

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

APR 02 2010

ADMINISTRATIVE HEARING  
COMMISSION

DIRECTOR OF THE DEPARTMENT )  
OF INSURANCE, FINANCIAL )  
INSTITUTIONS AND PROFESSIONAL )  
REGISTRATION )  
STATE OF MISSOURI, )

Petitioner, )

vs. )

TITAN TITLE & CLOSING OF )  
MISSOURI, LLC, )

Respondent. )

Serve: )

Registered Agent )  
Robert Carlyle Butler, III )  
302 South Street )  
Ozark, Missouri 65721 )

Case No.: \_\_\_\_\_

**COMPLAINT**

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the license held by Respondent, Titan Title & Closing of Missouri, LLC, because:

**INFORMATION RELEVANT TO ALL COUNTS**

1. Petitioner is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (hereinafter, "Director") whose duties, pursuant to Chapters 374, 375, and 381, RSMo, include the supervision, regulation, and discipline of title insurance producers.

2. Respondent Titan Title & Closing of Missouri, LLC (“Titan”) is a business entity insurance producer first licensed by the Department of Insurance, Financial Institutions and Professional Registration (“Department”) on March 28, 2009. (License No. 8024283). Titan’s license is set to expire on March 28, 2012.

3. Section 381.141.1, RSMo, (Supp. 1999), states, in part:

No title insurer or title agent or agency shall:

1. Pay, directly or indirectly, to the insured or to any other person any commission, any part of its premiums, fees, or other charges; or any other consideration as inducement or compensation for the referral of title business or for performance of any escrow or other service by the title agent or agency; or

2. Issuc any title insurance policy or perform any service in connection with any transaction in which it has paid or intends to pay any commission, rebate or inducement which it knows to be in violation of this section.

4. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2008).

### COUNT I

5. Titan violated § 381.141.1.1, RSMo (Supp. 1999),<sup>1</sup> which is a ground to discipline its license pursuant to § 375.141.1(2), RSMo (Supp. 2009).

6. The facts are as follows:

a. In October 2008, the Department’s Consumer Affairs Division (“Division”) received a complaint about a marketing flyer that offered free closings to consumers who brought their transaction to Titan.

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<sup>1</sup> Section 381.141 is not published in the current edition of the Missouri Revised Statutes, but it remains in effect. The statute was repealed by Senate Bill 894 (2000), but reinstated after the Missouri Supreme Court ruled SB 894 unconstitutional in the case of *Home Builders of Greater St. Louis v. State of Missouri*, 75 S.W.3d 267 (Mo. Banc 2002). Section 381.141, RSMo (Supp. 1999), is attached for the Commission’s convenience.

- b. The Division forwarded the complaint to Titan with a letter that required a response within 20 days. Titan received the Division's letter dated October 24, 2008, on October 28, 2008.
- c. By letter dated November 7, 2008, (*attached as Exhibit 1, page 3*) and affidavit dated November 3, 2009, (*attached as Exhibit 2*) Titan owner, Joseph Passanise, stated that the marketing flyer supplied by the complainant was a correct copy of the flyer distributed by Titan. (*See Exhibit A, attached to Exhibit 2*).
- d. The marketing flyer appears on Titan letterhead and states:

SAVE \$300 AT CLOSING  
In November at  
Titan Title and Closing

Here at Titan Title and Closing of Missouri we are striving to take a little bit of the stress off these times by offering your buyers and sellers a free closing with the purchase of title insurance through Titan Title in the month of November.

Because of this amazing offer our openings are filling up fast so please contact us as soon as possible to take advantage of this opportunity.

Sincerely,

Molly Steffes

Marketing Director

Phone: 417-882-2100/Fax: 417-882-2103

\*Offer to include only the closing fee of \$300.00 split between buyer and seller

\*Purchase of title insurance through Titan Title is required

\*All other fees excluded from this offer, offer good from Nov 1 to Nov 30, 2008

- e. Real estate closings cost Titan \$300. As of November 7, 2008, one person had accepted Titan's free closing offer and scheduled a November 2008 closing. Twenty-four closings were conducted in November 2008 and all received a free closing with the purchase of title insurance through Titan. (*Exhibit 1*).

7. Titan's offer and provision of free real estate closing services to consumers who purchased insurance through Titan constitutes the payment of a part of Titan's premiums, fees, or other charges, for the referral of title business, or constitutes consideration that induced customers to purchase title insurance through Titan, or improperly compensated customers for purchasing title insurance through Titan, which is prohibited by § 381.141.1.1, RSMo (Supp. 1999).

## COUNT II

8. Titan violated § 381.141.1.2, RSMo (Supp. 1999), by issuing title insurance policies and performing closing services in connection with transactions in which it paid or intended to pay commissions, rebates, or inducements which it knew to be in violation of § 381.141.1.1, RSMo (Supp. 1999). Each illegal transaction is a ground to discipline Titan's license pursuant to § 375.141.1(2), RSMo (Supp. 2009).

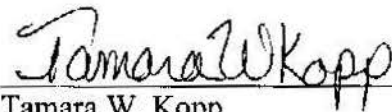
9. Petitioner realleges and incorporates the facts in paragraphs 1 – 7, above, as thought fully set forth herein.

10. By letter dated November 7, 2008, Titan acknowledged that it was aware of a problem with its free closing offer. (*Exhibit I*). Yet, Titan continued to provide free closings to all consumers who purchased title insurance through Titan in November 2008.

11. All free closings conducted by Titan and title insurance policies issued by Titan between November 7, 2008 and November 30, 2008 were done with knowledge that such activities violated § 381.141.1.1, RSMo (Supp. 1999).

**WHEREFORE**, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent Titan Title & Closing of Missouri, LLC's business entity insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2009).

Respectfully submitted,



Tamara W. Kopp  
Missouri Bar # 59020  
Senior Enforcement Counsel  
Missouri Department of Insurance,  
Financial Institutions & Professional  
Registration  
301 West High Street, Room 530  
Jefferson City, Missouri 65101  
Telephone: (573) 751-2619  
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Tamara.kopp@insurance.mo.gov

ATTORNEY FOR PETITIONER  
Director of the Missouri Department  
of Insurance, Financial Institutions  
and Professional Registration

LAW OFFICES OF  
**DEE WAMPLER**  
**JOSEPH PASSANISE**  
TRIAL ATTORNEYS



DEE WAMPLER JOSEPH S. PASSANISE ADAM D. WOODY HOMER D. WAMPLER, JR (1913-1999)

November 7, 2008

Rita Heimericks-Ash  
Department of Insurance  
Investigative Section  
PO Box 690  
Jefferson City, MO 65102-0690

Kathleen E. Jolly  
Department of Insurance  
Investigative Section  
PO Box 690  
Jefferson City, MO 65102-0690

RE: 08A000884, Titan Title

Dear Ms. Heimericks-Ash and Ms. Jolly:

We received your letter dated October 24, 2008, regarding a complaint lodged against Titan Title by Fidelity Title regarding a flyer that Titan disseminated. As one of the owners I am formally responding to the complaint as all of us take these allegations extremely seriously. While the letter was dated October 24, 2008, we did not receive the letter until October 28, 2008. We immediately contacted both Ms. Jolly and Ms. Heimericks-Ash by phone due to the letter indicating that we had 20 days from the date of the postmark, giving us until November 14, 2008, to respond.

While we are responding to the investigation by this letter, we are very concerned as to the assumption that Titan Title "appears to be in violation of Section 381.141 RSMo." Titan Title believes that Ms. Jolly may have already made a determination that our promotion is in violation of this matter. I personally spoke with her on October 29, 2008, for close to an hour. During this conversation I answered all of the questions that are being sought in writing in great detail with her and am now following up in writing.

In the conversation with Ms. Jolly, she did indicate that Bob Clinkenbeard from Fidelity was the one who filed the complaint. Titan Title decided to have this promotion for the entire month of November and it is open to all closings at Titan Title regardless of whether or not they have seen the flyer. Titan came up with this promotional offer as a way to create traffic flow because we are a new business, and there is no intent to deceive or to financially pay individuals money to do their closings at Titan.

PARALEGALS  
BETTY JACKSON  
TAMMY JACKSON  
JULIE HINTON  
SANDY ELLIS  
KATHY JOHNSON  
TERESA CHADWICK

RECEIVED

NOV 17 2008

MO. DEPT OF INSURANCE  
FINANCIAL INSTITUTIONS  
PROFESSIONAL REGISTRATION

However, Ms. Jolly framed our promotion in terms of this being a rebate and thereby a party who closes at Titan Title would be induced "indirectly" to close at Titan which would mean that we would be in violation of the statute. Under her interpretation of the statute, a title company no longer is allowed to set a price on services it provides. The effect is the Department of Insurance will now be setting fee schedules on closing costs because if any title company deviates in fees that are charged for services it provides, then Ms. Jolly's argument could be applied to that title company as there was an indirect benefit or inducement that was given to the secured that closed at that title company. We believe it is wrong for the government to get into the regulation of fee setting regarding what a business can charge or not charge, and the owners of Titan Title wholeheartedly object to this complaint. We will cooperate and we will be glad to share with the Department of Insurance any information it seeks because we realize that we have an ongoing relationship with the Department of Insurance regarding our license, but we are extremely concerned that arbitrary interpretation of this statute to our situation leads to a slippery slope. By this I mean the following:

If the true cost of a closing for a title company is \$300.00, but a closing company decides to charge \$200.00 because it wants to charge less than what a competitor charges, then they would be in violation.

I contacted Bob Clinkenbeard on October 30, 2008, and spoke with him for close to thirty minutes. Mr. Clinkenbeard indicated that he contacted Ms. Jolly and in regards to his conversation with her, he was told by Ms. Jolly that Titan Title's promotion was a "rebate" and we thereby were in violation of the statute. Mr. Clinkenbeard indicated that he wanted to run a similar type promotion, but Ms. Jolly interpreted the statute as prohibiting such activity. Mr. Clinkenbeard's conversation with Ms. Jolly had her already characterizing our promotion as "a rebate." A rebate would be in direct violation of the statute because it is inducing an individual to close with the title company. However, Mr. Clinkenbeard confirmed to me the very thing that is at issue regarding his complaint on Titan Title. He indicated that his company fluctuates closing costs for a particular builder or realtor that closes at his company. His company does not charge the exact same closing costs to a person across the board. I suggest that all closing companies should decide what they want to charge for their services and bill accordingly. Using Ms. Jolly's definition of a rebate, Mr. Clinkenbeard in fact would be in violation of the statute because his actions could be considered a rebate if he fluctuates closing costs and charges different prices for his services to different people.

By this letter I am filing a complaint on Fidelity as well as every other title company in Greene County regarding what they charge for the services they provide if they fluctuate differently from one person to the next. This is the real issue and one that I believe needs to be addressed.

I suggest that if the Department of Insurance is going to get into regulating what title companies can charge, there needs to be a fee schedule with a range of charges for services so we are all the same. I am extremely disappointed and frustrated as an owner that I am having to respond to this complaint. I do hope the Consumer Affairs Division takes what I am suggesting extremely seriously because this is a fundamental right of a business from my perspective as to determining the fees a business charges for its services.

The irony in this entire situation is the following:

1. Titan Title went through an extremely scrutinized process in order to get a license from the Department of Insurance. We went through the process at a time after Guaranty Title had destroyed the title industry reputation in our area. Titan Title embraced the opportunity because we wanted to do it better and right compared to how title companies had been operating in this area. Myself along with the other owners secured quality, experienced individuals in the industry who had excellent reputations for doing it right, being meticulous and having excellent customer relations. Despite the Guaranty Title debacle in our area, we went through and dealt with the Department of Insurance even as it changed rules almost on a daily basis because of the new regulations that were coming into play.
2. After we secured the license from the Department of Insurance, we went through an extremely rigorous process with the Tigor Title Insurance Company. Tigor put us through an intense scrutiny process regarding the underwriting before it was granted to us. This was not an easy process, but one that we embraced and met all of the obligations.
3. After we received the license from the Department of Insurance and our underwriting, we then had to go through a process with each of the banks in Springfield who believed that they had a fiduciary responsibility to put us through a credentialing process before they would approve closings taking place at Titan. While no formal process exists, they felt it was their fiduciary responsibility so then we met those obligations and continue to meet them on a daily basis.
4. Our competitors in the area have done everything they can to sabotage us, questioning our experience, questioning our reputation, and certainly making it difficult for a new title company to grow. Despite our competitors, we have continued to grow. At the present time no owner receives any type of compensation from the company. All proceeds that are earned go to meeting the overhead.

The reason for the promotion that is now such a central issue was because we wanted to create a traffic flow. We decided after talking with Rick Pierce at Tigor (816-274-0210) that we would run this promotion for the month of November. His only concern was that we provide the promotional rate to all closings regardless if they were aware of the promotion or not. At the time of this response to your inquiry we have ceased disseminating the promotion of this offer until this issue is resolved because we do not want to create any ill feelings with the Consumer Affairs Division of the Department of Insurance. I asked Ms. Jolly if we should cease and desist and she indicated that she could not give advice on this issue. Because we want to do things right, we have ceased and desisted disseminating this information; however, there are some of these flyers out there and we will continue to honor any closing at Titan Title in the month of November by waiving the title closing service as promised in the flyer. Below are the responses to your questions:

1. Is the enclosed flyer a correct copy of a flyer your company has distributed?  
**ANSWER:** Yes.



2. The cost to you or your company of the offer, including costs incurred in making clients aware of the promotion. ANSWER: The cost to the company will be \$300.00 per closing. The total would depend on the number of closings that come into Titan Title in the month of November. The cost for distribution of the flyer was approximately \$15.00 which includes paper and copying along with \$25.00 in gas in disseminating the flyers.
3. The number of clients or prospective clients who have accepted the offer, including the amount of money each paid for any title or escrow service, including third party services. ANSWER: At the time of this letter one client with a set closing as a result of the flyer. Since it is not closed yet no one has been paid anything, but if it does close the fees will be as follows:  
Seller: Search \$150.00, CPL \$25.00.  
Buyer: Risk Rate \$178.00, Title Service Charge \$267.00, CPL \$25.00
4. The number of title orders with closing scheduled in November 2008, the number of those qualifying for the offer, and the number scheduled in both September and October 2008. ANSWER: 19 closings scheduled in November—all qualify for the offer. In September we had 12 closings and in October we had 18 closings. (These did not qualify for the promotion.)
5. The date the flyers were created, the dates they were distributed, and the identities of the persons to whom they were distributed. ANSWER: Created on October 22, 2008, delivered on October 24, 2008. The flyers were delivered to all agents in the offices of Keller Williams Realtors, Murney Realtors on Primrose and Republic Road, Carol Jones office in Springfield, and Remax House of Brokers. We stopped at this point disseminating the flyers due to the complaint that was filed. We were getting ready to do a mass mailing, but we stopped the mailing until this issue has been resolved.
6. All methods used to make potential customers aware of the offer in addition to the flyers. Did you email, include the offer in a publication or in any other way make potential clients aware of the offer? If so explain in detail what you did. ANSWER: We had only started delivering the flyers when we received the letter. At the time we stopped all notifications so we never did any email blitz or any ads, mailers, or publications.
7. Details of your inquiry concerning the lawfulness of the promotion. ANSWER: Spoke with Rick Pierce, Ticor representative. Spoke with Robert Butler, owner and attorney.
8. The facts and law on which you relied to go forward with the promotion, including copies of all documents, notes, emails and phone notes in which the offer is discussed. ANSWER: N/A.
9. Titan's policies with respect to compliance with 381.141 RSMo. ANSWER: N/A.

10. The names and titles of all Titan staff, contractors and consultants who have reviewed the offer for compliance with Missouri and federal law.

**ANSWER:** We are "not paying anyone" or giving anyone "a rebate" to close with our title company. We discussed this promotion with Rick Pierce at Ticor. His concern was to make sure it was offered to everyone. Whether they knew about it or not, all customers would receive the same fee reduction.

Robert Butler	Owner, Attorney in Oklahoma
Joseph Passanise	Owner, Attorney
Carol Cockrell	Closer/Office Manager (10+ years experience in the title industry)
Christina Baird	Examiner (16 years of experience)
Molly Steffes	Marketing Rep (6 months experience) (Realtor)

We trust that the answers to these questions will give you enough information that you can see that given the tough economic times Titan Title decided to do a promotion in order to create more traffic flow. Ironically Titan Title is costing itself money in services in order to promote its name. We will do everything we can to comply because we want a good relationship with the Department of Insurance but you have to see some irony in this situation as we are costing ourselves money for services, yet there is a complaint.

If there is further information that is needed, please let me know. Based on Mr. Clinkenbeard's conversation with me and the fact that he charges different closing costs to different people who close at his title company we believe that if we are indirectly providing a rebate under our promotion, then he is as well and we would like a complaint filed on Fidelity as well as every other title company in Greene County.

Obviously we disagree with Ms. Jolly's interpretation at this point because setting the fees of a business or lack thereof is a fundamental right of a business owner and if the Department of Insurance is going to get involved in setting fees or creating a rate schedule, then this needs to be addressed immediately.

Sincerely Yours,

  
Joseph Passanise

JSP/jgh

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

State of Missouri )  
County of Polk ss. )



AFFIDAVIT OF JOSEPH PASSANISE

COMES NOW affiant, Joseph Passanise, and states and attests under oath as follows:

1. My name is Joseph Passanise. I am partial owner of Titan Title & Closing of Missouri, LLC . My office is located at 2974 East Battlefield, Springfield, Missouri 65804.
2. I have personal knowledge of and am competent to attest to the matters stated herein. The information provided herein is true and accurate to the best of my knowledge, information, and belief.
3. Titan Title & Closing of Missouri, LLC (Titan Title) is a business entity insurance producer first licensed by the Department of Insurance, Financial Institutions and Professional Registration on March 28, 2009. (License No. 8024283). Titan Title's license is set to expire on March 28, 2010.
4. Closing services cost Titan Title approximately \$300.
5. In October 2008, Titan Title distributed a marketing flyer to some real estate agents on Titan Title letterhead which stated:

SAVE \$300 AT CLOSING  
In November at  
Titan Title and Closing

Here at Titan Title and Closing of Missouri we are striving to take a little bit of the stress off these times by offering your buyers and sellers a free closing with the purchase of title insurance through Titan Title in the month of November.

Because of this amazing offer our openings

are filling up fast so please contact us as soon as possible to take advantage of this opportunity.


Sincerely,  
Molly Steffes  
Marketing Director  
Phone: 417-882-2100 / Fax: 417-882-2103

\*Offer to include only the closing fee of \$300.00 split between buyer and seller  
\*Purchase of title insurance through Titan Title is required  
\*All other fees excluded from this offer, offer good from Nov 1 to Nov 30, 2008

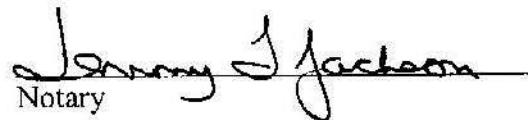
6. Exhibit A, attached, is a true and accurate copy of the marketing flyer distributed by Titan Title in October 2008.

7. Only one (1) closing was scheduled due to this promotional offer. However, Titan had a total of twenty four (24) closings for the month of November 2008 and the promotional offer was applied to all of those closings as well. Everyone was treated the same.

8. Titan was contacted early in the month of October and was advised about the complaint. Titan immediately ceased dissemination of the promotional flier but honored the promotion at all closings.

  
Joseph Pasanise  
Owner, Titan Title & Closing of Missouri, LLC

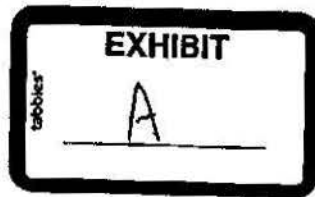
In witness whereof I have hereunto subscribed my name and affixed my official seal this 3<sup>rd</sup> day of November, 2009.

  
Notary

My commission expires: 12-12-09



TAMMY L. JACKSON  
My Commission Expires  
December 12, 2009  
Polk County  
Commission #06487474



# SAVE \$300 AT CLOSING In November at Titan Title and Closing

Here at Titan Title and Closing of Missouri we are striving to take a little bit of the stress off these times by offering your buyers and sellers a free closing with the purchase of title insurance through Titan Title in the month of November.

Because of this amazing offer our openings are filling up fast so please contact us as soon as possible to take advantage of this opportunity.

Sincerely,  
Molly Steffes  
Marketing Director

Phone: 417-882-2100 / Fax: 417-882-2103

\*Offer to include only the closing fee of \$300.00 split between buyer and seller

\*Purchase of title insurance through Titan Title is required

\*All other fees excluded from this offer, offer good from Nov 1 to Nov 30, 2008

# *Missouri Revised Statutes*

## **Chapter 381**

### **Title Insurance Law**

#### **Section 381.141**

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

**Referrals, general prohibition against--producers may refer business, conditions.**

381.141.

1. No title insurer or title agent or agency shall:
  1. Pay, directly or indirectly, to the insured or to any other person any commission, any part of its premiums, fees, or other charges; or any other consideration as inducement or compensation for the referral of title business or for performance of any escrow or other service by the title agent or agency; or
  2. Issue any title insurance policy or perform any service in connection with any transaction in which it has paid or intends to pay any commission, rebate or inducement which it knows to be in violation of this section.
2. Nothing in this section shall be construed as prohibiting reasonable payments, other than for the referral of title insurance business, for services actually rendered to either a title insurer or a title agent or agency in connection with title insurance business.
3. Nothing in sections 381.011 to 381.241 shall prohibit any producer or any associate of a producer from referring title business to any title insurer or title insurance agent or agency of his, her or its choice, and if such producer or associate producer has any financial, franchise, or ownership interest in the title insurer, the title insurance agent or agency, from receiving income or profits produced or realized from such financial, franchise or ownership interest so long as the purchaser is made aware in writing of the relationship between the producer or associate producer and the title agent or agency.

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