1412-531100	180
0205279	1312-256313	181
0109174	1412-496496	196
0109271	1412-530642	228
0112199	1412-551303	246
0106114	1412-484603	254
0102369	1412-484484	268
0108178	1412-551366	316
0110901	1312-247294	337
0104153	1312-240880	357
0109542	1312-247326	366
0108032	1312-247021	382
0102746	1312-230871	392
0101321	1412-485124	395
0012234	1412-484478	408
0110576	1412-515982	563

## **2. AGENCY – FIDELITY TITLE AGENCY OF SPRINGFIELD**

Forty-one of the 51 delayed policies were issued within 200 days, while the remaining 10 were not issued until at least 200 days after all required information was available.

The delayed policies are listed below.

File No.

(< 200)

2001110101

2001120270

2002030258

2002020344

2002040295

2002040476

2002030082

2002030308

2002060124

2002080506

2001110687

2002060168

2002070267

2002010119

2002060176

2002080133

2002050196

2001120321

2001050469

2002060200

2002060281

2002010213

2002010534

2002020379

2001070318

2002020406

2001050087

2002020294

2001030303

2001120006

2002040215

2001100185

2001100718

2001120169

2001040416

2000120213

2001040089

2001100215

<u>Policy No.</u>	<u>Days</u>
(< 200)	(< 200)
1312-239868	89
1312-252726	92
1312-252663	99
1412-535385	102
1412-520716	105
1412-529067	105
1312-257307	110
1412-566647	113
1412-520692	119
1412-554174	123
1312-257575	131
1412-509940	133
1412-554298	134
1412-566785	138
1412- 543828	138
1412-509579	141
1312-227330	144
1312-257427	147
1412-566523	148
1312-243118	148
1412-532007	149
1312-249237	149
1412-487666	153
1412-531887	156
1412-471562	157
1312-246345	169
1412-566714	170
1312-239966	170
1312-252787	173
1412-502556	177
1412-509699	177
1312-246225	183
1312-222809	184
1312-231750	186
1412-506059	189
1412-505911	190
1312-237280	190
1312-243119	191

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
	2001060150	1312-289142
	2002090014	
	1412-509819	191
2001100369	1412-520889	196
2001110625	(200 +)	(200 +)
(200 +)	1412-516830	200
2001110300	1412-471683	211
2001050142	1412-471683	217
2001080303	1312-268195	220
2001080392	1412-516710	221
2001050252	1412-476153	229
2001080363	1412-487786	234
2001110591	1412-521146	253
2001060059	1412-476278	257
2001120055	1412-535265	259
	1312-231671	309

### **3. OTHER AGENCIES**

#### **a. Agency – Investors Title Company**

The eight policies were delayed as follows.

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
64677	1312-212866	102
51533	1412-443242	117
57064	1312-212752	144
83911	1312-259529	155
74174	1412-602129	217
84607	1412-638167	232
83835	1412-442946	300
50141	1412-523328	382

#### **b. Agency – America’s Title Source**

The six policies were delayed as follows.

<u>File No.</u>	2500	1554
1656	2673	<u>Policy No.</u>
1153	2338	1222-27805

1212-29969	1222-31703	170
1222-38793	<u>Days</u>	182
1222-39990	131	185
1222-34750	148	216

**c. Agency – Title Insurers Agency**

The seven policies were delayed as follows.

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
60785	1412-563277	100
46341	1412-563042	112
45429	1412-563008	129
45333	1312-261077	234
120020	1312-272210	246
45455	1412-563085	254
110186	1312-261184	326

**d. Agency – Ozark Abstract and Loan**

The six policies were delayed as follows.

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
1102B6096	1412-529650	70
1002B5997	1412-529562	83
103B6189	1412-555074	83
902B5907	1412-509538	93
303B6314	1312-257705	183
403B6469	1312-268652	300

**e. Agency – United Title Company**

The five policies were delayed as follows.

<u>File No.</u>	<u>F26790</u>	<u>Policy No.</u>
F25997		1312-215639
F26216		1312-215688
F25583		1312-215596
F26738		1412-565463

1412-627907	<u>Days</u>
	70
	74
	106
	123
	202

**f. Agency – Phoenix Title Company**

The 17 policies were delayed as follows.

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
16981	1412-560891	68
17340	1412-580638	81
17691	1412-595657	81
16586	1412-565373	107
16595	1412-565220	111
16535	1312-260719	114
15055	1312-220946	115
16207	1412-560634	123
16132	1412-521957	148
16219	1412-560760	153
14680	1412-513933	161
15348	1312-236164	176
15962	1412-564974	189
14842	1412-521786	194
15882	1412-565095	194
14916	1412-580860	366
14844	1412-612521	459

**g. Agency – Nations Title Agency**

The four policies were delayed as follows.

<u>Policy</u>	1412-503836	0205193
1312-217038	1412-503922	0209222
1412-470901	<u>File</u>	0207766

0209160	137	65
<u>Days</u>	187	123

**h. Agency – Miller County Title**

The three policies were delayed as follows.

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
227	1412-468466	85
1043	1312-238968	146
1593	1412-631116	287

**i. Agency – Troy Title Company**

The following three files were delayed as follows.

<u>File</u>	<u>Policy</u>	<u>Days</u>
002901	1412-481639	146
002728A	1412-526615	153
	1312-264671	
002949	and 1412-581940	314

**j. Agency – U. S. Title Guaranty Company**

The following file was delayed as follows.

<u>File No.</u>	<u>Policies</u>	<u>Days</u>
02007907	1312-167888 and 1412-334077	82

**k. Agency – Archer Land Title**

The following two files were delayed as follows:

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
2002080029	1222-32079	88
2002100577	1222-34584	163
		104

**l. Agent – Maness & Miller**

The following file was delayed as follows:

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
02210	1412-559514	122

**m. Agency – Wright County Title Company**

The following two files were delayed as follows:

<u>File</u>	<u>Policy</u>	<u>Days</u>
0213188	1312-253573	125
	1312-228036	
0212926	and 1412-504276	186

**n. Agency – Assured Title Company**

The following three files were delayed as follows:

<u>File No.</u>	<u>Policy No.</u>	<u>Days</u>
25533	1312-246428and 1412-476727	657
26360	1312-246441and 1412-476783	135
26705	1412- 581186	149

## APPENDIX C

### I. SALES AND MARKETING

#### A. Licensing of Agents and Agencies

##### LICENSING AND APPOINTMENT OF AGENTS

###### c. Other Agencies

###### (1) Agency – Investors Title Company

Sixty-nine employees of the agency had no license for the year 2002.

The agency failed to report the employment of these same individuals to the Director.

Anderson, Tabitha L	Farris, Dianna L	O'Gorman, Diana L
Anthony, Corey L	Fosdick, Alicia	Pierson, Marie D
Atchison, Danielle C	Greenlee, Candace A	Pitts, Sandra G
Atterberry, Misty	Hagen, Sally A	Rachford, Julie Ann
Barnes, Sherry	Harrington, Kimberly S	Reeder, Casie R
Beatty, Kari A	Harris, Kristin L	Riordan, Heather M
Bell, Ashia Z	Haumesser, David W	Robinson, Keisha R
Boudreaux, Brandy B	Henderson, Sheryl	Rogan, Heidi Mv
Boudreaux, Kristin R	Hunter, Amy E	Romano, Joe
Brown, Andrea M	Jackson, Shelly C	Runge, Christine L
Burleson, Jacqueline A	Kaminski, Dawn A	Rutledge, Anne T
Busackino, Angela K	Keating, Joan M	Schulte, Rebecca A
Ceasar, Tosha	Knittel, Tara C	Sheckel, Margarita C
Chandler, Pamela	Koenig, Laura J	Silver, Jennifer R
Claspill, Dawn G	Krastanoff, Denise L	Smith, Jamie A
Clawson, Donna	Large, Kimberly A	Stalls, Nadia E
Dees, Donald L	McBride, Laura A	Stamm, Amy S
Diller, Jr., Robert E	McCutcheon, Lauree E	Stephenson, Margaret A
Ditmeyer, Laura	Midgett, Sharon K	Stough, Melissa L
Duncan, Laura A	Moss, Kristine L	Weiler, Carrie A
Elmendorf, Jessica A	Murray, Kimberly	Weinstock, Gardina
Embree, Elizabeth B	Musterman, Kelly C	Wells, Tara S
Fagan, Veronica S	Neuhoff, Kimberly C	Wilson, Stephanie M

Fidelity did not appoint any of the 132 identified employees of Investors Title Company as agents.

Anderson, Tabitha L  
Anthony, Corey L  
Atchison, Danielle C  
Atterberry, Misty  
Bader, Julia M  
Baniak, Kathleen M  
Barnes, Sherry  
Beatty, Kari A  
Bell, Ashia Z  
Bell, Regina D  
Benavidez, Debra  
Blevins, Loretta L  
Bohler, Barbara  
Boudreaux, Brandy B  
Boudreaux, Kristin R  
Branneky, Christine L  
Brookfield, Gloresha A  
Brown, Andrea M  
Burleson, Jacqueline A  
Busackino, Angela K  
Campbell, AnnLee F  
Carter, Tina M  
Ceasar, Tasha  
Chandler, Pamela  
Cipponeri, Janine  
Clark, Priscilla  
Claspill, Dawn G  
Clawson, Donna  
Crites, Sarah L  
Crutchfield, Jr, Joe  
Dees, Donald L  
Deranja, Cyndi  
Diller, Jr., Robert E  
Ditmeyer, Laura  
Duncan, Laura A  
Effertz, Frances J  
Elliott, Deborah  
Elmendorf, Jessica A  
Embree, Elizabeth B  
Everett, Renee  
Fagan, Veronica S  
Farnbach, Deborah L

Farrell, Carrie A  
Farris, Dianna L  
Fenberg, James  
Fosdick, Alicia  
Freund, Cynthia  
Goff, Heidi A  
Greenlee, Candace A  
Hagen, Sally A  
Haggerty, Kim E  
Harrington, Kimberly S  
Harris, Kristin L  
Haumesser, David W  
Henderson, Sheryl  
Hicks, Carol  
Hickson, Laura L  
Hill, Lisa G  
Hunter, Amy E  
Jackson, Shelly C  
Jackson, Shirley  
Kaminski, Dawn A  
Katinas, Gretchen A  
Keating, Joan M  
Kelley, Jennifer L  
Knittel, Tara C  
Koenig, Laura J  
Krastanoff, Denise L  
Large, Kimberly A  
Lewis, Sheri L  
Mareschal, Precilla A  
Maurer, Cheryll  
McBride, Laura A  
McBride, Vivian M  
McCartney, Amy  
McClintock, Kelly  
McCoy, Kelly M  
McCutcheon, Lauree E  
McMillen, Mitzie D  
Michaels, Lisa K  
Midgett, Sharon K  
Miller, Lucinda V  
Moric, Tihana  
Morse, Darla J

Moss, Kristine L  
Murray, Kimberly  
Musterman, Kelly C  
Neuhoff, Kimberly C  
Odorizzi, Carrie  
O'Gorman, Diana L  
Parsons, Sherry L  
Pettker, Susan K  
Pierson, Marie D  
Pitts, Sandra G  
Rachford, Julie Ann  
Reeder, Casie R  
Rickard, Diana M  
Riordan, Heather M  
Rivera, Leslie A  
Robinson, Keisha R  
Rogan, Heidi M  
Romano, Joe  
Rosales, Mary  
Runge, Christine L  
Rutledge, Anne T  
Schiller, Shelli  
Schulte, Rebecca A  
Schwartz, Carol

Sheckel, Margarita C  
Silver, Jennifer R  
Simmons, Sean E  
Slatton, Lisa M  
Smith, Jamie A  
Stalls, Nadia E  
Stamm, Amy S  
Steinlage, Kristin H  
Stephenson, Margaret A  
Stough, Melissa L  
Sullivan, Chandra N  
Towell, Denise A  
Ullman, Deborah A  
Wallis, Shirley  
Weiler, Carrie A  
Weinstock, Gardina  
Welborn, Donna K  
Weller, Karen J  
Wells, Tara S  
Williams, Becky M  
Wilson, Stephanie M  
Witte, Tracy  
Wolf, Carol A  
Zollner, Stephan

## **EXAMINATION REPORT SUBMISSION**

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Fidelity National Title Insurance Company (NAIC #51586), Examination Number 0311-32-TLE. This examination was conducted by Tom Schnell, CIE, Examiner-in-Charge, Joe Ott, Ted Greenhouse, and Martha Burton. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, originally dated October 6, 2005, and revised March 16, 2009. Any changes from the text of the Market Conduct Examiner's 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.

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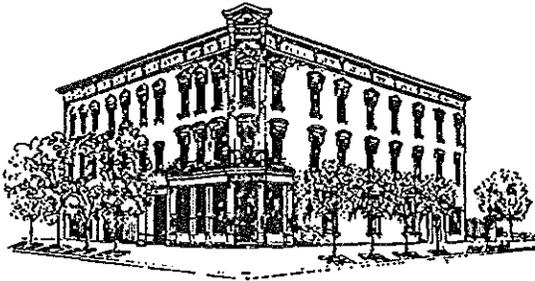
Jim Mealer  
Chief Market Conduct Examiner

Date

MONROE HOUSE LAW CENTER

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NOV 23 2009

DEPT OF INSURANCE,  
FINANCIAL INSTITUTIONS &  
PROFESSIONAL REGISTRATION



Law Offices

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

*Via Hand Delivery & E-mail*  
November 23, 2009

Carolyn H. Kerr, Senior Attorney, AIE, AIRC  
Insurance Market Regulation Division  
Missouri Department of Insurance, Financial  
Institutions and Professional Registration  
301 West High Street, Room 530  
Jefferson City, MO 65109

Nicholas M. Monaco  
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Gerard "Jay" Harms, Jr.  
Todd E. Irelan

(1921-2008) John W. Inglish  
(1929-1991) Charles P. Dribben  
(1906-2004) William Barton

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

Re: Fidelity National Title Insurance Company - Market Conduct Examination

Dear Carolyn:

Attached please find for filing by and on behalf of Fidelity National Title Insurance Company ("Fidelity National") the company's formal Response dated November 23, 2009, to the Department's draft Report dated November 3, 2009.

The company's reply draft Stipulation will be filed under separate cover.

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@inglishmonaco.com](mailto:mwarren@inglishmonaco.com) and [awarren@inglishmonaco.com](mailto:awarren@inglishmonaco.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)

RECEIVED  
NOV 23 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 0311-32-TLE**

Fidelity National Title Insurance Company  
NAIC # 51586

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

Submitted November 23, 2009

Michael J. Rich  
Vice President, Regulatory Counsel  
Fidelity National Title Group, Inc.  
601 Riverside Avenue, T-11  
Jacksonville, FL 32204  
Tel. 904.854.3558  
Fax 904.327.1206  
[michael.rich@fnf.com](mailto:michael.rich@fnf.com)

## 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 Fidelity National 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 as 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 2<sup>nd</sup> 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 3<sup>rd</sup> 515. (Mo. App. W.D. 2006) citing *Voss v American Mutual Liability Insurance Company*, 341 SW 2<sup>nd</sup> 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.

## **RESPONSE TO EXAMINATION FINDINGS<sup>1</sup>**

### **I. SALES AND MARKETING**

#### **A. Licensing of Agents and Agencies**

##### **1. LICENSING AND APPOINTMENT OF AGENTS (pages 8-14)**

As a general response to all agencies cited in this section, see General Statement 7.

###### **a. Agency – Hogan Land Title (page 8)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

###### **b. Agency – Fidelity title Agency of Springfield (page 8)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

###### **(c) Other Agencies (page 9)**

###### **(1) Agency – Investors Title Company (page 9)**

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<sup>1</sup> Because of the length of the Department's Report, the Company will respond to each criticism in the order it appears in the Report without reproducing the text of the criticism.

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 69 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute. For the same reasons, the Company is not liable for the failure to report the employment of the 69 individuals.

**(2) Agency – Nations Title Agency of Missouri (page 9-10)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 9 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(3) Agency – Title Insurers Agency (page 10)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the

agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 13 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(4) Agency – Netco Title (page 11)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 5 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(5) Agency – Phoenix Title (page 12)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

**(6) Agency – First Financial Title (page 12)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 2 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(7) Agency – Archer Land Title (page 12-13)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 7 individuals did not have licenses, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(8) Agency – Troy Title Company (page 13)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could

only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

**(9) Agency – Assured Title Company (page 13)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

**(10) Agency – Emory Melton (page 6)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement. To the extent this violation suggests that 1 individual did not have a license, the Company notes that it is the agent's responsibility in the first instance to apply for a license under the Missouri producer licensing law and the agent's failure or refusal to do that and to do that without notice to the Company is not only an independent violation of the law but constitutes an act outside the scope of the agent's authority thereby insulating the Company from any duty to insure licensure under the statute.

**(11) Agency – Barry County Abstract & Title (page 14)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

**(12) Agency – Wright County Title (page 14)**

The Company disputes this violation since Missouri law did not require notification to the DIFP of its appointments. To the extent the applicable law required that the Company maintain a register of appointed agents, the Company could only maintain such a register upon notification from the agency that persons were hired or released from employment. Where the Company has no record of notice from the agency requesting appointment of the individuals named in the criticism, the Company is not liable for a violation since it is the agent who acted outside the scope of its authority by failing to notify the Company of hires or terminations. The Company has no possession, dominion or control of the agency records and must rely on the agency reporting the information to the Company. It is the agency, not the Company that is responsible for the violation of this requirement.

**2. LICENSING OF AGENCIES (page 14)**

The examiners did not find any unlicensed agencies representing Fidelity National Title Insurance Company.

**B. Marketing Practices (page 14)**

The examiners did not discover any unacceptable marketing practices.

**II. UNDERWRITING AND RATING PRACTICES**

**A. Forms and Filing (page 15)**

**1. EXCEPTIONS ON COMMITMENTS**

**a. Agency - Hogan Land Title - All commitments reviewed (page15)**

Under the terms of its agency agreement, the agent is required to use forms promulgated and approved for use in Missouri by the insurer. Any failure to do so without written approval from the insurer or the DIFP is outside the scope of the agency agreement and the Company has committed no violation of Missouri law. See General Statement 7.

**b. Other Agencies (pages 15-16 except for Assured Title Company, see below)**

All these criticisms relate to the fact that the standard exceptions in the commitments issued by the agent are not those filed by Fidelity with the Director.

However, the standard exceptions used by these agencies are acceptable to the underwriter and are substantially similar to those filed. The use of these exceptions, therefore, does not harm the consumer or provide them with any coverage different from what would be provided by using, verbatim, the exceptions so filed.

Further, there is no requirement in the applicable statute that the verbiage of all general exceptions used be filed. In addition, local practices control expectations as to how general exceptions are worded. Consumers and their representatives in various markets have come to expect certain language used to describe certain exceptions of title, and this is not necessarily the same in all markets across the state.

**(4) Agency - Assured Title (page 16)**

As to the standard exceptions in the commitments issued by the agent, the Company re-states its responses to Section II. A. 2. a. and b., above.

As to criticism directed to exception for zoning or other ordinances and for matters pertaining to federal and state bankruptcy and creditor's rights laws, the Company does not dispute the criticism except for cases where these matters are recorded in the public records. While the Company disputes the allegation that it is not sound underwriting practices to set forth such exceptions, it will undertake to issue a bulletin to its agents to refrain from raising such exceptions unless the matters are recorded in the public records.

**2. EXCEPTIONS ON POLICIES**

**a. Agency - Hogan Land Title (pages 16-18)**  
**(1) Commercial policies**

As to the criticism that loan policies were issued with standard exceptions not filed with the Department, see General Statement 1.

As to the criticism that the listed owner's policies were issued with certain standard exceptions not appearing on the ALTA 1992 owner's policy filed by Fidelity, please see the Company's response to II.A.2.a and b., above.

As to the criticism that the listed policies be issued showing "gap language," the Company does not dispute that criticism in general, but adds that such an exception may be warranted in cases where the insured or its legal representative has accepted the gap language.

**(2) Residential Policies (page 17)**

The Company re-states its response to II.A.2.a. and b., above.

**b. Agency - Fidelity Title Agency of Springfield (page 18)**

**(1) Commercial policies**

For the Company's response, please see General Statement II and the response to II.A.2.a and b., above.

**(2) Residential policies - All residential owner's policies reviewed**

The criticism states that the agent issued an inflation endorsement with owner's policies that was not the same as the form filed with the Company with the Department. For its response, the Company states that the examination criticism does not explain how substantially different the inflation endorsement used was from the endorsement filed by the Company. If the endorsement used provided the same coverage with the same language, there was no violation. Alternatively, if the agent acted outside the scope of its agency agreement by using forms not provided or authorized by the Company, the agent is liable under the Missouri Producer Licensure Law and the Company is not liable as a principal under agency law.

**c. Agency - Nations Title Agency of Missouri (page 18)**

For the Company's response, please see General Statement 2 and the response to II.A.2.a and b., above.

**d. Other Agencies (pages 19-24)**

**(1) Agency - Ozark Abstract and Loan (page 19)**

The criticism states that the Agent used Schedule B inserts that are not those filed by the Company with the Department. For its response, the Company states that the examination criticism does not explain how substantially different the Schedule B used was from the endorsement filed by the Company. If the endorsement used provided the same coverage with the same language, there was no violation. Alternatively, if the agent

acted outside the scope of its agency agreement by using forms not provided or authorized by the Company, the agent is liable under the Missouri Producer Licensing Law and the Company is not liable as a principal under agency law.

**(2) Agency - Landmann Title Company (pages 19-20)**

As to the criticism that loan policies were issued with standard exceptions, for the Company's response, see General Statement II. As to the criticism of owner's policies issued with certain standard exceptions not appearing in the filed ALTA 1992 owner's policy, the Company re-states its response to II.A.2.a., above.

**(3) Agency - Miller County Title (page 20)**

The Company re-states as its response to II.A.2.a. and b., above.

**(4) Agency - Troy Title Company (pages 20-21)**

As its response, the Company again re-states its response to II.A.2.a. and b., above. The Company further states that the agent has advised the Company that it is now using the exceptions filed by the Company with the Department.

**(5) Agency - Netco, Inc. (page 21)**

Regarding the criticism that owner's policies contain certain standard exceptions not the same as the standard exceptions used by the Company, the Company responds by re-stating its answer to II.A.2.a. and b., above.

As to the criticism that the loan policies contain certain standard exceptions but there are no standard exceptions in the ALTA 1992 loan policy filed by Fidelity, for the Company's response, please see General Statement 2.

Alternatively, if the agent acted outside the scope of its agency agreement by using forms or procedures not provided or authorized by the Company, the agent is liable under the Missouri Producer Licensing Law and the Company is not liable as a principal under agency law.

**(6) Agency - Nations Title Agency of Missouri (pages 21-22)**

For its response to the criticism that standard exceptions used in the owner's policy were not those filed by Fidelity with the Department, the Company re-states its response to II.A.2.a. and b., above.

In response to the criticism that loan policies were issued by the agent containing standard exceptions, but there are no standard exceptions in the 1992 ALTA loan policy filed by Fidelity, for the Company's response, please see General Statement II., above.

As to the criticism that the following exception appears on all of the loan policies listed:

In the event the security instrument to be used in connection with this transaction is a trust deed, the final policy will provide no coverage for any loss arising from the lack of qualifications of the trust deed therein named.

For its response, the Company does not dispute that the exception should not be used. However, the Company further states that a loan policy, in fact, would provide no coverage for any loss arising from such a situation because such a loss would be excluded by exclusion 3 (a) of the policy.

Alternatively, if the agent acted outside the scope of its agency agreement by using forms not provided or authorized by the Company, the agent is liable under the Missouri Producer Licensing Law and the Company is not liable as a principal under agency law.

- (7) Agency - Emory Melton (pages 22-23)
- (8) Agent - Aberty and Deveny (page 23)
- (9) Agent - Maness and Miller (page 23)
- (10) Agency - Wright County Title Company (page 23)

For the Company's response to these three criticisms, please see General Statement 2.

### **3. GENERIC EXCEPTIONS**

- a. Agency - Hogan Land Title - residential policies (page 24)

For the Company's response, please see General Statement 2.

- b. Other agencies (page 24)

**Agency - Wright County Title Company**

For its response, the Company re-states its response to II.A.2.a. and b., above.

**4. EXCEPTIONS ON SPECIFIC POLICIES**

**a. Agency - Hogan Land Title - commercial policies (page 25)**

Policy 1412-551366 file 0108178

As to the criticism regarding policy issued showing “gap language,” the Company does not dispute that, in most cases, the gap language should not appear on the final policy, unless such an exception is agreeable to the insured or its representatives.

As to the criticism that the policy contains standard exceptions but there are no standard exceptions in the ALTA 1992 loan policy filed by Fidelity with the Department, for the Company’s response please see General Statement 2.

Policy 1412-531191 file 0208842

Regarding the policy issued with the usury endorsement, the Company is unaware that the use of the usury endorsement has been found as contrary to public policy in Missouri but does not dispute that the usury endorsement has not been filed by Fidelity with the Department. Alternatively, if the agent acted outside the scope of its agency agreement by using forms not provided or authorized by the Company, the agent is liable under the Missouri Producer Licensing Law and the Company is not liable as a principal under agency law.

**b. Agency - Fidelity Title Agency of Springfield - Residential Policies (page 25)**

For the Company’s response to this criticism, please see General Statement 2.

**B. Underwriting and Rating**

**Hogan Land Title (page 26)**

For the Company’s response, please see General Statement 7.

**Fidelity Title Agency of Springfield (page 25)**

For the Company’s response, please see General Statement 7.

**1. COMMERCIAL POLICIES (face amounts greater than \$5,000,000)**

**a. Problems related to other policy exceptions (page 19)**

File No. 0108632: The Company does not dispute this finding.

**b. Risk Rates (page 27)**

The Company does not dispute the criticisms regarding Hogan Land Title file numbers 0108632, 0205279, 0102746 and 0208842. The Company disputes the criticism as to Hogan file 0110438. The Company also disputes the criticism of Fidelity Title of Springfield's file numbers 2002020344 and 2002060007.

The Company is unable to respond at this time to the criticisms as to U.S. Title Guaranty file 01019817 and Nations Title file 0205193 because the Company has terminated those issuing agency contracts and the records of those companies are not accessible by the Company. To the extent these two files constitute violations of Missouri law, it must be presumed that the agency acted outside the scope of its authority since the agent was only authorized to charge a premium consistent with Missouri law and in doing so is independently responsible under Missouri's producer licensing law. The Company is not liable for acts outside the scope of the agent's authority.

**c. Total Charges (pages 27-28)**

The Company does not dispute the criticism as to Hogan Land Title files 0102746, 0208842 and 0205279. The Company disputes the criticism as to Hogan Land Title file 0110438 and Fidelity Title Agency of Springfield file 200202034.

The Company is unable to respond at this time to the criticisms as to Nations Title file 0205193 because the Company has terminated the issuing agency contract and the records of that company is not accessible by the Company. To the extent the file constitutes a violation of Missouri law, it must be presumed that the agency acted outside the scope of its authority since the agent was only authorized to charge a premium consistent with Missouri law and in doing so is independently responsible under Missouri's producer licensing law. The Company is not liable for acts outside the scope of the agent's authority.

**d. Various Underwriting Issues (pages 28-32)**

Hogan Land Title File 0102746 (page 28)

**Disagree:** As to the criticism that the agent failed to obtain underwriting approval for these specific mechanics liens risks, said approval would not have been necessary if the agent were following the Company's underwriting requirements for assuming such risk. The agent acted outside the scope of its authority and, as a result, the appropriate relief for the Department is under Missouri's producer licensing law and not against the Company.

The sound underwriting statute does not apply to closing procedures and cannot be used as a basis to assess a violation against the agent or the Company. *See* General Statement 1. The agent is not the Company's agent for the purposes of settlement under the issuing agency agreement and there is no applicable Missouri law that imputes

liability to the Principal for acts outside the scope of the agent's authority even if the agent is otherwise lawfully empowered to performs such settlement procedures. *See* General Statements 4, 7 and 10. The parties' participation in the closing and the completion of all acts necessary to complete closing constitutes a ratification of the agent's actions and negates any failure on the part of any party to provide closing instructions.

Hogan Land Title File 0102746 (page 28)

**Disagree:** The Company disputes the criticism that the policy copies in the file did not include a complete legal description. This agent maintains its own title plant. Such documentation would have been contained in said plant. It would likely have been impractical and unnecessary to copy such documentation to the file in such a situation. The policy is not a part of the search documents but rather the product of the search. A complete legal description is not required so long as the file documents can reasonably establish proof of the search required by the statute.

Hogan Land Title File 0205279 (pages 28-29)

**Disagree:** The examiners do not cite the agency for failing to establish good title in accordance with the statute. Having a copy of the sales contract or written instructions does not constitute a violation of the statute. The parties' participation in the closing and the completion of all acts necessary to complete closing constitutes a ratification of the agent's actions and negates any failure on the part of any party to provide closing instructions.

Hogan Land Title File 0208842 (pages 29)

**Disagree in part, agree in part:** Regarding the criticism that the agency issued an endorsement insuring against mechanics liens while the policy contained no exceptions for mechanics liens, the Company disputes this criticism. The parties in such a case often specifically request an affirmative endorsement over such a risk even though the lack of an exception essentially provides the coverage. When a party makes such a request, it is not unsound underwriting to provide such an endorsement when compliance with company underwriting requirements would have otherwise been met.

The Company does not dispute the criticism regarding issuance of an endorsement to the policy offering assurances that the land described in the policy is the same described in a certain survey but failing to reference the survey. Nevertheless, such a failure is a direct consequence of the agent to follow the underwriting instructions of the Company and constitutes an act outside the scope of the agent's authority.

The Company disputes the criticism regarding the offering of assurance that the current use of the property is permitted. Here, the criticism does not specifically state that there was a failure to provide coverage. The insured would have been aware of the

time as to the current use of the property. Such a current use would have been known and ascertainable.

The Company does not dispute the criticism that the agent issued an endorsement to the policy insuring two parcels described as contiguous when they have no continuous boundary.

The Company does not dispute the criticism as to the issuance of an endorsement to the policy insuring access by way of an easement not insured by the policy. However, providing insurance for an easement by way of an endorsement is a proper way to amend the policy so long as the easement parcel has been properly examined by the agent.

The Company does not dispute that the legal description was unintentionally erroneous, however, the error appears to be typographical in nature, referencing a call of 451.33 instead of 341.44.

The Company disputes the criticism that the agent issued the policy with an endorsement deleting creditor's rights endorsement and a usury endorsement without obtaining advance approval for these endorsements. The Company further responds by referring to General Statement 4, 7 and 10.

The Company does not dispute the criticism regarding the inclusion of an exception for city ordinances annexing certain land if said ordinance was not recorded.

The Company does not dispute the agent made an exception for an easement affecting an area not within the boundaries of the land described.

Hogan Land Title File 0110438 (page 29)

The Company disputes the criticism of the agent issuing an owner's policy that included coverage for a parcel of land acquired several years prior to the date of the policy. If the agent performed an examination of the title through the date of the policy, it was not an unsound underwriting practice. Further, matters that arose during the time the owner owned the land due to acts of that owner would be excluded from coverage by the title policy exclusion 3(a). No undue risk was assumed by the agent.

Hogan Land Title File 0110438 (pages 29-30)

The Company disputes the criticism regarding the sales transaction where the policy included a tract of land acquired several years earlier as well as one valued by contract at \$5,718,000.00 where the owner's policy face amount was \$6,300,000.00. The Company finds the criticism as to the potential controversy which could arise under the terms of the policy to be speculative.

The Company also disputes the criticisms that various agreements made by the buyer should be raised as exceptions to title. These agreements appear to be off record

and were matters agreed to by the insured. Therefore, they would neither be covered nor necessarily matters which should be raised on the final policy. The Company disputes the conclusion that the agent failed to use sound underwriting practice in not raising such exceptions. The Company also disputes the criticism that the agent failed to show matters known to affect the title and failed to make a determination of insurability in accordance with sound underwriting practices.

Fidelity Title Agency of Springfield File 2002020344 (page 30-32)

The Company disputes the criticism that there is no indication the previous owner's policy was surrendered. Not only is that observation irrelevant, the examiner fails to cite any statute or regulation requiring a surrender of a prior owner's policy as the condition for the issuance of the subsequent one to the same owner. The Company further disputes the criticism that the Company failed to use sound underwriting practice in insuring the same owner on two separate policies of title insurance. The examiner cites no basis for this criticism. The Company also disputes the criticism that there is no information in the file providing reasonable evidence of value to justify the face amount of the property. Further, one can reasonably assume if a lender makes a loan of nearly \$4 million and an owner requests a policy of over \$9.8 million, that these sophisticated parties would not be requesting coverage in excess of the value of the property. In fact, the criticism recites that an attorney representing one of the investors in the limited partnership owning the property specifically requested a policy amount of \$9,852,939.00. The Company disputes the assertion that it failed to use sound underwriting practices in that it insured title for amounts grossly in excess of any evidence of actual value.

The Company does not dispute the criticism that the issuance of the owner's inflation endorsements did not apply to property consisting of more than four residential units.

The Company disputes the criticism that the issuance of the ALTA 3.1 Zoning endorsement was not sound underwriting practice.

The Company does not dispute that the issuance of the particular ALTA 8.1 Environmental Protection Lien endorsement with language indicating it insured a lender. The preferred method would have been to issue a specialized endorsement correcting that term to make it applicable to the transaction.

The Company disputes the criticism of the owner's policy including an endorsement that the rights of tenants in possession are limited to their rights as tenants only. Such a form of endorsement language is common throughout the country in commercial transactions involving rental properties. The Company further disputes that this amounted to providing coverage for matters that ordinarily arise only by reason of the direct act of the insured owner and that such tenants' interests as tenants may have arisen prior to the acquisition of the property by the insured owner.

The Company disputes the criticism that extending coverage to a date beyond the date of recording of relevant instruments is not sound underwriting practice if the title was, in fact, examined through the policy issuance date.

The Company disputes the criticism of the issuance of the commitment for the proposed owner's policy in the amount of only \$9,375,580.00. Such a matter involves the agency contract between the insured and the agent. The Company also incorporates General Objection 4 and 10.

The Company disputes the criticism that the insurer of the agency did not make a determination of insurability in accordance with sound underwriting practices.

The Company disputes the criticism that the owner's policy includes an ALTA 3.1 endorsement and that the file contains no information confirming this use is permitted. Such information may have been based upon an examination of the zoning maps and ordinances maintained by the municipality.

The Company disputes the criticism that the endorsement offering assurance the land described in those policies is the same of the land depicted in the survey based upon the reference survey not in the file, so long as the survey is adequately identified.

The Company does not dispute the criticism as to the issuance of an owner's policy endorsement offering assurances as to the use of the land but not presently built on the land. However, if such an endorsement was issued after the completion of the project, this criticism would not be valid.

The Company disputes the criticism that the owner's policy issued with an endorsement offering coverage against certain risks required advanced approval so long as the proper underwriting requirements were met by the agent.

The Company disputes the criticism that the dating of the owner's policy of title insurance by subsequent endorsement was not sound underwriting practice so long as the agent conducted a proper later date examination of the title in each instance.

The Company disputes the criticism that the agent did not obtain required approval for this issuance of the lenders policy with no exception for claims for mechanics liens or a pending disbursement clause. Fidelity has issued instructions to its Missouri agents on the proper underwriting of mechanics lien coverage, and there is no indication by the examiner that these requirements were not followed. Any lack of obtaining advanced underwriter approval is a matter of contract between the insured and the agent. See General Objection 4 and 10.

U. S. Title Guaranty Company File 01019817 (page 32)

The Company disputes the criticism that there was no exception for lack of right of direct access to adjacent interstate highway. There is no reason to have an exception

for the lack of “direct access” to any public right of way. The insuring provision of the standard ALTA owner’s or lender’s policy provides only coverage for legal, as opposed to physical access. Numerous court interpretations of the clause from around the country support this view. The examiner’s comments reflect a conclusion of law that is unrelated to the statute cited as authority for this violation.

**2. COMMERCIAL POLICIES**

**a. Problems related to legal descriptions**

Fidelity Title Agency of Springfield File 2002030082 (page 33)

The Company disputes the criticism that language excepting out a strip of land in which a right of way easement had previously been created is unsound underwriting practice. See General Objection 1.

**b. Problems related to other policy exceptions**

Hogan Land Title File Nos. 0108032, 0104153\* and 0203721 (page 33)

The Company does not dispute the finding in files numbered 0108032 and 0104153. The Company disputes the criticism with respect to 0203721 since the matters did or could affect the insured property.

Hogan Land Title File 0108178 (page 33)

The Company does not dispute the criticism regarding the exception for general taxes for the year 1989 and thereafter. The Company disputes the criticism pertaining to the exception for a right of way. The agent was of the opinion that the right of way affected the legal description of the policy. See General Statement 1.

Fidelity Title Agency of Springfield File 2002030082 (pages 33-34)

The Company disputes the criticism. See General Statement 1.

**c. Risk Rates (pages34-35)**

The Company is not able to fully investigate all of the files listed in this subsection. To the extent that the calculations of the Department are correct versus the calculations made the agent, The Company does not dispute the criticism. To the extent that the Department’s calculations are incorrect, the Company the disputes the criticism.

**d. Total Charges (page 35)**

The Company is not able to fully investigate all of the files listed in this subsection. To the extent that the calculations of the Department are correct versus the

calculations made the agent, The Company does not dispute the criticism. To the extent that the calculations are incorrect, the Company the disputes the criticism.

e. Various underwriter issues

Hogan Land Title File 0104153 (pages 35-36)

The Company disputes the criticisms. This criticism relates to the settlement practices of the agent which are matters outside the agency agreement. See General Objection 4 and 10. The fact that the loan proceeds did not equal the amount requested for title insurance is not indicative of failure by the agent in determining insurability. It is not uncommon for lenders to make loans secured only in part by real estate. See General Objection 7.

Hogan Land Title File 0203271 (page 36)

The Company disputes the criticisms. See General Objection 1. The lender does not determine the underwriting standards of the agent or the company. To the extent sound underwriting required the exceptions to remain in the policy, the examiner's findings constitute legal error and a misapplication of the cited statute. An endorsement that insures over errors that would be evident from a survey, it is not necessary to refer to a particular survey to meet the lender's request.

Hogan Land Title File 0112199 (pages 36-37)

The Company disputes this criticism. There is no indication in the examiner's report that the agent failed to follow established guidelines for underwriting over mechanics liens risks, if, in fact, such existed. As a further response, see General Objections 1, 4 and 10.

Hogan Land Title File 0110901 (page 37)

See General Objection 2.

Hogan Land Title File 0111490 (page 37)

The Company disputes this criticism. Setting forth separate instruments as separate exceptions, even though they modify an earlier easement is not unsound underwriting. It is perfectly acceptable. It is, in fact, preferred that agent's raise separate recorded instruments as separate exceptions. For further response, see General Objection 1.

Fidelity Title Agency of Springfield File 2001120270 (page 38)

The Company disputes the criticism. The agent obtained certain documentation that is reasonably in compliance with sound underwriting. See General Objection 1. The

criticism observes that the parties to the deed in lieu of foreclosure had entered into an agreement obligating the lender to cancel the promissory note and to terminate the lien of the deed of trust. The fact that the deed of trust was, in fact, released and that the deed in lieu of instrument issued, as well as the closing of transaction, is indication of agreement to all parties with the transaction and that the actions of the agent were proper and in compliance with the statute.

Fidelity Title Agency of Springfield File 2001080303 and 2003010316 (pages 38-39)

The Company disputes the criticism that the files were issued with endorsements requiring advanced approval of the underwriter. Such issues are properly matters between the agent and the underwriter. See General Objections 1, 4 and 10. The Company disputes the criticism of the agent for issuing endorsements advancing the effective date of the policies. See General Objection 1.

The Company does not dispute the criticisms regarding the issuance of the Homeowner's Inflation endorsement and ALTA 8.1 Environmental Protection Lien endorsement.

The Company disputes the criticism regarding the special exception for court annexation of the property into the city limits of West Plains, Missouri. Such instrument was of record, the exception is proper. See further, General Objection 1.

The Company disputes the criticism regarding the issuance of a policy in Howell County, Missouri. Such matters are subject of the agent's contract with the underwriter. See General Objections 4 and 10. The Company further disputes the criticism regarding the lack of information providing reasonable evidence of value.

The Company disputes the criticism regarding the valuation of the property for purposes of underwriting the transaction.

The Company disputes the criticism regarding the legal description change to match the new plat recorded on 02/04/2003. See General Objection 1.

The Company disputes the criticism regarding the lack of exceptions for street easements and building lines referenced in an earlier plat. See General Objection 1.

### **3. RESIDENTIAL POLICIES**

#### **a. Risk Rates (pages 40-44)**

To the extent the risk rates were incorrectly charged by the agents in the first instance, the agents acted outside the scope of their authority by charging the incorrect risk rate and are liable under Missouri's producer licensing law. See General Objections 4, 7 and 10. Alternatively, The Company does not dispute the criticism of the Report with

respect to incorrect risk rates reported on simultaneously issued loan policies to the extent that they varied from filed risk rate of \$7.50. As to the rest of the criticisms listed for reporting incorrect risk rates, the Company does not dispute those criticisms, where the reported risk rates actually vary from the proper calculation for risk rate. Regarding the criticism that the agent did not report risk rates on the policies in the following files, The Company responds as follows.

The Company disputes the criticism charged to Nations Title Agency of Missouri File 0213489 (page 37). The agent reports the risk rate and total charge are listed on the top of Schedule A of the policy. See Company response to examiner criticism number J182FNTIC.

The Company does not dispute the criticisms of America's Title Source files 1656, 1554, 2338, 2500, 2673. See General Objections 4, 7 and 10. (page 37) The Company does not dispute the criticisms of Archer Land Title files 2002080029, 2002100577 and 2002091273. See General Objections 4, 7 and 10. (page 37)

The Company lacks sufficient information to dispute or concede criticisms regarding Nations Title Agency of Missouri files 02KS13459, 020776, and Barry County file 02305. See General Objections 4, 7 and 10. (page 37)

The Company disputes the criticism of Troy Title Files 002801 and 0090A -- file number is actually 001790A. In both cases the agent reasonably believed the customer had obtained prior title insurance within the reissue rate. Market conditions and time constraints precluded obtaining a copy of the prior policy and, therefore, the agency gave the customer the benefit of the reissue rate. See Company response to examiner criticisms number T373FNTIC and T375FNTIC. See General Objections 4, 7 and 10. (page 37)

**b. Total Charges (pages 44-48)**

Except for the following identified files, the Company disputes any criticism not specifically conceded. See General Objections 4, 7 and 10.

The Company does not dispute the criticisms regarding Hogan Land Title file 0109174, 0010897, 0204538, 0210055 and 0111529, nor does it dispute the files referenced from America's Title Source and Archer Land Title. See General Objections 4, 7 and 10.

With regard to Hogan Land Title files 0101321, 0112489, 0204680 and 0208379, the agent reported in its response to the criticisms that discount and search fee waivers were provided, based upon prior title work done on those properties by that agent.

The Company does not dispute the criticisms regarding Phoenix Title. See General Objections 4, 7 and 10.

**c. Recording Delays (pages 48-49)**

None of the violations for recording delays are attributable to the Company. See General Objection 8. Parenthetically, the Company no longer maintains agency relationships with those agencies responsible for nearly all of the recording delays listed – Nations Title Agency of Missouri, Investors Title Agency, America’s Title Source, Title Insurers Agency, Phoenix Title, U.S. Title Guaranty and Archer Land Title.

**d. Problems related to effective dates of policies**

Hogan Land Title File 0105152 (page 49)

The Company disputes this criticism. The Company believes it germane to point out that in Item 4 of Schedule A the date of the insured instrument is correctly listed as 7/25/00. The date listed as the effective date of the policy of 4/25/00 was a typographical error. Further, the error does not affect coverage because the policy, by its own terms is not effective until the insured acquires an interest in the real estate, which it did on 7/25/00.

Hogan Land Title File 010911 (page 49)

The Company disputes this criticism. The policy is designed to provide coverage as the effective date of the transaction and a typographical error can be remedied by a corrective endorsement. The insured would be covered even though the policy date was the subject of a typographical error.

Fidelity Title Agency of Springfield File 2002080133 (page 50)

The Company disputes this criticism. The date on the policy was, apparently, a typographical error. The policy notes indicate that it was to have an effective date of 9/9/02, the recording date.

**e. Problems Related to Improper Exceptions (pages 50-53)**

As a general matter, for all alleged violations under 381.071 RSMo in this section of the Report, please see General Statement No. 1.

Nations Title of Agency of Missouri Tax Exception 24 files (pages 50-51)

The Company disputes this criticism. It is entirely appropriate to insert an exception that taxes have not been examined and therefore are excepted from coverage. An exception is especially germane if the agent has not examined the record and the exception provides clarity in coverage for both the insured and the Company. There is no statutory or regulatory provision that suggests that such an exception violates the statute. See General Objections 1 and 3.

Nations Title of Agency of Missouri Files 025282, 019897, 0112030, 025359 (page 51)

The Company disputes this criticism. See General Objections 1 and 3. The Company disputes the criticism regarding the three exceptions listed in the series of files from Nations Title of Missouri set forth on page 68 of the Report. The first exception includes at the end, the words "if any" making the exception inapplicable in the case of tenancy by the entireties held property where both spouses had signed.

As for the second exception, the language has been the subject of numerous criticisms in the Report. As stated previously, the references to acreage are taken from the record legal description and the exception is appropriate.

As to the third exception, what the insurer and insured agree to regarding coverage is a matter of contract between the parties. It is acceptable for the insurer to limit coverage, so long as the insured agrees. In particular, an insured under a loan policy is a sophisticated business entity.

The Company disputes the criticisms with respect to ordinances to the extent that they may be of record. The Company disputes the criticisms as to the raising of homestead marital rights, acreage and legal description. The Company further disputes that it may limit the coverage according to an agreement with the insured.

Nations Title Agency of Missouri File 026049 (page 52)

The Company disputes the criticisms. Whether a property is located within a city is not necessarily determinable by an examination of the record title. See General Objections 1 and 3.

Nations Title of Agency of Missouri File 201699 (page 52)

The Company disputes the criticisms. The Company would concede the criticism as to the lack of special exceptions or restrictions contained in a recorded subdivision plat, if there were such restrictions. The fact that a subdivision trustee assessments were paid from escrow does not necessarily mean that there was an applicable restriction in force at the time of the closing. For further response, please see General Objections 1 and 3.

Nations Title of Missouri Files 02KS12005, 0215994, 0209222\*, 0204849, 0207675\*, 0207766\*, 0209160 (page 52-53)

The Company disputes the criticisms. The exception noted, while generic in nature, is one that is substantially the same as that set forth in the short form loan policy filed and approved by the DOI. With respect to all of the criticisms contained in this section, The Company further refers to its General Objections 1 and 3.

f. Incorrect exceptions

As a general matter, for all alleged violations under 381.071 RSMo in this section of the Report, please see General Statement No. 1.

Hogan Land Title Files 01124 and 011897 (page 53)

The Company disputes the criticism. If the prior deed of trust was not released of record, the exception would be appropriate. See General Objections 1 and 3.

Hogan Land Title File 0110576 (pages 53)

The Company does not dispute this criticism.

Hogan Land Title File 0204126 (page 53)

The Company disputes the criticism. The insured owner would have been fully aware of the purchase money deed of trust and any claim made, thereunder would be excluded by exclusion 3A.

Fidelity Title Springfield 200112006 (page 54)

It is the Company's normal practice for to include a survey exception on owner's policies, even when a survey has been obtained, but to remove the exception on lender's policies. The exception on an owner's policy will only be removed if specifically requested and when there is an acceptable survey made in conjunction with settlement. It is not unsound underwriting for the agent to have followed the Company policy. See General Statement No. 1.

Nations Title Agency of Missouri File 0111805\* (pages 54)

The Company does not dispute the criticism but asserts that it is not liable for the violation because the agency acted outside the scope of its agency by ignoring underwriting guidelines issued by the Company.

Nations Title Agency of Missouri File 025282\* (page 54)

The Company disputes the criticism. The deed of trust in favor of the seller, if properly documented as a second mortgage, would be subordinate to the lender's deed of trust and, therefore, not necessary to be listed as a specific exception to title on the owner's policy. The owner would be held to know about this second deed of trust and, therefore, the matter excluded by exclusion 3A of the policy.

Title Insurers File 45455 (pages 54-55)

The Company disputes the criticism. While the agent did not show a special exception regarding a four family flat and one for known tenancies, there is a general exception for parties in possession which covers all tenancies.

Landmann Title Company File 22202\* (page 55)

The Company disputes the criticism. There is a general exception for rights for parties in possession which covers all tenancies.

Landmann Title Company Files 21384, 21406\*, 21879, 21128\* and 21672 (page 55)

The Company disputes the criticism. The exception noted is commonly used. The Company further states that the applicable statute and regulations issued by the Department of Insurance do not specifically require the filing of all such possible exceptions. Sound underwriting requires the inclusion of the exception

Miller County Title File 1076\* (page 55)

The Company does not dispute the criticism.

Miller County Title File 1325 and 1325A\* (pages 55-56)

The Company does not dispute the criticism.

Troy Title File 002949\* (page 56)

The inclusion of the exception for the general taxes for 2001 is an exception that was a typographical error. The criticism is not disputed with respect to the omission of the exception for the scheme of restrictions. The Company disputes the criticism of the use of the advisory noted as an exception. The computer system utilized by the agent automatically inserts an exception number for all such entries.

Netco, Inc. File KC257710\* (page 56)

The Company disputes the criticism. See General Objections 1 and 3.

Phoenix Title File A27426 (page 56)

The Company disputes the criticism. The deed of trust subordinated on the record to the insured deed of trust is not an exception to the insured deed of trust's title as a matter of law. See General Objections 1 and 3.

Phoenix Title File 015055\* (pages 56-57)

The Company disputes the criticism. The criticism does not explain whether or not the seller's lien was recorded and, if recorded, whether it specifically designated itself as being subordinate to the insured deed of trust. See General Objections 1 and 3.

Nations Title Agency of Missouri File 01KS06598 (page 57)

The Company disputes the criticism. If the earlier mortgage was not released of record, it is proper to continue to show it as an exception to the title.

Nations Title Agency of Missouri File 01KS04849 (page 57)

The Company does not dispute the criticism.

Nations Title Agency of Missouri File 02KS07766 (page 57)

The Company does not dispute the criticisms regarding the exceptions pertaining to judgments. The use of the word "commitment" was a typographical error and not a violation of the statute. Whether or not language is extraneous is not a matter of sound underwriting. See General Objections 1 and 3.

Wright County Title Files 213188\*, 212926\* and 212928\* (pages 57-58)

The Company does not dispute that the reference to the zoning and building regulations are matters excluded by terms of the policy. However, it is not inconsistent to provide an exception for the same.

Municipal taxes, assessments or liens of the city of Mountain Grove were properly excluded in generic format as the same may not all be readily available by searching the public records. The exception for "rights of the public in any portion of the property that the public holds, streets and highways" is a commonly used exception, especially if an adequate survey is not provided.

Assured Title Company File 26705\* (page 58)

The Company disputes the criticism in so far as the Report does not describe the three exceptions. The Company also disputes the criticism regarding the exception for "minutes of special meeting as shown on record." Said exception for a document of record is a proper exception. Inclusion of such an exception is within the discretion and judgment of the title agent. See General Objections 1 and 3.

Assured Title Company File 26360 (pages 58-59)

The Company does not dispute the criticism regarding the use of the gap language, unless inclusion of said language was agreeable and acceptable to the party, the

insureds or their representatives. The Company disputes the remaining criticisms. Inclusion of the exception so noted is within the discretion and judgment of the agent.

With respect to all of the criticisms contained in this section, See General Objections 1 and 3.

**g. Inadequate examinations**

Nations Title Agency of Missouri File 0111124\* (page 59)

The Company disputes the criticism. It is appropriate for an agent to search forward from the last recorded plat. The agent can rely on a recorded plat for the assumption that it was properly prepared and approved.

Nations Title Agency of Missouri File 25282\* (pages 59-60)

The Company disputes the criticism. The criticism assumes that special exceptions were, in fact, required for matters reflected on the recorded plat. By including the plat in the policy exceptions it includes all matters contained on the plat by reference. It is also appropriate for the agent to search forward from the date of the recorded plat.

Nations Title Agency of Missouri File 019897\* (pages 60)

The Company disputes the criticism. The criticism assumes that, in fact, there were covenants, conditions, protections, easements and servitudes in the recorded instrument requiring special exceptions. By including the plat in the policy exceptions it includes all matters contained on the plat by reference. It is appropriate for the agent to search forward from the last recorded plat.

Nations Title Agency of Missouri File 025359\* (page 60)

The Company disputes the criticism. By including the plat in the policy exceptions it includes all matters contained on the plat by reference. The agent had a prior file on this property. The file in question did not contain any search-related documents as they were obtained and are in the prior file. The search was updated from this prior file.

Nations Title Agency of Missouri File 506924\* (page 61)

The Company disputes the criticism. The criticism's evidence is that, in fact, the agency had examined the title to indicate that party A had conveyed her interests to parties B and C three months before the date of the contract itself.

America's Title Source Files 1153\*, 1656\*, 2338\* and 2500\* (page 61)

The Company disputes the criticisms. The agent's response to the criticisms indicates that they had employed a search company that would have notified them of intervening matters. Additionally, there is no legal requirement that a datedown be performed prior to settlement so long as the datedown is performed prior to recordation of the documents executed at closing.

Netco, Inc. File STL2060751\* (page 61)

The Company does not dispute this criticism. See General Objections 4, 7 and 10.

Netco, Inc. File KC264444 (pages 61-62)

The Company does not have sufficient information to concede or dispute the criticism. Nevertheless, the Company states that the agent may have obtained information confirming the prior payoff of said mortgage, though it might not have been satisfied of record. See General Objections 4, 7 and 10.

Phoenix Title File 017741\* (page 62)

The Company disputes the criticism. The agent's response states that the recorded documents in the lenders policy correctly indicate that one individual was the only vested owner of the property. The policy, though, was mistakenly issued with two insureds due to the fact the original transaction information changed during the contract period. The policy has been corrected by endorsement which relates back to the date of issuance.

Phoenix Title Files 015348\*, 016535\*, 017741\*, 015055\*, 015882\* and 016595\* (page 62)

The Company disputes these criticisms. The title plant chain sheets utilized by the agent to provide the extensive background research, including plat information, to make sound underwriting decisions. Hard copies are not kept of all documents reviewed as part of the examination. If a copy in the chain of title is needed at a later date, it can easily be copied as appropriate. The use of a licensed title plant requires that the title plant maintain the search records required by the statute. The chain sheets are evidence of the search.

Phoenix Title Files 016207\*, 016219\*, 016981\*, 015962\*, 017626\*, 014916\*, 017542\* and 017691\* (pages 62-63)

The Company disputes the criticisms in that the agent has stated it conducts a diligent search according to guidelines issued by the Company. The agent has conducted additional research to comply with sound underwriting principles, as needed. In the

county in question, the agent searched a “plat index book” which indicates all exceptions appropriate to the specific plat. The additionally searched evidence is verified and included on the exceptions to the policy, though it does not show on the “chain sheet.”

Archer Land Title Files 2002080029\* and 2002090173\* (page 63)

The Company disputes the criticism. The agent’s responses to the criticisms indicates its policy was to do an update prior to funding and recording. It is possible this may have not been done with respect to file 2002090173. To the extent it was not done, the Company would concede the criticism.

Wright County Title File 0212926\* (page 63)

The Company disputes the criticism. It was appropriate for the agent to continue the chain of title from a prior lender’s policy. The Company further responds to all of the criticisms in this subsection by referring to General Objections 1 and 3.

**h. Other deficiencies noted**

Hogan Land Title File 0203102\* (page 63)

The Company disputes the criticism. The exception is common in the State of Missouri. City taxes are difficult to verify because posting is not often up to date, and the records are not reliable.

Hogan Land Title File 0107679\* (page 64)

The Company disputes the criticism. The agent responds that the parties changed the way the transaction was set up and agreed to it by signing the HUD-1 Settlement Statement. The result was ratified and accepted by the parties as sufficient.

Hogan Land Title Files 0205306\* and 0206446 (pages 64)

The Company disputes this criticism. See General Objections 4, 7 and 10.

Hogan Land Title File 0110897\* (page 64)

The Company disputes this criticism. See General Objections 4, 7 and 10.

Hogan Land Title File 0111529\* (page 64)

The Company disputes the criticism as does the agent. The criticism acknowledges that the unrecorded mortgage may have been subordinate to the insured deed of trust. See General Objections 4, 7 and 10.

Fidelity Title Agency of Springfield File 2002020406\* (pages 64-65)

The Company disputes the criticism. The Company disputes that any underwriting analysis to establish the face amount of the owner's policy is reasonable is a requirement. See General Objections 1 and 3

Fidelity Title Agency of Springfield File 2002080506\* (page 65)

The Company disputes the criticism. The Company states that the facts alleged are not in violation of the Good Funds statute Mo.Stat.381.412. For further response, see General Objection 3, 4, 7 and 10.

Fidelity Title Agency of Springfield File 2002090014\* (page 65)

The Company disputes the criticism. The parties apparently accepted the insurance amount. There are various reasons why the sale price may exceed the value of the real estate conveyed. For example, personal property may have been included in the sale price or the owner may not have wanted insurance above the face value on the policy amount. An insured may elect to have coverage for less than full value.

Fidelity Title Agency of Springfield File 2002050337 (page 65)

The Company disputes the criticism. The agent reports that there was an affidavit regarding the judgment in the file negating the requirement set forth in the report. There is no legal basis for the Department to require certain wording in a policy since the Department is not an underwriter of the policy. See General Objections 1 and 3.

Nations Title of Missouri, 19 files (pages 65-66)

The Company disputes all 19 criticisms. See General Objections 4, 7 and 10. The Company believes that the agent has disputed these criticisms as well.

Nations Title of Missouri Files 0209866, 0209083, 0210245 and 0207218 (pages 66-670)

The Company disputes the criticism. Based upon the recital of the criticism, it appears that the agent was, for all intents and purposes, acting as a settlement agent. The criticism recites that the agent received funds into its escrow, is named as the settlement agent in the Settlement Statement, disbursed funds from its escrow and issued a title insurance policy. The criticism notes that the mortgage and related documents were prepared by the lender and acknowledged by an employee of the lender. However, the settlement is made up of numerous functions and the Company is of the opinion that just because one of those was performed by someone else, does not mean that the agent does not qualify as the settlement agent when it, in fact, performed settlement services, particularly, the handling of escrow funds. An agent is not required by law to conduct a closing in order to issue a title policy. See General Objections 1, 3, 4, 7 and 10.

Nations Title Agency of Missouri, 8 files (page 67)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri File 0112030\* (page 67)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri File 021699\* (pages 67-68)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri Files 0112030\*, 0111124\* and 025282\* (page 68)

The Company disputes the criticism. Merely because the contract of sale requires the seller to provide a loan policy of title insurance does not necessarily mean that, if a loan policy of title insurance is not provided to the seller, that the agent violated escrow instructions. Since no commitment was issued for the seller, it is likely no specific request was made of the agent to issue said policy. Compliance with contract terms is the responsibility to the parties to that contract. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri File 021662\* (page 68)

If, in fact, the agent did not record the release, the Company would not dispute the criticism, however, the Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri File 0111553\* (pages 68-69)

The Company disputes the criticism. See General Objections 1 and 3.

Fidelity Title Agency of Springfield File 20020900014\* (page 69)

The Company disputes the criticism. See General Objections 1 and 3.

Investor's Title File 85126 (page 69)

The Company is unable to concede or dispute the allegation regarding access to a public street. As to the omission of the exception of the mortgage, the Company refers to General Objections 1 and 3. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Investor's Title File 683911\* (page 69)

The Company does not dispute the criticism. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 5, 7 and 10.

America's Title Source File 2500\* (page 70)

The Company does not dispute the criticism. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Title Insurers Agency File 60785\* (pages 70)

The Company lacks the information to concede or dispute the criticisms. The Company disputes its obligation to be responsible for the criticism. See General Objections 1, 3, 4, 7 and 10.

Title Insurers Agency File 120020 (page 71)

The Company disputes the criticism. The agent utilized a highly experienced employee as abstractor and examiner. For further reference, see General Objections 1 and 3.

Title Insurers Agency File 46341\* (pages 71-72)

The Company disputes the criticism that the owner's policy for title insurance should have been issued for the same amount as the lender's policy. The Company further disputes that it should consider issuing an endorsement to the owner to include exceptions for mechanics liens and for parties in possession. The Company disputes its obligation to be responsible for the criticism. See General Objections 1, 3, 4, 7 and 10.

Ozark Abstract and Loan Company File 302B5520\* (page 72)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10. Valuation can be determined in ways other than written instructions.

Landmann Title Company File 21426 (page 72)

The Company disputes the criticism. See General Objections 1 and 3.

Miller County Title File 227\* (page 73)

The Company does not dispute that a written commitment should have been issued. However, there is no requirement that prevents a policy being written to conform to the parties' agreement even if excluded from the commitment. See General Objections 1 and 3.

Troy Title Company File 002782A\* (page 73)

The Company does not dispute the criticism of the fact that the agent did not issue the title policy. However, The Company disputes the criticism that the agent failed to “insure the lender”. Having closed the transaction, disbursed the funds and collected charges for the title policy, the lender would have been entitled to the coverage pursuant to the terms and conditions of the title commitment. The agent responds to the criticism by stating the closing occurred during the refinance rush. The agent has since hired an experienced title person who works primarily on policies. The agent is currently, as of January 25, 2005, averaging approximately 45 days to issue policies. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Netco, Inc. File STL259730\* (page 73)

The Company disputes the criticism. The agent reports no post closing problems with any party. It appears all parties were satisfied with the handling of the transaction. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Netco, Inc. File STL2060751\* (pages 73-74)

The Company neither concedes nor disputes this criticism as it is unclear whether or not the agent had specifically agreed to undertake the arrangements. Though the agent may have issued a commitment to insure the buyer, whether or not the buyer followed through and paid for a policy is not so indicated. It is also unclear whether the parties expected the agent to pro-rate the lienable charges for water and sewer services. Many of the aforementioned actions would properly be undertaken by the parties or their representatives. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Netco, Inc. Files KC23749, STL259730\* and STL247532 (page 74)

The agent has indicated that it refunded the amount charged. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Phoenix Title File 016207\* (page 74)

The Company does not dispute this criticism. However, the Company did not know the lender had so listed the Company. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Phoenix Title File 016132\* (pages 74-75)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Archer Land Title File 2002080029\* (page 75)

The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

Nations Title Agency of Missouri Files 0206696\* and 0215994\* (page 75)

The agent is directly responsible for a failure to produce a file to the Department under the Missouri's producer licensing law. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

**C. Practices considered not in the best interests of the consumers**

Sixteen various agencies (pages 75-76)

The Company disputes the criticism to the extent the agencies took greater than 60 days to issue a policy. The 60 day policy issuing period is not set forth in either applicable statutes or regulations. There is no statutory citation to support this criticism. See General Objection 6.

**D. Other Comments**

**1. BOOKS AND RECORDS**

**a. Effective dates of policies**

**(1) Agency – Hogan Land Title (page 76)**

The Company does not dispute the criticism. The policy date reported by the agent to the underwriter should be the effective date of the policy. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

**(2) Agency – Fidelity Title Agency of Springfield (page 77)**

The Company does not dispute the criticism. The policy date reported by the agent should be the effective date of the policy. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

**(3) Agency – Phoenix Title Company (page 77)**

The Company does not dispute the criticism regarding the incorrect policy date reported by this agent. The Company disputes its obligation to be responsible for the criticism. See General Objections 4, 7 and 10.

**III. Claims Practices**

**A. Claim Time Studies (page 78)**

The Company disputes this criticism. The Company always provided responses to criticisms in a timely manner. The examiners provided criticisms in a rotation of items. These items were answered as promptly as possible and the examiners were asked if it caused them any inconvenience if they could not be answered immediately. Since the examiners provided no complaints to any new extensions, we feel that this criticism is an unjust assessment of the situation. The failure to object to written and oral requests for extensions and the affirmative agreement to allow an extended time to respond acts as an estoppel against this criticism.

**1. Closed Title Claims With Payment**

File No. 93977 (page 79)

The company does not dispute this criticism.

File No. 141219026 (page 79)

The company does not dispute this criticism.

File No. 1312106954 (page 79)

The company disputes this criticism. The Company needed the assistance and information from the policy-issuing agent to complete its investigation. The agent failed to cooperate in providing this information. Accordingly, the Company paid the insured's policy limits as soon as it became clear that the information needed from the agent would not be provided.

File No. 1312179336 (page 79)

The Company disputes this criticism. The completion of the investigation was dependant on responses and information from the insured, which was not provided in a timely manner. A note in the file indicates that insured did not send in a policy for six months. The remaining time was mostly on effort to locate an appraiser who could provide a diminution in value appraisal.

## 2. Closed Title Claims Without Payment

File No. 107425 (page 79)

The Company disputes this criticism. It is unclear how and why the Department alleges that the Insurer failed “to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies” (RSMo 375.1007(3)). The company has standards in place which result in the immediate provision of any insured or claimant with an acknowledgement of claim and provision of a Notice of Claim form to complete and return. The Company receives many pieces of correspondence, which, as in this matter, do not make or purport to make a title insurance claim, but merely advise the Company of a matter which may or may not constitute a potential claim. However, in the regular course of its business, the Company responds immediately by giving them a mechanism i.e., the Notice of Claim form, with which to present any claim they wish to make. Even if the purported claimant does not respond, if feasible, the Company seeks the information from third parties it needs to investigate and resolve the matter. Such was the case in this matter---since the Insured did **not** respond to the Company’s reasonable request for further information, the Company solicited such information as was necessary to investigate the matter from the policy-issuing agent. Based upon the information obtained from the agent, the Company was able to determine during the course of its investigation that if enforcement of the two Deeds of Trust referenced by the Insured was sought, and if a claim was properly submitted, the Company would be liable under the terms of its policy to defend and/or indemnify the Insured from such claims of enforcement. It should be noted that the Insurer sought information from its policy-issuing agent on March 7, 2002, six calendar days after receiving Wells Fargo’s initial and only correspondence. The agent did not respond to this request until May 2, 2002. On the same day as the necessary information was received by the Company from the agent, the Company then resolved the matter, apparently to the satisfaction of the Insured, by assuring its insured that upon request, it would indemnify a new underwriter with respect to the two Deeds of Trust in order to facilitate the Insured’s disposition of the property in the event of a foreclosure. Insurer specified in its letter the reasonable terms upon which such an indemnification would be given. Since there is no indication that the Insured ever followed up or sent any type of correspondence subsequent to its letter of March 1, 2002, it appears that the obligation to the Insured was either satisfied, brought up-to-date, or that the foreclosure was complete and that this or another title insurance underwriter insured the new owner and/or lender without exception to the two prior Deeds of Trust.

The Department also cites a violation of 20 CSR 100-1.040. This regulation requires that “[e]very insurer shall complete an investigation of a claim within 30 days after notification of the claim, unless the investigation cannot reasonably be completed within this time.” For the reasons stated above, Wells Fargo’s March 1, 2002 letter is **not** the presentation of a “claim.” Even if it was a “claim,” however, an investigation could not have been reasonably completed within 30 days, given the Insured’s non-responsiveness and failure to reply to the Company’s reasonable requests for information.

File No. 99489 (page 79)

The Company disputes this criticism. On May 3, 2001, less than 30 days after receipt of the claim, the Company sent the insured a letter requesting additional information and advising that additional documentation was needed before the investigation could be completed. The claim was resolved in the most expeditious manner possible. In that letter the Company agreed that a judicial foreclosure might be required (and ultimately was the resolution) but also suggested that a more expeditious resolution might be available. The investigation continued, not to determine whether the claim was covered under the terms of the policy, but rather, in an attempt to find a more expeditious resolution than the one proposed by the insured.

File No. 91770 (page 79)

The Company disputes this criticism. It is unclear how and why the Department alleges that the Insurer failed "to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies" (RSMo 375.1007(3)). The company has standards in place which result in the immediate provision of any insured or claimant with an acknowledgement of claim and provision of a Notice of Claim form to complete and return. The Company receives many pieces of correspondence, which, as in this matter, do not make or purport to make a title insurance claim, but merely advise the Company of a matter which may or may not constitute a potential claim. However, in the regular course of its business, the Company responds immediately by giving them a mechanism i.e., the Notice of Claim form, with which to present any claim they wish to make. Even if the purported claimant does not respond, if feasible, the Company seeks the information from third parties it needs to investigate and resolve the matter. Such was the case in this matter---since the Insured did **not** respond to the Company's reasonable request for further information, the Company solicited such information as was necessary to investigate the matter from the policy-issuing agent. Based upon the information obtained from the agent, the Company was able to determine during the course of its investigation that if enforcement of the two Deeds of Trust referenced by the Insured was sought, and if a claim was properly submitted, the Company would be liable under the terms of its policy to defend and/or indemnify the Insured from such claims of enforcement. The Company then resolved the matter, *to the satisfaction of the Insured*, by assuring its insured that upon request, it would indemnify a new underwriter with respect to the two Deeds of Trust in order to facilitate the Insured's disposition of the property in the event of a foreclosure. Insurer specified in its letter the reasonable terms upon which such an indemnification would be given. Since there is no indication that the Insured ever followed up or sent any type of correspondence subsequent to its letter of January 19, 2001, it appears that the delinquent obligation to the Insured was either satisfied, brought up-to-date, or that the foreclosure was complete and that this or another title insurance underwriter insured the new owner and/or lender without exception to the two prior Deeds of Trust.

The Department also cites a violation of 20 CSR 100-1.040. This regulation requires that "[e]very insurer shall complete an investigation of a claim within 30 days

after notification of the claim, unless the investigation cannot reasonably be completed within this time. For the reasons stated above, Fairbanks' January 19, 2001 letter is **not** the presentation of a "claim." Even if it was a "claim," however, an investigation could not have been reasonably completed within 30 days, given the Insured's non-responsiveness and failure to reply to the Company's reasonable requests for information. It should also be noted that the Company followed up its January, 26, 2001 acknowledgement letter and request for completion of the Notice of Claim form with a February 15, 2001 fax and letter requesting copies of the settlement statement and the Deeds of Trust in question. The Insured failed to respond to this correspondence as well, and the Company then requested the information from the policy-issuing agent. This information was provided by the agent, and the Company sent its letter assuring the Insured of its intention to indemnify, in apparent resolution of the matter (as evidenced by no further correspondence from the Insured).

File No. 105679 (page 79)

The Company disputes this criticism. Based on the documents reviewed and contained within the file and the lack of any adverse action for a period of at least two years on the unreleased prior deed of trust, it was and is reasonable for Fidelity to assume this prior lien has been paid off. The offer to indemnify or insure over this prior lien by Fidelity fully protects the insured from loss and was a satisfactory way to resolve the claim as is evidenced by the fact that the claimant accepted it.

File No. 106302 (page 79)

The Company disputes this criticism. Attempts were made to investigate whether the prior deed of trust had been paid off, but the insurer did not receive cooperation from the agent. The agent was telephoned on February 7, 2002 and told to investigate whether this deed of trust had been paid off. In addition a letter was mailed to the agent on February 11, 2002. However, the insurer did not receive a response. The policy was issued without taking exception to the deed of trust, therefore, as is industry practice, the insurer offered to indemnify or reinsure. At the request of the insured, an indemnity was issued to the insured.

In addition, the January 15, 2002 letter did not constitute a "notification of claim" as defined by 20 CSR 100-1.010 (G), and therefore, the Insurer was not obligated to acknowledge it as such. According to 20 CSR 100-1.010 (G), "notification of Claim means any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its insurance producer, by a claimant which reasonably apprises the insurer of the facts pertinent to a claim;" 20 CSR 100-1.010 (1)(B) defines "claim" as (1) "a request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy" or (2) "[a] request or demand for payment under the policy, such as return of unearned premium or non-forfeiture benefits." The insured's January 15, 2002 letter was not a request or demand for payment, but rather, a request for instructions to proceed with foreclosure and indemnification. Because the insured did not present a "claim" as defined by the

Regulations, the letter was not “notification of claim” and the Insurer was not required by the cited provisions to complete an investigation within 30 days.

File 103129 (page 79)

The Company disputes this criticism. The insurer received a letter from South & Associates, counsel for Chase Manhattan Mortgage Corporation, on November 8, 2001. It was not clear from this letter whether Chase was an Insured, since the property which was the subject of the correspondence was different from the property described in the policy. Chase alleged that a deed in its chain of title did not recite the marital status of the grantors. The November 8<sup>th</sup> correspondence was acknowledged on November 9<sup>th</sup>

Chase’s November 8<sup>th</sup> correspondence did not constitute a “claim” as defined by the Regulations, so 20 CSR 100-1.040 did not apply to require completion of an investigation within 30 days. Under the Regulation, a “claim” is defined as:

1. A request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy; or
2. A request or demand for any other payment under the policy, such as for the return of unearned premium or non-forfeiture benefits.

Accordingly, the letter from Chase did not refer to a “claim” as defined by the Regulations (20 CSR 100-1.010 (1) (B) nor did it constitute a proper “notification of claim” because it did not “reasonably apprise the insurer of the facts pertinent to a claim” as defined in the Regulations (20 CSR 100-1.010 (1) (G)).

20 CSR 100-1.010 (F) defines an “investigation” as “all activities of an insurer directly or indirectly related to the determination of liabilities *under coverages afforded by an insurance policy.*” Since the Insured never provided a policy that actually insured the property in question, the Company was under no obligation to conduct an investigation. It appears that there was a mutual mistake by Chase and the Insurer as to the applicability of the title insurance policy submitted by Chase.

Claim No. 99489 (page 80)

The Company disputes this criticism. On May 3, 2001, less than 30 days after receipt of the claim, the Company sent the insured a letter acknowledging that the course of action proposed by the insured may be appropriate. At that time, the Company also indicated that it would continue its investigation to locate the original documents and requested copies to facilitate that investigation. Although the May 3 letter does not formally accept coverage, the contents of that letter indicate that the Company was accepting coverage and working with the insured to resolve the claim in the most expeditious manner possible. When the Company was unable to locate the original documents and an additional claim was submitted, the Company proposed an alternative resolution which included an indemnity.

Claim 108805 (page 80)

The Company disputes this criticism. The insured lender sent a fax dated March 29, 2002 to the Insurer. The fax requested a letter of indemnity to enable the lender to foreclose. The March 29<sup>th</sup> letter was acknowledged on April 2, 2002 and the Insurer sent a letter of indemnity on May 16, 2002, in resolution of the matter.

The May 16<sup>th</sup> letter did not constitute a “claim” as defined in 20 CSR100-1.010 (B), since it did not include a request or demand for payment of loss, or for any other payment under the policy. Accordingly, a 15-day acceptance or denial was not required under the Regulations. The letter did not identify any loss purportedly being claimed by the Insured. It did not assert that any adverse claim was actually being asserted by any adverse claimant. Since there was no adverse claim that would be covered under the policy, only a *potential* adverse claim, any “claim” of the insured would be premature, as the Insured would not be suffering any loss or damage covered by the insuring provisions of the policy. Furthermore, the Insured failed to submit the necessary forms that the Insurer provided on which to describe the nature and extent of the “claim.” Along with the Acknowledgement letter sent to the insured on April 2, 2002, the Insurer also sent a Notice of Claim form, requesting that the Insured complete and return it. The Insured did not return the form. Accordingly, the condition precedent to the 15-day requirement, i.e., “the submission of all forms necessary to establish the nature and extent of any claim,” did not occur, therefore, the Insurer was under no obligation to advise the insured of the acceptance or denial of the claim.

Claim 107841 (page 80)

The Company disputes this criticism. The Company received a letter from Upland Mortgage, insured lender, on February 27, 2002. This letter notified the Company that the insured mortgage was in foreclosure and that the legal description of the Deed of Trust encumbered more land than the borrower owned. An acknowledgment letter was sent on March 5, 2002, along with a Notice of Claim form with a request that it be completed and returned. The insured returned this form on March 14, 2002. Neither the February 27 letter nor the completed Notice of Claim form gave enough information as to constitute a “claim” as defined by the Regulations. Neither correspondence identified any loss purportedly being claimed by the Insured. The letter from Upland did not refer to a “claim” as defined by the Regulations, nor did it constitute proper “notification of claim.” The letter did not request or demand loss payment, but requested instead that the Insurer give it advice on how to conduct its foreclosure. The policy does not require the Insurer to give such advice and such a “claim” is not within its insuring provisions. The Insurer did assure the Insured of its indemnification of the insured against any loss arising from the matter, but none was alleged or apparent. The insured apparently concluded its foreclosure without further contacting the Insurer to allege any covered loss.

Claim No. 107425\* (page 80)

The Company disputes this criticism. The Company received a letter from Wells Fargo Home Mortgage on March 1, 2002. Wells Fargo was an Insured lender. Wells Fargo notified the Company that it had commenced foreclosure proceedings against the insured property, and that a foreclosure title commitment had been obtained, showing two unreleased Deeds of Trust. The "claim" was acknowledged on March 5, 2002, and a Notice of Claim form was sent to the Insured with a request that it be completed and returned. The Insured never returned this form or otherwise responded. The March 1, 2002 letter did not properly notify the Company of a claim. It did not specify whether the beneficiaries of the supposed unreleased Deeds of Trust were asserting priority over the insured lien. Without such assertion, any claim would be premature, as the Insured would not be suffering any loss or damage covered by the insuring provisions of the policy. 20 CSR 100-1.010 defines "claim" as a "request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy." This same Regulation states that a "notification of claim" is one which "reasonably apprises the insurer of the facts pertinent to a claim." The letter from Wells Fargo did not refer to a "claim" as defined by the Regulation nor did it constitute proper "notification of claim." The letter did not request or demand loss payment, but requested instead that the Company "obtain the appropriate curative documentation and provide the undersigned with recorded copies of the same," and that the Insurer, "in the interim," confirm its willingness to issue a letter of indemnity. 20 CSR 100-1.050 (1) (A) requires that "within 15 working days after the *submission of all forms necessary to establish the nature and extent of any claim*, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer." (emphasis added). Since Wells Fargo's initial (and only) correspondence did not constitute a "claim" as defined by the regulations, 20 CSR 100-1.050(1) (A) did not apply to require a response within fifteen days. Further, even if it was a "claim," since the necessary forms were not submitted by the Insured, the Regulation cited by the Department does not require a 15 day response.

Claim No. 91770\* (page 80)

The Company disputes this criticism. The Company received a letter from Fairbanks Capital on January 21, 2001. Fairbanks was an Insured lender. Fairbanks notified the Company that the borrower had defaulted and that a foreclosure title commitment had been obtained showing two unreleased Deeds of Trust. The "claim" was acknowledged on January 26, 2001, and a Notice of Claim form was sent to the Insured with a request that it be completed and returned. The Insured never returned this form or otherwise responded. The January 21, 2001 letter did not properly notify the Company of a claim. It did not specify whether the beneficiaries of the supposed unreleased Deeds of Trust were asserting priority over the insured lien. Without such assertion, any claim would be premature, as the Insured would not be suffering any loss or damage covered by the insuring provisions of the policy. 20 CSR 100-1.010 defines "claim" as a "request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy." This same Regulation states that a "notification of claim" is one which "reasonably apprises the insurer of the facts pertinent

to a claim.” The letter from Fairbanks did not refer to a “claim” as defined by the Regulation nor did it constitute proper “notification of claim.” The letter did not request or demand loss payment; in fact it did not request or demand *anything* other than a request that Fairbanks be contacted if additional information were needed. 20 CSR 100-1.050 (1) (A) requires that “within 15 working days after the *submission of all forms necessary to establish the nature and extent of any claim*, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer.” (emphasis added). Since Fairbank’s initial (and only) correspondence did not constitute a “claim” as defined by the regulations, 20 CSR 100-1.050(1) (A) did not apply to require a response within fifteen days. Further, even if it was a “claim,” since the necessary forms were not submitted by the Insured, the Regulation cited by the Department does not require a 15 day response.

### 3. Title Claims That Were Open But Not Closed Within The Review Period

File No. 72302a (page 80)

The Company disputes this criticism. Regulation 20 CSR 100-1.010 provides that “(G) Notification of claim means any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent, by a claimant, **which reasonably apprises the insurer of the facts pertinent to a claim.**” (emphasis added). Conditions and Stipulation 3(b) requires the insured to “notify the Company promptly in writing.”

In this case, the insured merely dropped off a copy of a lawsuit to the agent. There was no notification in writing explaining the nature of the claim. Accordingly, the insurer did not fail to acknowledge receipt of the claim because there was no valid notification of the claim to the insurer under the terms of the policy.

File No. 111143 (page 80)

The Company does not dispute this criticism.

File No. 120009 (page 80)

The Company does not dispute this criticism.

File No. 120188 (page 80)

The Company disputes this criticism. The “claim” tendered by the insured was not an actual claim, but rather, a request for a letter of indemnity. Accordingly, the request is not subject to the above Regulations because it does not fit the definition of a “claim.”

A Letter of Indemnity is NOT a true claim situation. A letter of indemnity requires underwriter investigation and approval. Letters of Indemnity are considered

underwriting matters and not claims because there is no loss, which is required under the Conditions and Stipulations of the policy. Further 20 CSR 100-1.010 (1) (B) provides the definition of a claim as “(1) a request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy or (2) [a] request or demand for payment under the policy, such as return of unearned premium or non-forfeiture benefits.”

A request for a letter of indemnity is not an actual claim of loss, but rather, only a statement that there is the potential that a claim may be made in the future. Pursuant to any letter of indemnity issued, the terms, provisions and conditions of the referenced policy are incorporated into, and made a part of the letter. Accordingly, if any actual claim of priority over the insured deed of trust is made, the party to who the indemnity was issued must notify the Company within 30 days of the date such claim of priority is made. When the letter of indemnity was requested, there was no actual claim of loss of priority. Accordingly, since this was a request for a letter of indemnity, and not a claim, the request is not subject to the same rules as required under a claim.

Further, the Insureds should be able to proceed with their foreclosure based on the policy. We now have a Mutual Indemnification Agreement between the major title companies in Missouri that underscores this rationale.

File No. 95121 (page 81)

The Company does not dispute this criticism.

File No. 120188\* (page 81)

The Company disputes this criticism. The “claim” tendered by the insured was not an actual claim, but rather, a request for a letter of indemnity. Accordingly, the request is not subject to the above Regulations because it does not fit the definition of a “claim.”

A Letter of Indemnity is not a true claim situation. A letter of indemnity requires underwriter investigation and approval. Letters of Indemnity are considered underwriting matters and not claims because there is no loss, which is required under the Conditions and Stipulations of the policy. Further 20 CSR 100-1.010 (1) (B) provides the definition of a claim as “(1) a request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy or (2) [a] request or demand for payment under the policy, such as return of unearned premium or non-forfeiture benefits.”

A request for a letter of indemnity is not an actual claim of loss, but rather, only a statement that there is the potential that a claim may be made in the future. Pursuant to any letter of indemnity issued, the terms, provisions and conditions of the referenced policy are incorporated into, and made a part of the letter. Accordingly, if any actual claim of priority over the insured deed of trust is made, the party to who the indemnity

was issued must notify the Company within 30 days of the date such claim of priority is made. When the letter of indemnity was requested, there was no actual claim of loss of priority. Accordingly, since this was a request for a letter of indemnity, and not a claim, the request is not subject to the same rules as required under a claim.

Further, the Insureds should be able to proceed with their foreclosure based on the policy. We now have a Mutual Indemnification Agreement between the major title companies in Missouri that underscores this rationale.

File No. 72302 (page 81)

The Company disputes this criticism. 20 CSR 100-1.050 states that “[w]ithin 15 working days after the submission of all forms necessary to establish the nature and extent of any claim, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer.” In addition, Regulation 20 CSR 100-1.010 provides that “(G) Notification of claim means any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.” (emphasis added). Conditions and Stipulation 3(b) requires the insured to “notify the Company promptly in writing.”

In this case, the insured merely dropped off a copy of a lawsuit to the agent. There was no notification in writing explaining the nature of the claim. The condition precedent (submission of all forms necessary to establish the nature and extent of any claim) to the Insurer’s obligation under the Regulation at issue never occurred. Accordingly, since proper submission of all information necessary to complete an investigation was not provided by the insured, Insurer was not required by the Regulations to advise the claimant of the acceptance or denial of the claim within fifteen days.

## **B. General Handling Practices**

### **1. Closed Title Claims with Payment**

File No. 93977 (page 81)

The Company does not dispute this criticism.

File No. 104841 (page 81)

The Company disputes this criticism. The claim was tendered December 27, 2001 and acknowledged on January 4, 2002. Contrary to the examiners original criticism, which stated that “the insurer had no further contact with the insured until May 6, 2002, a copy of a letter indicating the actions being taken by the claims handler was sent to the insured on February 22, 2001. Delay after that time was due solely to the bureaucratic delays of St. Louis City in providing a death certificate for the party being

investigated. In the interim, an agreement to insure was provided by Fidelity, thereby protecting the insured from loss.

File No. 104841 (pages 81-82)

The Company disputes this criticism. The information as provided to the insured regarding the potential interest of Hettie L. Patton are spelled out in the file documents. Nothing in the file indicates that there were heirs other than those contained in the chain of title. While the existence of such heirs is of course possible, it was reasonable to assume that none existed. It is unclear what the examiner means by the allegation that Fidelity “failed to disclose benefits or coverage” to the insured. The insured was provided with a policy benefit (i.e., an agreement to insure a new owner) which protected their interest and was satisfactory to them.

File No. 114272 (page 82)

The Company disputes this criticism. The letter of indemnity issued to Old Republic protects the insured owner from loss or damage by allowing them to close on their refinancing. Coverage for the owner was based on the “marked up” commitment, which was a reasonable conclusion despite the absence of the final Owner’s Policy. Such actions were neither misleading nor valueless, and were appropriate in the circumstances.

File No. 82555 (page 82)

The Company does not contest this criticism.

File 114272 (page 82-83)

The Company disputes this criticism. Providing a letter of indemnification is an acceptable method of resolving a claim where the immediate payment of money or other action is not required. It is arbitrary and capricious to suggest that a letter of indemnification “is tantamount to a denial” when a letter of indemnification is in fact an assumed obligation of the company.

## **2. Closed Title Claims Without Payment**

File No. 98393 (page 83)

The Company does not dispute this criticism.

File No. 99489 (pages 83-84)

The Company disputes this criticism. In a letter dated August 19, 2002, the Company requested information from the insured on the status of the foreclosure. By letter dated September 4, 2002, counsel for the insured responded, advising the Company that the foreclosure had occurred on May 17, 2002, more than three months earlier.

Although the letter from counsel asked that the insured be contacted for the amount of the loss, a comparison of the amount of the sale price and the original loan amount, as well as the time lapse since the date of foreclosure, indicated that the insured may have recovered any loss. Further, the insured had already been advised that the Company would pay any loss related to the judicial foreclosure. Under the terms of the policy, it is the responsibility of the insured to inform the insurer of any loss suffered. Since nothing was heard from the insured as to loss, it was assumed that the insured had not incurred a loss.

File No. 105679 (page 84)

The Company disputes this criticism. Based on the documents reviewed and contained within the file and the lack of any adverse action for a period of at least two years on the unreleased prior deed of trust, it was and is reasonable for Fidelity to assume this prior lien has been paid off. The offer to indemnify or insure over this prior lien by the Company fully protects the insured from loss and was a satisfactory way to resolve the claim as is evidenced by the fact that the claimant accepted it.

The Company in no way “failed to properly disclose to the first-party claimant that unmarketability of title is a matter for which the insured is entitled to coverage under the policy.”

File No. 106302 (page 84)

The Company disputes this criticism. The Department alleges a violation of 20 CSR 100-1.020(1), which states “the insurer is obliged to fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance policy under which a claim is presented. First, the letter dated January 15, 2002 did not constitute a “claim” as defined by the Regulations. 20 CSR 100-1.010 (1)(B) defines “claim” as (1) “a request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy” or (2) “[a] request or demand for payment under the policy, such as return of unearned premium or non-forfeiture benefits.” The insured’s January 15, 2002 letter was not a request or demand for payment, but rather, a request for instructions to proceed with foreclosure and indemnification.

Further, the letter was not a “notification of claim.” According to 20 CSR 100-1.010 (G), “notification of Claim means any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its insurance producer, by a claimant which reasonably appraises the insurer of the facts pertinent to a claim;” Because the insured did not present a “claim” as defined by the Regulations, the letter was not a “notification of claim” and the insurer was not required by the cited regulation to disclose all pertinent benefits, coverages, or other provisions of the policy. The insured did not suffer a loss in this instance, and over two years have elapsed since the insured received our indemnity under the terms of the policy. To date no “claim” has been filed in regard to any loss in connection with the prior deed of trust. Should a real

claim be made, the Company has indemnified the insured against any loss sustained by reason of this deed of trust.

The Department states “The insurer has offered to insure following foreclosure w/o exception..., however, the insurer is obliged by the terms of the policy to establish the title, as insured, or otherwise settle the claim.” The Letter of Indemnity given by the Insurer has “otherwise settled the claim.”

File No. 108358 (pages 84-85)

The Company disputes this criticism. The examiner’s report states that “[t]he insurer has denied a claim on a covered matter without conducting a reasonable investigation.” However, there has never been a denial of this claim. In fact, a letter was sent to the insured informing them that Fidelity was committed to insure or indemnify any subsequent transaction and gave an indemnity letter over the liens in question. Since the indemnity was given in 2002, and nothing further has been heard from the insured, it is reasonable to conclude that the insured did not suffer any loss or damage. Further, it is the insured’s responsibility under the terms of the policy and under the terms of a letter of indemnity, to inform the Company within 30 days of any loss or damage as a result of the liens for which the indemnification was issued.

File No. 103129 (page 85)

The Company disputes this criticism. The Insurer received a letter from South & Associates, counsel for Chase Manhattan Mortgage Corporation on November 8, 2001. It was not clear from this letter whether Chase was an insured, since the property which was the subject of the correspondence was different from the property described in the policy. Chase alleged that a deed in its chain of title did not recite the marital status of the grantors. The November 8<sup>th</sup> correspondence was acknowledged on November 9<sup>th</sup>.

Chase’s November 8<sup>th</sup> correspondence did not constitute a “claim” as defined by the Regulations, so 20 CSR 100-1.040 did not apply to require completion of an investigation within 30 days. Under the Regulation, a “claim” is defined as:

(1) a request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy; or (2) a request or demand for any other payment under the policy, such as for the return of unearned premium or non-forfeiture benefits.

Accordingly, the letter from Chase did not refer to a “claim” as defined by the Regulations (20 CSR 100-1.010 (1) (B) nor did it constitute a proper “notification of claim” because it did not “reasonably apprise the insurer of the facts pertinent to a claim” as defined in the Regulations (20 CSR 100-1.010 (1) (G)).

20 CSR 100-1.010 (F) defines an “investigation” as “all activities of an insurer directly or indirectly related to the determination of liabilities *under coverages afforded*

*by an insurance policy.”* Since the Insured never provided a policy that actually insured the property in question, the Company was under no obligation to conduct an investigation. It appears that there was a mutual mistake by Chase and the Insurer as to the applicability of the title insurance policy submitted by Chase.

### **3. Title Claims that were Opened but not Closed Within the Review Period**

File No. 95121 (pages 85-96)

The Company disputes this criticism. The claim received April 18, 2001, acknowledgement letter sent April 20, 2001. Additional information requested from Insured was not received until July 2002. It was the Insured's acts which caused the delay in the investigation. Accordingly, the insured is not under obligation to notify them every 45 days that additional time is needed for the investigation.

File No. 118390 (page 86)

The Company disputes this criticism. The insurer did not fail to disclose any policy coverages to the insured. When a title commitment was issued in 2002, title was vested in a daughter of the deceased owner and the alleged spouse of the deceased owner. The Company gave a letter of indemnity over any outstanding interest of a possible surviving spouse of the deceased owner. Giving the indemnity was a risk assumed by our Company. The Department alleges that this possible outstanding interest makes the property unmarketable. Clearly this is not the case. The former owner passed away in 1990 and there has been no challenge made by any alleged spouse. It is unlikely any claim to the property will be made. Accordingly, a business decision to issue a letter of indemnity over the possible outstanding interest was given.

File No. 111143 (page 86)

The Company does not dispute this criticism.

### **IV. Consumer Complaints**

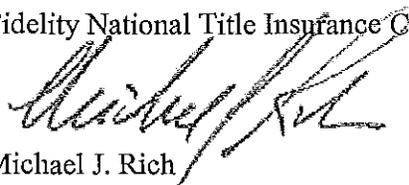
The Company has no comments on these findings.

### **V. Unclaimed Property**

The Company has no comments on these findings.

Respectfully submitted,

Fidelity National Title Insurance Company

A handwritten signature in black ink, appearing to read "Michael J. Rich". The signature is written in a cursive style with a large, sweeping initial "M".

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

Fidelity National Title Insurance Company

NAIC # 51586

Examination Number 0311-32-TLE



January 11, 2010

Home Office  
**601 Riverside Ave**  
**Jacksonville, FL 32204**

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## **FOREWORD**

This market conduct examination report of the Fidelity National 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 “Fidelity” to refer to Fidelity National 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;

“CSR” to refer to the Code of State Regulations; and

“DBA” to refer to an agent “doing business as” a fictitious name filed with the Missouri Secretary of State’s Office.

## **SCOPE OF EXAMINATION**

The DIFP has authority to conduct this examination pursuant to, but not limited to, §§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 0311-32-TLE. The purpose of this examination is to determine if Fidelity complied with Missouri statutes and DIFP regulations.

The examination of Fidelity National Title Insurance Company, NAIC # 51586, was expanded by an examination warrant issued on March 10, 2008. It included the following Fidelity agents to be examined for the time frame of January 1, 2006, to February 29, 2008.

- Bankers and Lenders Title, LLC
- Exclusive Title and Escrow, LLC
- MoKan Title Services, LLC
- Nations Title Agency, Inc.
- Netco Title, Inc.
- Residential Title Services, LLC
- Title Professionals, LLC

## **EXECUTIVE SUMMARY**

Examiners found the following areas of concern.

- In one file reviewed, the Company or its agent failed to disclose an affiliated business arrangement or verify that disclosure had been made to interested parties.
- In two files, the Company or agent failed to use the filed risk rate.
- In several files, the Company or its agent failed to issue the policy within 45 days of all information necessary to do so.
- In several files, the Company or its agent failed to record the deed within five days of completing the transaction.
- In several of the policies reviewed, the company or its agent failed to use sound underwriting.

## EXAMINATION FINDINGS

### **Bankers and Lenders Title LC**

The examiners reviewed six files. The examiners found errors in one of the files reviewed.

**File: 17150-07-3**

**Owners Policy: 2730672-7545306**

The examiners found one error in this file.

1. The business to be written for this file constitutes an affiliated business. Prior to commencing the transaction, the title insurer, title agency, or title agent was obligated to ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title insurer, title agency, or agent. No evidence in the file indicates that this disclosure was made or verified. (See §381.029.2, RSMo)

Bankers and Lenders Title, LLC., is licensed as a title agency by the DIFP. Kozeny and McCubbin, L.C., is a law firm. Wesley T. Kozeny is an owner/manager of both Bankers and Lenders Title, LLC., and Kozeny and McCubbin, L.C. The Kozeny and McCubbin, L.C., website, [www.km-law.com/affiliations.html](http://www.km-law.com/affiliations.html) describes Bankers and Lenders Title, LLC., as affiliated organizations.

Kozeny & McCubbin, L.C., acted in its capacity as trustee to foreclose on a deed of trust. The lender purchased the property at the foreclosure, sold the property, and referred the title transaction to Bankers and Lenders Title. The principals of Kozeny and McCubbin, L.C., are also the principals of Bankers and Lenders Title, LLC. The foreclosing lender had a contractual relationship with Kozeny and McCubbin, L.C. The examiner found no confirmation in the file that the insured buyer was made aware of the affiliated business arrangement existing between Kozeny and McCubbin, L.C., and Bankers and Lenders Title, LLC.

Reference: §381.029.2, RSMo (Supp. 2007)

### **Exclusive Title and Escrow, LLC**

Fidelity terminated its agency relationship with Exclusive by letter dated July 23, 2007, for misappropriation of escrow funds. Fidelity indicated they did not have access to the settlement files. DIFP's investigation section is reviewing the agent.

**MoKan Title Services, LLC**

The examiners reviewed 12 files. Errors were found in seven files.

**File 0815583U**

**Owners Policy: 2730672-76035041**

**Loan Policy: 2730772-76035048**

The examiner found one error in this file.

1. The Company charged the purchaser a risk rate of \$77.80 for an owner's policy of title insurance issued with a face amount of \$56,500.00. The agent charged a risk rate of \$50.00 for a simultaneous loan policy with a face amount of \$79,354.90. The purchaser's full cost of acquisition and planned improvement of the property was \$80,375.00, including \$23,875.00 held in escrow for rehabilitation of the property.

The value of the coverage offered by the Company under the terms of the policy should be related to the dollar amount of the loss that could reasonably be anticipated by the insured and the Company. In the event of a total loss of title, this owner's losses could exceed the amount of the policy as written by more than 40%.

The purchaser could reasonably have obtained coverage of at least \$80,375.00.

Absent a clear intention on the part of the insured to obtain coverage in an amount less than a known risk, underwriting practice requires insuring the full amount of the risk. The Company's underwriting practice is that an owner's policy should not be issued for an amount less than the full insurable value of the interest insured. The Company's underwriting policies specify that an owner's policy may be issued for the full value of the property and any contemplated improvements. (Cf. page 121 of 160 of Fidelity underwriting commentary titled "Underwriting Principles & Exception Language" dated 6/1/1990, as reprinted 06/1993.)

No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo (Supp. 2007)

**File: 077871U**

**Owners Policy: OPM 27106 75182779**

The examiner found one error in this file.

1. At the time of examination of this title, the agent had a copy of an owner's policy of title insurance dated 10/14/2005. The agent did not extend the period of the search of title to any date prior to the date of the earlier owner policy. The chain of title prepared by MoKan Title Services does not reflect a posting for the deed of acquisition of the insured owner named in the earlier policy.

The previous owner's policy includes an exception to title reading: "Building lines, easements and restrictions of record, if any." The phrasing in this prior policy exception indicates that the examiner did not obtain sufficient title information to determine whether there were any building lines, easements, and restrictions a matter of record and affecting the property.

The agent did not have sufficient reason to rely upon the information contained in the prior owner's policy. No additional steps were taken to verify the status of the record title. The search and examination of title in this file did not include sufficient information to permit insuring title in accordance with sound underwriting practices.

The title insurer, title agent, or agency issued a title insurance policy without determining insurability of title in accordance with sound underwriting practices.

In addition, the title agent, or agency knowingly issued an owner's title insurance policy without showing all outstanding, enforceable recorded liens or other interests against the title to be insured.

Reference: §381.071.1,.1(2) and .2, RSMo (Supp. 2007)

**File: 0814933U**

**Owners Policy: 2730672-75937891**

The examiner found one error in this file.

1. The agent closed the transaction in this file on 2/22/2008, and disbursed funds from escrow on 2/25/2008. The agent recorded the deeds from the transaction on 2/28/2008, and issued the policies on 6/9/2008, 102 calendar days after the date of recording.

A title insurer, title agency, or title agent failed to issue the policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**File: 0851072U**

**Owners Policy: 2730672-75549621**

The examiner found one error in this file.

1. At the time of examination of this title, the agent had a copy of an earlier owner's policy of title insurance dated 10/24/2005. The prior policy does not include any exception to title for any matters created or shown by plat. The policy issued by the agent, however, includes the following exception: "Easements, restrictions and setback lines as per the recorded plat ...." There is no recorded plat referenced in the exception, and no indication the agent identified or examined a plat of the subdivision, and no

indication that a plat of the subdivision created any easements, restrictions and setback lines. The agent had no basis for the exception to title.

The agent ran a chain of title to the point of acquisition by the insured named in the prior policy of title insurance. The agent examined the deed of acquisition recorded 10/24/2005, and a trustee's deed in foreclosure recorded 1/15/2008. There are no deed copies, deed abstracts, or examiner notes indicating that any other deeds within the chain of title were examined in preparation for the commitment issued under date of 1/18/2008 and later revised to date of 3/12/2008. The following instruments, any of which could be significant, were not examined:

- Deed of Trust to Long Beach Mortgage recorded 10/24/2005 (apparently the deed of trust later foreclosed)
- Deed of Trust to Robert Baldwin recorded 10/24/2005
- Appointment of trustee by Washington Mutual Bank recorded 7/10/2007
- Assignment of deed of trust from Long Beach Mortgage to Washington Mutual Bank recorded 9/7/2007
- Quit Claim Deed from James D. Robertson to Washington Mutual Bank recorded 12/3/2007
- Appointment of trustee by Washington Mutual Bank recorded 12/18/2007

The examination of title was not sufficient to permit insuring in accordance with sound underwriting practices. The title insurer, title agent, or agency issued a title policy without determining insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo (Supp. 2007)

**File: 713589**

**Owners Policy: OP-2730672-76122340**

The examiner found three errors in this file.

1. The examiner found no documentation that the agent had prior title information when preparing the commitment dated 11/26/2007, or the later commitment dated 1/3/2008. The agent ran a chain of title to 1949. The chain of title may have been sufficient in this transaction; but the examination of the title was not sufficient to justify accepting the risk in accordance with sound underwriting practices. Furthermore, the examination was not sufficient to establish a reasonable certainty that all known and recorded matters affecting title could be reported in the owner's policy of title insurance.

The only documents examined by the agent in preparing the commitment to insure were a warranty deed recorded 3/23/2004, an appointment of successor trustee recorded 9/27/2007, and a trustee's deed under power of foreclosure recorded 10/31/2007, purporting to foreclose the interests of a grantor in a deed of trust dated 3/12/2004, and recorded in Book 15715, Page 299. The examiner found no indication that the agent examined the deed of trust recorded in Book 15715, Page 299.

The chain of title prepared by the agent included several additional recorded instruments. The examiner found no indication the additional documents were examined by the agent. The examination of title failed to review the warranty deed recorded 1/31/1949, the warranty deed recorded 12/19/1949, the warranty deed recorded 5/5/1952, the warranty deed recorded 9/3/1997, the consent recorded 8/23/2001, the deed of trust recorded 8/23/2001, the additional deed of trust recorded 8/23/2001, the assignment of deed of trust recorded 6/11/2003, the appointment of trustee recorded 6/11/2003, the trustee's deed recorded 6/25/2003, the special warranty deed recorded 11/26/2003, and the assignment of deed of trust recorded 9/27/2007.

The policy includes an exception reading as follows: "Easements, restrictions and setback lines as per the recorded plat ...." There are no notes, abstracts, document copies, or indication of any sort, that the recorded plat shows or creates any easements, restrictions and setback lines affecting the property. All or parts of this exception to title may be applicable, but the agent's file contains no information establishing a basis for the exception.

The examination of title was not sufficient to establish insurability in accordance with sound underwriting practices, and assure that all known and recorded matters could be shown in the owner's policy of title insurance. The policy was issued without showing all outstanding, enforceable recorded liens or other interests against the title to be insured.

Reference: §381.071.1, .1(2), and .2 RSMo (Supp. 2007)

2. The agent closed the transaction in this file on 2/20/2008, and disbursed funds from escrow on 2/26/2008. The agent recorded the deeds from the transaction on 3/11/2008, and issued the policy on 7/11/2008, 122 calendar days after the date of recording. All conditions for issuance of the policy were satisfied by 3/11/2008.

The title insurer, title agency, or title agent failed to promptly issue each title insurance policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

3. Funds were disbursed from escrow on 2/26/2008. The deeds were recorded 3/11/2008, 10 business days after disbursement of funds.

The settlement agent failed to record all deeds and security instruments for real estate closings within five business days.

Reference: §381.026.1, RSMo (Supp. 2007)

**Nations Title Agency, Inc.**

Nations Title Agency, Inc. was not an agent for Fidelity during the time frame of the examination. No Nations Title Agency, Inc. files were reviewed by the examiners.

**Netco Title, Inc.**

Netco Title, Inc. was registered with the office of the Secretary of State of Missouri on 6/18/2001 as a fictitious name for Netco, Inc. Netco, Inc. is an Illinois domestic corporation. The Company provided data indicating that 491 policies were issued by Netco between January 1, 2005, and December 31, 2007.

Eight policy files were selected from that list for review. Five of the policy files requested were not provided by the Company or its agent. The Company terminated its agency with Netco and its affiliated agents in 2007. Details regarding these terminations and the affiliated business relationship between Netco, Inc; Infinity Title Services, LLC; Choice Title Services, LLC; Clearwater Title Services, LLC; all with an address of 401 Fountain Lakes Blvd, St. Charles, MO 63301, and AAT Services, LLC with an address of 1550 Wall St Ste 212, St. Charles, MO 63303 was requested but not provided by the underwriter or the agents.

The three files provided contain the following errors.

**File: STL482488**

**Loan Policy: 1412- 1231387**

The examiner found four errors in this file.

1. The policy is dated 1/5/2006, and was issued 2/27/2006, with a face amount of \$96,653.19. The face of the policy shows "Premium" of \$219.00 and a "Risk Rate" of \$57.99. The agent's invoice to the insured reflects a total charge for the policy of \$392.00. The risk rate of \$57.99 shown on the face of the policy does not match any rate appearing on the rate schedule filed by the insurer with the Director on 5/19/2003.

The agent issued the policy showing an incorrect amount for the total charges for issuance of the policy and a risk rate other than the risk rate filed with the Director.

No policy of title insurance is to be issued unless it contains the total amount paid for the policy and the risk rate for the policy.

Reference: 20 CSR 500-7.100(3)(B) (1999).

2. The risk rate of \$57.99 shown on the face of the policy was not the correct risk rate and does not appear to match any rate appearing on the rate schedule filed by the insurer with the director on 5/19/2003. There is no indication in this file that the borrower named in this loan policy of title insurance was insured as owner in an owner's policy of title insurance issued by any title insurer. The correct risk rate for this policy was \$87.36, calculated as follows:  $(50 \times 1.00 = 50.00) + (46.7 \times 0.80 = 37.36) = \$87.36$ .

The agent charged a risk rate for the policy that was less than the risk rate filed with the Director. No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules filed with the Director.

Reference: §381.181, RSMo (1994).

3. The agent did not use a title plant in preparing the search of title and examination for the title insurance commitment and policy. 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 excepted 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 (1999).

4. The agent issued the policy reporting two exceptions to title reading as follows:

EASEMENT AS SHOWN IN INSTRUMENT BOOK: 5022 PAGE: E  
COVENANTS, CONDITIONS, RESTRICTIONS, AND BUILDING SETBACK LINES  
CONTAINED IN INSTRUMENT AS BOOK 5022 PAGE E.

The agent had no factual basis for these "exceptions" to title. While the recorder's office of the city of St. Louis has a record book numbered 5022, and while that book contains several hundred pages, it contains no pages designated "E." The notation "B5022/E" found in the searcher's notes in this file is a reference to a page in the map books maintained by the assessor of the City of St. Louis. The property in question is located in Block 5022-East of the City of St. Louis. The assessor of the City of St. Louis has been maintaining a City Block mapping system for well over 100 years but that mapping system is not a part of the official land records and is not a location for recording easements, covenants, conditions, restrictions, etc.

Exceptions to title that are not clear or are without factual basis do not represent sound underwriting practice. No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo. (1994).

**File: KC478192-1**

**Loan Policy: 1412- 1230740**

The examiner found four errors in this file.

1. The deed of acquisition names the grantee as a tenancy by the entireties.

The insured deed of trust names an individual grantor who is also a member of the tenancy by the entireties. The insured deed of trust does not show a grant by the tenancy by the entireties. The deed of trust did not attach as a lien.

It is not a sound underwriting practice to insure the validity of a mortgage that does not attach as a lien. No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo. (1994)

2. The agent closed this purchase transaction on 1/6/2006, disbursed funds from the escrow on the same date, and recorded documents from the closing on 1/17/2006, a delay of six business days.

The settlement agent was required to record all security instruments from the real estate closing within three business days.

Reference: §381.412.1, RSMo (1994).

3. The face of the policy shows “Premium” of \$338.75 and a “Risk Rate” of \$98.40. The agent’s total charges for the policy as shown on the settlement statement of 1/6/2006 were \$630.00, consisting of a title search fee of \$175.00 and a lender’s coverage fee of \$455.00.

The risk rate of \$98.40 shown on the policy was apparently calculated at a rate of \$0.60/thousand for the full face amount of \$164,000.00. The rate used by the agent was not among the rates filed by the insurer with the Director on 5/19/2003.

The agent issued the policy showing an incorrect amount for the total charges for issuance of the policy and a risk rate other than the risk rate filed with the Director.

No policy of title insurance is to be issued unless it contains the total amount paid for the policy and the risk rate for the policy.

Reference: 20 CSR 500-7.100(3)(B) (1999).

4. The face of the policy shows a “Risk Rate” of \$98.40. This loan policy was not eligible for any discounted rates. The correct risk rate for this policy was \$134.80, calculated as follows:  $(50 \times 1.00 = 50.00) + (50 \times 0.80 = 40.00) + (64 \times 0.70 = 44.80) = \$134.80$ .

No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules filed with the Director.

Reference: §381.181, RSMo (1994).

**File: KC328908**

**Loan Policy: 1412- 1232100**

In this file the examiner found one error and one practice not in the best interests of the insured.

1. This loan policy is dated 8/28/2003, and was issued 4/17/2006, with a face amount of \$9,300.00. The agent closed the transaction in escrow on 8/15/2003, disbursed funds from the escrow on 8/20/2003, and recorded documents from the closing on 8/28/2003, a delay of six business days.

The settlement agent was required to record all security instruments from the real estate closing within three business days.

Reference: §381.412.1, RSMo (1994).

2. The loan policy is dated 8/28/2003, and has a face amount of \$9,300.00. The agent closed the transaction in escrow on 8/15/2003, disbursed funds from escrow on 8/20/2003, and recorded the deed of trust on 8/28/2003. The policy was issued on 4/17/2006. The policy was issued 963 calendar days after the agent had acquired all necessary information. The agent delayed issuing the policy for more than 31 months.

Significant delay in issuing the policy of title insurance is not in the best interests of the insured. (A recent change in Missouri title insurance law requires that the policy of title insurance ordinarily be issued within 45 days of the escrow closing. The applicable statute is §381.038.3, RSMo. (Supp. 2007).

**Residential Title Services, Inc.**

Residential Title Services, Inc. is a national agent. The agency processed its last Missouri order on 5/2/2007. It 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. As such, no files were reviewed for purposes of this examination.

**Title Professionals, LLC**

Fidelity did not have an agency contract with Title Professionals, LLC during the time frame of the examination set out in this warrant.

## **FINAL REPORT SUBMISSION**

Attached hereto is the Division of Insurance Market Regulation's Final Addendum Report of the examination of Fidelity National Title Insurance Company (NAIC #51586), Examination Number 0311-32-TLE. This examination was conducted by Martha Long, Joe Ott, and Ted Greenhouse. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated April 6, 2009. 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

**STATE OF MISSOURI**

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

Market Conduct Examination Report  
ADDENDUM  
Fidelity National Title Insurance Company  
NAIC # 51586  
Examination Number 0311-32-TLE

INSURER'S RESPONSE TO  
THE DEPARTMENT'S ADDENDUM REPORT April 6, 2009

Submitted June 30, 2009

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## INTRODUCTION

Fidelity National Title Insurance Company (“Company” or “Insurer”) has copied the alleged violations contained in the Addendum Report (“Addendum Report”) dated April 6, 2009, prepared by the Department of Insurance, Financial Institutions and Professional Registration (“Department” or “DIFP”) and has set them out as they appeared in the Addendum Report. The Company will respond to the alleged violations by placing its response immediately following each alleged violation.

## GENERAL OBJECTIONS

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 as 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 2<sup>nd</sup> 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 3<sup>rd</sup> 515. (Mo. App. W.D. 2006) citing *Voss v American Mutual Liability Insurance Company*, 341 SW 2<sup>nd</sup> 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.

## RESPONSE TO EXAMINATION FINDINGS<sup>1</sup>

### Bankers and Lenders Title LC

The examiners reviewed six files. The examiners found errors in one of the files reviewed.

File: 17150-07-3

Owners Policy: 2730672-7545306

The examiners found one error in this file.

1. The business to be written for this file constitutes an affiliated business. Prior to commencing the transaction, the title insurer, title agency, or title agent was obligated to ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title insurer, title agency, or agent. No evidence in the file indicates that this disclosure was made or verified. (See §381.029.2, RSMo)

Bankers and Lenders Title, LLC., is licensed as a title agency by the DIFP. Kozeny and McCubbin, L.C., is a law firm. Wesley T. Kozeny is an owner/manager of both Bankers and Lenders Title, LLC., and Kozeny and McCubbin, L.C. The Kozeny and McCubbin, L.C., website, [www.km-law.com/affiliations.html](http://www.km-law.com/affiliations.html) describes Bankers and Lenders Title, LLC., as affiliated organizations.

Kozeny & McCubbin, L.C., acted in its capacity as trustee to foreclose on a deed of trust. The lender purchased the property at the foreclosure, sold the property, and referred the title transaction to Bankers and Lenders Title. The principals of Kozeny and McCubbin, L.C., are also the principals of Bankers and Lenders Title, LLC. The foreclosing lender had a contractual relationship with Kozeny and McCubbin, L.C. The examiner found no confirmation in the file that the insured buyer was made aware of the affiliated business arrangement existing between Kozeny and McCubbin, L.C., and Bankers and Lenders Title, LLC.

Reference: §381.029.2, RSMo (Supp. 2007)

### RESPONSE:

**Disagree.** The real issue is whether Kozeny & McCubbin, L.C. ("KM") or the owners (Wes Kozeny and Garry McCubbin) are "producers" of business. Based upon the way the business comes to Bankers and Lenders Title ("BLT") that is not the case. KM is not a trustee for the Seller. First, the "Seller" is not the Seller until KM's role as trustee is complete; until then they are just a lender. Second, the REO referral is generally from a separate entity, or at least from a separate department if within the same entity. Seller may be directing the REO transaction to BLT because KM and BLT are related entities, but KM is not referring that

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<sup>1</sup> Because of the length of the Department's Report, the Company will respond to each criticism in the order it appears in the Report without reproducing the text of the criticism.

business. KM's trustee role is not general, it is limited to the powers given them in the deed of trust securing the Note.

Therefore, KM does not have the power to direct the referral of title business. RSMo 381.029, Section 1(5) defines referral; specifically with respect to the direction of title insurance business. First, KM doesn't have any power or influence over their client. The clients are not directing the buyers to KM even under circumstances where the seller pays the policy cost. The fact that the seller may contract with the buyer to close a certain place has absolutely nothing to do with KM nor is it within KM's control or influence. The party paying for the policy, whether under a contract provision or otherwise, is, "producer" of the business.

The Company's agency agreement is with Bankers & Lenders Title L.C. and to the extent the agent creates or establishes other non-title agency business or relationships, the Company is not liable for the acts of parties not appointed by the Company. The Company is not the correct party in interest and the DIFP's jurisdiction in this matter is under the producer licensing law and not against the Company.

#### **Exclusive Title and Escrow, LLC**

Fidelity terminated its agency relationship with Exclusive by letter dated July 23, 2007, for misappropriation of escrow funds. Fidelity indicated they did not have access to the settlement files. DIFP's investigation section is reviewing the agent.

#### **MoKan Title Services, LLC**

The examiners reviewed 12 files. Errors were found in seven files.

#### **File 0815583U**

**Owners Policy: 2730672-76035041**

**Loan Policy: 2730772-76035048**

The examiner found four errors in this file.

1. The agent issued the owner's policy for a face amount of \$56,500.00, the purchase price shown on the settlement statement dated 4/24/2008. The agent charged a risk rate of \$77.80, which is the correct risk rate for the subject policy.

The agent charged a risk rate of \$50.00 for a loan policy with a face amount of \$79,354.90 and issued simultaneously with the owner's policy. The correct rate for the simultaneous issue loan policy was \$22.32. The agent charged and the consumer paid \$27.68 more than the rate filed with the Director.

Premium schedules must be filed with the director. No title insurer or agent may use or collect any premium except in accordance with the premium schedules filed with the Director.

Reference: §381.181, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. Alternatively, the agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law.

2. The Company charged the purchaser a risk rate of \$77.80 for an owner's policy of title insurance issued with a face amount of \$56,500.00. The agent charged a risk rate of \$50.00 for a simultaneous loan policy with a face amount of \$79,354.90. The purchaser's full cost of acquisition and planned improvement of the property was \$80,375.00, including \$23,875.00 held in escrow for rehabilitation of the property.

The value of the coverage offered by the Company under the terms of the policy should be related to the dollar amount of the loss that could reasonably be anticipated by the insured and the Company. In the event of a total loss of title, this owner's losses could exceed the amount of the policy as written by more than 40%.

The purchaser could reasonably have obtained coverage of at least \$80,375.00.

Absent a clear intention on the part of the insured to obtain coverage in an amount less than a known risk, underwriting practice requires insuring the full amount of the risk. The Company's underwriting practice is that an owner's policy should not be issued for an amount less than the full insurable value of the interest insured. The Company's underwriting policies specify that an owner's policy may be issued for the full value of the property and any contemplated improvements. (Cf. page 121 of 160 of Fidelity underwriting commentary titled "Underwriting Principles & Exception Language" dated 6/1/1990, as reprinted 06/1993.)

No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. Alternatively, the agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law. As a matter of law, an insurer cannot issue coverage for more than the value of the property to be insured. The agent issued the original policy in the correct amount based on the value of the property regardless of the amount

held in escrow. At the time the repairs were to be complete, the owner would have been entitled to pay for and receive an endorsement increasing the face value of the property based on sound underwriting practices.

3. The agent closed the transaction on 4/24/2008. The examiner was not able to determine date of disbursement from the information in this file but estimates that disbursement was no more than three business days later on 4/29/2008. The deeds were not recorded until 5/29/2008, a delay of 20 business days after 4/29/2008.

The settlement agent must present for recording all deeds and security instruments for real estate closings handled within five business days after completion of all conditions precedent thereto unless otherwise instructed by all parties to the transaction.

Reference: §381.026.1, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. The Company disputes that the alleged violation can be charged to the Company.

4. The agent closed the transaction in this file on 4/24/2008. The transaction was funded on the same day. The examiner is not able to determine from this file when the agent disbursed funds from the escrow account. Allowing a reasonable time of three business days (to 4/29/2008) for the agent to disburse the funds from escrow and the maximum statutory time of five business days to 5/6/2008, to record the deeds from the transaction, the policy in this file should have been issued no later than 6/20/2008, 45 calendar days later. The policy was issued 7/1/2008, a delay of 56 calendar days.

A title insurer, title agency, or title agent failed to issue the title insurance policies within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. Alternatively, §381.038.3, RSMo (Supp. 2007) states that "A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. **A title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law.

The agent's failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

**File: 816983**

**Owners Policy: OP-2008.2730672-76159082**

**Loan Policy: LP-2008.2730772-76159092**

The examiner found two errors in this file.

1. The agent closed the transaction in this file on 4/29/2008. The transaction was disbursed from escrow on 4/30/2008. The deeds were recorded on 5/14/2008, nine business days after completion of all conditions precedent.

The settlement agent failed to present the deeds from the transaction within five business days after completion of all conditions precedent.

Reference: §381.026.1, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. The Company disputes that the alleged violation can be charged to the Company.

2. The agent closed the transaction in this file on 4/29/2008, and disbursed funds from escrow on 4/30/2008. The agent recorded the deeds from the transaction on 5/14/2008, and issued the policies on 7/22/2008, 69 calendar days after the date of recording. All conditions for issuance of the policy were satisfied by 5/14/2008.

The title insurer, title agency, or title agent failed to issue the title insurance policies within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. See General Objection 6. Alternatively, §381.038.3, RSMo (Supp. 2007) states that "A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A **title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the

insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law. The agent's failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

**File: 0815559U**

**Owners Policy: OP-.1729671-75502802**

The examiner found one error in this file.

1. The agent closed the transaction in this file on 3/4/2008. The agent recorded the deeds from the transaction on 3/10/2008, and issued the policy on 6/2/2008, 84 calendar days after the date of recording. All conditions for issuance of the policy were satisfied by 3/10/2008.

A title insurer, title agency, or title agent failed to issue this title insurance policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. *See* General Objection 6. Alternatively, §381.038.3, RSMo (Supp. 2007) states that "A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A **title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law. The agent's failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

**File: 077871U**

**Owners Policy: OPM 27106 75182779**

The examiner found one error in this file.

1. At the time of examination of this title, the agent had a copy of an owner's policy of title insurance dated 10/14/2005. The agent did not extend the period of the search of title to any date prior to the date of the earlier owner policy. The chain of title prepared by MoKan Title Services does not reflect a posting for the deed of acquisition of the insured owner named in the earlier policy.

The previous owner's policy includes an exception to title reading: "Building lines, easements and restrictions of record, if any." The phrasing in this prior policy exception indicates that the examiner did not obtain sufficient title information to determine whether there were any building lines, easements, and restrictions a matter of record and affecting the property.

The agent did not have sufficient reason to rely upon the information contained in the prior owner's policy. No additional steps were taken to verify the status of the record title. The search and examination of title in this file did not include sufficient information to permit insuring title in accordance with sound underwriting practices.

The title insurer, title agent, or agency issued a title insurance policy without determining insurability of title in accordance with sound underwriting practices.

In addition, the title agent, or agency knowingly issued an owner's title insurance policy without showing all outstanding, enforceable recorded liens or other interests against the title to be insured.

Reference: §381.071.1,1(2) and .2, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** The cited statute, known as the title plant law, sets forth the sufficiency of the records one must search before issuing a title policy. Subsection 1(2) of the law merely says that insurability of title is to be made in accordance with sound underwriting practices. Missouri law does not define the term "sound underwriting practices." The Company acknowledges its statutory obligation to employ sound underwriting practices, and has historically defined the phrase "sound underwriting practice" as 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 examiner has not demonstrated that the company's approach using that underwriting standard violates Missouri law. The examiner has attempted to apply this term more broadly than the meaning of the term permits. RSMo. §381.071.1(2) does not provide a means by which the examiner may, through criticisms related to title searches or decisions relating to coverage, narrow the standards used by the Company to underwrite its policies. The Company disagrees with a conclusion that it has engaged in unsound underwriting practices. To the extent the examiner disagrees with the company, such disagreement does not rise to a violation of the title plant statute where the acceptance of the risk was within the underwriting guidelines of the company.

Section 381.071, RSMo. requires that a title search "be made from the evidence prepared from a title plant of the county where the property is located as herein defined." It is a common and lawful practice to accept information from a plant owner and that information can be in the form of an existing policy of insurance. This is especially true in the case of developments where master searches are retained and subsequent searches adopt the contents of the master file without having to re-read or re-search the documents in the master file. The statute does not mandate a full search or even a fully documented search. The statute merely requires evidence

of the search and an existing policy of insurance meets that statutory standard. The statement that the searcher “took no additional steps to verify the status of the record title,” to the extent it relates to a fully documented search prior to the date of the Stewart policy, is inconsistent with a statute that allows a searcher to rely on the title plant of others.

The decision on whether a subsequent underwriter is required to adopt the same exceptions as a prior underwriter is a matter of the underwriting policy of the insurer. The examiner merely conjectures about the reason for the exception regarding building lines and easements in the Stewart policy. It’s not uncommon for underwriters (whether for title or any other line) to have different underwriting policies than their competitors. Indeed, this type of exception is one that the examiner has objected to in the past since it takes an exception to matters of record. The examiner in the past has been critical of generally worded exceptions when used in Schedule B and the use by Fidelity of the Stewart language would constitute a practice which the examiner in the past has asserted to be incorrect. The Fidelity policy shows specifically worded exceptions as opposed to the more general Stewart exceptions.

**File: 0814933U**

**Owners Policy: 2730672-75937891**

The examiner found one error in this file.

1. The agent closed the transaction in this file on 2/22/2008, and disbursed funds from escrow on 2/25/2008. The agent recorded the deeds from the transaction on 2/28/2008, and issued the policies on 6/9/2008, 102 calendar days after the date of recording.

A title insurer, title agency, or title agent failed to issue the policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. *See* General Objection 6. Alternatively, §381.038.3, RSMo (Supp. 2007) states that “A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A **title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law. The agent’s failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

**File: 0851072U**

**Owners Policy: 2730672-75549621**

The examiner found one error in this file.

1. At the time of examination of this title, the agent had a copy of an earlier owner's policy of title insurance dated 10/24/2005. The prior policy does not include any exception to title for any matters created or shown by plat. The policy issued by the agent, however, includes the following exception: "Easements, restrictions and setback lines as per the recorded plat ...." There is no recorded plat referenced in the exception, and no indication the agent identified or examined a plat of the subdivision, and no indication that a plat of the subdivision created any easements, restrictions and setback lines. The agent had no basis for the exception to title.

The agent ran a chain of title to the point of acquisition by the insured named in the prior policy of title insurance. The agent examined the deed of acquisition recorded 10/24/2005, and a trustee's deed in foreclosure recorded 1/15/2008. There are no deed copies, deed abstracts, or examiner notes indicating that any other deeds within the chain of title were examined in preparation for the commitment issued under date of 1/18/2008 and later revised to date of 3/12/2008. The following instruments, any of which could be significant, were not examined:

- Deed of Trust to Long Beach Mortgage recorded 10/24/2005 (apparently the deed of trust later foreclosed)
- Deed of Trust to Robert Baldwin recorded 10/24/2005
- Appointment of trustee by Washington Mutual Bank recorded 7/10/2007
- Assignment of deed of trust from Long Beach Mortgage to Washington Mutual Bank recorded 9/7/2007
- Quit Claim Deed from James D. Robertson to Washington Mutual Bank recorded 12/3/2007
- Appointment of trustee by Washington Mutual Bank recorded 12/18/2007

The examination of title was not sufficient to permit insuring in accordance with sound underwriting practices. The title insurer, title agent, or agency issued a title policy without determining insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo (Supp. 2007)

**RESPONSE:**

**Disagree.** The cited statute, known as the title plant law, sets forth the sufficiency of the records one must search before issuing a title policy. Subsection 1(2) of the law merely says that insurability of title is to be made in accordance with sound underwriting practices. Missouri law does not define the term "sound underwriting practices." The Company acknowledges its statutory obligation to employ sound underwriting practices, and has historically defined the phrase "sound underwriting practice" as 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 examiner, has not demonstrated that the company's approach using that standard violates Missouri law. The examiner, however, has attempted to apply this term more broadly than permitted by the statute. RSMo. §381.071.1(2) does not provide a means by which the examiner may, through criticisms related to title searches or decisions relating to coverage, narrow the standards used by the Company to underwrite its policies. The Company disagrees with a conclusion that it has engaged in unsound underwriting practices. To the extent the examiner disagrees with the company, such disagreement does not rise to a violation of the title plant statute where the acceptance of the risk was within the underwriting guidelines of the company.

In accordance with the custom and practice in 2006 under the law as it applied at that time, the agency relied on the mutual indemnity that existed between the major title insurance companies regarding the prior policy that was in the file and did not go behind the start to verify that Stewart did not find any easements or restrictions that were not listed specifically in their policy. There is no basis to re-examine the file in that instance. In response to criticisms of the DIFRPR subsequent to 2006, the agency has since changed its process and searches behind prior policies for these encumbrances when a prior policy does not include specific exceptions for easements, restrictions, HOA, etc. The agency's decisions with respect to the final version of the policy was justified in this case since the interest was insurable based on the prior Stewart policy and the agency's bring to date search. The statute is satisfied so long as the file shows copies of documents that would need to be cleared or would be the basis for an exception in the final title policy.

**File: 713589**

**Owners Policy: OP-2730672-76122340**

The examiner found three errors in this file.

1. The examiner found no documentation that the agent had prior title information when preparing the commitment dated 11/26/2007, or the later commitment dated 1/3/2008. The agent ran a chain of title to 1949. The chain of title may have been sufficient in this transaction; but the examination of the title was not sufficient to justify accepting the risk in accordance with sound underwriting practices. Furthermore, the examination was not sufficient to establish a reasonable certainty that all known and recorded matters affecting title could be reported in the owner's policy of title insurance.

The only documents examined by the agent in preparing the commitment to insure were a warranty deed recorded 3/23/2004, an appointment of successor trustee recorded 9/27/2007, and a trustee's deed under power of foreclosure recorded 10/31/2007, purporting to foreclose the interests of a grantor in a deed of trust dated 3/12/2004, and recorded in Book 15715, Page 299. The examiner found no indication that the agent examined the deed of trust recorded in Book 15715, Page 299.

The chain of title prepared by the agent included several additional recorded instruments. The examiner found no indication the additional documents were examined by the agent. The examination of title failed to review the warranty deed recorded 1/31/1949, the warranty deed recorded 12/19/1949, the warranty deed recorded 5/5/1952, the warranty deed recorded 9/3/1997, the consent recorded 8/23/2001, the deed of trust recorded 8/23/2001, the additional deed of trust recorded 8/23/2001, the assignment of deed of trust recorded 6/11/2003, the appointment of trustee recorded 6/11/2003, the trustee's deed recorded 6/25/2003, the special warranty deed recorded 11/26/2003, and the assignment of deed of trust recorded 9/27/2007.

The policy includes an exception reading as follows: "Easements, restrictions and setback lines as per the recorded plat ...." There are no notes, abstracts, document copies, or indication of any sort, that the recorded plat shows or creates any easements, restrictions and setback lines affecting the property. All or parts of this exception to title may be applicable, but the agent's file contains no information establishing a basis for the exception.

The examination of title was not sufficient to establish insurability in accordance with sound underwriting practices, and assure that all known and recorded matters could be shown in the owner's policy of title insurance. The policy was issued without showing all outstanding, enforceable recorded liens or other interests against the title to be insured.

Reference: §381.071.1, .1(2), and .2 RSMo (Supp. 2007)

#### **RESPONSE:**

**Disagree.** The cited statute, known as the title plant law, sets forth the sufficiency of the records one must search before issuing a title policy. Subsection 1(2) of the law merely says that insurability of title is to be made in accordance with sound underwriting practices. Missouri law does not define the term "sound underwriting practices." The Company acknowledges its statutory obligation to employ sound underwriting practices, and has historically defined the phrase "sound underwriting practice" as 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 examiner, has not demonstrated that the company's approach using that standard violates Missouri law. The examiner, however, has attempted to apply this term more broadly than permitted by the statute. RSMo. §381.071.1(2) does not provide a means by which the examiner may, through criticisms related to title searches or decisions relating to coverage, narrow the standards used by the Company to underwrite its policies. The Company disagrees with a conclusion that it has engaged in unsound underwriting practices. To the extent the examiner disagrees with the company, such disagreement does not rise to a violation of the title plant statute where the acceptance of the risk was within the underwriting guidelines of the company.

The title plant law does not require proof of the search to the extent suggested by the examiner, especially in the case of a foreclosure which, pursuant to the FCL transfers clear title to the foreclosure sale purchaser. When using the title plant the agency relies on the evidence in the plant. The statute does not require the documentation of back title suggested by the

examiner. In cases where the deeds of trust and related documents will be satisfied or released upon settlement, the commitment and policy are sufficient evidence of compliance with the statute, especially where no exception to the documents will be taken.

The plat exception is valid especially if the title plant contains the reference to the plat. Even the examiner agrees that it may be a valid exception. The agency agrees that a reference to the plat recording information in the exception might be useful but disagrees that the failure to relate the exception to a recorded document is evidence of unsound underwriting if the title plant supports the exception.

2. The agent closed the transaction in this file on 2/20/2008, and disbursed funds from escrow on 2/26/2008. The agent recorded the deeds from the transaction on 3/11/2008, and issued the policy on 7/11/2008, 122 calendar days after the date of recording. All conditions for issuance of the policy were satisfied by 3/11/2008.

The title insurer, title agency, or title agent failed to promptly issue each title insurance policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

#### **RESPONSE:**

**DISAGREE:** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. Alternatively, §381.038.3, RSMo (Supp. 2007) states that “A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. A **title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law. The agent’s failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

3. Funds were disbursed from escrow on 2/26/2008. The deeds were recorded 3/11/2008, 10 business days after disbursement of funds.

The settlement agent failed to record all deeds and security instruments for real estate closings within five business days.

Reference: §381.026.1, RSMo (Supp. 2007)

**RESPONSE:**

**DISAGREE:** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. The Company disputes that the alleged violation can be charged to the Company.

**File: 0816525U**

**Owners Policy: OP-2008.2730672-76215022**

**Loan Policy: LP-2008.2730722-76215030**

The examiner found one error in this file.

1. The agent closed the transaction in this file on 6/6/2008, and disbursed funds from escrow on 6/10/2008. The agent recorded the deeds from the transaction on 6/11/2008, and issued the policies on 7/29/2008, 48 calendar days after the date of recording.

The title insurer, title agency, or title agent failed to issue insurance policy within 45 days after compliance with the requirements of the commitment for title insurance.

Reference: §381.038.3, RSMo (Supp. 2007)

**RESPONSE:**

**DISAGREE:** This violation did not occur within the time specified in the examination warrant and therefore is outside the subject matter jurisdiction of the examination. *See* General Objection 6. Alternatively, §381.038.3, RSMo (Supp. 2007) states that “A **title agent and a title agency** shall remit premiums to the title insurer under the term of its agency contract, but in no event later than within sixty days of receiving an invoice from the title insurer. **A title insurer, title agency, or title agent** shall promptly issue each title insurance policy within forty-five days after compliance with the requirements of the commitment for insurance, unless special circumstances as defined by rule delay the issuance. In this case the agent, without notice to the insurer, failed to issue the policy as required by law, a violation of the statute and the producer licensing law. The agent’s failure cannot be imputed to the company as it was an act outside the scope of the agency agreement.

**Nations Title Agency, Inc.**

Nations Title Agency, Inc. was not an agent for Fidelity during the time frame of the examination. No Nations Title Agency, Inc. files were reviewed by the examiners.

**Netco Title, Inc.**

Netco Title, Inc. was registered with the office of the Secretary of State of Missouri on 6/18/2001 as a fictitious name for Netco, Inc. Netco, Inc. is an Illinois domestic corporation. The Company

provided data indicating that 491 policies were issued by Netco between January 1, 2005, and December 31, 2007.

Eight policy files were selected from that list for review. Five of the policy files requested were not provided by the Company or its agent. The Company terminated its agency with Netco and its affiliated agents in 2007. Details regarding these terminations and the affiliated business relationship between Netco, Inc; Infinity Title Services, LLC; Choice Title Services, LLC; Clearwater Title Services, LLC; all with an address of 401 Fountain Lakes Blvd, St. Charles, MO 63301, and AAT Services, LLC with an address of 1550 Wall St Ste 212, St. Charles, MO 63303 was requested but not provided by the underwriter or the agents.

**Company's Note related to non-production of files:** On February 6, 2009, the Company objected to the request for files and information relating to entities not named in the Warrant dated March 10, 2008 which were the alleged affiliated agencies referred to above. Additionally, the Company objected on the grounds that no factual basis was provided by the Department to produce the requested files. The Department made some attempts to obtain the files from Netco directly, as an affiliate of the named entities but discontinued any attempt to seek them from the Company.

The three files provided contain the following errors.

**File: STL482488**

**Loan Policy: 1412- 1231387**

The examiner found four errors in this file.

1. The policy is dated 1/5/2006, and was issued 2/27/2006, with a face amount of \$96,653.19. The face of the policy shows "Premium" of \$219.00 and a "Risk Rate" of \$57.99. The agent's invoice to the insured reflects a total charge for the policy of \$392.00. The risk rate of \$57.99 shown on the face of the policy does not match any rate appearing on the rate schedule filed by the insurer with the Director on 5/19/2003.

The agent issued the policy showing an incorrect amount for the total charges for issuance of the policy and a risk rate other than the risk rate filed with the Director.

No policy of title insurance is to be issued unless it contains the total amount paid for the policy and the risk rate for the policy.

Reference: 20 CSR 500-7.100(3)(B) (1999).

**RESPONSE:**

**DISAGREE:** The agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law.

2. The risk rate of \$57.99 shown on the face of the policy was not the correct risk rate and does not appear to match any rate appearing on the rate schedule filed by the insurer with the director on 5/19/2003. There is no indication in this file that the borrower named in this loan policy of title insurance was insured as owner in an owner's policy of title insurance issued by any title insurer. The correct risk rate for this policy was \$87.36, calculated as follows:  $(50 \times 1.00 = 50.00) + (46.7 \times 0.80 = 37.36) = \$87.36$ .

The agent charged a risk rate for the policy that was less than the risk rate filed with the Director. No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules filed with the Director.

**RESPONSE:**

**DISAGREE:** The agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law.

Reference: §381.181, RSMo (1994).

3. The agent did not use a title plant in preparing the search of title and examination for the title insurance commitment and policy. 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 excepted 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 (1999).

**RESPONSE:**

**DISAGREE:** The agent does not dispute the violation. The agent has the responsibility under 20 CSR 500-7.200, as the person ordering the search, to comply with Missouri law and the agent's failure to do so, without notice to the Company, is an act outside the scope of the agency agreement and does not render the Company liable for a violation.

4. The agent issued the policy reporting two exceptions to title reading as follows:

EASEMENT AS SHOWN IN INSTRUMENT BOOK: 5022 PAGE: E  
COVENANTS, CONDITIONS, RESTRICTIONS, AND BUILDING SETBACK LINES  
CONTAINED IN INSTRUMENT AS BOOK 5022 PAGE E.

The agent had no factual basis for these “exceptions” to title. While the recorder’s office of the city of St. Louis has a record book numbered 5022, and while that book contains several hundred pages, it contains no pages designated “E.” The notation “B5022/E” found in the searcher’s notes in this file is a reference to a page in the map books maintained by the assessor of the City of St. Louis. The property in question is located in Block 5022-East of the City of St. Louis. The assessor of the City of St. Louis has been maintaining a City Block mapping system for well over 100 years but that mapping system is not a part of the official land records and is not a location for recording easements, covenants, conditions, restrictions, etc.

Exceptions to title that are not clear or are without factual basis do not represent sound underwriting practice. No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo. (1994).

**RESPONSE:**

**DISAGREE:** The agent does not dispute the violation. The agent, as the person ordering evaluating the search report, to comply with Missouri law and the agent’s failure to do so, without notice to the Company, is an act outside the scope of the agency agreement and does not render the Company liable for a violation.

**File: KC478192-1**

**Loan Policy: 1412- 1230740**

The examiner found four errors in this file.

1. The deed of acquisition names the grantee as a tenancy by the entireties.

The insured deed of trust names an individual grantor who is also a member of the tenancy by the entireties. The insured deed of trust does not show a grant by the tenancy by the entireties. The deed of trust did not attach as a lien.

It is not a sound underwriting practice to insure the validity of a mortgage that does not attach as a lien. No title insurance policy is to be written unless and until the title insurer, title agent, or agency has caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Reference: §381.071.1 and .1(2), RSMo. (1994)

**RESPONSE:**

**Disagree in Part, Agree in Part:** The Company notes that the agent, Netco, provided copies of documents to the examiners but the Company cannot be sure that the documents provided constitute all of the relevant documents in the file. To the extent the records attached to Crit J17 constitute all of the records in the agent's file, the Company would agree that there is an irreconcilable distinction between the names of the grantees on the deed conveying title and the name of the grantor of the deed of trust. The agent, in issuing a policy of title insurance, acted outside the scope of its agency agreement and may be cited for a violation of the producer licensing law but the violation is not one attributable to the Company.

2. The agent closed this purchase transaction on 1/6/2006, disbursed funds from the escrow on the same date, and recorded documents from the closing on 1/17/2006, a delay of six business days.

The settlement agent was required to record all security instruments from the real estate closing within three business days.

Reference: §381.412.1, RSMo (1994).

**RESPONSE:**

**Disagree:** Under the terms of the issuing agency agreement, the agent is not an agent of the Company for purposes of conducting settlement. The Company is not liable for the agent's violation of the recording statute since the action was outside the scope of the agent's authority.

3. The face of the policy shows "Premium" of \$338.75 and a "Risk Rate" of \$98.40. The agent's total charges for the policy as shown on the settlement statement of 1/6/2006 were \$630.00, consisting of a title search fee of \$175.00 and a lender's coverage fee of \$455.00.

The risk rate of \$98.40 shown on the policy was apparently calculated at a rate of \$0.60/thousand for the full face amount of \$164,000.00. The rate used by the agent was not among the rates filed by the insurer with the Director on 5/19/2003.

The agent issued the policy showing an incorrect amount for the total charges for issuance of the policy and a risk rate other than the risk rate filed with the Director.

No policy of title insurance is to be issued unless it contains the total amount paid for the policy and the risk rate for the policy.

Reference: 20 CSR 500-7.100(3)(B) (1999).

**RESPONSE:**

**Disagree:** The agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law.

4. The face of the policy shows a "Risk Rate" of \$98.40. This loan policy was not eligible for any discounted rates. The correct risk rate for this policy was \$134.80, calculated as follows:  $(50 \times 1.00 = 50.00) + (50 \times 0.80 = 40.00) + (64 \times 0.70 = 44.80) = \$134.80$ .

No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules filed with the Director.

Reference: §381.181, RSMo (1994).

**RESPONSE:**

**Disagree:** The agent does not dispute this violation. Since the agent was solely responsible for the calculation of the risk rate and the agent, by agreement is not an agent of the principal for purposes of settlement, this violation is not attributable to the Company and the Department's jurisdiction is exclusively under the producer licensing law.

**File: KC328908**

**Loan Policy: 1412- 1232100**

In this file the examiner found one error and one practice not in the best interests of the insured.

1. This loan policy is dated 8/28/2003, and was issued 4/17/2006, with a face amount of \$9,300.00. The agent closed the transaction in escrow on 8/15/2003, disbursed funds from the escrow on 8/20/2003, and recorded documents from the closing on 8/28/2003, a delay of six business days.

The settlement agent was required to record all security instruments from the real estate closing within three business days.

Reference: §381.412.1, RSMo (1994).

**RESPONSE:**

**Disagree:** Under the terms of the issuing agency agreement, the agent is not an agent of the Company for purposes of conducting settlement. The Company is not liable for the agent's violation of the recording statute since the action was outside the scope of the agent's authority.

2. The loan policy is dated 8/28/2003, and has a face amount of \$9,300.00. The agent closed the transaction in escrow on 8/15/2003, disbursed funds from escrow on 8/20/2003, and

recorded the deed of trust on 8/28/2003. The policy was issued on 4/17/2006. The policy was issued 963 calendar days after the agent had acquired all necessary information. The agent delayed issuing the policy for more than 31 months.

Significant delay in issuing the policy of title insurance is not in the best interests of the insured. (A recent change in Missouri title insurance law requires that the policy of title insurance ordinarily be issued within 45 days of the escrow closing. The applicable statute is §381.038.3, RSMo. (Supp. 2007).

**RESPONSE:** 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.

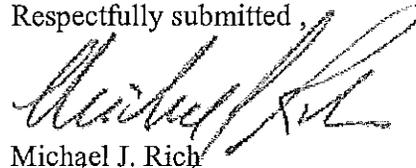
**Residential Title Services, Inc.**

Residential Title Services, Inc. is a national agent. The agency processed its last Missouri order on 5/2/2007. It 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. As such, no files were reviewed for purposes of this examination.

**Title Professionals, LLC**

Fidelity did not have an agency contract with Title Professionals, LLC during the time frame of the examination set out in this warrant.

Respectfully submitted,



Michael J. Rich  
Vice President and Regulatory Counsel