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

IN THE MATTER OF:	)	
	)	
Michael A. Holden,	)	Case No. 10-0216246C
	)	
Applicant.	)	
	)	
Serve at:	)	
	)	
2001 E. Elizabeth,	)	
P.O. Box 2224	)	
Sioux Falls, South Dakota 57103	)	

REFUSAL TO ISSUE INSURANCE PRODUCER LICENSE

On April 30, 2010, Elfin L. Noce, as Legal Counsel for the Consumer Affairs Division, submitted a Petition to the Director alleging cause for refusing to issue an insurance producer license to Michael A. Holden ("Holden"). After reviewing the Petition and the investigative report, the Director issues the following findings of fact, conclusions of law and summary order:

FINDINGS OF FACT

1. Holden is a South Dakota resident with an address of 2001 E. Elizabeth, P.O. Box 2224, Sioux Falls, South Dakota 57103.

2. Holden was originally licensed as an insurance producer by the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") on September 6, 1990, license number 0187989. The license was subsequently renewed until it was cancelled by Holden on August 11, 2008.

3. On or about May 4, 2009, the Department received Holden's Uniform Application for Individual Insurance Producer License ("Application").

4. In the "Demographic Information" section of the Application, Question #37 asks: "Account for all time for the past five years. Give all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education."

5. Holden answered Demographic Information Question #37, indicating he was employed by "Landchoice Company LLC" from July 1989 through August 2008, holding the position of "President," and that he was employed by "Dakota Homestead Title Ins" from

September 2008 through "current" holding the position of "Bus Development."

6. Dakota Homestead Title Insurance Company is a title insurance company domiciled in South Dakota with an active certificate of authority in Missouri.

7. While employed by Dakota Homestead Title Insurance Company, Holden was the Director of Business Development and Assistant Underwriter, responsible for company branding, marketing and assisting with underwriting for Kansas, Nebraska, Iowa, and Missouri.

8. From around September 2008 through March 2009, while employed by Dakota Homestead Title Insurance Company, Holden assisted Missouri title insurance producers Shane McComish, James DeReign, Gracie Mackin, Stacy Pollack, Lisa Ford, Mike Prosser, and Lacy Maples with underwriting by email.

9. In the "Background Questions" section of the Application, Question #2 asks: "Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration? 'Involved' means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. 'Involved' also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. 'Involved' also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee."

10. Holden answered "No" to Background Question #2.

11. On September 5, 1990, Guaranty Land Title Insurance, Inc. was originally licensed as a business entity insurance producer by the Department, license number 0001046. Guaranty Land Title Insurance, Inc.'s business entity insurance producer license was subsequently renewed until it requested the cancellation of its license on July 5, 2008.

12. Holden was the President of Guaranty Land Title Insurance, Inc. from September 5, 1990 until July 5, 2008. During the time Holden was President, Guaranty Land Title Insurance, Inc. entered into three voluntary forfeiture agreements with the Department.

13. On July 27, 2005, Holden, as President of Guaranty Land Title Insurance, Inc., signed a Voluntary Forfeiture Agreement with the Missouri Department of Insurance[1], in which Guaranty Land Title Insurance, Inc. agreed to surrender and forfeit $1,950.00 to settle allegations that Guaranty Land Title Insurance, Inc. allowed unlicensed insurance

[1] The Missouri Department of Insurance is now known as the Missouri Department of Insurance, Financial Institutions and Professional Registration.

producers to conduct the business of title insurance on its behalf.

14. On January 9, 2006, a representative of Guaranty Land Title Insurance, Inc. signed a Voluntary Forfeiture Agreement with the Missouri Department of Insurance, in which Guaranty Land Title Insurance, Inc. agreed to surrender and forfeit $75.00 to settle allegations that Guaranty Land Title Insurance, Inc. allowed an unlicensed insurance producer to conduct the business of title insurance on its behalf.

15. On May 25, 2006, Holden, as President of Guaranty Land Title Insurance, Inc., signed a Voluntary Forfeiture Agreement with the Missouri Department of Insurance, in which Guaranty Land Title Insurance, Inc. agreed to surrender and forfeit $100.00 to settle allegations that Guaranty Land Title Insurance, Inc. allowed an unlicensed insurance producer to conduct the business of title insurance on its behalf.

CONCLUSIONS OF LAW

16. Section 381.031, RSMo (1994)[2], provides in part:

* * *

> 17. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
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> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> 1. Establish premiums for policies of title insurance;
> 2. Determine insurability; or
> 3. Issue commitments, policies or other contracts of title insurance;

* * *

> 19. "Title insurance business" or "business of title insurance" means:
>
> 1. Issuing as insurer or offering to issue as insurer a title insurance policy;

[2] This statute is not published in the current edition of the Missouri Revised Statutes, but it remains in effect. The statute was repealed by Senate Bill 894 (2000), but reinstated after Missouri Supreme Court ruled SB 894 unconstitutional in the case of *Home Builders of Greater St. Louis v. State of Missouri*, 75 S.W.3d 267 (Mo. Banc 2002).

2. Transacting or proposing to transact by a title insurer, title agency, or title agent any of the following activities when conducted or performed by a title agent, title agency, or title insurer in conjunction with the issuance of its title insurance:

    1. Soliciting or negotiating the issuance of a title insurance policy;
    2. Guaranteeing, warranting, or otherwise insuring the correctness of title searches;
    3. Handling of escrows, settlements, or closings;
    4. Execution of title insurance policies, reports, commitments, binders, and endorsements;
    5. Effecting contracts of reinsurance; or
    6. Abstracting, searching, or examining titles;

3. Transacting by a title insurer, title agent, or agency of matters subsequent to the issuance of a title insurance policy and arising out of it; or

4. Doing or proposing to do any business in substance equivalent to any of the foregoing in order to evade any provision of this act[.]

17. Section 381.115, RSMo (Supp. 2009) provides, in part:

1. It is unlawful for any person to transact the business of title insurance unless authorized as a title insurer, title agency or title agent.

2. It is unlawful for any person to transact business as:

(1) A title agency, unless the person is a licensed business entity insurance producer under subsection 2 of section 375.015, RSMo; or

(2) A title agent, unless the person is a licensed individual insurance producer under subsection 1 of section 375.015, RSMo, or is exempt from licensure under subsection 3 of this section.

3. A salaried employee of a title insurer, title agency, or title agent is exempt from licensure as a title agent if the employee does not materially perform or supervise others who perform any of the following:

(1) Sell, solicit, or negotiate a title insurance policy or closing protection letter;

(2) Calculate premiums for a title insurance policy or closing protection letter;

(3) Determine insurability;

(4) Establish, calculate, or negotiate title charges;

(5) Conduct title search or examinations;

(6) Execute title insurance policies, commitments, binders or endorsements; or

(7) Handle escrows, settlements, or closings.

* * *

18. Section 375.141, RSMo (Supp. 2009) provides, in part:

> 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:
>
> (1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> (3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;
>
> * * *
>
> (12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed[.]

19. Section 374.051, RSMo (Supp. 2009), provides, in part:

> 1. Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141, RSMo, may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in

determining whether the applicant may be disqualified by statute. Notwithstanding section 621.120, RSMo, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.

20. The principal purpose of § 375.141, RSMo, is not to punish licensees or applicants, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo.App. E.D. 1984).

21. Holden may be refused an insurance producer license pursuant to § 375.141.1(1), RSMo (Supp. 2009), for intentionally providing materially incorrect, misleading, incomplete or untrue information on his Application by failing to disclose his complete history in the title insurance industry on his Application, including his failure to disclose his employment as President of Guaranty Land Title Insurance, Inc. and the three voluntary forfeiture agreements with the Department that Guaranty Land Title Insurance, Inc. agreed to, including two that were signed by Holden.

22. Holden may be refused an insurance producer license pursuant to § 375.141.1(3), RSMo (Supp. 2009), for attempting to obtain a license through material misrepresentation or fraud, by failing to disclose his complete history in the title insurance industry on his Application, including his failure to disclose his employment as President of Guaranty Land Title Insurance, Inc. and the three voluntary forfeiture agreements with the Department that Guaranty Land Title Insurance, Inc. agreed to, including two that were signed by Holden.

23. Underwriting is defined as the "process of examining, accepting, or rejecting insurance risks, and classifying those selected, in order to charge the proper premium for each." *Dictionary of Insurance Terms*. 4th ed. 2000. The process of examining, accepting, or rejecting insurance risks is determining insurability.

24. Holden, while employed by Dakota Homestead Title Insurance Company, determined insurability in Missouri by assisting title insurance agents in Missouri with underwriting, and, thus, was not exempt from licensure under § 381.115.3, RSMo (Supp. 2009).

25. While an authorized agent of Dakota Homestead Title Insurance Company, Holden acted as a title agent in the solicitation of, negotiation for, or procurement or making of title insurance contracts.

26. Holden may be refused an insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2009), for violating §§ 381.115.1 and 381.115.2(2), RSMo (Supp. 2009), as he transacted title insurance business as a title agent while not licensed as a Missouri insurance producer and was not exempt from licensure under § 381.115.3, RSMo (Supp. 2009).

27. Holden's history as a Missouri title agent for almost 18 years and direct involvement with at least two voluntary forfeiture agreements regarding Guaranty Land Title Insurance,

Inc. allowing unlicensed insurance producers to conduct the business of title insurance on its behalf in Missouri demonstrates that Holden had knowledge of the Missouri's title agent licensing requirements.

28. Holden may be refused an insurance producer license pursuant to § 375.141.1(12), RSMo (Supp. 2009), for knowingly acting as an insurance producer in Missouri when not licensed, as he possessed knowledge of Missouri's licensing requirements of title agents and still acted as a title agent in Missouri when not licensed.

29. In applying his discretion, the Director has considered the history of Holden and all of the circumstances surrounding Holden's Application. Holden's failure to disclose his full history in the title insurance industry and his unlicensed activity as a title agent raises questions of Holden's ability to comply with Missouri law and whether he can meet the significant responsibilities required of a licensed insurance producer. For these reasons, the Director exercises his discretion in refusing to issue an insurance producer license to Holden.

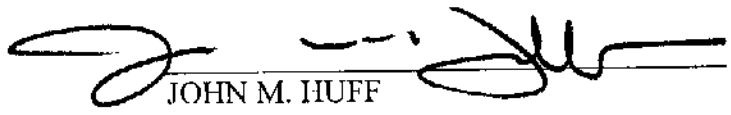
30. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that issuance of the insurance producer license of Applicant Michael A. Holden is hereby REFUSED.

SO ORDERED.

WITNESS MY HAND THIS 17th DAY OF June, 2010.



JOHN M. HUFF
DIRECTOR

NOTICE

TO: Michael A. Holden and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within thirty (30) days after the mailing of this notice pursuant to Section 621.120, RSMo. Under 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2010, a copy of the foregoing notice and order was served upon both Michael A. Holden and his attorney in this matter, Diana Carter, by certified mail.

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