

FINANCIAL SERVICES COMMISSION

**OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS**

**TARGET MARKET CONDUCT EXAMINATION FINAL
REPORT**

OF

FIDELITY NATIONAL TITLE INSURANCE COMPANY

AS OF

July 1, 2005

NAIC COMPANY CODE: 51586

EXAMINER:

EXAMINATION RESOURCES, LLC



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PURPOSE AND SCOPE OF EXAMINATION

Under authorization of the Financial Services Commission, Office of Insurance Regulation (Office), Market Investigations, pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of Fidelity National Title Insurance Company (Company) was performed by Examination Resources, LLC. The scope of this examination was January 1, 2003 through July 1, 2005. The examination began March 7, 2005 and ended July 9, 2005.

The purpose of this examination was to review arrangements with homebuilders, realtors, lenders, title agents, title agencies and reinsurers and investigate inducements to title insurance, and to verify the Company's compliance with Florida Statutes and Rules. The Company records were examined at 10401 Deerwood Park, Jacksonville, Florida.

In reviewing materials for this draft report, the examiner relied primarily on records maintained by the Company. The files examined were selected systematically from data files provided by the Company using Microsoft Excel's "random sample" selection process. Procedures and conduct of the examination were in accordance with the Market Conduct Examiner's Handbook produced by the National Association of Insurance Commissioners.

This Final Report is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company.

Error tolerance levels applied are as follows: monetary returns under \$5.00 were waived; zero tolerance levels were applied to all improprieties by the Company which were in violation of Florida Statutes and Rules.

COMPANY OPERATIONS

Fidelity National Title Insurance Company is a foreign property and casualty insurer licensed to conduct business in the State of Florida. The Company was the survivor in a merger with an affiliate insurer, Fidelity National Title Insurance Company of NY, effective July 30, 2004. The Company provides title insurance in the State of Florida through the following four (4) sources:

- Independent agencies;
- Affiliated Business Arrangements (agency partly owned by the Company in partnership with a real estate broker, lender or builder);
- Affiliated Business Arrangements (agency fully owned by real estate broker, lender or builder); and,
- Direct business.

Independent agencies provide all title services and the Company's sole involvement is to provide the title insurance coverage. These agencies receive 70% of the promulgated premium for the title insurance coverage, plus all title related fees. Affiliated Business Arrangements (ABA) agencies typically receive 30% of the promulgated premium, plus the title examination fee. Other title related functions are performed by the Company's title plants located throughout the State of Florida. These agencies have a licensed agent located in the Company's title plant who

performs the title examination and issues commitments. It was noted that the same agent was the agent of record for multiple agencies.

Direct business is processed through the Company's title plants, resulting in 100% of the premium being retained by the Company.

The Company's rates are established by Section 627.782, Florida Statutes, and Rule 690-186.003, Florida Administrative Code.

Total Direct Premiums Written in Florida during the scope of the examination are broken down as follows:

Year	Total Written Premium (Florida)
2003*	\$154,963,322
2004	\$158,239,195

* Includes Fidelity National Title Insurance Company of NY premiums.

POLICY REVIEW

Findings

The Company wrote 275,595 policies during the scope of the examination. One hundred sixty-six (166) policies were reviewed.

Twenty-nine (29) errors were found involving twenty-nine (29) policies.

The errors are broken down as follows:

1. Twenty (20) errors were due to failure to collect the required retention of funds, in accordance with the minimum insurance retention schedule, on the total premium charged by the agency. This constitutes a violation of Rule 690-186.003(1)(a), Florida Administrative Code. The agencies increase the premium for endorsements on simultaneously issued policies, however, the Company does not require the agencies to remit the required portion of the additional premiums charged. Additional premiums charged by the agencies totaled \$2,294.93.

Corrective Action: The Company should discontinue this practice and advise its agencies to remit the Company's portion of premium based on the total premium charged.

2. Nine (9) errors were due to the Company's failure to provide records. This constitutes a violation of Section 624.318, Florida Statutes. The Company was unable to provide all requested files.

Corrective Action: The Company should establish procedures to obtain records from agencies that are necessary to demonstrate compliance with state and federal laws.

2004 ANNUAL STATEMENT

Findings

The 2004 Annual Statement was reviewed.

One (1) error was found.

The error is described as follows:

1. One (1) error was due to reporting incorrect Direct Premiums Written in the Company's 2004 Annual Statement. This was a result of the Company's failure to record the total premium charged by agents as described in Item #1 of the Policy Review Section of this Report. This constitutes a violation of Section 624.424(1)(a), Florida Statutes, as the premium income data reported on the 2004 Annual Statement was not a full and true statement.

Corrective Action: The Company should properly report the actual premium charged in its filed financial statements. The Company should identify the correct amount of premiums written and make amended filings to report the correct premiums and premium tax owed.

AFFILIATED BUSINESS ARRANGEMENTS (ABA) REVIEW

Findings

A total of sixty-six (66) ABAs were identified. Eight (8) of the ABA agencies were partly owned by the Company. For the fifty-eight (58) ABAs fully owned by realtors, lenders or builders, the following was found:

- Agencies have only one employee, which is the licensed agent;
- The same agent has been hired by most agencies;
- The agent is not located within the agency premises. The agent is located at the Fidelity office;
- Agencies do not appear to be bona fide service providers as required by the Real Estate Settlement Procedures Act (RESPA). The only services provided are the title examination and issuance of commitments by the agent located at the Fidelity office;
- Not all agencies pay rent for office space occupied at the Fidelity Title Plant. Eighteen (18) agencies did not pay rent for space; and,
- RESPA Disclosures were missing or incomplete (47 of 101 requested were missing).

As a result of a combination of one or more of the above, it has been determined that fifty-eight (58) of these arrangements do not qualify as ABAs in accordance with the standards set forth by

Section 8 of RESPA. The total risk premiums retained involving all ABAs in 2004 and 2005, as of March 31, 2005, were \$1,694,425 and \$538,416, respectively.

The errors are broken down as follows:

1. Fifty-eight (58) errors were due to the Company entering into ABAs in an attempt to provide inducements to realtors, lenders and/or builders. This constitutes a violation of Section 626.9541(1)(h)3.a., Florida Statutes.

Corrective Action: The Company should only obtain business from licensed agencies that are bona fide service providers as required by RESPA. The Company should identify and return to the individuals who paid the premiums all monies paid to realtors, lenders and/or builders through ABAs that are not in compliance with RESPA requirements. In addition, the Company should terminate its relationship with all ABAs which are not compliant.

The Company has agreed to implement the above corrective actions as part of a Corrective Action Plan entered into with the Department of Financial Services.

CAPTIVE REINSURANCE REVIEW

Findings

A review of all agreements with captive reinsurance companies disclosed three (3) arrangements with Florida premiums ceded. The total of all Florida premiums ceded during the existence of the agreements through 2005 is \$44,317. A breakdown is as follows:

<u>Captive Reinsurance Company</u>	<u>Lender</u>	<u>Effective Date</u>	<u>Premium</u>
Chesapeake Title Reins. Co.	Citigroup	June 1, 2003	\$15,175
Home Services Title Reins. Co.	Wells Fargo	Sept. 4, 2001	\$26,758
FT Title Reins. Co.	First Horizon	Jan. 1, 2004	\$2,384
			<u>\$44,317</u>

The amount of \$44,317 includes all three (3) Fidelity National Financial, Inc. companies subject to the current market conduct examination: Fidelity National Title Insurance Company; Chicago Title Insurance Company; and Ticor Title Insurance Company, as the Company could not demonstrate each company was not involved by providing separate figures for each company. The Company, through a third party audit, is in the process of reconciling all captive reinsurance agreements. A copy of the audit results should be provided to the Office within thirty (30) days of completion of the audit.

A review of these 50%/50% quota-share reinsurance agreements revealed that the Companies deduct a per-transaction processing fee ranging from \$200 to 80% of gross premium and divide the balance on the quota-share basis with the reinsurer. The reinsurer then passed its share of the premium to the builder or lender.

The errors are broken down as follows:

1. Three (3) errors were due to entering into captive reinsurance arrangements in an attempt to provide inducements to realtors, lenders and/or builders. This constitutes a violation of Section 626.9541(1)(h)3.a., Florida Statutes.

Corrective Action: The Company has terminated all captive reinsurance agreements. The Company should identify and refund to the individuals who paid the premiums all monies paid to captive reinsurers.

RISK PREMIUMS RETAINED REVIEW

Findings

Agency agreements were reviewed for determination of improper payments. Activity from the general ledger was also reviewed.

The amount of risk premiums retained in the agency contracts is within allowable parameters. A review of risk premiums retained was further tested during the review of policy files resulting in the exception described in Item #1 of the Policy Review Section of this report. In addition, a limited review of general ledger activity was performed. This review did not reveal any inappropriate payments to agents, except for the non-payment of rent by some agencies as noted in the Affiliated Business Arrangements Review Section of this report.

SERVICES REVIEW

Findings

Activity from the general ledger was reviewed to determine if payments made by the Company were in proportion to the services received. In addition, marketing and advertising materials were reviewed to determine any improper payments.

No errors were found, with the exception of errors noted in the Affiliated Business Arrangements Review Section.

COMPLAINT REFERRAL REVIEW

Two (2) complaints were referred for review.

1. The Company allegedly was providing realtors a report product without charge. The Company states this "profile" is a computer-generated report. The provider for this report program is E-Neighborhoods. The approximate cost of the report for the Company is \$1.50 per report. The purpose of the report is to give prospective buyers information about the general communities. It provides information on schools in the area, local churches, weather, employment, age ranges, etc. The Company states this is provided free of charge to anyone who requests one and the profile itself does not promote any insurance aspect.

Findings

No errors were found.

2. The Company furnished supplies to an agency, Enterprise Title & Escrow, Inc., that was not licensed as a title agency. The Company accepted business from the agency even though they were not licensed or appointed to represent the Company.

Findings

One (1) error was due to furnishing supplies to an unlicensed agency. This constitutes a violation of Section 627.7776, Florida Statutes.

One (1) error was due to use of an unlicensed/unappointed agency. This constitutes a violation of Section 626.8412(2), Florida Statutes.

Corrective Action: The Company terminated this relationship on August 26, 2003.

REPORT SUMMARIZATION

A sample review of one hundred sixty-eight (168) files was conducted for this Company. Ninety-three (93) errors were found. The following represents general findings, however, specific details are found in each section of the report.

Sample Files Reviewed – 168 Files

- One hundred sixty-six (166) title policies
- Two (2) complaint referrals

Findings

- Policy Review – Twenty-nine (29) errors – page two (2) of the report
 - Failure to collect the required retention of funds, in accordance with the minimum insurance retention schedule, on the total premium charged by the agency.
 - Failure to provide records.
- 2004 Annual Report – One (1) error – page three (3) of the report
 - Failure to accurately file with the Office full and true statements of its financial condition, transactions, and affairs.
- Affiliated Business Arrangements Review – Fifty-eight (58) errors – page four (4) of the report
 - Entering into affiliated business arrangements in an attempt to provide inducements to realtors, lenders and/or builders.
- Captive Reinsurance Review – Three (3) errors – page five (5) of the report
 - Entering into Captive Reinsurance arrangements in an attempt to provide inducements to realtors, lenders and/or builders.
- Complaint Referral Review – Two (2) errors – page six (6) of the report
 - Furnishing supplies to an unlicensed agency.

- o Use of an unlicensed/unappointed agency.

Corrective Action:

The Company should provide a letter, signed by an officer of the Company, certifying that all corrective actions have been completed. The letter should be submitted to the Office no later than thirty (30) days following receipt of the examination report.

EXAMINATION DRAFT REPORT SUBMISSION

The courtesy and cooperation of the officers and employees of the Company during the examination are acknowledged.

In addition to the undersigned, Victor M. Negron, AIE, FLMI, Richard Kramer, CFE, AIE, FLMI, and Ilona Klasons, CIE, CFE participated in this examination.

Respectfully submitted,

Examination Resources, LLC
Todd Fatzinger
Examiner Supervisor

EXAMINATION FINAL REPORT

The Office hereby issues this report as the Final Report, which is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company.