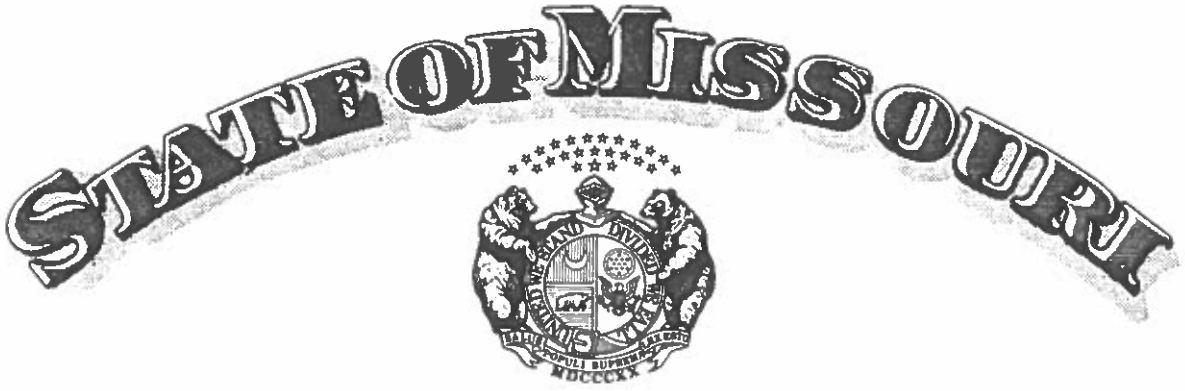

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

In the Matter of:	)	
	)	**Case No. 150127050C**
NANCY J. PORTER	)	
And	)	
	)	
NANCY J. PORTER, LLC D/B/A	)	
ADAIR COUNTY TITLE & ESCROW,	)	
	)	
Respondents.	)	

CONSENT ORDER

John M. Huff, Director of the Department of Insurance, Financial Institutions and Professional Registration, takes up the above matter for consideration and disposition. The Consumer Affairs Division, through legal counsel Tamara W. Kopp, Nancy J. Porter, and Nancy J. Porter, LLC d/b/a Adair County Title & Escrow, through legal counsel Mark L. Williams, have reached a settlement in this matter and have consented to the issuance of this Consent Order.

1. John M. Huff is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (the "Director" of the "Department"), whose duties,

pursuant to Chapters 374, 375, and 381 RSMo,[1] include the supervision, regulation and discipline of insurance producers and business entity producers.

2. The Department's Consumer Affairs Division ("Division") has the duty of conducting investigations into the acts of insurance producers and business entity producers under the insurance laws of this state and is authorized by the Director to investigate and to recommend enforcement action for violations of the insurance laws of this state.

3. Nancy J. Porter ("Porter") is licensed as a Missouri resident insurance producer (Number 0215163).

4. Porter is the designated responsible producer on behalf of and sole owner of Nancy J. Porter, LLC d/b/a Adair County Title & Escrow ("Adair County Title"), a business entity producer (Number 8022553) whose license expired February 27, 2015.

5. Stewart Title Guaranty Company ("Stewart") is a title insurance company authorized to do business in Missouri. Respondents were contracted with Stewart to issue title insurance policies from March 2, 2007 until Stewart terminated the agency agreement effective December 31, 2012.

6. Porter concedes that the Director would have sufficient evidence to prove that after December 31, 2012, Respondents continued to issue title insurance commitments and title insurance policies for approximately two (2) years that appeared to be underwritten by Stewart, when in fact, Respondents had no actual authority to bind Stewart.

7. Porter concedes that the Director would have sufficient evidence to prove that Respondents collected title insurance premium and additional fees from consumers and provided

[1] All statutory references are to the 2013 Supplement to the Revised Statutes of Missouri unless otherwise noted.

consumers title insurance commitments and title insurance policies purportedly underwritten by Stewart, when in fact, Respondents had no actual authority to bind Stewart.

8. Porter concedes that the Director would have sufficient evidence to prove that consumers have been defrauded such that the consumers have evidence of purported title insurance coverage, but no title insurance coverage.

9. Porter concedes that the Director would have sufficient evidence to prove that financial institutions were defrauded by Respondents issuing commitments and title insurance lenders' policies. Some of the loans for which title insurance commitments and policies had been issued have since been sold on the secondary market, believing the loans were protected by title insurance, when in fact, the loans have no title insurance protection.

10. Porter concedes that the Director would have sufficient evidence to prove that for over two (2) years, Respondents did not forward to Stewart title insurance premiums they collected for title insurance commitments and policies purportedly underwritten by Stewart.

11. In the regular course of business, Respondents maintained funds in one or more accounts, that belong to other individuals or entities.

12. Porter concedes that the Director would have sufficient evidence to prove that Respondents employed individuals to perform activities that required licensure as a title insurance producer under § 381.115:

a. Between March 2012 and January 27, 2015, Respondents employed Lydia Clatt.

b. Between August 2014 and February 2015, Respondents employed Cathy Capps.

13. Porter concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(2) the Director has grounds to discipline their licenses because Porter further

concedes that the Director would have sufficient evidence to prove that Respondents violated the following insurance laws or materially aided others' violations of the insurance laws:

a. Section 375.144, when Respondents provided false evidence of title insurance coverage to consumers and financial institutions. Section 375.144 provides:

> It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:
>
> (1) Employ any deception, device, scheme, or artifice to defraud;
> (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
> (3) Engage in any pattern or practice of making any false statement of material fact; or
> (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person.

b. Section 375.991 (Non. Cum. Supp. 2014), when Respondents provided false evidence of title insurance coverage to consumers and financial institutions. Section 375.991 prohibits fraudulent insurance acts and provides.

> a person commits a "fraudulent insurance act" if such person knowingly presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, purported insurer, broker, or any agent thereof, any oral or written statement including computer generated documents as part of, or in support of, an application for the issuance of, or the rating of, an insurance policy for commercial or personal insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance, which such person knows to contain materially false information concerning any fact material thereto or if such person conceals, for the purpose of misleading another, information concerning any fact material thereto.

c. Section 381.115 when Respondents employed unlicensed individuals to engage in activities that required a title insurance producer license. Section 381.115 prohibits unlicensed activity, and provides, in relevant 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; or

(2) A title agent, unless the person is a licensed individual insurance producer under subsection 1 of section 375.015 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.

14. Porter concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(4) the Director has grounds to discipline Respondents' licenses because, by failing to remit title insurance premium to Stewart for policies purportedly underwritten by Stewart, Respondents improperly withheld, misappropriated, or converted moneys or properties received in the course of doing insurance business.

15. Porter concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(5) the Director has grounds to discipline Respondents' licenses because, by selling title insurance policies that appeared to be underwritten by Stewart, when in fact, Respondents had no authority to bind Stewart, Respondents intentionally misrepresented the terms of an actual or proposed insurance contract.

16. Porter concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(7) the Director has grounds to discipline Respondents' licenses because

Respondents engaged in unfair trade practices, namely "misrepresentations and false advertising of insurance policies" as defined by § 375.936(6), by misrepresenting the benefits, advantages, conditions, or terms of title insurance policies when they marketed title insurance commitments and title insurance policies that appeared to be underwritten by Stewart, when in fact, Respondents had no authority to bind Stewart. Such conduct also constitutes fraud upon the recipient of any title insurance commitment or title insurance policy that appeared to be underwritten by Stewart, when in fact, Respondents had no authority to bind Stewart.

17. Porter concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.1(8) the Director has grounds to discipline Respondents' licenses because they used fraudulent or dishonest practices, and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business by providing title insurance commitments and title insurance policies that appeared to be underwritten by Stewart, when in fact, Respondents had no authority to bind Stewart.

18. Adair County Title concedes that the Director would have sufficient evidence to prove that pursuant to § 375.141.3 the Director has grounds to discipline its business entity producer license because Porter's violations were known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the Director nor corrective action taken.

19. Respondents agree to make no withdrawals from the following accounts:

a. Bank Midwest account held in the name of Nancy J Porter LLC, Adair Co Title & Escrow, Account ****** 5802.

b. American Trust Bank account held in the name of Adair County Title and Escrow, Escrow Account, Account *****041.

20. Respondents' counsel, Mark L. Williams, to facilitate an orderly winding up of Respondents' title insurance and escrow business, has signatory authority on Respondents' business accounts, listed above in paragraph 19.

21. Respondents acknowledge that the concessions they make, contained within this Consent Order, are for purposes of settlement only, and not admissions of criminal or civil liability.

22. Respondents acknowledge and understand that they have the right to consult counsel at their expense and have retained attorney Mark L. Williams.

23. Respondents further acknowledge that they been advised that they may, either at the time the Consent Order is signed by all parties, or within fifteen (15) days thereafter, submit the Consent Order to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Consent Order constitute grounds to discipline Respondents' licenses.

24. Except as provided in paragraph 23, above, Respondents stipulate and agree to waive any waivable rights that they may have to a hearing before the Administrative Hearing Commission or the Director, and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Consent Order and forever release and hold harmless the Department, the Director and his agents, and the Consumer Affairs Division from all liability and claims arising out of, pertaining to, or relating to this matter.

25. Respondents and the Division desire to settle the allegations raised by the Division.

26. On or about March 25, 2015, counsel for the Division provided a written description of the specific conduct for which discipline was sought and a citation to the law and rules allegedly violated, together with copies of any documents upon which it based the allegations, and the Division's settlement offer, namely, this Consent Order, in accordance with § 621.045.4(1). Counsel for the Division further advised Respondents that they had sixty (60) days to review the

relevant documents and consider the proposed settlement offer in accordance with § 621.045.4(2).

27. Each signatory to this Consent Order certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Consent Order in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Consent Order.

Conclusions of Law

28. The allegations raised by the Division, and conceded herein by Respondents, are grounds to discipline Respondents' licenses under § 375.141.1 (2), (4), (5), (7), and (8). Furthermore, the allegations raised by the Division, and conceded herein by Adair County Title, are grounds to discipline Adair County Title's business entity producer license under § 375.141.3.

29. Section 375.141 provides in relevant part as follows:

> 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:
>
> * * *
>
> (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;
>
> * * *
>
> (4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business; [or]
>
> * * *
>
> (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
>
> * * *
>
> (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]
>
> * * *
>
> 3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.
>
> * * *
>
> 4. The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

30. Respondents' consent to receivership, in any form determined appropriate by the Director, in accordance with § 374.048 and §§ 375.1150-375.1246, the Insurers, Supervision, Rehabilitation and Liquidation Act. Respondents further waive service of process and notice of hearing with respect to any receivership action.

31. The Director is authorized to settle this matter and issue this Consent Order in the public interest pursuant to §§ 374.046, 536.060, and 621.045. Nothing contained within this Consent Order prohibits the Director from pursuing other violations of the insurance laws and financial penalties, restitution, or receivership against Respondents in a later proceeding.

32. The terms set forth in this Consent Order are an appropriate disposition of this matter and entry of this Consent Order is in the public interest.

Order

IT IS ORDERED that Nancy J. Porter's insurance producer license Number 0215163 is hereby REVOKED.

IT IS ORDERED that Nancy J. Porter, LLC d/b/a Adair County Title & Escrow's business entity producer license Number 8022553 is hereby REVOKED.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 17 DAY OF June, 2015.

JOHN M. HUFF
Director, Missouri Department of Insurance, Financial Institutions and Professional Registration

CONSENT AND WAIVER OF HEARING

The undersigned persons understand and acknowledge that Nancy J. Porter and Nancy J. Porter, LLC d/b/a Adair County Title & Escrow may have the right to a hearing, but that they have waived the hearing and consented to the issuance of this Consent Order.

Nancy J. Porter

Nancy J. Porter
2507 North East
Kirksville, MO 63501

6/16/15
Date

Nancy J. Porter

Nancy J. Porter for
Nancy J. Porter, LLC d/b/a Adair County
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6/16/15
Date

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Date

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6-17-15
Date