



(hereinafter “the Department”) has the duty to administer Chapters 374, 375, and 381, RSMo, which includes the supervision, regulation, and discipline of title insurers and their agents licensed to operate and conduct business in the state of Missouri.

3. The Consumer Affairs Division of the Department of Insurance, Financial Institutions, and Professional Registration (hereinafter “Consumer Affairs Division”) has the duty of conducting investigations into the unfair or unlawful acts of insurance companies and agents under the insurance laws of this state and has been authorized by the Director to initiate this action before the Director to enforce the insurance laws of this state.

#### **JURISDICTION**

4. The jurisdiction of the Director to initiate and administer this proceeding is found in § 374.046.1, RSMo (Cum. Supp. 2006), which provides, in part:

If the director determines based upon substantial and competent evidence that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:

(1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;

(2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;

(3) Order a civil penalty or forfeiture as provided in section 374.049; and

(4) Award reasonable costs of the investigation.

5. Section 374.049, RSMo (Cum. Supp. 2006) authorizes the Director to impose a monetary penalty or forfeiture of not more than one thousand dollars (\$1,000.00) for each violation which resulted in actual financial loss to consumers or which was knowingly committed, but not to exceed an aggregate penalty of fifty thousand dollars (\$50,000.00) per annum, unless the violation was committed in conscious disregard of the law, in which case the monetary penalty or forfeiture may be up to five thousand dollars (\$5,000.00) per violation but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000.00) per annum.

6. The Director has jurisdiction to administer this proceeding pursuant to the Unfair Trade Practices Act, found in § 375.940, RSMo (2000), which provides, in part:

1. Whenever the director shall have reason to believe that any person or insurer has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person or insurer a statement of the charges in that respect and a notice of hearing thereon to be held at a time and place fixed in the notice which shall not be less than twenty days after the date of service thereof.

7. In addition to the authority to issue a cease and desist order, § 375.942, RSMo, (2000) authorizes the imposition of a monetary penalty of not more than one thousand dollars (\$1000.00) for each violation but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000.00), unless the violation was committed in conscious disregard of the law, in which case the penalty may be up to twenty-five

thousand dollars (\$25,000.00) per violation but not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000.00) in a twelve month period.

### **ALLEGATIONS RELEVANT TO ALL COUNTS**

8. Residential, as a licensed title agency, has negotiated and sold title insurance to real estate buyers and sellers on behalf of several title insurance companies, and in conjunction with this title insurance business, has determined the insurability of real estate title by conducting searches and examination and clearing defects.

9. Residential has also served as an escrow, settlement or closing agent and contributed to the preparation of real estate settlement documents intended to provide, prior to closing, material disclosure to all parties to the transaction, including the purchasers of title insurance and title search and examination services.

10. This proceeding is in the public interest.

### **COUNT I**

11. Residential violated § 381.181, RSMo (1994) by using and collecting premiums at rates that had not been filed with the Director.

12. Section 381.181.1, RSMo (1994) provides, in part:

Every title insurer shall file with the director its premium schedules it proposes to use in any county of this state.

13. Section 381.181.2, RSMo (1994) provides, in part:

No title insurer or title agent or agency may use or collect any premium after September 28, 1987, except in accordance with the premium schedules filed with the director as required by subsections 1 and 2 of this section.

14. Section 381.031(14), RSMo (1994) defines “premium” as “risk rates charged to the insured.”

15. Pursuant to 20 CSR 500-7.100(1)(D), “risk rate” means “the total consideration paid by or on behalf of the insured for a title insurance policy.” It further states that “[r]isk rate shall include the title insurance agent’s commission but shall not include any charge as defined in subsection (1)(A).”

16. Pursuant to 20 CSR 500-7.100(1)(A), “charge” means

“any fee charged to the insured, or paid for the benefit of the insured for the performance of title-related services other than the risk rate charged for title insurance. This charge shall include, but is not limited to, fees for abstracts, title search and examination, handling of escrows, settlements or closings . . .”

17. The facts are as follows:

- a. Commonwealth Land Title Insurance Company (hereinafter “Commonwealth”) and Fidelity National Title Insurance Company (hereinafter “Fidelity”) underwrite title insurance for Residential. Copies of Commonwealth’s and Fidelity’s underwriting agreements are attached hereto as Exhibits 1 and 2, respectively, and incorporated herein by reference.
- b. Commonwealth and Fidelity filed premium rates with the Director as required by § 381.181.1, RSMo (1994). Such rates were deemed effective or otherwise approved for use by Commonwealth, Fidelity, and any of their licensed agents at all times relevant hereto. A copy of Commonwealth’s Premium Rate Filing is attached hereto as Exhibit 3 and incorporated herein by reference. A copy of Fidelity’s Premium Rate Filing is attached hereto as Exhibit 4 and incorporated herein by reference.

- c. Residential, as an agent for Commonwealth and Fidelity, advertised and used or collected a single amount for title insurance premium, in addition to collecting other fees including a settlement or closing fee. A copy of Residential's purchase and refinance title premium rates are attached hereto as Exhibit 5 and incorporated herein by reference.
- d. The single amount advertised and used or collected for title insurance premium by Residential is not based on the premium rates filed with the Director.
- e. The single amount advertised and used or collected for title insurance premium by Residential had not been filed with the Director before Residential used or collected premium based upon that unfiled premium rate.

## COUNT II

18. Residential violated § 381.171, RSMo (1994) by using or collecting unfairly discriminatory title insurance premiums.

19. Section 381.171, RSMo (1994) provides, in part:

1. Premiums shall not be inadequate, excessive or unfairly discriminatory. . . .

4. Premiums are unfairly discriminatory if the premium charged for a policy of any particular face amount of liability is higher than the premium for an identical policy within the same classification where such policy has a like face amount or a higher face amount of liability.

20. The facts are as follows:

- a. On or about October 24, 2006 Rita Heimericks-Ash and Win Nickens, investigator and audit manager, respectively, with the Department, visited

Residential's St. Louis office and spoke with Michael Rubin, State Operations Manager for Residential.

- b. Mr. Rubin admitted to Ms. Heimericks-Ash and Mr. Nickens that Residential does not always use or collect the rates indicated on their "card rate" or advertised rate. See Exhibit 5 attached hereto and incorporated herein by reference.
- c. Ms. Heimericks-Ash and Mr. Nickens reviewed several client files where the client paid title premiums that far exceeded the "card rate."

### COUNT III

21. Residential violated § 375.934, RSMo (2000) by engaging in an unfair trade practice defined by § 375.936(6), RSMo (2000).

22. Section 375.934, RSMo (2000) provides:

It is an unfair trade practice for any insurer to commit any practice defined in section 375.936 if:

(1) It is committed in conscious disregard of sections 375.930 to 375.948 or of any rules promulgated under sections 375.930 to 375.948; or

(2) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

23. Section 375.936, RSMo (2000), provides in part:

Any of the following practices, if committed in violation of section 375.934, are hereby defined as unfair trade practices in the business of insurance:

(6) "Misrepresentations and false advertising of insurance policies", making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any policy;

24. The facts of Residential's untrue, deceptive, and misleading statements are as follows:

a. Residential, in one or more instances, listed an all-inclusive "title insurance" fee on real estate closing documents when only a small portion of that fee is a filed insurance premium rate and most of this all-inclusive fee is not title insurance premium, but instead, charges subject to negotiation and discount.

25. Residential committed the aforesaid violation(s) in conscious disregard of §§ 375.934 and 375.936, RSMo (2000).

26. Residential knew or reasonably should have known its actions described in the foregoing paragraphs were in violation of § 375.934, RSMo (2000).

#### COUNT IV

27. Residential violated § 375.144, RSMo (Cum. Supp. 2005) by concealing from purchasers at the time of negotiation and sale of insurance material facts concerning the cost of title insurance.

28. Section 375.144, RSMo (Cum. Supp. 2005) provides, in part:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(2) As to any material fact, make or use any misrepresentation, concealment or suppression;

29. Residential concealed the following information in violation of § 375.144, RSMo (Cum. Supp. 2005).

- a. Information regarding the actual cost of title insurance, which must be calculated in accordance with a filed premium rate and may not be discounted or negotiated except as provided for in the filed premium rate plan; and
- b. Information regarding charges for related services, including search and examination expenses, clearing title defects, and other charges that are not included in the filed premium rate and may be discounted or negotiated without limitation.

#### COUNT V

30. Residential violated § 381.201.3 by failing to prominently display copies of the premium rates which are required to be filed with the Director under the provisions of §§ 381.011 to 381.241.

31. The facts are as follows:

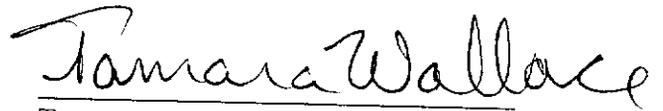
- a. On or about October 24, 2006 Ms. Heimericks-Ash and Mr. Nickens observed that Residential had failed to prominently post the filed premium rates anywhere in the reception area or closing room.

## RELIEF

**WHEREFORE**, the Consumer Affairs Division requests the Director:

- A. Find that Residential engaged in the unlawful acts and unfair practices alleged herein;
- B. Issue an order prohibiting Residential and its agents and employees from:
  - a. Violating or materially aiding in any violation of § 381.181, RSMo (1994).
  - b. Violating or materially aiding in any violation of § 381.171, RSMo (1994).
  - c. Violating or materially aiding in any unfair practice defined by § 375.936, RSMo (2000).
  - d. Violating or materially aiding in the violation of §375.144, RSMo (Cum. Supp. 2006) by concealing in connection with the negotiation or sale of title insurance to Missouri residents by failing to disclose that the all-inclusive fees include non-negotiable insurance premium and other negotiable non-insurance charges.
  - e. Violating or materially aiding in the violation of § 381.201.3, RSMo (1994) by failing to prominently display the schedule of premiums which are required to be filed with the Director.
- C. Order Residential to pay a civil penalty for each unlawful act or unfair practice;
- D. Order Residential to pay reasonable costs of the investigation.
- E. Such other relief as the Director deems just in this proceeding

Respectfully submitted,



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