

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**COMMONWEALTH LAND TITLE  
INSURANCE COMPANY**  
Philadelphia, Pennsylvania

**AS OF  
April 29, 2009**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
MARKET CONDUCT DIVISION**

**Issued: September 16, 2009**

VERIFICATION

Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).

*June A. Coleman*

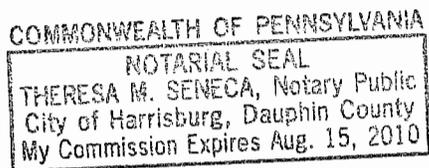
June A. Coleman, Examiner-in-Charge

Sworn to and Subscribed Before me

This *13* Day of *April*, 2009

*Theresa M. Seneca*

Notary Public



**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

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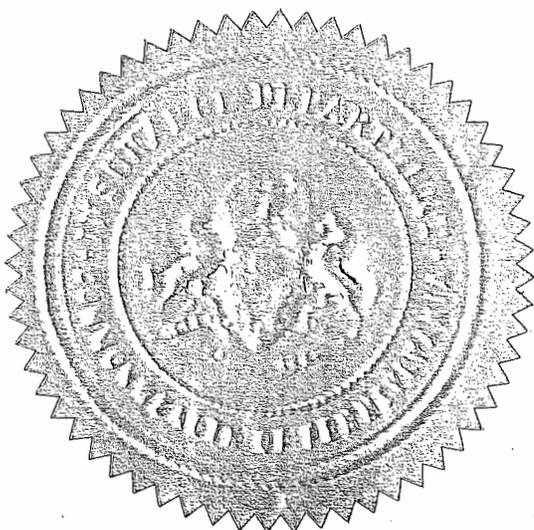
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 22<sup>ND</sup> day of July, 2008, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Ronald A. Gallagher, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



  
\_\_\_\_\_  
Joel S. Ario  
Insurance Commissioner

RECEIVED  
INSURANCE DEPARTMENT

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

2009 SEP 16 PM 1:21  
ADMINISTRATIVE SERVICES OFFICE

IN RE:	:	VIOLATIONS:
	:	
COMMONWEALTH LAND TITLE	:	40 P.S. §§ 323.3(a), 910-25,
INSURANCE COMPANY	:	910-26(a), 910-27, 910-37(a),
601 Riverside Ave.	:	910-37(h), and 1171.4
Jacksonville, FL 32204	:	
	:	Title 31, Pennsylvania Code,
	:	Section 126.1
	:	
Respondent.	:	Docket No. MC09-06-003

CONSENT ORDER

AND NOW, this 16<sup>th</sup> day of September, 2009, this Order is hereby issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law.

3. Without admitting the allegations of fact and conclusions of law contained herein, the Respondent specifically denies that it violated any law or regulation of the Commonwealth.

Compliance with this order shall not (i) be interpreted to settle any question of law (ii) constitute an admission by the Respondent that any violation of law or regulation of the Commonwealth occurred, or (iii) impair the validity of the Respondent's existing contracts with its agents in the Commonwealth.

#### FINDINGS OF FACT

4. The Insurance Department finds true and correct each of the following Findings of Fact:

(a) Respondent is Commonwealth Land Title Insurance Company, and maintains its address at 1700 Market Street, Philadelphia, Pennsylvania 19103.

(b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2006 through December 31, 2006.

(c) On April 29, 2009, the Insurance Department issued a Market Conduct Examination Report to Respondent.

(d) A response to the Examination Report was provided by Respondent on May 29, 2009.

(e) The Examination Report notes violations of the following:

(i) 40 P.S. §323.3(a), which requires every company subject to examination to keep all records and documents relating to its business in such manner as may be required in order that the Department may verify whether the company has complied with the laws of this Commonwealth;

(ii) 40 P.S. § 910-25, which requires every title insurance company authorized

to transact business within this Commonwealth to, from time to time, certify to the commissioner the names of all agents appointed by it in this Commonwealth;

(iii) 40 P.S. § 910-26(a), which requires agents to make application for a certificate of qualification with the Insurance Department for authority to act as a title insurance agent in the manner provided for in the Insurance Department Act. Upon certification, an agent may be appointed by a title insurer with notice of such appointment to the Insurance Department in the manner provided for in the Insurance Department Act;

(iv) 40 P.S. § 910-27, which requires every agent of a title insurance company to keep the books, records, accounts and vouchers pertaining to the business of title insurance, in such manner that the commissioner or his authorized representative may readily ascertain from time to time, whether or not the agent has complied with all of the applicable provisions of this Act;

(v) 40 P.S. § 910-37(a), which requires every title insurance company to file with the commissioner every manual of classifications, rules, plans and schedules of fees and every modification of any of the foregoing relating to the rates which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated;

(vi) 40 P.S. § 910-37(h), which provides that no title insurance company or agent of a title insurance company shall charge any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company or such agent of a title insurance company as provided in this article;

(vii) 40 P.S. § 1171.4, which prohibits any person from engaging in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act; and

(viii) Title 31, Pa. Code, § 126.1, which states that title insurance companies and agents of title insurance companies, issuing mortgagee's title insurance upon a loan made simultaneously with the purchase of all or a part of the real estate securing the loans, where no owner's title insurance policy has been ordered; shall, prior to the disbursement of the loan funds or the issuance of the mortgagee's title policy, cause the mortgagor to be advised in writing of the fact that a mortgagee's title insurance policy is to be issued, of the fact that the policy does not afford title insurance protection to the owner-mortgagor, and if the owner-mortgagor elects not to purchase owner's title insurance, the title insurance company shall obtain from the mortgagor a statement in writing that the mortgagor has received the notice and that the mortgagor waives the right to purchase owner's title insurance. The form of the written notice and waiver shall be in the prescribed form.

#### CONCLUSIONS OF LAW

5. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department makes the following Conclusions of Law:

(a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

(b) Violations of 40 P.S. §§ 910-25, 910-26(a), 910-27, 910-37(a) and 910-37(h) are punishable by the following, under 40 P.S. §910-48: The commissioner may, if he finds that any person or organization has violated any provision of this article, impose a penalty or not more than \$500 for each violation. If the violation is willful, the commissioner may

impose a penalty of not more than \$5,000 for each violation, in addition to any other penalty provided by law;

(c) Violations of 40 P.S. § 1171.4, are punishable by the following, under 40 P.S. §1171.9:

(i) cease and desist from engaging in the prohibited activity;

(ii) suspension or revocation of the license(s) of Respondent.

(d) In addition to any penalties imposed by the Department for violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Department may, under 40 Purdons Statutes, Sections 1171.10 and 1171.11 file an action in which the Commonwealth Court may impose the following civil penalties:

(i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);

(ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

#### ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

(a) Respondent shall not engage in the activities described herein in the Findings of Fact and Conclusions of Law.

(b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.

(c) Respondent shall comply with all recommendations contained in the attached report by providing written notice to its agents of their obligation as licensed producers to comply with all applicable laws and regulations of the Commonwealth of Pennsylvania and the Pennsylvania Department of Insurance particularly with regard to their obligations under the Title Insurance Act and the statutes and regulations cited in the report.

(d) The company shall comply with the recommendations in the report by implementing the recommendations which implicate its direct responsibilities under the law, consisting of: making quarterly filings with the Department for additional charges in especially difficult title matters, special fees for affirmative risks coverages and policies issued in excess of the filed rate; ensuring that all agents are properly licensed; and ensuring that all agents are properly appointed. Otherwise, the company shall notify agents of their responsibilities as provided in paragraph 6(c), above.

(e) To the extent not already done, Respondents will ensure that refunds of all overcharges are issued to consumers within 30 days of this Order, whether by the company directly, or the by the agent or agents. Nothing in this Order absolves an agent from his or her potential liability for refunds for overcharges, nor does this Order preclude the company from seeking reimbursement for such, if appropriate.

(f) Respondent shall pay Twelve Thousand, Five Hundred Dollars (\$12,500.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

(g) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of Market Conduct, PA Insurance Department, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

7. In the event the Insurance Department finds that there has been a breach of paragraph 6 of this Order, the Department may, in its discretion, pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or it may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. Alternatively, in the event there has been a breach of any of the provisions of paragraph 6 of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

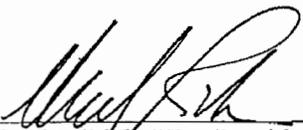
9. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred.

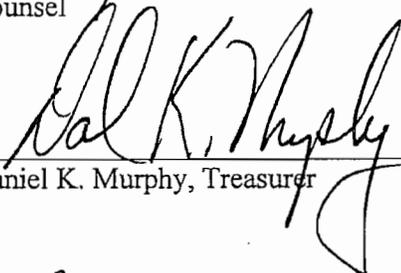
10. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: COMMONWEALTH LAND TITLE  
INSURANCE COMPANY, Respondent

  
\_\_\_\_\_  
Michael J. Rich, Vice President and Regulatory  
Counsel

  
\_\_\_\_\_  
Daniel K. Murphy, Treasurer

  
\_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA  
By: Ronald A. Gallagher, Jr.  
Deputy Insurance Commissioner

## **I. INTRODUCTION**

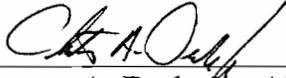
The Market Conduct Examination was conducted on Commonwealth Land Title Insurance Company (“the Company”), in the office of the Pennsylvania Insurance Department, located in Harrisburg, Pennsylvania.

The Pennsylvania Market Conduct Examination Report (“Report”) generally notes only those items to which the Department, after review, takes exception. However, the Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review those areas of concern in order to determine the potential impact upon Company operations or future compliance. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties.

Throughout the course of the examination, Company officials were provided with status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify potential violations. An exit conference was conducted with Company personnel to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged.

The undersigned participated in this examination and in preparation of this Report.



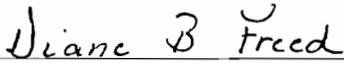
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Chester A. Derk, Jr., AIE, HIA  
Market Conduct Division Chief



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June A. Coleman  
Market Conduct Examiner



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Diane B. Freed  
Market Conduct Examiner

## **II. SCOPE OF EXAMINATION**

The Market Conduct Examination was conducted on Commonwealth Land Title Insurance Company at the office of the Pennsylvania Insurance Department located in Harrisburg, Pennsylvania. The examination was conducted pursuant to Sections 903 and 904 of the "Insurance Department Act", the Act of May 17, 1921, P.L. 789, No. 185, Art., IX, *as amended* 40 P.S. §§323.3, 323.4 and covered the experience period of January 1, 2006 through December 31, 2006, unless otherwise noted. The purpose of the examination was to determine the Company's compliance with Pennsylvania insurance laws and regulations.

The examination focused on Company operations in the following areas:

1. Underwriting Practices and Procedures
2. Rating
3. Forms
4. Licensing

### III. COMPANY HISTORY AND LICENSING

The Company was incorporated in Pennsylvania as Commonwealth Title Company of Philadelphia on April 11, 1929. Effective April 1, 1944, the Company was merged with Pennsylvania Title Insurance Company with the surviving corporation being named Commonwealth Title Company of Philadelphia. On December 30, 1955, the Company merged with Land Title Insurance Company to form Commonwealth Land Title Insurance Company. Since that date, the Company has absorbed several other companies, via merger, as follows:

December 1961	Frankford Title Insurance Company
April 1973	Commonwealth Land Title Insurance Company of New York
November 1974	Louisville Title Insurance Company
December 1974	Xania Land Title Insurance Company
April 1976	Union Title Guaranty Company
June 15, 2000	District-Realty Title Insurance Corporation
December 12, 2002	Industrial Valley Title Insurance Company

Prior to February 27, 1998, the Company was a wholly-owned subsidiary of Reliance Insurance Company. On that date, LandAmerica Financial Group, Inc., a Virginia corporation, formerly known as Lawyers Title Corporation, acquired all of the outstanding shares of the Company from Reliance Insurance Company.

Effective on May 30, 2006, the Company was re-domesticated and incorporated in Nebraska.

### LICENSING

Commonwealth Land Title Insurance Company is currently licensed to write title insurance in the Commonwealth of Pennsylvania under a Certificate of Authority last issued April 1, 2009. The Company is also licensed to write title insurance in the

District of Columbia, Puerto Rico, U.S. Virgin Islands, American Samoa and all states except Iowa.

The Company's total direct premium earned in Pennsylvania was \$89,028,251 as of its 2007 annual statement.

#### **IV. UNDERWRITING PRACTICES AND PROCEDURES**

As part of the examination, the Company was requested to supply manuals, underwriting guides, bulletins, directives or other forms of underwriting procedure communications. The purpose of this review was to identify any inconsistencies which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

## V. RATING

The purpose of the review was to measure compliance with Section 737 of the “Insurance Company Law,” the Act of May 17, 1921, P.L. 682, Art., VII, *as amended* 40 P.S §910-37, which requires every title insurance company to file with the Insurance Commissioner every manual of classifications, rules, plans, and schedules of fees and every modification of any of the foregoing relating to the rates which it proposes to use in the Commonwealth. In addition, this section of the law prohibits a title insurance company or agent of a title insurance company from charging any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for the title insurance company or agent of a title insurance company as provided in this article of the law, or in accordance with subsections (f) and (g) of this section.

To perform this review, the Department selected 150 lender policies and 150 owner policies from the universe of 13,735 lender policies and 29,280 owner policies that were issued during the experience period. Of the 300 policy files requested, 296 files were received and reviewed.

All rates, forms and rules used by the Company must be filed with and approved by the Pennsylvania Insurance Department. The rates approved for use by Commonwealth Land Title Insurance Company effective August 1, 2005 and May 1, 2006, were published by the Title Insurance Rating Bureau of Pennsylvania (“TIRBOP”) and contain rules governing the writing of title insurance. General Rule 2.7 of the Manual of Title Insurance Rating Bureau (2005 and 2006) (“Rate Manual”) states: “No policy, endorsement or other coverage may be issued which varies the terms, conditions, stipulations or exclusions of a policy unless first approved by the Department.” In addition, the Company was requested to provide quarterly reports that are required if additional charges or special fees are made under Section 2.3 or

Section 2.4 of the TIRBOP Manual. The examiners were able to determine compliance with the Company's filed and approved rating plans by reviewing documentation supporting the charges listed in Sections 1100, 1200 and 1300 of the HUD-1 settlement sheet.

The following findings were made:

*A. 3 Violations as a result of the Company not obtaining valid waivers. The violations are of the Unfair Insurance Practices Act, the Act of July 22, 1974, P.L. 589, No. 205, Section 4, as amended 40 P.S. §1171.4 which:*

Requires no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act.

*AND the Department's regulations at 31 Pa. Code §126.1 which:*

Requires all title insurance companies and agents of title insurance companies, issuing mortgagee's title insurance upon a loan made simultaneously with the purchase of all or a part of the real estate securing the loans, where no owner's title insurance policy has been ordered; shall, prior to the disbursement of the loan funds or the issuance of the mortgagee's title policy, cause the mortgagor to be advised in writing of the fact that a mortgagee's title insurance policy is to be issued, of the fact that the policy does not afford title insurance protection to the owner-mortgagor, and of the owner-mortgagor's right to obtain title insurance in his own favor; and if the mortgagor elects not to purchase owner's title insurance, the title insurance company shall obtain from the mortgagor a statement in writing that the mortgagor has received the notice

and that the mortgagor waives the right to purchase owner's title insurance.

*B. 4 Violations as a result of the Company not producing files in order to determine compliance. The violations are of the Insurance Company Law at 40 P.S. §910-27 which:*

Requires every agent of a title insurance company shall keep his, her or its books, records, accounts and vouchers pertaining to the business of title insurance, in such manner that the commissioner or his authorized representative may readily ascertain from time to time, whether or not the agent has complied with all of the applicable provisions of this act. Failure to comply with this section shall be a ground for revocation of the agent's license.

*AND the Insurance Department Act at 40 P.S. §323.3(a) which:*

Requires every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department, in its discretion, may require in order that its authorized representatives may readily ascertain whether the company or person has complied with the laws of this Commonwealth.

*C. 10 Violations as a result of the Company's failure to provide documentation to support charges on the HUD settlement sheet. The violations are of the Insurance Company Law at 40 P.S. §910-27 which:*

Requires every agent of a title insurance company shall keep his, her or its books, records, accounts and vouchers pertaining

to the business of title insurance, in such manner that the commissioner or his authorized representative may readily ascertain from time to time, whether or not the agent has complied with all of the applicable provisions of this act. Failure to comply with this section shall be a ground for revocation of the agent's license.

*AND the Insurance Company Law at 40 P.S. §910-37(h) which:*

Requires that beginning ninety days after the effective date of this amendment, no title insurance company or agent of a title insurance company shall charge any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company or such agent of a title insurance company as provided in this article, or in accordance with subsections (f) and (g) of this section.

*AND the Insurance Department Act at 40 P.S. §323.3(a) which:*

Requires every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department, in its discretion, may require in order that its authorized representatives may readily ascertain whether the company or person has complied with the laws of this Commonwealth.

Of the ten (10) violations noted, five (5) violations were the result of the Company not providing documentation to support the charges and/or pass through charges under Sections 1100 and 1200 of the HUD-1 sheet according to Section 2.1 and

Section 3.4 in the Rate Manual. This resulted in overcharges of \$240.00. The remaining five (5) violations were the result of the Company not providing documentation to support the charges and/or pass through charges under Section 1300 of the HUD-1 sheet according to Section 2.1 and Section 3.4 in the Rate Manual. This resulted in overcharges of \$212.00.

*D. 12 Violations as the result of the Company not filing with the Department policies issued in excess of the filed rate of \$30,000,000 as required. The violations are of the Insurance Company Law at 40 P.S. §910-37(a) which:*

Requires every title insurance company to file with the commissioner every manual of classifications, rules, plans, and schedules of fees and every modification of any of the foregoing relating to the rates which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

*E. 69 Violations as a result of the Company making inappropriate charges on the HUD settlement sheet. These are violations of the Insurance Company Law at 40 P.S. §910-37(h) which:*

Requires that beginning ninety days after the effective date of this amendment, no title insurance company or agent of a title insurance company shall charge any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company or such agent of a title insurance company as provided in this article, or in accordance with subsections (f) and (g) of this section.

Of the 69 violations noted, 26 violations were the result of the Company charging incorrect rates according to the Policies and Rates Section in the Rate Manual. This resulted in overcharges of \$6,092.94 and undercharges of (\$826.69). Sixteen (16) violations were the result of the Company charging incorrect amounts for endorsements according to the Endorsements and Rates Section in the Rate Manual. This resulted in overcharges of \$941.02 and undercharges of (\$600.00). Nineteen (19) violations were the result of the Company charging inappropriate charges and/or pass through charges under Sections 1100 and 1200 of the HUD-1 sheet according to Section 2.1 and Section 3.4 in the Rate Manual. This resulted in overcharges of \$1,527.46. The remaining eight (8) violations were the result of the Company charging inappropriate charges and/or pass through charges under the section 1300 of the HUD-1 sheet according to Section 2.1 and Section 3.4 in the Rate Manual. This resulted in overcharges of \$385.00.

*F. 65 Violations as a result of charging excess settlement and/or closing fees and not properly disclosing information on the HUD-1 settlement sheets. These are violations of the Unfair Insurance Practices Act at 40 P.S. §1171.4 which:*

Requires no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act.

Of the 65 violations noted, 32 violations were the result of the Company charging excess settlement or closing cost fees without demonstrating that advance written notices were given to the applicants. The remaining 33 violations were the result of the Company not properly disclosing information on the HUD-1 settlement sheets.

*G. 2 Violations as a result of the Company not providing HUD-1 settlement sheets. These are violations of the Unfair Insurance Practices Act at 40 P.S. §1171.4 which:*

Requires no person shall engage in this state in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance pursuant to this act.

*AND the Insurance Department Act at 40 P.S. §323.3(a):*

Requires every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department, in its discretion, may require in order that its authorized representatives may readily ascertain whether the company or person has complied with the laws of this Commonwealth.

## VI. FORMS

All files were reviewed to verify the use of Department approved forms in compliance with the Insurance Company Law at 40 P.S. §477b, Approval of Policies, Contracts, etc., Prohibiting the Use Thereof Unless Approved. During the experience period of the examination, the Insurance Company Law provided that it shall be unlawful for any insurance company to issue, sell, or dispose of any policy contract or certificate covering fire, marine, title and all forms of casualty insurance or use applications, riders, or endorsements in connection therewith, until the forms have been submitted to and formally approved by the Insurance Commissioner. No violations were noted.

## VII. LICENSING

In order to determine compliance with the licensing requirements of the Insurance Company Law at 40 P.S. §§910-24 - 910-31, the Company was asked to provide a list of active agents during the experience period. In addition, the Company was asked to submit a list of all agents whose contracts or agency agreements were canceled during the experience period. The Company's policy files were also reviewed for the purpose of identifying agents.

The following findings were made:

- A. 20 Violations as a result of the Company's failure to certify a list of its appointed agents. These are violations of the Insurance Company Law at 40 P.S. §910-25 which:*

Requires every title insurance company to certify to the commissioner the names of all agents appointed by it in this Commonwealth.

The following agents were found to be writing policies without having an appointment. The Company failed to file a notice of appointment and submit appointment fees to the Department.

Agent

Templeton Abstract Services Inc  
ABCO of Northampton LLC  
Pro-Search Abstract Inc  
North American Land Transfer LLC  
Liberty Abstract of Delaware Valley LLC  
Savings Abstract Company  
Octoraro Land Exchange LLC  
Westminster Abstract Co  
Philip J Boyle C/O Continental Land Abstract  
Delaware Valley Searches Inc

Brendan Abstract Company Inc  
Chester D Newhart Esquire  
James R Clark  
Metropolitan Abstract Inc  
Freedom Settlement Company LLC  
North American Company  
Realty First Settlement Services  
A D Abstract Corporation  
Thomas, Shannon McCormick-Designated Licensee for M&T  
Abstract LLP  
McGowan, John-Designated Licensee for Philadelphia Abstract  
Company

*B. 1 Violation as a result of the Company failing to obtain a certificate of qualification for one agent. This is a violation of the Insurance Company Law at 40 P.S. §910-26(a) which:*

Requires agents to make application for a certificate of qualification with the Insurance Department for authority to act as a title insurance agent in the manner provided for in Section 603 of the act of May 17, 1921 (P. L. 789, No. 285)

The following agent was found to be writing policies but was not found in the Insurance Department records as holding a valid certificate of qualification in the Commonwealth of Pennsylvania.

Agent  
M & T ABSTRACT

## **VIII. DEPARTMENT CONCERNS**

The Department notes concerns involving business practices related to closing and/or settlement costs which practices may not be within the Company's direct control or direction. Accordingly, such practices are not designated herein as title violations by the Company, as within the Department's regulatory authority. These concerns were brought to the attention of the Company for their review and response.

Related to the appropriateness of closing and/or settlement costs, the Company noted that it does not receive compensation or payment for anything other than the actual title insurance. As a general rule, the Company does not request or require documentation to support charges listed on HUD settlement sheets as a precondition to issuing a policy, because the charges do not constitute insurance premium. Another frequently noted concern was that, in many cases, the title or settlement agent was unable or unwilling to produce to the Company, documentation to support charges made. As such, in many cases, the third party charges could not be supported by documentation.

Some of the more frequently noted concerns involved charges for delivery fees, which ranged from \$13.94 to \$105.00, and settlement/closing fees from no charge to \$395.00. Numerous charges were also noted for email and document preparation, ranging from \$25.00 to \$200.00, notary fees which ranged from no charge to \$72.00, and wire fees, ranging from \$10.00 to \$50.00. Other fees noted included attorney fees from no charge to \$375.00, conveyance fees from no charge to \$250.00 and cancellation fees from no charge to \$250.00.

These concerns were not uniform or consistent, in that they were not identified in every file reviewed. Also, there was wide disparity in the number of concerns involving fees and the corresponding charges made, supporting the fact there is a

general lack of uniformity in the settlement process. One conclusion may be that this puts the consumer at a disadvantage, resulting in potentially higher costs.

## IX. RECOMMENDATIONS

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other statutory or regulatory violations, noted in the Report.

1. The Company must review the Unfair Insurance Practices Act specifically 40 P.S. §1171.4 and the Department's regulations at 31 Pa. Code § 126.1 with its agents to ensure that the owner-mortgagor is advised in writing of the right to obtain title insurance in one's own favor. This is to ensure that violations noted in the Report do not occur in the future.
2. The Company must reinforce internal controls to ensure that all records and documents are maintained in accordance with the Insurance Department Act and the Insurance Company Law so that violations noted in the Report do not occur in the future.
3. The Company must make quarterly filings with the Department for additional charges in especially difficult title matters, special fees for affirmative risks coverages and policies issued in excess of the filed rate as required. This is to ensure that violations noted under the Insurance Company Law at 40 P.S. §910-37(a) do not occur in the future.
4. The Company must review the Insurance Company Law at 40 P.S. §910-37(h) and must take appropriate measures to ensure the rating violations listed in the Report do not occur in the future. The overcharges noted in the Rating Section of this Report must be refunded to the insureds and proof of such refunds must be provided to the Insurance Department within 30 days of the Report issue date.

5. The Company must implement procedures with its agents to ensure that each agent provides the consumer, in advance of the day of closing, a written notice that an additional expense may be incurred when scheduling a closing out-of-office or after-hours. This is to ensure that violations of the Unfair Insurance Practices Act at 40 P.S. §1171.4 noted in the Report do not occur in the future.
6. The Company must implement procedures to ensure that the violations of the Unfair Insurance Practices Act at 40 P.S. §1171.4, regarding the proper disclosure of information on the HUD-1 settlement sheet noted in the Report, do not occur in the future.
7. The Company must reinforce internal controls to ensure that all records and documents are maintained in accordance with the Insurance Department Act and the Unfair Insurance Practices Act so that violations noted in the Report do not occur in the future.
8. The Company must ensure that all agents are properly licensed, as required by the Insurance Company Law at 40 P.S. §910-26(a) prior to accepting business from an agent.
9. The Company must ensure that all agents are properly appointed, as required by the Insurance Company Law at 40 P.S. §910-25 prior to accepting business from an agent.

**X. COMPANY RESPONSE**



May 29, 2009

**VIA E-MAIL & FEDERAL EXPRESS**

Mr. Chester A. Derk, Jr., AIE, HIA  
Market Conduct Division Chief  
Market Conduct Division  
Pennsylvania Insurance Department  
1227 Strawberry Square  
Harrisburg, PA 17120

**Re: Response to the Pennsylvania Insurance Department's (the "Department")  
Market Conduct Examination Report dated April 29, 2009 (the "Report") on  
behalf of the Commonwealth Land Title Insurance Company - Examination  
Warrant No. 07-M19-001**

Dear Mr. Derk:

Thank you for the opportunity to respond to the Department's concerns and recommendations outlined in the Report dated April 29, 2009. By way of background, please accept the following brief summary of the recent events that have transpired with regards to the ownership of Commonwealth Land Title Insurance Company (the "Company"). As of December 22, 2008, Fidelity National Title Insurance Company ("Fidelity") acquired the Company pursuant to a Stock Purchase Agreement dated November 25, 2008 by and among Fidelity, Chicago Title Insurance Company, and LandAmerica Financial Group, Inc., the former parent corporation of the Company. This acquisition occurred after the Exit Summary in June of 2008 but prior to the April 29, 2009 issuance of the Report.

This written submission and rebuttal (the "Reply Letter") responds to each of the findings of the Department as well as to the recommendations for corrective measures in the order in which they are outlined in the Report. Section I of the Reply Letter sets forth the Company's legal responses to the Department's conclusions that technical and substantive violations of the law occurred. Section II of the Reply Letter sets forth our reply to the Department's recommendations. The Department will note in Section II that, between the issuance of the Report and the drafting of this Reply, the Company instituted a number of the Department's recommendations for corrective measures. Specifically, for example, the Company oversaw certain title agent refunds of overcharges noted in the Rating Section of the Report. Please note, however, that while the Company cooperated with the Department in its information gathering effort, such cooperation should not be deemed an express or implied concession that the Company is responsible or liable for any acts or omissions outside the contractual agency

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agreement it has with its agents. In addition, the fact that the Company compelled its agents to issue refunds of the overcharges noted in the Rating Section of the Report is not intended as an admission to the Department's conclusion that violations of the Pennsylvania Unfair Insurance Practices Act (the "PA UIPA") were committed. The Company continues to maintain its position that a great majority of the violations contained in the Report are patently inconsistent with Pennsylvania law.

## I. VIOLATIONS

### A. Introduction

We respectfully disagree with the Department's imposition of violations against the Company. Most states, including Pennsylvania, permit title insurers to issue policies in several different ways. An insurer can issue a policy directly through its employees, create a wholly owned subsidiary that, when qualified as an agency under Pennsylvania law, can issue policies as an agent of the insurer, and issue policies through independent non-affiliated agents (including lawyer agents) or agencies (including law firms).<sup>1</sup> Because title agents do more than merely issue policies and endorsements, the title industry in general and the Company specifically, have developed a strictly defined relationship so that the agent can conduct non-title insurance business separate from the agent's contractual obligations to the insurer.

The Company, through agency agreements, appoints and establishes the duties and obligations of its title agents.<sup>2</sup> Title agents are appointed as limited agents for the sole purpose of issuing title policies in the name of the Company. The role of the agent is for policy issuance and is not inclusive of the duties of a settlement or closing officer. The activities of a closing or settlement officer are outside the scope of the Company's relationship with its agents. No part of the Pennsylvania Insurance Code (the "Insurance Code") or the Pennsylvania Rate Manual (the "Rate Manual"), obligates the title insurer to supervise any part or the totality of the settlement process. The Company does not receive any of the monies an agent collects for such charges as Document Preparation Charges, Recording Fees, Overnight Delivery Charges, Wire Fees or any of the fees contemplated by Section 2 of the Rate Manual. In each transaction, the Company only receives its share of the title insurance premium per the issuing agency agreement. By contract, an agent's ability to bind the Company is limited. To the extent an agent performs functions unrelated to the issuance of a policy, for example the issuance of closing service letters, such is a transaction for which liability upon the Company cannot be imposed. If the

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<sup>1</sup> It is understood without extensive discussion that the Company and the Department understand the application of the producer licensing laws for agents and agencies and that it is not necessary, in the context of this letter, to discuss producer licensing except where germane to a particular violation related to producer licensing.

<sup>2</sup> The term agent, agents, agency and agencies shall be used interchangeably depending on context but shall, unless otherwise clearly indicated, be synonymous.

liability for conduct at closing was as broad as the Department contends, we would respectfully suggest that there would be no need for closing service letters. In the vast majority of title insurance transactions, the insurer has no knowledge of the underlying transaction until after it has been completed and the policy issuing agents remit the underwriter's portion of the title insurance premium to the underwriter.

One other thread woven through the Department's conclusions is that the Company is not only responsible for the agent's violations set forth in the Report but is further responsible to assure the agent's future compliance with Pennsylvania's insurance laws and regulations for settlement and post settlement closing practices. Under Pennsylvania's producer licensing law, agents are directly responsible for compliance with such laws and regulations and the Company has no legal authority to stand in the shoes of the Department for purposes of regulatory enforcement. Simply stated, the Company maintains that it is not a regulatory enforcement agency and therefore, not responsible for ensuring to the Department that its title agents are at all times compliant with the Insurance Code or the Rate Manual.

**B. Specific Areas of Violations**

1. **Ratings**

- (a.) 3 Violations as a result of the Company not obtaining valid waivers in violation of the 40 P.S. § 1171.4 and 31 Pa. Code § 126.1 (the "Pa Code")

The PA UIPA is violated when a person engages "in any trade practice which is defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." 40 P.S. § 1171.4. Section 1171.5 of the PA UIPA defines what constitutes an unfair or deceptive act or practice and lists fourteen specific categories determined to be violations of the act. Settlement errors by title agents are not listed under Section 1171.5. To date, the Department has not issued an opinion, bulletin, or rule providing notice to the title industry that settlement errors may be categorized as an "unfair or deceptive act or practice" or rise to the level of a PA UIPA violation. The Company maintains that the PA UIPA is not relevant or applicable to any of the violations contained in the Report.

A corollary is that the PA UIPA is not applicable to title insurance companies that have a written contract with agents limiting the agent's authority to the issuance of title insurance policies. Under circumstances where the agent is not the insurer's agent for purposes of settlement, the insurer cannot be liable for a violation of the PA UIPA even if it were found that the PA UIPA was applicable to title insurance. In addition, the violations asserted to arise under the PA UIPA do not rise to a level sufficient to constitute a pattern and practice violation of the

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PA UIPA. Therefore, we disagree with the Department's conclusion that an agent's failure to obtain a waiver constitutes a violation by the agent's underwriter under the PA UIPA.

- (b.) 4 Violations as a result of the Company not producing files in order to determine compliance in violation of 40 P.S. § 910-27 and 323.3(a)

Based on Pennsylvania law, the Company contends that it bears no responsibility for maintaining and accessing the records of its agents except as may be required under the issuing agency agreement. No duty exists under the Insurance Code and the administrative regulations promulgated thereunder for a title insurer to retain settlement records. See 40 P.S. § 910 et seq. Only one provision requires either the insurer or the insurer's agent or attorney to retain an abstract of title on file. Section 910-7 states "the abstract of title or the report of the examination thereof shall be in writing and shall be kept on file by the title insurance company or its agents or approved attorney for a period of not less than twenty years." 40 P.S. 910-7. The Company is and has been compliant with this provision.

Pennsylvania law also supports the Company's position that it has limited responsibility for the acts and/or records of its agents. Pennsylvania law places the burden of retaining additional records upon the agent, not the title insurer. Section 910-27 of the Insurance Code states that "every agent of a title insurance company shall keep his, her, or its books, records, accounts, and vouchers pertaining to the business of title insurance, in such a manner that the [C]ommissioner ... may readily ascertain ... whether or not the agent has complied with all of the applicable provisions of this act." 40 P.S. § 910-27. No such equivalent, corresponding duty or obligation is imposed upon the title insurer. Moreover, agents are compelled to "keep separate records of business written for each title insurer." 40 P.S. § 910-26.1.<sup>3</sup> Section 910-26.1 instructs that "the title insurer shall have access and a right to copy all files, accounts and records related to its business in a form acceptable to the title insurer, and the Insurance Commissioner, shall have access to all files, books, bank accounts and records of the title insurance agent in a form usable to the Insurance Commissioner." 40 P.S. § 910-26.1(6). Pennsylvania law does not place the burden of retention of records upon the title insurer. Rather, it gives the Insurance Commissioner commanding and superior rights to obtain access to records. Consistent with Pennsylvania law, our agents produced records at the request of the Department that allowed this examination to move forward.

In addition, while Sections 2 and 3 of the Rate Manual identify what items may or may not be included in the premium, neither the Rate Manual nor the Department has provided guidance on what records are necessary to establish compliance. Most property sales and

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<sup>3</sup> It is not unusual for title agents to write for more than one title insurer and be obligated to different insurers under separate agency agreements.

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mortgage loans take thirty to sixty days from contract to settlement. That time does not include the necessary follow up actions that include bring down searches, document recordation, title policy issuance and account reconciliation. During that time, an agent will communicate with parties, lender's representatives, public officials, etc. Information that will be used on the settlement sheet will, in many cases, be provided orally. While the Company's new parent has an established audit process to assure the integrity of the agent's financial records under the agency agreement, that oversight is focused on matters arising out of the agency agreement between the agent and the Company. In most settlements, there are additional documents to support the charges that appear on the HUD-1 but without any prior guidance from the Department, an agent is not on notice that government receipts, individual bills of lading, itemized wire fee invoices, etc. are required in order to comply with Section 2 or 3 of the Rate Manual.

The agent's ability to meet the level of documentary compliance suggested by the violations is complicated by settlement procedures that are dictated by the lender which, in some cases, work at cross purposes to the Rate Manual. For example, many lenders will only wire funds and banks usually impose wire fees for credit and debit without providing any documentation other than a consolidated end of month charge on a statement or invoice. The same is true for overnight services that require an agent to establish a monthly billing account that may have end of month adjustments based on weight, distance or volume. . In both cases there is usually no individual transactional invoice or receipt that identifies the cost or value of the service.

More importantly, document preparation charges, wire and delivery fees, recording charges, and other settlement costs are exclusive of the insurer's agreement to issue a title policy upon the completion of settlement and the final recordation of documents necessary to transfer title and/or impose a lien on the property. Such fees are imposed outside the confines of the issuing agency agreement between the title insurer and the title agent. Such fees are neither submitted to the insurer for advance approval nor are they part of the remittance report provided to the insurer by the agent pursuant to the agency agreement.

Additionally, the Company submits that if the Department decides to consider such failures of record keeping as violations (an argument the Company disputes), the amounts listed would not necessarily accurately represent the amount of any violation. The agent's failure to provide responsive documentation is not the same as a substantive violation of any of these categories.

Based upon the above described facts related to the relationship between underwriters and agents and a review of all pertinent Pennsylvania law, we can find no support for the Department's position that the Company is responsible for the acts of its agents at settlement or that it has a duty to maintain agent records.

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- (c.) 10 Violations as a result of the Company's failure to provide documentation to support charges on the HUD settlement sheet in violation of 40 P.S. § 910-27.

The Department notes five (5) violations against the Company for failure to provide documentation to support charges under Sections 1100 and 1200 of the HUD-1 sheet according to Section 2.1 of general rules in the Rate Manual which resulted in an overcharge to the insured. However, Section 2.1 does not require that any documentation be provided. It does not require proof of actual costs. Section 2.1 only provides information as to what is and is not included within the basic title policy premium. It is silent with regard to the violation being cited by the Department. Further, the Company has no way to determine prior to receiving a violation from the Department what constitutes an "overcharge" when there is no written standard to follow. Finally, the Department has also included on its list of "overcharges" both attorneys' fees and certain bank fees which are exclusive of settlement charges and not subject to the Rate Manual. The Company respectfully objects to the implication that these fees are within the regulation or supervision of underwriters, agents, or the Department. There is no authority to suggest that the Department may determine at what point attorneys' fees constitute "overcharges" and then cite the underwriter for violating the Rate Manual. The concept of title insurance issuance is a five (5) party relationship: title insurer/underwriter; lender; agent/settlement officer; borrower/policy holder; and attorney. No title insurer can interfere with an attorney/client relationship and/or lender/borrower contract to which the insurer and agent is not a party.

Even assuming that there are valid grounds for the Department's position (which the Company strongly contests), the Company restates its position that without prior guidance in the form of regulations, bulletins or circular letters, there is nothing in the Rate Manual or Pennsylvania law that defines the documents or record keeping requirements to determine compliance. Historically, it has been minimally sufficient for the purposes of record keeping if the amounts listed on the HUD-1 are consistent with the settlement officer's ledger and cancelled checks. In most instances, there are additional documents to support the charges that appear on the HUD-1 but without any prior guidance from the Department no agent/settlement officer is on notice to produce the kind of documentation the Department now demands.

The Department also notes five (5) violations against the Company for failure to provide documentation to support pass through charges under Section 1300 of the HUD-1 sheet according to Section 3.4 of the general rules in the Rate Manual which resulted in an overcharge to the insured. However, Section 3.4 of the Rate Manual is very specific regarding what it covers. The Rate Manual does not support the violations cited by the Department. Section 3.4 of the Rate Manual reads as follows:

### 3.4 PASS-THROUGH CHARGES

Search and examination services are included in the basic and reissue rates for policies issued under the Company or Agent Procedure. Additional Searches and Certifications may be required in a particular closing. If so, they must comply with the following rules:

- (a) The actual fee charged the appropriate party will not exceed the charge made by the issuing governmental agency **for the Searches and Certifications shown below**. *[Emphasis Added]* When a HUD-1 Settlement Statement is used, these charges must be reported in the 1300 Section.
  - (1) Real Estate Tax Searches and/or Certifications.
  - (2) Water and Sewer Searches and/or Certifications.
  - (3) Municipal Lien Searches and/or Certifications.
  - (4) Domestic Relations and Support Lien Searches and/or Certifications.
  
- (b) The actual cost of obtaining certain other Searches and Certifications **shown below** *[Emphasis Added]* may be passed on to an Interested Party.
  - (1) Corporate Lien Searches.
  - (2) Corporate Good Standing Certificates
  - (3) Uniform Commercial Code Searches.
  - (4) Condominium, Cooperative, and Planned Community Certifications.

The Department cites the Company for violations of this Section which are substantially for "Delivery fees overcharge," "Email documents download overcharge," "Wire fees overcharge," and "Email documents transmittal fee overcharge." Not one of these areas is covered by Section 3.4 of the Pennsylvania Rate Manual. The Rate Manual is silent regarding the Department's argument that the Company must provide documentation from its title issuing offices regarding the actual costs incurred.

Further, historical documentation supports the Company's above position. On July 20, 1999 the Rating Bureau (the "Rating Bureau") submitted its proposed changes for the 1999 Rate Manual to the Department. See Exhibit A (the "Letter"). These changes were accepted by the Department and the Letter was stamped "Approved, Effective October 1, 1999". In the Letter, the Rating Bureau proposed deleting charges such as "overnight delivery" from the Rate Manual with the intention that they not be eliminated from practice. See page 3 of the Letter. The

Rating Bureau stated in the letter "we believe that this kind of special service may not be 'title insurance' and therefore not subject to regulation by the Department." The Department approved the Letter. Without any other guidance from the Department on this issue, the title industry should be entitled to rely on the historical documentation. The Letter establishes that the Department indisputably endorsed the Rating Bureau's position that charges such as overnight delivery fees be deleted from the Rate Manual but not eliminated from practice.

- (d.) 12 Violations as a result of the Company not filing with the Department policies issued in excess of the filed rate of \$30,000,000 as required in violation of 40 P.S. § 910-37(a).

The Company contends that rates were filed and approved for amounts of insurance up to \$30,000,000. The title industry believes that the Rate Manual is controlling for those policies. The Rate Manual is silent and does not address rates for transactions in excess of \$30,000,000. Therefore, the industry believes and operates under the assumption that rates for insurance over \$30,000,000 in liability are negotiable as are the costs and fees for settlement that are charged by the settlement officer.

To the extent that other title underwriters provide lists to the Department of all transactions in an amount over \$30 million, the Company cannot discern whether or if the Insurance Code or the Rate Manual require this practice. Unless there is a clear requirement to provide this information, we respectfully contend that the Company cannot be cited for failing to comply with a voluntary practice of a minority of underwriters. Assuming, however, this is the practice that the Department requires, the Company would ask that the Department request a change to the Rate Manual from the Rating Bureau or clarify the same in the form of an industry-wide bulletin. In that way there would be no question of the Department's requirements and the Company and other insurers would have the necessary guidance for compliance purposes.

- (e.) 69 Violations as a result of the Company making inappropriate charges on the HUD settlement sheet in violation of 40 P.S. § 910-37(h).

Please see the Company's rebuttal set forth above.

- (f.) 65 Violations as a result of charging excess settlement and/or closing fees and not properly disclosing information on the HUD-1 settlement sheets in violation of the Pa UIPA.

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The Report contains violations for overcharges of fees related to after hours or out-of-office settlement/closing costs. The Company draws the Department's attention to a bulletin it issued dated September 15, 1999. See Exhibit B. The bulletin clearly instructs and advises that the Department will not regulate or oversee the amount a customer is charged for an out-of-office or after hours closing. The Notice states in pertinent part:

As you know, the Pennsylvania Insurance Department ("Insurance Department") has approved a revised Rating Manual with an effective date of October 1, 1999. Manual Rule 2.3(b), relating to out-of-office closings, has been deleted from the new Rating Manual. Accordingly, member companies and their agents will no longer be reporting special charges for out-of-office closings or closings that take place beyond normal office hours. **Further, the Insurance Department will not be regulating the amount that is charged a customer for this special service.** *[Emphasis Added]*

No Pennsylvania law, administrative rule, or the Rate Manual indicates that the fee charged for settlement/closing, if after hours or out-of-office, must be based on actual costs or that it must meet any other threshold. Nor does the Insurance Code or Rate Manual require that the consumer be given an option for an in-office closing. It simply requires that the borrower be informed of the extra charge for an out-of-office or after hours closing. If a borrower does not wish to pay the charge for an out-of-office closing, they may choose to attend a closing in the office or go to someone else who may charge a different amount for an out-of-office closing. In the event, however, that a borrower wishes to incur these charges for the convenience of attending a closing after hours or at a different location, then the option is available. It should also be noted that there are instances where the lender may require that a settlement be conducted at a specified location irrespective of the borrower's wishes and that charges (for settlement, document preparation, wire fees, delivery fees, etc.) imposed by a lender as part of the loan commitment and agreement are not governed by the Rate Manual since the lender is not a licensee of the Department.

The Company recognizes that the Department has expressed concern about the uniformity of certain charges such as settlement fees, wire fees, electronic document fees, delivery fees, etc. Because Pennsylvania is a rating bureau state, the Company is not at liberty to assume the manner in which the Department will enforce the laws and regulations applicable to settlement. The Company, like other insurers and agents, looks to the Department for regulations, bulletins, circular letters and other directives for guidance. To the extent the Department was and is concerned with uniform settlement practices and where that concern is not addressed in the Rate Manual, best practice suggests the use of regulations, bulletins, circular letters and the like as a method of providing such notice to Departmental licensees. In that vein, the 1999 bulletin regarding settlement costs and advance notice provided an opportunity to

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provide uniform guidance upon which the licensees could rely and it avoided uncertain interpretations by members of the Rating Bureau. As a corollary, it would be unseemly for a Rating Bureau member to act inconsistently with the Rate Manual or to impose different or onerous obligations upon its agents that deviate from the Rate Manual or the Rating Bureau.

- (g.) 2 Violations as a result of the Company not providing HUD-1 settlement sheets in violation of the Pa UIPA and 40 P.S. § 323.3(a).

As stated above, we disagree with the Department's conclusion that violations under PA UIPA were committed by the Company. The Company restates the position that without prior guidance in the form of regulations, bulletins or circular letters, there is nothing in the Rate Manual or Pennsylvania law that defines the documents or record keeping requirements to determine compliance. The Company respectfully suggests that the Department issue rules or bulletins to guide agents on what constitutes proper documentation to retain prior to issuing violations for failing to maintain certain records. The agents have no guidance from the Department outlining what documents must be retained to comply with the Department's record keeping requirements and the Insurance Code is vague on this issue. If the original policy contains an endorsement approved by the Department and the agency's HUD-1 settlement sheet and financial records show that the endorsement was issued, then it should be understandable that the agents would determine endorsement copies are not necessary for the agent's file in order to comply with Pennsylvania law. By statute, the title insurer is obligated to retain only the abstract of title or report of examination.

## 2. Licensing

- (a.) 20 Violations as a result of the Company's failure to certify a list of its appointed agents in violation of 40 P.S. § 910-25.

See response in Section II (I), infra.

- (b.) 1 Violation as a result of the Company failing to obtain a certificate of qualification for one agent in violation of 40 P.S. § 910-26(a).

See response in Section II (H), infra.

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## II. THE DEPARTMENT'S RECOMMENDATIONS

As stated in the opening paragraph to this Reply Letter, Fidelity acquired the Company as of December 22, 2008 and is currently integrating the Company into its organization of affiliated title insurers. In the coming months, all corporate policies and standards will be uniform among each of the companies. The effort for uniformity among these companies is currently underway and Fidelity is diligently working to expedite the transition period. Once the Company is fully integrated, all of its reporting and auditing practices and procedures will be identical to Fidelity's and the Company will be subject to the same controls related to the monitoring of title agents. Fidelity and the Company agree with the Department's general recommendation that internal controls must be reinforced and utilized in order to assure that the Company is complying with all Pennsylvania insurance laws, rules, and regulations. Fidelity and the Company also agree to update its agents as to their obligations under applicable Pennsylvania insurance laws, rules, and regulations through the use of informative bulletins. The Department's specific recommendations for corrective action and the Company's additional replies are outlined below.

- A. **The Company must review the Pa UIPA with its agents to ensure that the owner-mortgagor is advised in writing of the right to obtain title insurance in one's own favor. This is to ensure that violations noted in the Report do not happen in the future.**

The Company recognizes the necessity for an agent to receive a waiver in all cases where one is required. However, the obligation to obtain a waiver resides with the agent in the first instance since it, not the Company, is aware of the nature of the transaction and whether a waiver is necessary. In most cases, the Company does not even know about the transaction until after a closing is conducted and the premium is remitted. Thus, the Company is not in a position to determine whether a waiver is necessary and it is not in a position to obtain a waiver after the closing has been conducted. The Company agrees, in accordance with our agency agreements, to provide each agent with an updated bulletin which outlines and describes the waiver requirements.

The Company does not concede that the agents' failure to obtain waivers resulted in violations of the PA UIPA and therefore denies the factual accuracy of the second statement in this recommendation. As stated in Section I(A) of this Reply Letter, settlement errors by title agents are not defined as an "unfair or deceptive act or practice" under Section 1171.5 of the PA UIPA. Nor has the Department issued an opinion, bulletin, or rule providing notice to the title industry that settlement errors may be categorized as an "unfair or deceptive act or practice" or rise to the level of a PA UIPA violation. It is the Company's position that the PA UIPA has inaccurately been applied in this case.

- B. The Company must reinforce internal controls to ensure that all records and documents are maintained in accordance with the Insurance Department Act and the Insurance Company Law so that violations noted in the Report do not occur in the future.**
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To the extent that Pennsylvania insurance law requires a producer to maintain records, the Company fully intends to comply with such records retention provisions. The Company agrees, in accordance with our agency agreements, to provide each agent with an updated bulletin which outlines and describes Pennsylvania insurance record retention requirements. The Company does not believe, however, that Pennsylvania insurance law requires it to undertake the responsibility of a regulatory governmental body by ensuring that each title agent maintains all records and documents in accordance with state insurance law. As shown above, no duty exists under the Insurance Code and the administrative regulations promulgated thereunder for a title insurer to retain settlement records and Pennsylvania law places the burden of retaining additional records upon the agent, not the title insurer. As such, the Company will comply with its own underwriter retention requirements and provide guidance to its title agents but will not agree to undertake responsibilities outside or beyond its requirements under Pennsylvania insurance law or to assume the duties of the Department in this regard.

- C. The Company must make quarterly filings with the Department for additional charges in especially difficult title matters, special fees for affirmative risk coverages and policies issued in excess of the filed rate as required. This is to ensure that violations noted under 40 P.S. § 910-37(a) do not occur in the future.**
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The Company concedes to the Department's conclusion that proper timely quarterly reports of additional work charges were not filed in especially difficult title matters and special fees for affirmative risks coverages as required. The Company was not aware of this legal obligation. The Company is working to address how it can comply with the Department's expectation that quarterly reports be filed and intends to develop a plan for ensuring compliance to the extent that the underwriter is responsible under the insurance laws of Pennsylvania and in accordance with our agency agreements. Specifically, the Company intends to provide bulletins to its title agents on a going-forward basis to make each agent aware and provide guidance of its obligations under the insurance laws of Pennsylvania in accordance with our agency agreements.

- D. The Company must review 40 P.S. § 910-37(b) and must take appropriate measures to ensure the rating violations listed in the Report do not occur in the future. The overcharges noted in the Rating Section of this Report must be refunded to the insureds and proof of such refund must be provided to the Department within 30 days of the Report issue date.**

Certain overcharges by the agents noted in the Report were refunded to the insureds by the respective overcharging title agent. The Company, in an effort to facilitate resolution of these matters and monitored the title agents' responses to the Department's request for the issuance of refunds. In response to the Department's order that proof of such refunds be provided, the Company requests that the Department please see the responses to the Exit Interview submitted on July 14, 2008 which identify those instances in which refunds were made.

The fact, however, that the Company acted as a liaison between the Department and the agents to assist in the timely issuance of certain refunds is not intended in any way to undermine the position that the Company is not responsible for the actions of an agent acting as a settlement officer. No admission, responsibility, or liability on the part of the Company is intended by its efforts to assure the agents made appropriate refunds to their clients.

- E. The Company must implement procedures with its agents to ensure that each agent provides the customer, in advance of the day of closing, a written notice that an additional expense may be incurred when scheduling a closing out-of-office or after-hours. This is to ensure that violations of the PA UIPA do not occur in the future.**

The Company agrees that it will provide bulletins to make each agent aware of its obligations under the insurance laws of Pennsylvania and provide guidance to the agents in accordance with its agency agreements. The Company does not concede that the agents' failure to provide written notice of additional expenses when scheduling a closing out-of-office or after hours resulted in violations of the PA UIPA. Again, as shown on Exhibit B, the Department issued a bulletin in September of 1999 which clearly instructs and advises the title insurance industry that the Department will not regulate or oversee the amount a customer is charged for an out-of-office or after hours closing. Without further guidance on the issue, the Company relies on the bulletin for proper instruction. As the Department has not established a violation of the Pennsylvania insurance laws, the Company cannot concede to violations of the PA UIPA.

- F. The Company must implement procedures to ensure that the violations of the PA UIPA, regarding the proper disclosure of information on the HUD-1 settlement sheet noted in the Report do not occur in the future.**

The Company agrees that it will provide bulletins to make each agent aware of its obligations under the insurance laws of Pennsylvania and provide guidance to the agents in accordance with its agency agreements. The Company does not concede that the examination of the HUD-1 settlements sheets establish any violations of the PA UIPA. To the extent that any of its agents' activities as a closing officer are outside the scope of the agency agreement, the Company incorporates its statement with respect to the regulatory authority of the Department (*see* page 3, *supra.*)

- G. The Company must reinforce internal controls to ensure that all records and documents are maintained in accordance with the Insurance Department Act and PA UIPA so that violations noted in the Report do not occur in the future.**

Again, the Company agrees that it will provide bulletins to make each agent aware of its obligations under the insurance laws of Pennsylvania and provide guidance to the agents in accordance with its agency agreements. The Company does not concede that it failed to maintain the proper records in accordance with the Insurance Department Act and thus does not agree with the Department's conclusion that violations of the PA UIPA were committed. To the extent that any of its agents' activities as a closing officer are outside the scope of the agency agreement, the Company incorporates its statement with respect to the regulatory authority of the Department (*see* page 3, *supra.*)

- H. The Company must ensure that all agents are properly licensed, as required by the 40 P.S. § 910-26(a) prior to accepting business from an agent.**

The Company will confirm that all agents are properly licensed as part of their initial appointment with the Company.

- I. The Company must ensure that all agents are properly appointed, as required by the 40 P.S. § 910-25 prior to accepting business from an agent.**

The Company will confirm that all agents are properly appointed as part of their initial appointment with the Company.

Mr. Chester A. Derk, Jr., AIE, HIA  
May 29, 2009  
Page 15

**III. CONCLUSION**

The Department's Report references and suggests a reduced number of violations. The final number and substance of the violations did not appear to be clarified in the Department's Report. Therefore, without the benefit of such clarity as to the numerosity of the violations, the substance of the reply is made more difficult and less precise.

This Reply Letter and Exhibits constitute the Company's response to the Department's Report dated April 29, 2009. The Company extends its gratitude to the Department's staff for its cooperation. The Company stands ready to answer any questions that the Department may have with respect to this Reply Letter.

Respectfully submitted,



Michael J. Rich  
Vice President and Regulatory  
Counsel

Enclosures

cc: Tommye M. Frost, Senior Vice President and Chief Regulatory Counsel  
Pamela Beckner, Vice President and Regulatory Counsel  
Lauren P. McKenna, Esquire  
Carl Anthony Maio, Esquire

**EXHIBIT**  
**"A"**

**Buchanan Ingersoll**  
PROFESSIONAL CORPORATION

Attorneys

M. Hannah Leavitt  
717-237-4807  
leavittmh@bipc.com

One South Market Square  
213 Market Street, Third Floor  
Harrisburg, PA 17101  
Telephone: 717-237-4800  
Fax: 717-233-0852

July 20, 1999

Mailing Address:  
P.O. Box 12023  
Harrisburg, PA 17108-2023

**VIA HAND DELIVERY**

Randy Rohrbaugh, Director  
Bureau of Property and Casualty Insurance  
Office of Regulation of Rate and Policies  
Pennsylvania Insurance Department  
1311 Strawberry Square  
Harrisburg, Pennsylvania 17120

**RECEIVED**  
Office of Rate and Policy Regulations

JUL 21 1999

Pennsylvania  
Insurance Department

Re: Title Insurance Rating Bureau of Pennsylvania:  
Proposed New Endorsements and Charges and  
Proposed Revisions to Rating Manual

*Rate 03293200 |*  
*Form 03293200 |*

Dear Mr. Rohrbaugh:

Enclosed you will find two (2) copies each of the above-captioned filings. By this letter the Title Insurance Rating Bureau of Pennsylvania ("Rating Bureau") requests approval of proposed forms and rates and proposed Rating Manual revisions.

**I. Proposed Endorsements and Charges.**

The American Land Title Association ("ALTA"), *inter alia*, monitors the title insurance industry, identifying new marketplace demands for which it then develops new coverages. It also identifies the need for language changes in existing ALTA forms. All of the endorsements proposed herein have been developed and approved by the ALTA. Their approval by the Pennsylvania Insurance Department is requested so that members of the Rating Bureau will be able to meet the needs of their policyholders in this state. Following is a list of each endorsement and what changes to the Rating Manual will be effected by each approval. In addition, a complete description of each proposed endorsement is found in the draft revised Rating Manual which is also included with this filing.

- ALTA 7 - TIRBOP ENDORSEMENT PA 400 (1999) (Manufactured Housing Unit): This is a new endorsement for Pennsylvania. It is proposed to price this endorsement at \$50.
- ALTA 5.1 - TIRBOP ENDORSEMENT PA 820 (Rev'd 1999) - (Planned Unit Development): This Endorsement replaces existing ALTA 5, which is priced at \$50.

*Forms*  
Approved, Effective 10/1/99

*Rates*  
Approved, Effective 10/1/99

Pennsylvania Insurance Department

Pennsylvania Insurance Department

*[Signature]*  
Harrisburg Philadelphia and Bryn Mawr Miami and Aventura Tampa Lexington Princeton Buffalo Washington DC

There will be no change in the Charge, only in the language of the endorsement form which is intended to be a clearer statement of the same coverage.

- ALTA 11 - TIRBOP ENDORSEMENT PA 500 (1999) (Mortgage Modification): This coverage is described and authorized at Manual Rule 5.9 (formerly 5.12). Although the Charge for this coverage exists in the current Manual, there was no specific endorsement form required by which to provide the coverage. Accordingly, this is a new form but not a new Charge which is set forth in Manual Rule 5.9 (formerly 5.12). The coverage language will be standardized upon approval of this new endorsement form.
- ALTA 9 - TIRBOP ENDORSEMENT PA 1030 (Rev'd 1999) (Restrictions, encroachments, minerals): This replaces existing ALTA 9. The 1999 version of this endorsement does not substantively change existing ALTA 9, but the language is considered to be improved. There is no change in the existing Charge proposed.
- ALTA 9.1 - TIRBOP ENDORSEMENT PA 1031 (Restrictions, etc.: Unimproved Land): This is a new endorsement. The Charge for this endorsement is proposed to be 20% above the basic or reissue rate for the policy unless it is issued with TIRBOP Endorsement 301 in which case it would be priced at an additional 10% over the basic or reissue rate. A reduction is appropriate in this circumstance because there is some overlap in the coverages in TIRBOP 301 and ALTA 9.1.
- ALTA 9.2 - TIRBOP ENDORSEMENT PA 1031 (Restrictions, etc.: Improved Land): This is a new endorsement. The Charge for this endorsement is proposed to be identical to that proposed for ALTA 9.1.

## II. Justification for Endorsement Charges.

Endorsements ALTA 5.1 (TIRBOP 820 - Rev'd 1999), ALTA 11 (TIRBOP 500 - 1999) and ALTA 9 (TIRBOP 1030 - Rev'd 1999) are not new endorsements; these forms clarify or standardize coverage authorized by the existing Rating Manual. They are not priced differently from the endorsements they replace. In the case of ALTA 11, the Charge set forth in Section 5.9 (formerly 5.12) of the Manual is not changing. The standard form endorsement developed by ALTA will simply replace the forms presently used by each company according to its own drafting preference.

ALTA 7 (TIRBOP 400 - 1999) is not a new endorsement, but it is new to Pennsylvania. The Rating Bureau has been unable to collect data on its use in other states. This is because in many states endorsement data is not collected. Manufactured housing is a very small percentage

Randy Rohrbaugh  
July 20, 1999  
Page - 3 -

of the residential housing marketplace, and the use of the endorsement is expected to be infrequent, relatively speaking, and not to have a material impact upon overall revenue.

ALTA 9.1 (TIRBOP 1031) and ALTA 9.2 (TIRBOP 1032) are new coverages and have not been used previously anywhere in the country for a significant period of time. Accordingly, there is no experience to draw upon to justify the proposed Charge for each endorsement. The proposed Charge has been established at a level comparable to the Charge for ALTA 9 which provides coverage comparable to that provided by ALTA 9.1 and 9.2. There is a difference, however, in the risk which is reflected in the higher Charge for ALTA 9.1 and 9.2. ALTA 9 is an endorsement issued only to lenders. A lender does not have a claim unless and until there is a default on the loan, and it is discovered that title defects impair the lender's security interest in the insured property. ALTA 9.1 and ALTA 9.2 will be issued only in connection with an owners' policy. The risk of loss is greater on an owner's policy than on a lender's policy because a default on a loan is not the precondition to a claim. Accordingly, the Charge is proposed to be 10% higher than the approved Charge for ALTA 9.

In short, there are no data upon which the proposed Charges for ALTA 7 (TIRBOP 400-1999), ALTA 9.1 (TIRBOP 1031) and ALTA 9.2 (TIRBOP 1032). They are proposed to be priced in accordance with the principles used to price all endorsements: the proposed Charges reflect the additional work and/or risk assumed by issuance of the endorsement. The use of these new endorsements is expected to be infrequent and their impact on overall revenue non-material.

### **III. Proposed Revisions to the Rating Manual.**

Enclosed you will find a red-lined version of the Rating Manual. Many of these proposed changes are required to update the Rating Manual; for example, the address of the Rating Bureau and the member company names have been corrected. The revisions also take into account the new endorsements proposed in this filing.

The most significant change proposed is the elimination of Section 2.3(b) of the Manual. This abolishes the Charge for out-of-office closings and for closings that take place beyond normal office hours. This will reduce agent retentions in an amount equivalent to approximately 2.7% of overall title insurance revenue.

Also proposed is the elimination of Section 7.7 of the Manual, which regulates, *inter alia*, charges for photocopying and overnight delivery. Certain Charges authorized under Section 7.7 of the Manual are simply eliminated, such as the one for photocopying, with no ability of the insurer or agent to charge for them. Other Charges authorized by Section 7.7 of the Manual, such as overnight delivery, are deleted from the Rating Manual but not intended to be eliminated from practice. We believe that this kind of special service may not be "title insurance" and therefore not subject to regulation by the Department. As explained in the proposed revisions to Section

Randy Rohrbaugh  
July 20, 1999  
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2.1 of the Manual, the title insurance fee for a policy covers delivery by U.S. Mail; any other delivery is at the expense of the policyholder or other person with an interest in the insured transaction.

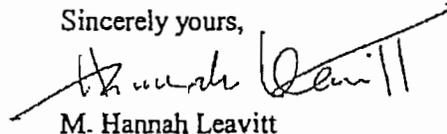
Two items are being added as pass-through charges in Section 7.4 (formerly 7.6) of the Manual. One change is for domestic relations lien information which is charged in many countries. The second is for a certification which is charged by some planned communities such as condominiums. The Agent or Insurer will not be able to charge more than the charge made by the government or the planned community for those certifications.

The only other substantive change to the Rating Manual is found in Section 5.12 (formerly 5.15) of the Manual. The availability of discounted title insurance Charges has been extended to applicants eligible for any governmental program designed to assist persons in the purchase of a home. The current rule is specific to a program, The Community Reinvestment Program, or to a specific agency, the Pennsylvania Housing Finance Authority. In addition, the limit of \$50,000 is proposed to be raised to \$200,000. The Rating Bureau does not believe it should limit eligibility for title insurance discounts where the responsible governmental agency permits a subsidy for the mortgage loan generating the need for title insurance.

An effective date of October 1, 1999, is proposed for the new endorsements, elimination of certain Charges and revision to the Rating Manual. This will allow sufficient time to print the new forms and rating manuals, to distribute them and to undertake the requisite training of agents and employees.

The Rating Bureau has been working for a long time on this filing. We believe that the title insurance marketplace will be well served by these new coverages, standardized form endorsements and simplified Rating Manual. Your attention to this filing is appreciated. If you have any questions, please do not hesitate to contact me.

Sincerely yours,



M. Hannah Leavitt

MHL/lmm  
Enclosures

cc: Gordon M. Burlingame, Jr.  
Executive Director

**EXHIBIT**  
**"B"**



EXECUTIVE OFFICES

COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT  
STRAWBERRY SQUARE  
HARRISBURG, PA. 17120

RECEIVED  
9-16-99  
Jan

September 15, 1999

IMPORTANT NOTICE

TO: ALL MEMBERS OF THE TITLE RATING  
BUREAU OF PENNSYLVANIA

FROM: Gregory S. Martino *[Signature]*  
Deputy Insurance Commissioner

SUBJECT: Title Insurance Rating Bureau Of Pennsylvania  
Revised Rating Manual of October 1, 1999

As you know, the Pennsylvania Insurance Department ("Insurance Department") has approved a revised Rating Manual with an effective date of October 1, 1999. Manual Rule 2.3(b), relating to out-of-office closings, has been deleted from the new Rating Manual. Accordingly, member companies and their agents will no longer be reporting special charges for out-of-office closings or closings that take place beyond normal office hours. Further, the Insurance Department will not be regulating the amount that is charged a customer for this special service.

It is the Insurance Department's position that consumers must be given notice in advance of the day of closing of the additional expense that may be incurred by scheduling a closing at the convenience of the consumer. Therefore, your company and your agents will be required to demonstrate that they have given advance written notice to every applicant for title insurance of the opportunity to save money by arranging a settlement in the office of the agent or underwriter during regular business hours. Attached you will find a sample notice which the Insurance Department finds acceptable.

This notice can be sent to the applicant, which may be the lawyer, real estate broker or lender for the title insurance policyholder. In this case, your company or agent must advise the applicant that the notice should be forwarded by the applicant to the consumer.

This notice should be given in every case where a title insurance company or agent expects to impose an additional charge for out-of-office or after-hours closings. This directive from the Insurance Department should not be considered as the Department's approval or tacit encouragement of the imposition of such an additional charge. Many agents and underwriters do not impose a charge for this service, and this pro-consumer practice is appropriate.

Attachment

Dear Applicant:

Please be advised that the Notice set forth below is intended for the consumer(s)/party(ies) who will be financially responsible for any additional closing service fee in connection with the real estate closing. If you are not that person or party, please forward a copy of the Notice to the consumer(s)/party(ies) who may be affected. Thank You.

#### NOTICE

The title insurance fee includes the cost of the closing on the insured real estate property if it takes place during regular business hours and at the office of the title insurance agent or underwriter.

If your closing takes place at another location or a time of your choosing, or that of your attorney, lender or realtor, the title insurance agent or underwriter may impose an additional charge for this special service. You may determine the amount of this additional charge, if any, by calling the title insurance representative at:

(Insert name, address, phone # of contact person)

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