

**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 Group, Inc.
5600 Cox Road
Glen Allen, VA 23060

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

STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

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

WHEREAS, John M. Huff is the Director of the Department of Insurance, Financial Institutions, and Professional Registration, 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, Transnation 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 Transnation and prepared report #0612-68-PAC in accordance with the laws and regulations of the State of Missouri in effect at the time of the actions examined and alleged during the scope of the examination; and

WHEREAS, the report of the Market Conduct Examination, #0612-68-PAC, stated that:

1. In some instances, Transnation's agents used general exceptions in their owners' and lender's title policies and in their commitments that were different from those filed by the Company with the Director, thereby violating §381.211, RSMo, and 20 CSR 500-7.100(3)(A) and (B).

2. In some instances, Transnation's commitment forms contained language that was different than that filed with the Director, in violation of §§375.1007(1), and 381.211, RSMo, and 20 CSR 500-7.100(3)(B).

3. In some instances, Transnation's agencies acted as settlement agents and failed to record the security instrument(s) within three business days after the closing of the transaction, thereby violating §381.412.1, RSMo.

4. In some instances, Transnation used risk rates that were either incorrect or were not the actual risk rate filed with the Department by the Company, thereby violating §§381.031.4 and .14, and 381.181, RSMo, 20 CSR 500-7.100(1)(B) and (3)(B), and DIFP Bulletin 93-09.

5. In one instance, Transnation's agent charged recording fees in excess of the actual fee, in violation of the Real Estate Settlement Procedures Act of 1974 (RESPA), §8(b), 12 USCA §2607(a-b), 24 CFR §3500.14, and §59.310, RSMo.

6. It was alleged that Transnation calculated an agency's commission and net premium based on a rate that was different than the risk rate filed by the Company with the Director, thereby violating §381.181.2, RSMo, and 20 CSR 500-7.100(1)(D).

7. In some instances, Transnation unintentionally paid fees to agents who did not provide services to the underwriter or agent handling the transaction, violating §381.141, RSMo.

8. In some instances, Transnation failed to insure as agreed upon by the parties or for the proper amount of risk, in violation of §381.071.1 and .2, RSMo.

9. It was alleged that Transnation failed to maintain proper evidence of the title examination for a period of not less than 15 years after issuing the policy of insurance, as required by §381.071.3, RSMo.

10. In some instances, Transnation failed to maintain sufficient documentation to allow the examiners to determine when policies were actually issued to the insured, in violation of §374.205(2)2, RSMo, and 20 CSR 300-2.200(2) and (3)(A)2.

11. In some instances, Transnation failed to promptly acknowledge certain first-party claims within 10 working days after receipt, thereby violating §375.1007(2), RSMo, 20 CSR 100-1.010(1)(G) and 20 CSR 100-1.030(1).

12. It was alleged that Transnation failed to provide a claimant all necessary claim forms, instructions, and reasonable assistance so that the claimant could properly file a claim, thereby

violating 20 CSR 100-1.030(3).

13. It was alleged that Transnation failed to pay or deny a claim within 15 days after receiving all forms necessary to establish the nature and extent of the claim, as required by 20 CSR 100-1.040 and 20 CSR 100-1.050(1)(A).

14. It was alleged that Transnation failed to properly and completely investigate a claim within 30 days of the initial notification of the claim, thereby violating §375.1007(3), RSMo, and 20 CSR 100-1.040.

15. Transnation failed to log all complaints on their complaint log, as required by §375.936(3), RSMo.

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

1. Transnation 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. Transnation 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;

2. Transnation agrees to cooperate with the Department in an effort to calculate and file reasonable and adequate risk rates to be used for all of its policies. With regard to its policy files containing incorrect risk rates and other charges, Transnation 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; and

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

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

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

WHEREAS, Transnation, 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 Examination #0612-68-PAC; and

WHEREAS, Transnation hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination #0612-68-PAC further agrees, voluntarily and knowingly to surrender and forfeit the sum of \$39,454.38.

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 Transnation to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Transnation 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 \$39,454.38, such sum payable to the Missouri State School Fund, in accordance with §374.280, RSMo.

DATED: _____

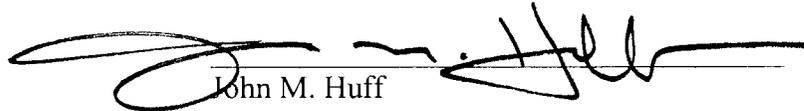
President
Transnation Title Insurance Co.

IT IS FURTHER ORDERED that Transnation shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Transnation 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 Transnation shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of \$70,000.00, 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 15TH day of FEBRUARY, 2010.


John M. Huff
Director

STATE OF MISSOURI

DEPARTMENT OF INSURANCE FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Final Market Conduct Examination Report
for
Transnation Title Insurance Company
NAIC # 50012



Home Office
5600 Cox Road
Glen Allen, VA 23060
Examination Number 0612-68-PAC

January 11, 2010

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FOREWORD

This market conduct examination report of the Transnation 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.

Examiners use the following in this report:

“Transnation” and “Company” to refer to Transnation Title Insurance Company

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

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

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

“CSR” to refer to the Code of State Regulation

SCOPE OF EXAMINATION

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

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

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

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

Transnation is the successor to Transamerica Title Insurance Company which began underwriting in 1910. Transnation Title Insurance Company was incorporated in Arizona on September 15, 1992. Land America acquired Transnation from Reliance Group Holdings, Inc., a Pennsylvania corporation, on February 27, 1998. Transnation re-domesticated to Nebraska in the summer of 2006.

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

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

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

EXECUTIVE SUMMARY

The examination found the following areas of concern:

Several agents for the company used policy and commitment forms different from the form filed with the Department.

The company failed to record the security instrument within three business days from the date of the transaction in several files reviewed.

The agents reported incorrect risk rates on the face of the policy in several files reviewed

In several of the files reviewed, the Company failed to issue the policy in 60 days.

The company failed to properly acknowledge claims in several claim files reviewed.

EXAMINATION FINDINGS

I. Sales and Marketing

A. Licensing of Agents and Agencies

The examiners noted no errors in this review.

B. Marketing Practices

The examiners noted no errors in this review.

II. Underwriting and Rating Practices

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

A. Forms and Filings

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

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

The examiners found that certain agents used general exceptions in their owner's policies that were not the same as the general exceptions used in the filed forms. Those violations are as follows:

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

<u>File No.</u>	<u>Owner's Policy</u>	<u>Agent</u>
4025407	B90-0028161	U S Title
605933	B90-0032342	U S Title
4013733	B90-0028870	U S Title
500704	B90-0022661	U S Title
4020662	B90-0028044	U S Title
612022	B90-0035000	U S Title
510714	B90-0021750	U S Title
610201	B90-0036372	U S Title
607294	B90-0035054	U S Title
534029	B90-0034767	U S Title
512973	B90-0026046	U S Title
502880	B90-0016806	U S Title
5421481	B90-0016805	U S Title
523478	B90-0027470	US Title

The examiners found that certain agents used general exceptions in the loan policies. Although the ALTA 1992 loan policies and the related schedules filed by the Company with the director contain no such general exceptions. Those violations are as follows:

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
514944	J37-0031535	Kiefer Title
515102	J37-0035486	Kiefer Title
615322	J37-0035551	Kiefer Title
413511	J37-0012903	Kiefer Title
512394	J37-0035718	US Title
522215	J37-0031317	US Title

The examiners found that certain agents used general exceptions in commitments that were not the same as the general exceptions used in the filed forms. Those violations are as follows:

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
5001460	B900025810	U S Title
508321	B900029910	U S Title
4012349	B900016133	U S Title
4022406	B900022645	U S Title
503152	B900021438	U S Title
509872	B900027417	U S Title

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
52687	B900029480	Dependable
50887	B900022321	Champion Title
04D109572	B900014234 J37-0023766	Security Title
40828	B900014256 J37-0023775	Security Title
60235	H987913	Security Title
60266	J3700012235	Security Title
05A60285	B900009405	Lewis and Clark
514944	J37-0031535	Kiefer Title
515102	J37-0035486	Kiefer Title
615322	J37-0035551	Kiefer Title
413511	J37-0012903	Kiefer Title
502316	J37-0031011 B90-002679	US Title
503337	J37-0024769 B90-0021321	US Title
507736	J37-0030029 B90-0026290	US Title
512394	J37-003518	US Title
513508	B90-0023422	US Title
516226	J37-0023453	US Title
516942	J37-0028080	US Title
517621	J37-0034046 B90-0029617	US Title
518700	J37-0030048	US Title
520433	J37-0035668 B90-0029627	US Title
521399	J37-0029961 B90-0023527	US Title
522215	J37-0031317	US Title
523478	B90-0027470	US Title
528547	J37-0031207 B90-0027470	US Title

The owner's policy in the following file includes an exception reading: "Any discrepancy between the actual boundaries of the land and the apparent boundaries as indicated by fences, plantings or other improvements." This language is not a part of the policy forms filed with the director. There is no signal in the commitment to insure that the exception might be added to the policy. There is no indication in the file including the markup to policy, that the exception would be added to the policy as the result of any negotiation with the insured for modification of the policy. Addition of the language to the policy was a

violation of the contract to insure in the manner indicated by the provisions of the commitment to insure and by the markup to policy.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>	<u>Criticism</u>
521399	B9-0023527 J37-0029961	US Title	J37

The following commitment forms contain the following language:

THIS COMMITMENT IS NOT AN ABSTRACT, EXAMINATION, REPORT, OR REPRESENTATION OF FACT OR TITLE AND DOES NOT CREATE AND SHALL NOT BE THE BASIS OF ANY CLAIM FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR OTHER TORT CLAIM OR ACTION. THE SOLE LIABILITY OF THE COMPANY AND ITS TITLE INSURANCE AGENT SHALL ARISE UNDER AND BE GOVERNED BY THE CONDITIONS OF THE COMMITMENT AND OR POLICY SUBSEQUENTLY ISSUED.

This language is not contained in the form filed with the Director.

Reference: Sections 381.211, and 375.1007(1), RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Agent</u>
502316	US Title
503337	US Title
50736	US Title
507736	US Title
512394	US Title
513508	US Title
516226	US Title
516942	US Title
517621	US Title
518700	US Title
520433	US Title
521399	US Title
522215	US Title
523478	US Title
523478	US Title
528547	US Title

B. General Practices Underwriting and Rating

Field Size: 12,844
 Sample Size: 97
 Type of Sample: Random
 Number of Errors: 39
 Error Rate: 40%
 Within Dept. Guidelines: No

The original sample was 100 files. Three files from Guaranty Title in Nixa were not reviewed. The Underwriter closed the agency during the course of the examination. As such, the files were not readily available.

NOTE: A star (*) after a policy number denotes that the policy was cited earlier in the general practices underwriting study for a different error, but was only counted once in the number of errors herein.

a. Failure to Timely Record

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

Reference: Section 381.412, RSMo.

<u>File No.</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. Business of Days</u>	<u>Agent</u>
52687	10/10/2005	10/24/2005	10	Dependable
50887	4/26/2005	5/3/2005	6	Champion
05-14220	2/9/2005	2/23/2005	11	Kiefer
5-01004	3/31/2005	4/7/2005	5	US Title
5-01874	4/7/2005	4/20/2005	9	US Title
04025407	12/17/2004	12/29/2004	7	US Title
5-06044	4/22/2005	5/3/2005	7	US Title
5-00142	2-25-2005	3/3/2005	4	US Title
04015876	8/31/2004	9/7/2004	4	US Title
531707	11/8/2005	11/17/2005	7	US Title
524572	9/13/2005	9/21/2005	6	US Title
525281	9/30/2005	10/6/2005	4	US Title
530379	11/23/2005	11/30/2005	4	US Title
507835	5/20/2005	5/26/2005	4	US Title
510155	5/12/2005	5/19/2005	5	US Title
5-08321	5/9/2005	5/13/2005	4	US Title
04022406	11/9/2004	11/16/2004	5	US Title

<u>File #</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u># Business of Days</u>	<u>Agent</u>
5-9872	7/22/2005	7/28/2005	4	US Title
503337	5/17/05	6/8/05	15	US Title
507736	7/1/05	7/11/05	5	US Title
502316	4/8/05	4/14/05	5	US Title
520433	8/18/05	8/31/05	9	US Title
04D109572	11/30/2004	12/08/2004	6	Security

b. Incorrect Risk Rate

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

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

<u>File No.</u>	<u>Policy</u>	<u>Amount Listed on Policy</u>	<u>Filed Risk Rate</u>	<u>Agent</u>
05A60285	B90-0009405	\$625.20	\$683.60	Lewis and Clark
5-34981	J370042312	\$45.00	\$27.00	US Title
05001460	J37-0032899	\$201.30	\$257.72	US Title
5-04167	J37-0017883	\$276.60	\$461.48	US Title
05421481	J37-0023514	\$4.00	\$213.92	US Title
5-08321*	J37-0034372	\$960.00	\$1010.00	US Title
04022406*	J37-0027475	\$462.00	\$258.88	US Title
045746245	J37-0034362	\$109.60	\$79.08	US Title
5-16832	J37-0023449	\$70.80	\$118.00	US Title
5-10155*	J37-0036478	\$91.38	\$151.81	US Title
5-14200	J37-0016886	\$150.32	\$202.00	US Title
521399	J37-0029961 B90-0023527	\$186.00	\$111.60	US Title
518700	J37-0030048	\$173.28	\$288.80	US Title
512394	J37-0035718	\$19.20	\$145.00	US Title
513508	B90-0023422	\$796.40	\$477.50	US Title
503337*	B90-0021321	\$296.00	\$228.40	US Title
503337*	J37-0024769	\$4.00	\$4.80	US Title
60266	J37-00012235	\$160.32	\$355.30	Security
60235	H987913	\$158.32	\$115.99	Security

The following agency's agreements provide for calculation of the agency commission and net premium payable to the Company based on a rate that is other than the risk rate filed by

the company with the director. No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules file with the director. Risk rate includes the agent's commission.

Reference: Section 381.181.2, RSMo, and 20 CSR 500-7.100(1)(D)

<u>File #</u>	<u>Agency</u>
05A606285*	Lewis and Clark Title

c. Total Charges

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

Reference: Sections 381.181 and 381.031.4 and 14, RSMo, and 20 CSR 500-7.100(1)(B) and (3)(B)

<u>File No.</u>	<u>Policy</u>	<u>Total Charges</u>	<u>Risk Rate on Policy</u>	<u>Agent</u>
05A60285*	F5209242494	\$1,000.00	\$33,020.00	Lewis and Clark
04020662	B90-0028044	\$863.00	\$763.00	US Title
03-S107823	J37-0005161	\$95.00	\$920.40	US Title

d. Improper Fees

In the following file, the agent charged recoding fees to the buyer in excess of the actual fee.

Reference: Real Estate Settlement Procedures Act of 1974, Sec 8(b), 12 USCA sec. 2607(a-b). 24 CFR sec. 3500.14, and Section 59.310, RSMo

<u>File No</u>	<u>Policy No.</u>	<u>Overcharge</u>	<u>Agent</u>
04D109572*	J37-0023766 B900014234	\$88.00	Security

e. Miscellaneous

The following file was reported as issued by Lewis and Clark Title, an agent of the Company. Lewis and Clark submitted an invoice dated 8/18/05 and received payment on the same date for an owner's title policy. Neither the agent nor any of its employees performed any title-related services in this file. The file provided to the examiners is numbered 60285; it is a US Title Guaranty of St. Charles file. The examiner identified five U.S. Title of St. Charles employees who executed documents in this file on behalf of Lewis and Clark Title.

The policy issuing agent did not earn any of the fees collected in this transaction. No employee of the agent acted to examine, review, document or close any part of the transaction. The agent was paid a fee for referral of business or other inducement but provided no services to the underwriter or to the agent who handled the transaction

Reference: Section 381.141, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
05A60285*	B90-0009405	Lewis and Clark

The owner's policy in this file was reported as issued by Champion Title, an agent of the Company. The evidence in this file indicates that Champion was in fact the "Marketing Agent." However, there is no indication that Champion Title did any title work on this file.

The policy, presumably issued by Champion Title, is signed by an employee that is also an agent for Security Title. There is no indication on the policy itself that Champion Title, not Security Title, actually issued the policy. Champion Title received payment for title insurance from Security Title on 4/26/05, in the amount of \$1,085.00, paid by the purchasers. Security received settlement fees, notary fees, and delivery fees in the amount of \$312.00.

The order came to "Security Title." The order form listed Champion Title as "Marketing Agent." All of the agents involved in this transaction are licensed agents for both Champion Title and Security Title. All the contact e-mails in the file are for Security Title insurance. All the privacy statements in the policy are titled "Security Title Insurance Agency and Champion Title LLC." Security Title closed the transaction.

The policy issuing agent did not earn any of the fees collected in this transaction. The order was to Security Title. Champion Title was paid a fee for referral of business or other inducement but provided no services to the underwriter or to the agent who handled the transaction.

Reference: Section 381.141, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
50887*	J37-0024382 B90-0022321	Champion Title

The Company failed to insure as they had agreed by having its agent execute a letter of instruction dated 8/17/2005, the Company agreed to issue the owner's policy with a non-imputation endorsement. The endorsement issued provides that knowledge of the seller in this transaction will not be imputed to the insured. The endorsement as written probably provides minimal benefit to the insured and is not likely the coverage sought. The Company failed to insure as agreed. Failing to insure as agreed is not a sound underwriting practice.

Reference: Section 381.071.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
05A60285*	B90-0009405	Lewis and Clark

The Company failed to maintain proper evidence of the title examination. The Company and the agent are required to maintain evidence of the examination of title for a period of not less than 15 years after issuing the policy of title insurance.

Reference: Section 381.071.3, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
04D109572*	B900014234 J37-0023766	Security

In the following policy the purchaser's full cost of acquisition and planned improvement of the property was \$353,000.00, the amount of the purchaser's mortgage plus the earnest money paid at time of contract. The value of the coverage offered by the company under the terms of the policy should be reasonable related to the dollar amount of the loss that could reasonably be anticipated by the insured and the company. The purchaser was entitled to coverage of at least \$353,000.00. The owner's policy was issued with a face amount of \$223,000.00 and the Simultaneous loan policy with a face amount of \$348,000.00. Failure to insure for the amount of the loss that could reasonably be anticipated is not sound underwriting.

Reference: Section 381.071.1.2, RSMo

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>
503337*	B90-0021321 J37-0024769	US Title

C. Failure to issue policy in a timely manner

This practice is considered not in the best interest of the Consumers. This is not a violation of any statute or regulation. However, the delay may not be in the best interest of consumers. Long delay in issuing the policy is not in the interest of the consumer. The underwriter is not aware of reportable premium until the policy is issued and may be unable to promptly pay premium taxes when due. The Company has not fully complied with record maintenance obligations until the policy has been issued. In addition the insured does not receive notice of how to file a claim or the address and phone number of the underwriter until the policy is issued. SB 66, Section 381.038.3, RSMo, eff. 8/28/07 will require insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance.

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co had Enough Info. to Issue</u>	<u>Date Issued</u>	<u>Number of Days to Issue</u>
52687	B900029480 J-37-0036673	10/10/2005	12/15/2005	66
05A60285	B90-0009405	8/19/2005	11/8/2005	81
50887	B900022321 J-3700024382	4/26/2005	9/26/2005	153
53218	J37-00036717 B900031048	10/21/2005	1/9/2006	80
32449BL	J37-0032220 B90-0028098	4/7/2005	10/17/2005	193
05-14220	J37-0016886	2/9/2005	6/8/2005	121
05-14327	J37-001691	3/28/2005	6/24/2005	88
1551A	J37-0031990	5/16/2005	9/20/2005	137
04W27990	B90-0023213	4/28/2005	7/29/2005	92
5421481	B90-0016805 J37-0023514	1/25/2005	6/13/2005	142
5-08321	B90-0029910 J37-0034372	5/9/2005	11/28/2005	203
04012349	B90-0016133 J37-0024111	6/16/2004	5/19/2005	337
04022406	B90-0022645 J37-0027475	11/9/2004	8/10/2005	274
5-09872	B90-0027417 J37-0033848	7/22/2005	11/18/2005	119
5-14107	B90-0029804	9/29/2005	2/10/2006	134
5-01874	B90-0028098	4/7/2005	10/17/2005	183
	B90-0028161 J37-0032271	12-17/2004	10/5/2005	292

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co had Enough Info. to Issue</u>	<u>Date Issued</u>	<u>Number of Days to Issue</u>
04022300	B90-0021393 J37-0027358	11/24/2004	7/25/2005	181
5-11594	B90-0028069	5/26/2005	1/19/2006	238
04013733	B90-0028870	7/30/2005	11/15/2005	108
04015876	J37-0034362 B90-0029905	8/31/2004	11/23/2005	442
500704	B90-0022661 J37-0027368	3/4/2005	7/29/2005	142
531707	B90-0032192	11/8/2005	1/31/2006	84
524572	B90-0032192 J37-0035921	9/13/2005	2/2/2005	142
525281	B90-0029680 J37-0035693	9/30/2005	1/18/2006	110
530379	B90-0040279 J37-0040279	11/23/2005	3/28/2006	125
506835	B90-0022670 J37-0028648	5/20/2005	8/13/2005	85
511973	B90-0035249 J37-0040194	6/21/2005	3/21/2006	365
04020662	B90-0028044	11/12/2005	11/1/2005	354
5001460	B90-0025810 J37-0032899	3/31/2005	10/31/2005	214
53981	J37-0042312	1/24/2006	5/10/2006	106
536100	B90-0035157 J37-0044412	2/1/2006	4/7/2006	65
604023853	B90-0028655 J37-0032938	12/15/2004	11/8/2005	328
05W28222	J37-0025962 B90-0023189	5/11/2005	7/15/2005	64
502316	J37-0031011	4/14/05	10/14/04	183
507736	J37-0030029	7/11/05	10/11/05	92
520433	J37-0035668	8/31/05	1/9/06	131
517621	J37-0034046	8/30/05	12/23/05	115
522215	J37-0031317	8/29/05	1/4/06	128
40828	J37-00023775	1/31/2005	6/7/2005	127
04D109572	J37-0023766 B900014234	12/8/2004	6/12/2005	186

The following policy was not issued to the insured.

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

<u>File No.</u>	<u>Policy Number</u>	<u>Date Co had Enough Info. to Issue</u>	<u>Date Issued</u>	<u>Number of Days to Issue</u>	<u>Agency</u>
B2182	J37-0019795 B90-008062	4/14/2005	Not issued	746+	Asbury

The following files did not contain sufficient documentation to determine when the policy was issued to the insured.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Date Co had Enough Info to Issue</u>	<u>Date Issued To Insured</u>	<u>Agency</u>
04025721	J37-0028636	Not provided	8/16/2005	US Title
6-05933	B90-0032342 J37-0040616	4/14/2006	Not provided	US Title
5-00142	B90-0016877 J37-0017882	2/25/2005	Not provided	US Title
5-06044	B90-0021464 J37-0023386	4/22/2005	Not provided	US Title
04003866	J37-00215131	Not provided	6/8/2005	US Title
501004	B90-0016851 J37-70018030	3/31/2005	Not provided	US Title
4019136	J37-0025183 B90-0021270	Not provided	6/22/2005	US Title
526473	B90-004079 J37-0030130	10/05/2005	Not provided	US Title
510155	J37-0036478	5/12/2005	Not provided	US Title
601959	J37-0041555	Not provided	Not provided	US Title
5-09968	B90-0021773	5/27/2005	Not provided	US Title
5-10714	B90-0021750 J37-0025928	5/18/2005	Not provided	US Title
5-03152	J37-0023360 B90-0021438	4/14/2005	Not provided	US Title
6-10201	B90-0036372 J37-0044797	5/1/2006	Not provided	US Title
6-07294	B90-0035054 J37-0042405	3/31/2006	Not provided	US Title

<u>File No.</u>	<u>Policy No.</u>	<u>Date Co_had Enough Info to Issue</u>	<u>Date Issued To Insured</u>	<u>Agency</u>
5-34029	B90-0034767 J37-0040495	1/31/2006	Not provided	US Title
5-12973	B90-0026046 J37-0029871	7/29/2005	Not provided	US Title
5-02880	B90-0016806 J37-0023516	4/11/2005	Not provided	US Title
5-25971	J37-0033980	9/26/2005	Not provided	US Title
04421174	J37-0023517	Not Provided	Not provided	US Title
5-04167	J37-0017883	Not provided	Not provided	US Title

III. Claims Practices

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

A. Claim Time Studies

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

Field Size: 155
Sample Size: 50
Type of Sample: systematic
Number of Errors: 12
Error Rate: 24%
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.

Following are the results of the time studies.

Acknowledgement Time

The examiners noted the following error in this review.

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

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

<u>Claim</u>	<u>Received Notice of Claim</u>	<u>Date Accepted</u>	<u>Days</u>	<u>Agency</u>
C122628	4/20/2006	5/16/2006	18	US Title
C111613	5/9/2005	6/3/2005	17	Evans Land Title
C112140	5/25/2005	6/15/2005	15	US Title
C109003	1/26/2005	3/15/2005	25	US Title
C121264	2/28/2006	4/13/2006	32	US Title
C107558	2/28/2005	3/17/2005	13	US Title
C038743	2/12/2004	3/18/2004	25	US Title
C106851	11/19/04	1/5/2005	31	US Title
C115574	10/7/2004	10/31/2005	16	US Title
C124116	3/1/2006	6/27/2006	118	US Title

The Company failed to provide all necessary claim forms, instructions and reasonable assistance so that the claimant could comply with policy conditions and the insurer's reasonable requirements.

Reference: 20 CSR 100-1.030 (3)

<u>Claim</u>	<u>Received Notice of Claim</u>	<u>Proof of Loss Form Provided</u>	<u>Days</u>	<u>Agency</u>
C114379	8/1/2005	8/30/2005	20	Guaranty Title Company

Determination Time

The examiners noted the following error in this review.

The Company failed to pay or deny the following claim within fifteen (15) days after all forms necessary to establish the nature and extent of the claim. The Company's agent had all the documents necessary to establish the nature and extent of the claim on the day the claim was received but failed to do so.

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

<u>Claim</u>	<u>All Docs Received</u>	<u>Date Accepted</u>	<u>Days</u>	<u>Agent</u>
C109485	3/30/2005	7/7/2005	95	US Title

Investigation Time

The examiners noted the following errors in this review.

The Company failed to complete the following investigation within 30 days of the initial notification of the claim. There is no indication that an investigation could not be completed in 30 days. The house that is the subject of the transaction is located within the boundaries of a parcel not examined. Proper investigation of this claim should include a proper examination of title.

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</u>	<u>Claim Received</u>	<u>Investigation Complete</u>	<u>Days</u>	<u>Agency</u>
C124116*	6/20/2006	Incomplete as of 4/19/2007	303	US Title

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.

Field Size:	155
Sample Size:	50
Type of Sample:	Systematic
Number of Errors:	3
Error Rate:	6%
Within Dept Guidelines:	Yes

The company received and paid 12 payments on a claim totaling over \$56,000.00. The company failed to set reserves for unpaid losses and loss expenses upon receiving notice of a matter that may result in a loss or that may cause an expense to be insured in disposition of the claim

Reference: Section 381.101, RSMo

<u>Claim No.</u>
C100497

The following claim files did not contain all notes and work papers pertaining to the claim in such detail that pertinent events and dates of these events can be reconstructed.

Reference: 20 CSR 300-2.100, and 20 CSR 100-1.010(1)(G)

<u>Claim No.</u>
C117645
C114379

C. Indemnity letters

The Company made available to the examiners all requests for letters of indemnity received in 2006. These requests for indemnity letter are filed by month and Transnation, Commonwealth Land Title Insurance Company, and Lawyers Title Insurance Corporation are all filed together. The examiners reviewed 70 requests for Indemnity letter. Five of those requests were regarding Transnation policies. For purposes of determining the timely handling of these requests the claims standards were applied and all files were found to be handled in a timely and appropriate manner.

IV. Consumer Complaints

This section of the report is designed to provide a review of the Company's complaint handling practices. Examiners reviewed how the Company handles complaints to ensure it was performing according to its own guidelines and Missouri statutes and regulations.

The Company is required to maintain a registry of all written complaints received for the last three years by Section 375.936(3), RSMo. The registry is to include all Missouri complaints including those sent to the DIFP and those sent directly to the Company. The examiners requested the complaint registry.

Transnation had no complaints on their registry for the time period reviewed.

During the review of the claims the examiners found one claim file (C114379) that contained complaints that did not appear in the company complaint log. The insured's letter dated 8/5/2005, constitutes written communications primarily expressing a grievance. The insured indicates he has been attempting to resolve a claim for months without response from the company. Despite numerous requests, the insured stated that he has not received a copy of his policy. He further indicates if the situation is not resolved he will file a complaint with the DIFP.

The company failed to log this complaint on their complaint log

Reference: Section 375.936(3), RSMo.

<u>Claim No.</u>
C114379

V. Unclaimed Property

The examiners conducted a review of the Transnation's 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.

VI. Formal Requests and Criticisms Time Study

This study is based upon the time required by the Company to provide the examiners with the requested material or to respond to criticisms.

A. Criticism time study

<u>Calendar Days</u>	<u>Number of Criticisms</u>	<u>Percentage</u>
0 to 10	84	100%

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

B. Formal request time study

<u>Calendar Days</u>	<u>Number of Requests</u>	<u>Percentage</u>
0 to 10	10	100.0%

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

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

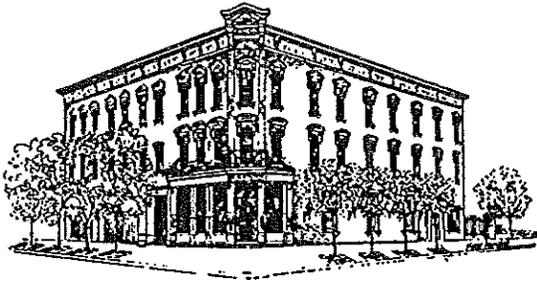
EXAMINATION REPORT SUBMISSION

Attached hereto is the Division of Insurance Market Regulation's Final Report of the examination of Transnation Title Insurance Company (NAIC #50012), Examination Number 0612-68-PAC. This examination was conducted by Martha (Burton) Long, Joseph Ott, and Ted Greenhouse. The findings in the Final Report were extracted from the Market Conduct Examiner's Draft Report, dated October 17, 2007. Any changes from the text of the Market Conduct Examiner's Draft Report reflected in this Final Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Report has been reviewed and approved by the undersigned.

Jim Mealer
Chief Market Conduct Examiner

Date

MONROE HOUSE LAW CENTER



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DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

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

Nicholas M. Monaco
*Ann Monaco Warren
Mark G.R. Warren
Gerard "Jay" Harms, Jr.
Todd E. Irelan

(1921-2008) John W. English
(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)

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

Re: Transnation Title Insurance Company - Market Conduct Examination

Dear Carolyn:

Attached please find for filing by and on behalf of Transnation Title Insurance Company ("Transnation") 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 inwarren@englishmonaco.com and awarren@englishmonaco.com.

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

Sincerely,

Ann Monaco Warren
AMW/mjw

Encl.

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

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

Market Conduct Examination Report

Examination Number 0612-68-PAC

Transnation Title Insurance Company
NAIC # 50012 (former)

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
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INTRODUCTION

Transnation Title Insurance Company was merged with and into Lawyers Title Insurance Corporation, a Nebraska domiciled insurer, effective August 31, 2008; therefore, this response is submitted by Lawyers Title Insurance Corporation. Lawyers Title Insurance Corporation was acquired by Fidelity National Financial, Inc. on December 22, 2008. References herein to "Company" or "Insurer," depending upon the context, shall mean Transnation Title Insurance Company as the company that was the subject of the market conduct examination or Lawyers Title Insurance Corporation as the survivor of the merger and the company submitting this response.

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 Transnation 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 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. 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.

6. 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.

7. 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.

8. Applicability of New Regulations

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

companies for which they are held responsible and are subject to penalty, they are Substantive and should not be applied retroactively.

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

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

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

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

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

For example, Section 2 of a Nations Title Agency Agreement (used as an example here) states that the agent "itself and through its employees or officers approved by the company (authorized signatories) shall only have the authority on behalf of company to sign, counter-sign and issue commitments, binders, title insurance policies, and endorsements and under which company assumes liability for the condition of title to land (hereinafter sometimes referred to "title assurances"), and only on forms supplied and approved by company and only on real estate located in the territory and in such other territories as may be designated in writing by the

company.” Therefore, as can be seen from the above, the agent is required, for example, to only use forms supplied and approved by the company. Thus, and for example only, use of an improper form by an agent is in direct contravention of the agreement with the company. The company should not therefore be held responsible in a market conduct examination (or in any legal proceeding) for an act by an agent which obviously exceeds the scope of the agent or agencies authority.

It should also be noted that the title insurance law found in Chapter 381 nowhere states that a title insurance company is responsible for the acts of its agents outside the scope of their agency agreements. On the contrary, Chapter 381.011 (effective 1/1/08) states at 381.011.3 that “except as otherwise expressly provided in this Chapter and except where the contexts otherwise requires, all provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents.” Chapter 381 does not, therefore, make title companies responsible for acts of their agents, especially when the acts occur outside the scope of the agent’s authority.

RESPONSE TO EXAMINATION FINDINGS¹

I. Sales and Marketing

A. Licensing of Agents and Agencies

No response required.

B. Marketing Practices

No response require.

II. Underwriting and Rating Practices

A. Forms and Filings

The examiners found that certain agents used general exceptions in their owner's policies that were not the same as the general exceptions used in the filed forms. Those violations are as follows:

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

<u>File No.</u>	<u>Owner's Policy</u>	<u>Agent</u>
4025407	B90-0028161	U S Title
605933	B90-0032342	U S Title
4013733	B90-0028870	U S Title
500704	B90-0022661	U S Title
4020662	B90-0028044	U S Title
612022	B90-0035000	U S Title
510714	B90-0021750	U S Title
610201	B90-0036372	U S Title
607294	B90-0035054	U S Title
534029	B90-0034767	U S Title
512973	B90-0026046	U S Title
502880	B90-0016806	U S Title
5421481	B90-0016805	U S Title
523478	B90-0027470	US Title

RESPONSE: Denied. See General Objections 2 and 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation.

¹ The Company will respond to each criticism in the order it appears in the Report without reproducing the text of the criticism except where necessary.

The examiners found that certain agents used general exceptions in the loan policies. Although the ALTA 1992 loan policies and the related schedules filed by the Company with the director contain no such general exceptions. Those violations are as follows:

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
514944	J37-0031535	Kiefer Title
515102	J37-0035486	Kiefer Title
615322	J37-0035551	Kiefer Title
413511	J37-0012903	Kiefer Title
512394	J37-0035718	US Title
522215	J37-0031317	US Title

RESPONSE: Denied. *See* General Objections 2 and 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation.

The examiners found that certain agents used general exceptions in commitments that were not the same as the general exceptions used in the filed forms. Those violations are as follows:

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
5001460	B900025810	U S Title
508321	B900029910	U S Title
4012349	B900016133	U S Title
4022406	B900022645	U S Title
503152	B900021438	U S Title
509872	B900027417	U S Title
<u>File No.</u>	<u>Policy No.</u>	<u>Agency</u>
52687	B900029480	Dependable
50887	B900022321	Champion Title
04D109572	B900014234 J37-0023766	Security Title
40828	B900014256 J37-0023775	Security Title
60235	H987913	Security Title
60266	J3700012235	Security Title
05A60285	B900009405	Lewis and Clark
514944	J37-0031535	Kiefer Title
515102	J37-0035486	Kiefer Title
615322	J37-0035551	Kiefer Title

413511	J37-0012903	Kiefer Title
502316	J37-0031011 B90-002679	US Title
503337	J37-0024769 B90-0021321	US Title
507736	J37-0030029 B90-0026290	US Title
512394	J37-003518	US Title
513508	B90-0023422	US Title
516226	J37-0023453	US Title
516942	J37-0028080	US Title
517621	J37-0034046 B90-0029617	US Title
518700	J37-0030048	US Title
520433	J37-0035668 B90-0029627	US Title
521399	J37-0029961 B90-0023527	US Title
522215	J37-0031317	US Title
523478	B90-0027470	US Title
528547	J37-0031207 B90-0027470	US Title

RESPONSE: Denied. *See* General Objections 2 and 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation.

The owner's policy in the following file includes an exception reading: "Any discrepancy between the actual boundaries of the land and the apparent boundaries as indicated by fences, plantings or other improvements." This language is not a part of the policy forms filed with the director. There is no signal in the commitment to insure that the exception might be added to the policy. There is no indication in the file including the markup to policy, that the exception would be added to the policy as the result of any negotiation with the insured for modification of the policy. Addition of the language to the policy was a violation of the contract to insure in the manner indicated by the provisions of the commitment to insure and by the markup to policy.

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

<u>File No.</u>	<u>Policy No.</u>	<u>Agent</u>	<u>Criticism</u>
521399	B9-0023527 J37-0029961	US Title	J37

RESPONSE: Denied. *See* General Objections 2 and 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation.

The following commitment forms contain the following language:

THIS COMMITMENT IS NOT AN ABSTRACT, EXAMINATION, REPORT, OR REPRESENTATION OF FACT OR TITLE AND DOES NOT CREATE AND SHALL NOT BE THE BASIS OF ANY CLAIM FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR OTHER TORT CLAIM OR ACTION. THE SOLE LIABILITY OF THE COMPANY AND ITS TITLE INSURANCE AGENT SHALL ARISE UNDER AND BE GOVERNED BY THE CONDITIONS OF THE COMMITMENT AND OR POLICY SUBSEQUENTLY ISSUED.

This language is not contained in the form filed with the Director.

Reference: Sections 381.211, and 375.1007(1), RSMo, and 20 CSR 500-7.100(3)(B)

<u>File No.</u>	<u>Agent</u>
502316	US Title
503337	US Title
50736	US Title
507736	US Title
512394	US Title
513508	US Title
516226	US Title
516942	US Title
517621	US Title
518700	US Title
520433	US Title
521399	US Title
522215	US Title
523478	US Title
523478	US Title
528547	US Title

RESPONSE: Denied. *See* General Objections 2 and 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation.

B. General Practices Underwriting and Rating

a. Failure to Timely Record

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

Reference: Section 381.412, RSMo.

<u>File No.</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u>No. Business of Days</u>	<u>Agent</u>
52687	10/10/2005	10/24/2005	10	Dependable
50887	4/26/2005	5/3/2005	6	Champion
05-14220	2/9/2005	2/23/2005	11	Kiefer
5-01004	3/31/2005	4/7/2005	5	US Title
5-01874	4/7/2005	4/20/2005	9	US Title
04025407	12/17/2004	12/29/2004	7	US Title
5-06044	4/22/2005	5/3/2005	7	US Title
5-00142	2-25-2005	3/3/2005	4	US Title
04015876	8/31/2004	9/7/2004	4	US Title
531707	11/8/2005	11/17/2005	7	US Title
524572	9/13/2005	9/21/2005	6	US Title
525281	9/30/2005	10/6/2005	4	US Title
530379	11/23/2005	11/30/2005	4	US Title
507835	5/20/2005	5/26/2005	4	US Title
510155	5/12/2005	5/19/2005	5	US Title
5-08321	5/9/2005	5/13/2005	4	US Title
04022406	11/9/2004	11/16/2004	5	US Title
<u>File #</u>	<u>Date of Disbursement</u>	<u>Date Recorded</u>	<u># Business of Days</u>	<u>Agent</u>
5-9872	7/22/2005	7/28/2005	4	US Title
503337	5/17/05	6/8/05	15	US Title
507736	7/1/05	7/11/05	5	US Title
502316	4/8/05	4/14/05	5	US Title
520433	8/18/05	8/31/05	9	US Title
04D109572	11/30/2004	12/08/2004	6	Security

RESPONSE: Denied. *See* General Objections 7 and 9.

b. Incorrect Risk Rate

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

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

<u>File No.</u>	<u>Policy</u>	<u>Amount Listed on Policy</u>	<u>Filed Risk Rate</u>	<u>Agent</u>

05A60285	B90-0009405	\$625.20	\$683.60	Lewis and Clark
5-34981	J370042312	\$45.00	\$27.00	US Title
05001460	J37-0032899	\$201.30	\$257.72	US Title
5-04167	J37-0017883	\$276.60	\$461.48	US Title
05421481	J37-0023514	\$4.00	\$213.92	US Title
5-08321*	J37-0034372	\$960.00	\$1010.00	US Title
04022406*	J37-0027475	\$462.00	\$258.88	US Title
045746245	J37-0034362	\$109.60	\$79.08	US Title
5-16832	J37-0023449	\$70.80	\$118.00	US Title
5-10155*	J37-0036478	\$91.38	\$151.81	US Title
5-14200	J37-0016886	\$150.32	\$202.00	US Title
521399	J37-0029961 B90-0023527	\$186.00	\$111.60	US Title
518700	J37-0030048	\$173.28	\$288.80	US Title
512394	J37-0035718	\$19.20	\$145.00	US Title
513508	B90-0023422	\$796.40	\$477.50	US Title
503337*	B90-0021321	\$296.00	\$228.40	US Title
503337*	J37-0024769	\$4.00	\$4.80	US Title
60266	J37-00012235	\$160.32	\$355.30	Security
60235	H987913	\$158.32	\$115.99	Security

RESPONSE: Denied. *See* General Objection 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use calculate the risk rate in a manner other than approved by the State and the Company is not chargeable to the Company as a violation.

The following agency's agreements provide for calculation of the agency commission and net premium payable to the Company based on a rate that is other than the risk rate filed by the company with the director. No title insurer or title agent or agency may use or collect any premium except in accordance with the premium schedules file with the director. Risk rate includes the agent's commission.

Reference: Section 381.181.2, RSMo, and 20 CSR 500-7.100(1)(D)

<u>File #</u>	<u>Agency</u>
05A606285*	Lewis and Clark Title

RESPONSE: Denied. *See* General Objection 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use calculate the risk rate in a manner other than approved by the State and the Company is not chargeable to the Company as a violation.

c. Total Charges

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

Reference: Sections 381.181, 381.031.4 &14, RSMo, and 20 CSR 500-7.100(3)(B), 20 CSR 500-7.100(1)(B)

<u>File No.</u>	<u>Policy</u>	<u>Total Charges</u>	<u>Risk Rate on Policy</u>	<u>Agent</u>
05A60285*	F5209242494	\$1,000.00	\$33,020.00	Lewis and Clark
04020662	B90-0028044	\$863.00	\$763.00	US Title
03-S107823	J37-0005161	\$95.00	\$920.40	US Title

RESPONSE: Denied. *See* General Objection 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use calculate the risk rate in a manner other than approved by the State and the Company is not chargeable to the Company as a violation.

d. Improper Fees

In the following file, the agent charged recoding fees to the buyer in excess of the actual fee.

Reference: Real Estate Settlement Procedures Act of 1974, Sec 8(b), 12 USCA sec. 2607(a-b). 24 CFR sec. 3500.14, and Section 59.310, RSMo

<u>File No</u>	<u>Policy No.</u>	<u>Overcharge</u>	<u>Agent</u>
04D109572*	J37-0023766 B900014234	\$88.00	Security

RESPONSE: Denied. *See* General Objection 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to overcharge recording fees is not chargeable to the Company as a violation.

e. Miscellaneous

File 05A60285*

RESPONSE: Denied. *See* General Objection 9.

File 50887*

RESPONSE: Denied. *See* General Objection 9.

File 05A60285*

RESPONSE: Denied. *See* General Objections 1 and 9.

File 04D109572*

RESPONSE: Denied. *See* General Objection 9. the obligation to maintain search records is imposed severally among the insurer, the agency or the agent.

File 503337*

RESPONSE: Denied. *See* General Objections 1 and 9.

C. Failure to issue policy in a timely manner

RESPONSE: As to each and every file noted in the report, this violation is denied. *See* General Objections 7 and 9.

III. Claims Practices

A. Claim Time Studies

RESPONSE: The Company does not dispute the specific findings in this section.

Acknowledgement Time

RESPONSE: The Company does not dispute the specific findings in this section.

Determination Time

RESPONSE: The Company does not dispute the specific findings in this section.

Investigation Time

RESPONSE: The Company does not dispute the specific findings in this section.

B. General handling practices

RESPONSE: The Company does not dispute the specific findings in this section and notes that the error rate is less than 10%.

C. Indemnity letters

No Response required.

IV. Consumer Complaints

The Company defines a complaint as an inquiry received from a regulatory agency. Matters filed by consumers (policyholders or others claiming an interest) are considered claims and are handled accordingly. Otherwise, the Company does not dispute the specific findings in this section.

V. Unclaimed Property

No response required.

VI. Formal Requests and Criticisms Time Study

A. Criticism time study

RESPONSE: The Company does not dispute the specific findings in this section.

B. Formal request time study

No response required.

Respectfully submitted,

Transnation Title Insurance Company

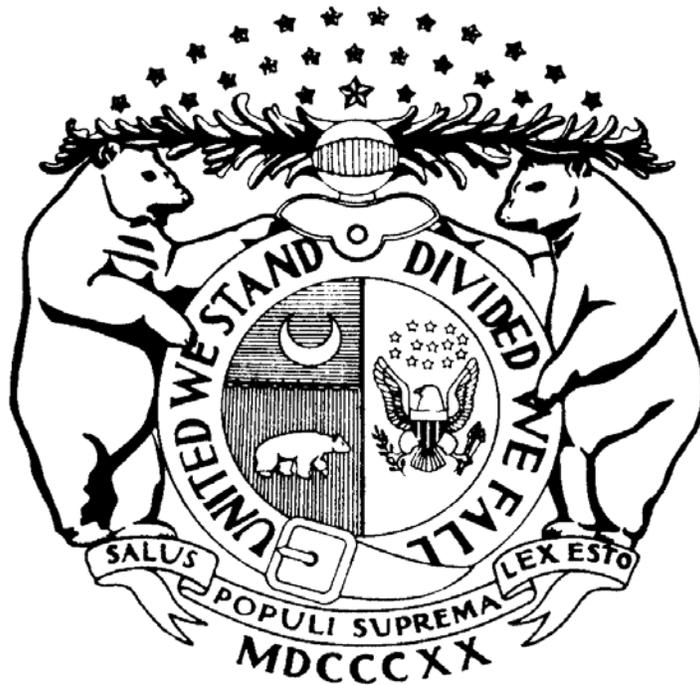


Michael J. Rich
Vice President and Regulatory Counsel

STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Final Market Conduct Examination Report
ADDENDUM
Transnation Title Insurance Company
NAIC # 50012



Home Office
5600 Cox Road
Glen Allen, VA, 23060
Examination Number 0612-68-PAC

January 11, 2010

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FOREWORD

This market conduct examination report of the Transnation 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 “Transnation” to refer to Transnation 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.

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.

This portion of the examination is a result of a warrant issued by the Director reopening examination 0612-68-PAC. The purpose of this examination is to determine if Transnation complied with Missouri statutes and DIFP regulations.

The examination of Transnation Title Insurance Company, NAIC #50012, was expanded by an examination warrant issued on March 10, 2008. It included the following Transnation agents to be examined for the time frame of January 1, 2006, to February 29, 2008.

- Mayer Title Co., LLC
- Security Title Insurance Agency, LLC
- NRT Settlement Services of Missouri, LLC (US Title)
- Residential Title Services, Inc.

Transnation merged with Lawyers Title Insurance Corporation during June of 2008. Lawyers Title Insurance Corporation is the surviving entity. Both Transnation and Lawyers Title were subsidiaries of LandAmerica Financial Group, Inc. Lawyers Title remains a subsidiary of LandAmerica.

LandAmerica filed for Chapter 11 Bankruptcy on November 26, 2008.

EXECUTIVE SUMMARY

Examiners found the following areas of concern.

- Agents of the Company are using commitment forms that are different from the forms filed with the DIFP
- In some files, agents of the Company did not use the risk rate filed with the DIFP.

EXAMINATION FINDINGS

Mayer Title Co., LLC

Mayer Title entered into a consent order with the DIFP on August 8, 2008. Their Certificate of Authority was revoked on August 21, 2008. No files were reviewed for purposes of this examination.

Security Title Insurance Agency, LLC

The examiners reviewed seven Transnation files at Security Title Insurance Agency. The examiners found errors in the following files.

File: 80935

Owners Policy: C35-003443

The examiner found one violation in this file.

1. The commitment in this file is dated 3/18/2008. The owner policy in this file is dated 3/24/2008. The commitment jacket used by the agent is not the commitment jacket filed by the insurer with the director of the DIFP. The agent used the ALTA Plain Language Commitment (6/17/06), which has not been filed with the director by this underwriter. A title insurer shall not deliver or permit its agent to deliver any standard form providing coverage, in connection with title insurance written, unless the standard form has been filed with the director.

Reference: §381.085.2, RSMo (Supp. 2007)

File: 81245

Loan Policy: K62-Z-003230

The examiner found one error in this file.

1. The loan policy in this file is dated 4/28/2008. The agent charged a risk rate premium of \$113.80 for the policy. The risk rate charged is not shown on the policy. No title insurer, agent or agency may use or collect any premium except in accordance with the premium schedules filed with the director. No policy providing title insurance coverage shall be issued unless it contains the premium collected for issuance of the policy.

Reference: §381.181.2, RSMo (1994), and 20 CSR 500 – 7.130 (1) (B).

File: 80484

Loan Policy: K62-0003524

The examiner found two errors in this file

1. The commitment in this file is dated 2/1/2008. The loan policy in this file is dated 3/11/2008. The commitment jacket used by the agent is not the commitment jacket filed by the

insurer with the director of the DIFP. The agent used the ALTA Plain Language Commitment (6/17/2006), which has not been filed with the director by this underwriter. A title insurer shall not deliver or permit its agent to deliver any standard form providing coverage, in connection with title insurance written, unless the standard form has been filed with the director.

Reference: § 381.085.2, RSMo (Supp. 2007)

2. The loan policy in this file is dated 3/11/2008, and has a face amount of \$417,000.00. The agent charged a risk rate premium of \$187.14 for the policy, the correct premium for a loan policy of this amount if it qualifies for a reissue risk rate. The agent's file contains no information indicating that the borrower had previously been insured as owner in a policy of title insurance. The definitions appended to form T-7, as referenced in 20 CSR 500 – 7.100, include a definition reading as follows: “‘Reissue Title Insurance for Loan Policies’ means a mortgage title insurance policy issued for an owner of property who has had the title to such property previously insured as owner by any title insurer.” The rates filed by Transnation with the director and in use at the time of the issuance of this policy do not include a different definition for a reissue loan policy. The correct risk rate for the policy was \$311.90, calculated as follows: $(50 @ \$1.00/M = \$50.00) + (50 @ \$0.80/M = \$40.00) + (317 @ \$0.70/M = \$251.90) = \$341.90$. No title insurer, agent or agency may use or collect any premium except in accordance with the premium schedules filed with the director. A consent order regarding this type of violation was entered into by Security Title Insurance Agency, LLC, and DIFP on 5/14/08.

Reference: § 381.181.2, RSMo (1994), and 20 CSR 500 – 7.100

3. The agent satisfied two mortgages from escrow. Each of the mortgage lenders charged and collected a release recording fee. The agent also collected fees of \$54.00 for recording releases. Having been paid fees for recording the releases, the lenders are required to do so. The title agent had no basis for any belief that releases would be sent to the agent for recording, and the agent had no basis for collecting the release recording charges. The secured party whose mortgage has been satisfied has liability to the mortgagor for failure to submit release for recording. The agent may not charge a fee for which no or nominal services are performed.

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

File: 80328

Loan Policy: K62-0003373

The examiner found one error in this file.

1. The commitment to insure in this file is dated 12/26/2007. The loan policy in this file is dated 2/8/2008. The commitment jacket used by the agent is not the commitment jacket filed by the insurer with the director of the DIFP. The agent used the ALTA Plain Language Commitment (6/17/2006). That form has not been filed with the director by this underwriter. A title insurer shall not deliver or permit its agent to deliver any standard form providing coverage in connection with title insurance written unless the standard form has been filed with the director.

Reference: §381.085.2, RSMo (Supp. 2007)

File: 80246

Loan Policy: K52-0004069

The examiner found one error in this file.

1. The commitment to insure in this file is dated 12/23/2007. The loan policy in this file is dated 2/7/2008. The commitment jacket used by the agent is not the form of commitment jacket filed by the insurer with the director of the DIFP. The agent used the ALTA Plain Language Commitment (6/17/2006). That form has not been filed with the director by this underwriter. A title insurer shall not deliver or permit its agent to deliver any standard form providing coverage in connection with title insurance written unless the standard form has been filed with the director.

Reference: §381.085.2, RSMo (Supp. 2007)

File: 80649

Loan Policy: K52-0003794

The examiner found one error in this file.

1. The commitment to insure in this file is dated 2/6/2008. The loan policy in this file is dated 4/3/2008. In this file, the commitment jacket used by the agent is not the commitment jacket filed by the insurer with the director of the DIFP. The agent used the ALTA Plain Language Commitment (6/17/2006). That form has not been filed with the director by this underwriter. A title insurer shall not deliver or permit its agent to deliver any standard form providing coverage in connection with title insurance written unless the standard form has been filed with the director.

Reference: §381.085.2, RSMo (Supp. 2007)

NRT Settlement Services of Missouri, LLC (US Title)

NRT Settlement Services of Missouri LLC, is a Delaware limited liability company and was registered as such with the Missouri Secretary of State on 11/26/2007. NRT Settlement Services of Missouri LLC, conducts business in Missouri using two fictitious names, U. S. Title Guaranty Company and U. S. Title Guaranty Company of St. Charles. Both fictitious names were registered with the Missouri Secretary of State on 1/9/2008. The DIFP has issued agency licenses to each of the registered fictitious names. This report does not distinguish among the fictitious names used by the agency.

The examiners reviewed three files at this agency. Errors were found in two of those files reviewed.

The examiners found three errors in this file.

1. Schedule B-I of the commitment contains the following disclaimer:

This commitment is not an abstract, examination, report, or representation of fact or title and does not create and shall not be the basis of any claim for negligence, negligent misrepresentation or other tort claim or action. The sole liability of company and its title insurance agent shall arise under and be governed by the conditions of the commitment and/ or policy subsequently issued.

This language is not a part of the form of commitment filed by the insurer with the DIFP. The company and the agent may not use forms not filed with the director.

Reference: §381.085, RSMo (Supp. 2007)

2. The buyer settlement statement for this purchase shows title insurance premium of \$194.80. The contract purchase price was \$176,000.00. The policy mark-ups show owner policy premium of \$190.80 and lender policy premium of \$4.00. The owner's policy premium of \$190.80 was correct at an original issue rate, but the agent's file contains a copy of another underwriter's policy insuring the seller as owner. The Transnation policy qualified for the reissue rate as filed by the Company with the director. The correct owner policy premium for this policy was \$114.48. Premium schedules must be filed with the director, and no title insurer or agent may use or collect any premium except in accordance with the premium schedules filed with the DIFP.

Reference: §381.181, RSMo (1994)

3. The buyer settlement statement for this purchase shows title insurance premium of \$194.80. The contract purchase price was \$176,000.00. The policy mark-ups show owner policy premium of \$190.80 and lender policy premium of \$4.00. By agreement, U. S. Title earns an 89.25/ 10.75% split with the LandAmerica group of underwriters, including Transnation. The agent submitted premium for these policies to the underwriter in a report dated 5/31/2008. The agent submitted net premium to the underwriter for these policies in the amount of \$48.68 for the owner's policy, or 10.75% of the agent's total charge of \$452.80; \$13.44 for the first loan policy, or 10.75% of the agent's total charge of \$125.00; and \$13.44 for the second loan policy, or 10.75% of the agent's total charge of \$125.00. Calculation of the premium charged was not in accordance with the premium schedules filed with the director. The two loan policies qualified for the simultaneous issue rate for loan policies issued at the same date as the owner policy. The simultaneous issue risk rate filed by the company with the director is \$4.00, but the underwriter collected \$13.44 for each of the simultaneous issue loan policies. The underwriter is not permitted to charge or collect any premium except in accordance with the premium schedules filed with the director.

Reference: §381.181, RSMo (Supp. 2007)

File 7-25382

Owners Policy: C35-0017850

Loan Policy: K62-0017134

The examiners found two errors in this file.

1. Schedule B-I of the commitment contains the following disclaimer:

This commitment is not an abstract, examination, report, or representation of fact or title and does not create and shall not be the basis of any claim for negligence, negligent misrepresentation or other tort claim or action. The sole liability of company and its title insurance agent shall arise under and be governed by the conditions of the commitment and/ or policy subsequently issued.

This language is not a part of the form of commitment filed by the insurer with the director of the Missouri DIFP. The Company and the agent may not use forms not filed with the director.

Reference: §381.085, RSMo (Supp. 2007).

2. The agent issued an owner's policy of title insurance dated 10/29/2007. The agent had a copy of a prior owner's policy issued for a different lot in the same subdivision. The agent copied certain exceptions to title from the related file. A survey for the property to be insured was provided to the agent. The surveyor included notes on his survey to the effect that certain exceptions to title appearing in the commitment to insure do not affect the property, namely an easement granted to Imperial Utility Corp. at Book 550 Page 407, an easement granted to Consolidated Public Water at Book 734 Page 562, and conveyance of a water distribution system at Book 540 Page 581. The agent continued to show the disputed matters as exceptions but made no apparent effort to resolve the issues raised by the surveyor. The examiner notes that all of the items reported by the surveyor as not affecting the property were recorded during the period covered by the chain of title developed by the agent but that none of them appear within the chain. The agent ran a chain of title, using a title plant, back to the time of the recording of the plat for the subdivision in 1972. The period covered by the chain of title may be sufficient, but the earliest deed examined by the agent was recorded in 1986. The chain of title includes at least five additional significant deeds that were not examined by the agent. Those deeds were recorded in Book 591 Page 965 (Strain to Grotha), Book 582 Page 234 (Amonds to Strain), Book 551 Page 513 (Knight Enterprises to Amonds), Book 550 Page 401 (Klamert to Knight Enterprises), and Book 539 Page 447 (Wood Lynn Corp to Klamert). Ignoring significant deeds of conveyance appearing in the chain of title is an unsound underwriting practice and significantly increases the possibility that a matter of record and affecting title to the property will be omitted from the owner's policy of title insurance. The agent did not make a determination of insurability in accordance with sound underwriting practices. The agent did not perform an examination of title sufficient to reasonably assure that all matters recorded and known to affect title could be reported when issuing the owner's policy of title insurance.

Reference: §381.071, RSMo (Supp 2007)

3. The agent closed this sale transaction in escrow on 10/26/2007. The agent disbursed funds from escrow on 10/26/2007, and recorded the deeds on 10/29/2007. The agency issued the policies on 5/6/2008, 190 calendar days after the date of the policies. A long delay in issuing the policy is not in the interest of the consumer. SB 66, §381.038.3, RSMo, eff. 1-01-08, and 20 CSR 500-7.090, eff. 1-28-08 require insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance.

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.

EXAMINATION REPORT SUBMISSION

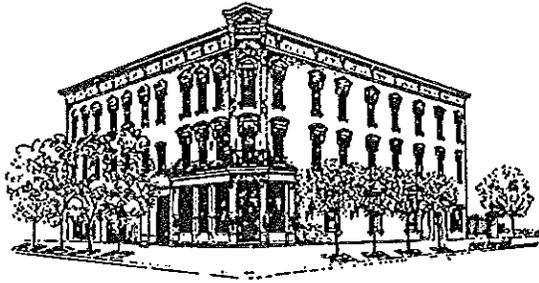
Attached hereto is the Division of Insurance Market Regulation's Final Addendum Report of the examination of Transnation Title Insurance Company (NAIC #50012), Examination Number 0612-68-PAC. This examination was conducted by Martha B. Long, Joseph Ott, and Ted Greenhouse. The findings in the Final Addendum Report were extracted from the Market Conduct Examiner's Draft Addendum Report, dated January 6, 2009. Any changes from the text of the Market Conduct Examiner's Draft Addendum Report reflected in this Final Addendum Report were made by the Chief Market Conduct Examiner or with the Chief Market Conduct Examiner's approval. This Final Addendum Report has been reviewed and approved by the undersigned.

Jim Mealer
Chief Market Conduct Examiner

Date

MONROE HOUSE LAW CENTER

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DEPT OF INSURANCE,
FINANCIAL INSTITUTIONS &
PROFESSIONAL REGISTRATION

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

Via Hand Deliver & 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
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Nicholas M. Monaco
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Mark G.R. Warren
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Todd E. Irelan
(1921-2008) John W. English
(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: Transnation Title Insurance Company - Market Conduct Examination

Dear Carolyn:

Attached please find for filing by and on behalf of Transnation Title Insurance Company ("Transnation") the company's formal Response dated November 23, 2009, to the Department's draft Addendum 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@englishmonaco.com and awarren@englishmonaco.com.

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

Sincerely,

Ann Monaco Warren
AMW/mjw
Encl.

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

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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 0612-68-PAC

Transnation Title Insurance Company
NAIC # 50012 (former)

INSURER'S RESPONSE TO
THE DEPARTMENT'S ADDENDUM 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
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INTRODUCTION

Transnation Title Insurance Company was merged with and into Lawyers Title Insurance Corporation, a Nebraska domiciled insurer, effective August 31, 2008; therefore, this response is submitted by Lawyers Title Insurance Corporation. Lawyers Title Insurance Corporation was acquired by Fidelity National Financial, Inc. on December 22, 2008. References herein to "Company" or "Insurer," depending upon the context, shall mean Transnation Title Insurance Company as the company that was the subject of the market conduct examination or Lawyers Title Insurance Corporation as the survivor of the merger and the company submitting this response.

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 Transnation Title Insurance Company's (the Company) response to repeat its position at length each time it applies to an item in the Report.

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

1. SOUND UNDERWRITING PRACTICES

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

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

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

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

The various transactions for which title insurance is provided are as unique as the individual tracts of land the policies insure. Underwriting is much more an art than a science. Just as each transaction and each party is unique, so are the title insurance issues that arise. It follows that the responses to these challenges by the insurer and its title insurance agent will be similarly varied. The Company and its agents strive to provide title insurance products and close transactions to the satisfaction of all parties. Just as there are numerous ways to interpret any artwork, there are numerous ways of interpreting the responses of the insurer and the agents to these challenges.

2. ABSENCE OF PRINTED EXCEPTIONS IN LOAN POLICY SCHEDULE B

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

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

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

3. UNLAWFUL DELEGATION OF LEGISLATIVE POWER

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

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

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

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

4. ISSUING AGENCY CONTRACT

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

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

5. 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.

6. 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.

7. 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.

8. Applicability of New Regulations

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

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

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

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

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

Because the company is not bound by or responsible for the acts of an agent or agency acting outside the scope of the companies' "manifestation of consent," it is improper for the Department of Insurance to cite and fine the company for alleged acts of its agents which are outside the scope of the authority granted to them in their agency agreement. The attempt by the Department within the scope of a market conduct examination to abrogate well settled case law

with respect to the duties of principals and agents is also improper. Further, the position taken by the Department would have the effect of allowing agents to ignore their agency agreements with the principal and violate the law at will knowing they will not be held accountable for their actions. The position of the Department will also act to give agents or agencies apparent authority to commit actions, legal or illegal, with no accountability from the agent or agencies for their actions to the principal. Further, this represents an attempt by the Department to directly interfere with the contractual relationship of the principal and agent.

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

It should also be noted that the title insurance law found in Chapter 381 nowhere states that a title insurance company is responsible for the acts of its agents outside the scope of their agency agreements. On the contrary, Chapter 381.011 (effective 1/1/08) states at 381.011.3 that "except as otherwise expressly provided in this Chapter and except where the contexts otherwise requires, all provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents." Chapter 381 does not, therefore, make title companies responsible for acts of their agents, especially when the acts occur outside the scope of the agent's authority.

EXAMINATION FINDINGS

Mayer Title Co., LLC

No response required

Security Title Assurance Agency, LLC

File: 80935

Owners Policy: C35-003443

RESPONSE: The agent responded that it changed its form to the Company's filed form prior to the date of the Department's review of its files but subsequent to the date of the issuance of referenced commitment. See Crit J98, attached as Exhibit 1. Since the form complied in substance with the filed form it does not constitute a violation since the commitment jacket is not material to the contents of the form. Alternatively, an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objections 6 and 9.*

File: 81245

Loan Policy: K62-Z-003230

RESPONSE: The agent does not dispute. In its response to Crit J99, attached as Exhibit 2, the agent agreed to issue an endorsement to the policy that shows the risk rate on Schedule A of the policy. The Company disputes that the alleged violation can be charged to the Company. *See General Objections 6 and 9.*

File: 80484

Loan Policy: K62-0003524

1. **RESPONSE:** The agent responded that it changed its form to the Company's filed form prior to the date of the Department's review of its files but subsequent to the date of the issuance of referenced commitment. See Crit J100, attached as Exhibit 3. Since the form complied in substance with the filed form it does not constitute a violation since the commitment jacket is not material to the contents of the form. Alternatively, an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objections 6 and 9.*

2. **RESPONSE:** The agent did not dispute the violation. See Crit J101 attached as Exhibit 4. The Company disputes this violation. This matter having been addressed in the consent order, there is no basis to include the violation in this report or to charge the Company for a violation.

3. **RESPONSE:** The agent does not dispute. In its response to Crit J102, attached as Exhibit 5, the agent represents that it has refunded the overcharge. The Company disputes that the alleged violation can be charged to the Company. *See General Objections 6 and 9.*

File: 80328

Loan Policy: K62-0003373

RESPONSE: The agent responded that it changed its form to the Company's filed form prior to the date of the Department's review of its files but subsequent to the date of the issuance of referenced commitment. See Crit J103, attached as Exhibit 6. Since the form complied in substance with the filed form it does not constitute a violation since the commitment jacket is not material to the contents of the form. Alternatively, an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objections 6 and 9.*

File: 80246

Loan Policy: K52-0004069

RESPONSE: The agent responded that it changed its form to the Company's filed form prior to the date of the Department's review of its files but subsequent to the date of the issuance of referenced commitment. See Crit J104, attached as Exhibit 7. Since the form complied in substance with the filed form it does not constitute a violation since the commitment jacket is not material to the contents of the form. Alternatively, an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objections 6 and 9.*

File: 80649

Loan Policy: K52-0003794

RESPONSE: The agent responded that it changed its form to the Company's filed form prior to the date of the Department's review of its files but subsequent to the date of the issuance of referenced commitment. See Crit J105, attached as Exhibit 8. Since the form complied in substance with the filed form it does not constitute a violation since the commitment jacket is not material to the contents of the form. Alternatively, an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objections 6 and 9.*

NRT Settlement Services of Missouri, LLC (US Title)

File: 8-04989

Owners Policy: C35-0017831

Loan Policy: K62-0017095

2nd Loan Policy: K62-0017096

1. **RESPONSE:** The agent does not dispute, stating that the agent added the language to be consistent with its other underwriters. See Exhibit 9. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See General Objection 1. See General Objections 6 and 9.*
2. **RESPONSE:** The agent disputes this violation. The agent represents in its response to Crit J80, attached as Exhibit 10, that the referenced seller's policy was dated 12/18/96 and that custom and practice dictates that the reissue credit can be taken only on a policy written in the

last 10 years. The Company supports the agent and disputes that the alleged violation can be charged to the Company. *See* General Objections 6 and 9.

3. **RESPONSE:** The agent disputes this violation, contending in its response to Crit J81, attached as Exhibit 11, that its contract with the Company provides for the percentage split on total title charges, including premium. The Company supports the agent and disputes that the alleged violation can be charged to the Company. The Company requests the right to supplement this response. *See* General Objections 6 and 9.

File 7-25382

Owners Policy: C35-0017850

Loan Policy: K62-0017134

1. **RESPONSE:** The agent does not dispute, stating that the agent added the language to be consistent with its other underwriters. *See* Exhibit 12. The Company disputes the alleged violation can be charged to the Company, contending that an agent choice to use a form other than the one provided by the Company is not chargeable to the Company as a violation. *See* General Objections 1, 6 and 9.

2. **RESPONSE:** Since there was no violation of law, the Company states that this "concern" should be eliminated from the Report.

3. **RESPONSE:** Since there was no violation of law, the Company states that this "concern" should be eliminated from the Report.

Residential Title Services, Inc.

No response required.

Respectfully submitted,

Transnation Title Insurance Company



Michael J. Rich
Vice President and Regulatory Counsel

Exhibit 1

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Douglas M. Ommen, Director

INSURANCE MARKET REGULATION DIVISION

Linda Bohrer, Division Director

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J98

Subject: Forms not filed/ Security Title Agency

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: C35-003443

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 80935

Owner: Kaimann

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

The commitment in this file is dated 3/18/2008. The owner policy in this file is dated 3/24/2008.

The commitment jacket form used by the agent is not the form of commitment jacket filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Registration. The agent used the ALTA Plain Language Commitment (6/17/06) form. That form has not been filed with the director by this underwriter.

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

Reference: §381.085, RSMo. Supp. 2007 and 20 CSR 500 - 7.130.

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC CHANGED ITS FORM TO THE
UNDERWRITER'S FILED FORM. PRIOR TO THE DATE OF THE CRITICISM
BUT SUBSEQUENT TO THE DATE OF THE ISSUANCE OF THE
REFERENCED COMMITMENT

Agrees: ___ Disagrees: ___ Authorized Respondent: BY: John W Schaefer, Manager SECURITY TITLE INSURANCE AGENCY, LLC

The examiner comments reflect the opinion of the Market Conduct Examiner. These comments do not reflect the opinion of the Department of Insurance, Financial Institutions and Professional Registration. If you do not agree with the examiner comments, attach all relevant documentation that you believe substantiate your response. Section 374.205.2(2), RSMo allows a 10 calendar day response time. If you are unable to fully respond within this time frame, please let the examiner know before the tenth calendar day.

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Exhibit 2

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J99

Subject: Risk rate not shown on policy/ Security Title

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: K62-Z-003230

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 81245

Owner: Nuber

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

The loan policy in this file is dated 4/28/2008.

The agent charged a risk rate premium of \$113.80 for the policy.

The risk rate charged is not shown on the policy.

Reference: §381.181, RSMo. Supp. 2007 and 20 CSR 500 - 7.130 (1) (B).

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC WILL ISSUE AN ENDORSEMENT
TO THE REFERENCED POLICY TO SHOW THE RISK RATE ON
SCHEDULE A OF THE POLICY

Agrees: ___ Disagrees: ___ Authorized Respondent: By: John W. Schaefer, Manager
SECURITY TITLE INSURANCE AGENCY, LLC

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Exhibit 3

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Douglas M. Ommen, Director

INSURANCE MARKET REGULATION DIVISION

Linda Bohrer, Division Director

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J100

Subject: Forms not filed/ Security Title Agency
Date Submitted: September 25, 2008
(Relevant parts of file stored electronically in folder labeled Security Title)
Policy number: K62-0003524
Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott
Reference: Agent File 80484
Owner: Nichols
Date Returned: ___/___/___
(For Examiner Use Only)

Examiner Comment:

The commitment in this file is dated 2/1/2008. The loan policy in this file is dated 3/11/2008.

The commitment jacket form used by the agent is not the form of commitment jacket filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Registration. The agent used the ALTA Plain Language Commitment (6/17/06) form. That form has not been filed with the director by this underwriter.

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

Reference: §381.085, RSMo. Supp. 2007 and 20 CSR 500 - 7.130.

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC CHANGED ITS FORM TO THE UNDERWRITER'S FILED FORM PRIOR TO THE DATE OF THE CRITICISM BUT SUBSEQUENT TO THE DATE OF THE ISSUANCE OF THE REFERENCED COMMITMENT.

Agrees: ___ Disagrees: ___ Authorized Respondent: By: [Signature]

SECURITY TITLE INSURANCE AGENCY, LLC
[Signature], Manager

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Exhibit 4

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J101

Subject: Incorrect risk rate/ Security Title

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: K62-0003524

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 80484

Owner: Nichols

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment: The loan policy in this file is dated 3/11/2008 and has a face amount of \$417,000.00. The agent charged a risk rate premium of \$187.14 for the policy, the correct premium for a loan policy of this amount if it qualifies for a reissue risk rate.

The agent's file contains no information indicating that the borrower had previously been insured as owner in a policy of title insurance. The definitions appended to form T-7 as referenced in 20 CSR 500 - 7.100 include a definition reading as follows: " 'Reissue Title Insurance for Loan Policies' means a mortgage title insurance policy issued for an owner of property who has had the title to such property previously insured as owner by any title insurer." The rates filed by Transnation Title Insurance Company with the director and in use at the time of the issuance of this policy do not include a different definition for a reissue loan policy.

The correct risk rate for the policy was \$311.90 calculated as follows: $(50 @ \$1.00/M = \$50.00) + (50 @ \$0.80/M = \$40.00) + (317 @ \$0.70/M = \$251.90) = \$341.90$.

No title insurer, agent or agency may use or collect any premium except in accordance with the premium schedules filed with the director.

Reference: Section 381.181, RSMo. Supp. 2007 and 20 CSR 500 - 7.100.

Company Response:

TRANSNATION HAS INSTRUCTED SECURITY TITLE INSURANCE AGENCY, LLC
THAT IT CAN USE A REISSUE RISK RATE BASED ON THE EXISTENCE
OF A PRIOR OWNER'S OR MORTGAGE POLICY ISSUED BY ANY UNDERWRITER.
SECURITY HAD A PRIOR MORTGAGE POLICY!

Agrees: ___ Disagrees: ___ Authorized Respondent: ST. JOHN W. SCHWAB, MANAGER

The examiner comments reflect the opinion of the Market Conduct Examiner. These comments do not reflect the opinion of the Department of Insurance, Financial Institutions and Professional Registration. If you do not agree with the examiner comments, attach all relevant documentation that you believe substantiate your response. Section 374.205.2(2), RSMo allows a 10 calendar day response time. If you are unable to fully respond within this time frame, please let the examiner know before the tenth calendar day.

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Exhibit 5

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company
NAIC # 50012
Exam # 06-12-68-PAC
Formal Criticism
Criticism No: J102

Subject: Fee without service/ Security Title
Date Submitted: September 25, 2008
(Relevant parts of file stored electronically in folder labeled Security Title)
Policy number: K62-0003524
Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott
Reference: Agent File 80484
Owner: Nichols
Date Returned: ___/___/___
(For Examiner Use Only)

Examiner Comment:

The commitment to insure in this file is dated 2/1/2008. The loan policy is dated 3/11/2008.

The agent satisfied two mortgages from escrow. Each of the mortgage lenders charged and collected a release recording fee.

The agent also collected fees of \$54.00 for recording releases. Having been paid fees for recording the releases, the lenders are required to do so. The title agent had no basis for any belief that releases would be sent to the agent for recording, and the agent had no basis for collecting the release recording charges. The agent may not charge a fee for which no or nominal services are performed.

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

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC HAS REFUNDED THE
OVER CHARGE.

Agrees: ___ Disagrees: ___ Authorized Respondent: BY: John W. Schaefer, MANAGER

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Exhibit 6

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Douglas M. Ommen, Director

INSURANCE MARKET REGULATION DIVISION

Linda Bohrer, Division Director

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J103

Subject: Forms not filed/ Security Title Agency

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: K62-0003373

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 80328

Owner: Titan Homes

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

The commitment to insure in this file is dated 12/26/2007. The loan policy in this file is dated 2/8/2008.

The commitment jacket form used by the agent is not the form of commitment jacket filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Registration. The agent used the ALTA Plain Language Commitment (6/17/06) form. That form has not been filed with the director by this underwriter.

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

Reference: §381.085, RSMo. Supp. 2007 and 20 CSR 500 - 7.130.

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC CHANGED ITS FORM TO THE
UNDERWRITER'S FILED FORM PRIOR TO THE DATE OF THE CRITICISM
BUT SUBSEQUENT TO THE DATE OF THE ISSUANCE OF THE REFERENCED
COMMITMENT

Agrees: ___ Disagrees: ___ Authorized Respondent: BY: John W Schaefer, MANAGER
SECURITY TITLE INSURANCE AGENCY, LLC

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Exhibit 7

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Douglas M. Ommen, Director

INSURANCE MARKET REGULATION DIVISION

Linda Bohrer, Division Director

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J104

Subject: Forms not filed/ Security Title Agency

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: K52-0004069

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 80246

Owner: Riordan

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

The commitment to insure in this file is dated 12/23/2007. The loan policy in this file is dated 2/7/2008.

The commitment jacket form used by the agent is not the form of commitment jacket filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Registration. The agent used the ALTA Plain Language Commitment (6/17/06) form. That form has not been filed with the director by this underwriter.

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

Reference: §381.085, RSMo. Supp. 2007 and 20 CSR 500 - 7.130.

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC CHANGED ITS FORM TO THE
UNDERWRITER'S FILED FORM PRIOR TO THE DATE OF THE CRITICISM
BUT SUBSEQUENT TO THE DATE OF THE ISSUANCE OF THE
COMMITMENT

Agrees: ___ Disagrees: ___ Authorized Respondent: BY: John W. Schaefer, MANAGER
SECURITY TITLE INSURANCE AGENCY, LLC

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Exhibit 8

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Douglas M. Ommen, Director

INSURANCE MARKET REGULATION DIVISION

Linda Bohrer, Division Director

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-12-68-PAC

Formal Criticism

Criticism No: J105

Subject: Forms not filed/ Security Title Agency

Date Submitted: September 25, 2008

(Relevant parts of file stored electronically in folder labeled Security Title)

Policy number: K52-0003794

Expected Date of Return: October 5, 2008

Examiner: Joseph K. Ott

Reference: Agent File 80649

Owner: Gajda

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

The commitment to insure in this file is dated 2/6/2008. The loan policy in this file is dated 4/3/2008.

The commitment jacket form used by the agent is not the form of commitment jacket filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Registration. The agent used the ALTA Plain Language Commitment (6/17/06) form. That form has not been filed with the director by this underwriter.

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

Reference: §381.085, RSMo. Supp. 2007 and 20 CSR 500 - 7.130.

Company Response:

SECURITY TITLE INSURANCE AGENCY, LLC CHANGED ITS FORM TO THE
UNDERWRITER'S FILED FORM PRIOR TO THE DATE OF THE CRITICISM
BUT SUBSEQUENT TO THE DATE OF THE ISSUANCE OF THE
REFERENCED COMMITMENT

Agrees: ___ Disagrees: ___ Authorized Respondent: BY: *John A. Schaefer*, MANAGER
SECURITY TITLE INSURANCE AGENCY, LLC

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Exhibit 9

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-09-40-TGT

Formal Criticism

Criticism No: J79

Subject: Commitment language not in form.

Examiner: Joseph K. Ott

Date Submitted: July 10, 2008

Reference: Agent File 8-04989

(Electronic copy of file in folder labeled U S Title Files)

Policy number: C35-0017831/ K62-0017095/ K62-0017096

Owner: Meyer

Expected Date of Return: July 20, 2008

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

Schedule B-I of the commitment as issued (page 161 of agent file) contains the following disclaimer:

This commitment is not an abstract, examination, report, or representation of fact or title and does not create and shall not be the basis of any claim for negligence, negligent misrepresentation or other tort claim or action. The sole liability of company and its title insurance agent shall arise under and be governed by the conditions of the commitment and/ or policy subsequently issued.

The quoted language is not a part of the form of commitment filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Regulation. (See Adobe Acrobat document labeled TNTIC commitment forms.) The company and the agent may not use forms not filed with the director.

Reference: Section 381.085, RSMo. (2008).

Company Response: We agree that this language is not part of the filed forms by LandAm. However it was added as a specific code by one of our underwriters (Stewart Title - see Bulletin attached). As we have a number of underwriters, we added the language to be consistent. We will remove upon instruction from LandAm.

Agrees: **Disagrees:** **Authorized Respondent:** _____

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Exhibit 10

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-09-40-TGT

Formal Criticism

Criticism No: J80

Subject: Incorrect risk rate reported.

Examiner: Joseph K. Ott

Date Submitted: July 10, 2008

Reference: Agent File 8-04989

(Electronic copy of file in folder labeled U S Title Files)

Policy number: C35-0017831/ K62-0017095/ K62-0017096

Owner: Meyer

Expected Date of Return: July 20, 2008

Date Returned: ___/___/___
(For Examiner Use Only)

Examiner Comment:

The buyer settlement statement for this purchase (page 222 of agent's file) shows title insurance premium of \$194.80. The contract purchase price was \$176,000.00. The policy mark-ups show owner policy premium of \$190.80 and lender policy premium of \$4.00 (page 198). The owner policy premium of \$190.80 was correct at an original issue rate. The agent's file contains a copy of a Stewart Title Guaranty policy insuring the seller as owner (page 6). The Transnation policy qualified for the reissue rate as filed by the company with the director. The correct owner policy premium for this policy was \$114.48. (50M @ 0.84/M, 50M @ 0.72/M, and 76M @ 0.48/M.)

Premium schedules must be filed with the director, and no title insurer or agent may use or collect any premium except in accordance with the premium schedules filed with the director.

Reference: Section 381.181, RSMo. (2008).

Company Response: The referenced policy dated 12/18/96 is over ten years old. Custom and practice is such that the reissue credit can only be taken on policy written on reputable underwriter in the last ten years. In addition, LandAmerica has not filed a definition of reissue rate along with their risk rates.

Agrees: ___ **Disagrees:** X **Authorized Respondent:** _____

The examiner comments reflect the opinion of the Market Conduct Examiner. These comments do not reflect the opinion of the Department of Insurance, Financial Institutions and Professional Registration. If you do not agree with the examiner comments, attach all relevant documentation that you believe substantiate your response. Section 374.205.2(2), RSMo allows a 10 calendar day response time. If you are unable to fully respond within this time frame, please let the examiner know before the tenth calendar day.

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Exhibit 11

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-09-40-TGT

Formal Criticism

Criticism No: J81

Subject: Charged rate not same as rate filed.

Examiner: Joseph K. Ott

Date Submitted: July 10, 2008

Reference: Agent File 8-04989

(Electronic copy of file in folder labeled U S Title Files)

Policy number: C35-0017831/ K62-0017095/ K62-0017096

Owner: Meyer

Expected Date of Return: July 20, 2008

Date Returned: ___/___/___
(For Examiner Use Only)

Examiner Comment:

The buyer settlement statement for this purchase (page 222 of agent's file) shows title insurance premium of \$194.80. The contract purchase price was \$176,000.00. The policy mark-ups show owner policy premium of \$190.80 and lender policy premium of \$4.00 (page 198).

By agreement U. S. Title earns an 89.25%/ 10.75% split with the LandAmerica group of underwriters, including Transnation.

The agent submitted premium for these policies to the underwriter in a report dated 5/31/2008. The agent submitted net premium to the underwriter for these policies in the amount of \$48.68 for the owner's policy, or 10.75% of the agent's total charge of \$452.80; \$13.44 for the first loan policy, or 10.75% of the agent's total charge of \$125.00; and \$13.44 for the second loan policy, or 10.75% of the agent's total charge of \$125.00. (See Adobe Acrobat document labeled Remittance for 8-04989.) Calculation of the premium charged was not in accordance with the premium schedules filed with the director.

The two loan policies qualified for the simultaneous issue rate for loan policies issued at the same date as the owner policy. The simultaneous issue risk rate filed by the company with the director is \$4.00, but the underwriter collected \$13.44 for each of the simultaneous issue loan policies. (See Adobe Acrobat document labeled TNTIC rates.)

The underwriter is not permitted to charge or collect any premium except in accordance with the premium schedules filed with the director.

Reference: Section 381.181, RSMo. (2008).

Company Response: ___ Our contractual agreement calls for the percentage split on total title charges, including premium (see attached addendum).

Agrees: ___ **Disagrees:** X **Authorized Respondent:** _____

The examiner comments reflect the opinion of the Market Conduct Examiner. These comments do not reflect the opinion of the Department of Insurance, Financial Institutions and Professional Registration. If you do not

agree with the examiner comments, attach all relevant documentation that you believe substantiate your response. Section 374.205.2(2), RSMo allows a 10 calendar day response time. If you are unable to fully respond within this time frame, please let the examiner know before the tenth calendar day.

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Exhibit 12

Matt Blunt
Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

INSURANCE MARKET REGULATION DIVISION

Transnation Title Insurance Company

NAIC # 50012

Exam # 06-09-40-TGT

Formal Criticism

Criticism No: J89

Subject: Commitment language not in form.

Examiner: Joseph K. Ott

Date Submitted: July 10, 2008

Reference: Agent File 7-25382

(Electronic copy of file in folder labeled U S Title Files)

Policy number: Owner policy and loan policy not copied to file.

Owner: Wooldridge

Expected Date of Return: July 20, 2008

Date Returned: ___/___/___

(For Examiner Use Only)

Examiner Comment:

Schedule B-I of the commitment as issued (page 1 of agent file) contains the following disclaimer:

This commitment is not an abstract, examination, report, or representation of fact or title and does not create and shall not be the basis of any claim for negligence, negligent misrepresentation or other tort claim or action. The sole liability of company and its title insurance agent shall arise under and be governed by the conditions of the commitment and/or policy subsequently issued. (page 198 of agent file)

The quoted language is not a part of the form of commitment filed by the insurer with the director of the Missouri Department of Insurance Financial Institutions and Professional Regulation. (See Adobe Acrobat document labeled TNTIC commitment forms.) The company and the agent may not use forms not filed with the director.

Reference: Section 381.085, RSMo. (2008).

Company Response: We agree that this language is not part of the filed forms by LandAm. However it was added as a specific code by one of our underwriters (see attachment to J79). As we have a number of underwriters, we added the language to be consistent. We will remove upon instruction from LandAm.

Agrees: **Disagrees:** **Authorized Respondent:** _____

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