

LAWRENCE G. WASDEN  
Attorney General

JOHN C. KEENAN, ISB No. 3873  
Deputy Attorney General  
State of Idaho  
Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043  
Telephone: (208) 334-4283  
Facsimile: (208) 334-4298  
[john.keenan@doi.idaho.gov](mailto:john.keenan@doi.idaho.gov)

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Department of Insurance  
State of Idaho

*Attorneys for the Department of Insurance*

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**

**STATE OF IDAHO**

In the Matter of:

FIRST AMERICAN TITLE COMPANY,  
INC. [Butte County]

Idaho Title Agency License No. 5615

Docket No. 18-3265-16

**ORDER ADOPTING REPORT  
OF EXCEPTION EXAMINATION  
AS OF DECEMBER 31, 2015**

The State of Idaho, Department of Insurance (Department), having conducted an examination of the affairs, transactions, assets, tract indexes, abstract records, and any other records of FIRST AMERICAN TITLE COMPANY, INC. [Butte County] (First American Title) to ascertain compliance with title 41, Idaho Code, and related rules, pursuant to Idaho Code §§ 41-2710(7) and 41-219(1) and (5), hereby alleges the following facts that constitute a basis for issuance of an order, pursuant to Idaho Code § 41-227(5)(a), adopting the Report of Exception Examination of First American Title Company, Inc. [Butte County] for the Period January 1, 2011 to December 31, 2015 (Report), as filed.

## **FINDINGS OF FACT**

1. First American Title is a title agency licensed by the Department to transact title insurance in Butte County, Idaho, under Title Agency License No. 5615.
2. The Department completed an examination of First American Title pursuant to Idaho Code §§ 41-2710(7) and 41-219(1) and (5) on or about November 1, 2016. The Department's findings are set forth in the Report.
3. Pursuant to Idaho Code § 41-227(4), a copy of the Report was filed with the Department on November 1, 2016, and was transmitted to First American Title on the same date. A copy of the Report is attached hereto as Exhibit A.
4. Pursuant to Idaho Code § 41-2710(7), First American Title had twenty-eight (28) days from service of the Report within which to review, comment, or request a hearing on the Report.
5. No request for hearing, written submission, or rebuttal with respect to any matter contained in the Report was received by the Department from First American Title.

## **CONCLUSIONS OF LAW**

6. Idaho Code § 41-227(5)(a) provides that, after expiration of "the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and relevant portions of the examiner's work papers" and shall enter an order adopting the report of examination as filed or with modifications or corrections.
7. Having fully considered the Report, the Director concludes that, with regard to the matters examined and information provided by First American Title, the comments and recommendations contained in the Report, including the Examiner's determination of violations

of Department rules by First American Title and corrective actions to be taken identified at pages 12 of the Report, Exhibit A, are appropriate and are incorporated herein as if set forth in full.

**ORDER**

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Report of Exception Examination of First American Title Company, Inc. [Butte County] for the Period January 1, 2011 to December 31, 2015, is hereby ADOPTED as filed, pursuant to Idaho Code § 41-227(5)(a).

IT IS FURTHER ORDERED, pursuant to Idaho Code §§ 41-2710(7) and 41-227(8), that the adopted Report is a public record and shall not be subject to the exemptions from disclosure provided in chapter 1, title 74, Idaho Code.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 41-227(6)(a), that, within thirty (30) days of the issuance of the adopted Report, First American Title shall file with the Department's Examiner Title & Market Insurance Specialist affidavits executed by each of its directors or, if none, its principal officers, stating under oath that they have received a copy of the adopted Report and related orders.

IT IS FURTHER ORDERED that, no later than thirty (30) days from the date of verification of the Report attached hereto, First American Title shall prepare and distribute written procedures for its staff regarding proper handling and billing of title commitment cancellation fees. A copy of such procedures or instructions shall simultaneously be provided to the Department.

IT IS FURTHER ORDERED that an administrative penalty in the amount of three hundred dollars (\$300.00) is imposed against First American Title, pursuant to IDAPA

18.01.25.004.01 and 18.01.56.018.01; provided, however, that such penalty is waived subject to the understanding that the Department will conduct an examination of First American Title in calendar year 2017, and subject to the following:

- The Department retains the right to perform a target examination at any time regarding cancellations and billings for such cancellations and to impose new penalties based on findings of violation.
- The Department also retains the right to perform a target examination at any time to ensure that First American Title's expenses are in compliance with title 41, Idaho Code, and related Department rules, and to impose new penalties based on findings of violation.

**IT IS SO ORDERED.**

DATED this 27 day of December, 2016.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE



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DEAN L. CAMERON  
Director

### NOTIFICATION OF RIGHTS

This Order constitutes a final order of the Director. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Director will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See*, Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order; or (b) an order denying a petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See*, Idaho Code § 67-5273. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 28<sup>th</sup> day of December, 2016, I caused a true and correct copy of the foregoing ORDER ADOPTING REPORT OF EXCEPTION EXAMINATION AS OF DECEMBER 31, 2015, to be served upon the following by the designated means:

Phil E. DeAngeli  
General Counsel  
Title Financial Corporation  
355 W. Myrtle Street, Ste. 101  
Boise, ID 83707  
[pdeangeli@titlefc.com](mailto:pdeangeli@titlefc.com)

- first class mail
- certified mail
- hand delivery
- email

First American Title Company, Inc.  
168 W. Pacific Street  
Blackfoot, ID 83221-2209

- first class mail
- certified mail
- hand delivery
- email

Georgia Siehl, CPA, CFE  
Bureau Chief / Chief Examiner  
Idaho Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
Boise, ID 83720-0043  
[georgia.siehl@doi.idaho.gov](mailto:georgia.siehl@doi.idaho.gov)

- first class mail
- certified mail
- hand delivery
- email

  
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REPORT OF EXCEPTION EXAMINATION  
For the Period January 1, 2011 to December 31, 2015

Of

FIRST AMERICAN TITLE COMPANY, INC.  
(a title agent corporation - license #5615 – Butte County)

As of

December 31, 2015

*Equal Opportunity Employer*



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Boise, Idaho  
November 1, 2016

The Honorable Dean L. Cameron  
Director of the Idaho Department of Insurance  
700 West State Street  
Boise, Idaho 83720

Sir:

Pursuant to your instructions and in conformity with Idaho Code §§ 41-219, 41-220, and 41-2713, an examination has been made of the administrative affairs, books, records and financial condition of;

First American Title Company, Inc.  
195 South Broadway  
Blackfoot, Idaho 83221  
License #5615 – Butte County

Hereinafter referred to as “Title Agent”.

The following Report of Exception Examination is respectfully submitted.

## **FOREWORD**

This is an exception examination report of the practices and procedures of First American Title Company, Inc. (Title Agent) an Idaho Title Agent licensed in Butte County. However, failure to identify or criticize specific products, procedures or files does not constitute approval thereof by the Idaho Department of Insurance (the Department).

The examination was conducted remotely at the Department's offices located at 700 W. State Street in Boise, Idaho. In performing this examination, the examiner(s) reviewed a sample of the Title Agent's procedures, files, and documentation. Some noncompliant practices may not have been discovered during this examination. As such, this report may not fully reflect all of the procedures and practices of the Title Agent.

During the examination, the examiner(s) may cite violations made by the Title Agent. Statutory citations are as of the period under examination unless otherwise noted. The goal of the examination team was to produce an examination report that reflects agreement in content with the Title Agent. The report indicates where agreement was not possible.

The final examination report documents consist of the examiners' report, the Title Agent's response if elected, and any administrative actions based on the findings of the Department.

## **PURPOSE AND SCOPE OF EXAMINATION**

The purpose of the examination is to determine compliance with applicable Idaho Statutes and regulations, and rules promulgated by the Department. In addition, examiners may have documented practices and procedures that did not appear to be in the best interest of Idaho insurance consumers.

The period covered by this examination is January 1, 2011 through December 31, 2015. Specific areas examined include operations/management, claims, advertising and marketing, title file review and escrow fiduciary account and file review.

The Department's authority to conduct the examination includes, but is not limited to, Idaho Code § 41-2710(7), which grants authority for regular examinations of a title agent's tract indexes, abstract records, and any other records to ascertain compliance with title 41, Idaho Code, and related rules, to occur not more than every fifth year, unless the agent otherwise requests or the director has cause to believe the same does not comply with said title or the rules thereunder.

## **HISTORY AND DESCRIPTION**

TitleWest, Inc. was formed, incorporated and became licensed with the Department on July 9, 1973. On April 11, 1975 they merged with Sun Valley Title, Inc. On January 13, 1979 they were licensed to do business in Butte County. On February 27, 1981 they merged with TitleWest of Twin Falls, Inc., First American Title Company of Sandpoint, Inc. and First American Title Company of Pocatello, Inc. On March 31, 1981 they changed their name to First American Title Company (FATCO). On July 1, 1982 they merged with Nez Perce County Title Company, Inc. On December 26, 2003 they changed their name to the current name. FATCO is a wholly owned subsidiary of Title Financial Corporation who was formed and incorporated on November 28, 2003. They conduct business in Butte County out of offices in Blackfoot, Idaho. Michelle Reay is a Vice President and the current county manager.

## **PRIOR EXAMINATION**

The examination included a review to determine if exceptions were noted in our preceding report of examination dated September 19, 2011, which covered the period of January 1, 2006 to December 31, 2010 and whether those exceptions were addressed. There were no exceptions noted. No exceptions were noted as a result of this current portion of the examination.

## **PRIOR ESCROW AUDIT**

The examination included a review to determine if exceptions were noted in the October 1, 2014 escrow audit completed by Ms. Norma Silbaugh of First American Title Company which covered the period July 1, 2011 through June 30, 2014 and whether those exceptions were addressed. There were no exceptions noted. No exceptions were noted as a result of this current portion of the examination.

## **SUMMARY OF FINDINGS AND RECOMMENDATIONS**

### **I. OPERATIONS AND MANAGEMENT**

The examination included a review of the Title Agent's operations and management. The focus of this portion of the examination included a review of the management and control, contracting authority, surety bond, claims, and financial interests of the title entity management and ownership.

#### **A. MANAGEMENT, CONTROL AND FINANCIAL INTERESTS** **IDAPA 18.01.39.011, 012 & 013**

The Idaho Secretary of State lists the corporate officers as Quinn H. Stufflebeam as current registered agent, Jay E. Williams as President, Tamara Bauer as Treasurer, and Anne Howe as Secretary. The Directors are listed as Donald P. Kennedy II, Jerry Hong, Jay E. Williams and Quinn H. Stufflebeam. Michelle Reay is a Vice President and Manager for this office. No exceptions were noted as a result of this portion of the examination.

#### **B. CONTRACTING AUTHORITY** **Idaho Code § 41-2710(2)**

The primary underwriting company is First American Title Insurance Company. The Title Agent also has underwriting agreement with Old Republic National Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, Chicago Title Insurance and National Title Insurance Company of New York. All underwriting contracts require a high liability approval of \$1,000,000.00. Deductible for claim loss is \$2,500.00. No exceptions were noted as a result of this portion of the examination.

#### **C. SURETY BOND** **Idaho Code §§ 41-2710(6), 2711** **IDAPA 18.01.25.011.08 & 09**

The Department has on file surety bond #70956858 in the amount of \$50,000.00 issued by Western Surety Company on behalf of the Title Agent. The examination confirmed this bond to be currently active. No exceptions were noted as a result of this portion of the examination.

#### **D. CLAIMS** **Idaho Code § 41-2708(1) & (2)**

The Title Agent reported one (1) claim with no losses paid. The claim does not appear to be an oversight on the part of the Title Agent. Additionally, we did not find material issues with the title plant during the examination. No exceptions were noted as a result of this portion of the examination.

## **II. ADVERTISING AND MARKETING**

**Idaho Code § 41-2708(3) & (4)**

**IDAPA 18.01.39.014 & 18.01.56**

The examination included a review of the Title Agent's marketing and sales practices. A general ledger for each year under examination for all accounts involving contributions, donations, sales expenses, travel and meal expenses, Title Agent/staff function expenses, as well as samples of listing packages or property profiles were requested and received. After a cursory review of the general ledgers, samples were picked within our examination parameters. Supporting documents for the samples were requested, received and reviewed. Supporting documents for the samples were requested, received and reviewed.

During our examination we noted three (3) of six (6) expenses sampled did not have adequate supporting documentation. We were not able to determine the compliance of these expenses.

Idaho Code § 41-2710(7) states that regular examination of the tract indexes, abstract records and any other records be conducted to ascertain compliance with title 41, Idaho Code, and related rules. This provision in the code impliedly requires agents to keep accurate and complete records sufficient to ascertain compliance with Title 41, Idaho Code.

2015 examinations of other FATCO licenses noted sampled expenses that did not have adequate supporting documentation. FATCO was asked for and submitted the steps being implemented in order to ensure that in the future, adequate supporting documentation is being retained to ascertain compliance with the above mentioned statutes and rules. The Department deemed that the response was adequate and no further administrative action was taken.

### **Recommendation**

As the 2015 response by FATCO concerning the retention of supporting documentation of expenses was deemed adequate by the Department and was implemented company wide, we recommend that no further action be taken as FATCO has already taken the necessary steps to ensure that future supporting documentation is being retained.

### **III. TITLE FILE REVIEW**

**Idaho Code §§ 41-2702, 2708 & 2709**

**IDAPA 18.01.25 & 18.01.56.017 & Exhibit 1(9)**

The Title Agent's Title Department is managed by Michelle Reay and is comprised of one (1) title officer and one (1) assistant. The title plant is posted and maintained by FATCO in Blackfoot, Idaho using FAST 6.9. A sample of title files were reviewed within the parameters of our examination for the rates charged, the correct insured amount of the owner's and mortgagee's policies, proper countersignatures, double sales, proper use of the Standards of Liability and liens and encumbrance rules, cancellation fees, and unique kind or class of risk.

During the examination, the following exceptions regarding the charging for and/or failing to make efforts to collect cancellation fees was noted:

Commitment #544728 was cancelled after July 23, 2014 and no cancellation fee was charged.

Pursuant to IDAPA 18.01.25.004.01...“where a preliminary report is issued, the order for the policy may be canceled prior to closing upon applicant being required to pay a cancellation charge of fifty percent (50%) of the premium with a minimum of fifty dollars (\$50) provided that any portion of the charge in excess of one hundred dollars (\$100) may be waived....”

IDAPA 18.01.25.004.02.d provides that no title insurance agent shall “issue a title insurance binder, commitment or preliminary report without an order and without making a charge therefor if a policy is not issued thereon....”

Furthermore, pursuant to IDAPA 18.01.56, EXHIBIT 1.9...“A title entity shall not waive a cancellation fee, fail to charge for a cancellation fee, or otherwise fail to make efforts to collect a cancellation fee from the recipient of services provided by the title entity.” When a title commitment issued by a title agent in response to an order does not result in a policy of title insurance, the title agent must charge a cancellation fee in the amount required by the rules and make an effort to actually collect the cancellation fee. IDAPA 18.01.39.10.04 and 18.01.56.010.05 define uncollected cancellation fees for title commitments as “things of value.” Additionally, providing things of value such as uncollected cancellation fees to a customer is considered an illegal inducement.

On July 23, 2014 an advisory addressing the issues on charging and collection of cancellation fees was issued by the Department to all title agents. Within that advisory, the agents were reminded that providing things of value such as uncollected cancellation fees to a customer is considered an illegal inducement.

The Title Agent was in violation of IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56, EXHIBIT 1.9, and 18.01.56.11 by not charging cancellation fees.

## **Recommendations**

It is recommended that the Title Agent submit to the Department in writing what proposed procedures will be implemented to ensure that all future cancellations of title commitments are compliant with IDAPA 18.01.25.004.01 and IDAPA 18.01.56, EXHIBIT 1.9.

It is also recommended that the Director enter an order for administrative penalties as a result of violating IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56, EXHIBIT 1.9, and 18.01.56.11 in the amount of \$300.00.

#### **IV. ESCROW FIDUCIARY ACCOUNTS AND FILE REVIEW**

The Title Agent's Escrow Department is managed by Michelle Reay and is comprised of two (2) closing escrow officers and one (1) assistant.

##### **A. FIDUCIARY ACCOUNTS**

**IDAPA 18.01.25.011.04, 05 & 10**

The examination included a review of the fiduciary accounts utilized during the examination period. The accounts were reviewed for correct labeling, separation from operating funds, reconciliation, and negative balances. The fiduciary accounts for this office are balanced on a daily basis by June Hogan and Anita McMurtrey at the corporate offices in Blackfoot, Idaho. No exceptions were noted as a result of this portion of the examination.

##### **B. ESCROW FILE REVIEW**

**Idaho Code § 41-2705(3)**

**IDAPA 18.01.25.011 & 12, 18.01.56.017**

The examination included a review of the escrow files opened during the examination period. A sample of the escrow files were reviewed within the parameters of our examination for adequate written instructions, conformity to the written instructions by the Title Agent, rates charged as filed, signed settlement statements, receipt and disbursement ledgers, evidence of receipts and disbursements made, file overdrafts, and business interests of the escrow officers. No exceptions were noted as a result of this portion of the examination.



## CONCLUSION

I certify and attest that I have examined the Title Agent's tract indexes, abstract records, as well as other records, and the operation of the Title Agent's business and other matters relevant to the affairs of the Title Agent. I further certify that I have no relationship, other than in my capacity as examiner and/or regulator, with the Title Agent or its employees and that no conflict of interest exists that would prevent me from conducting the examination. I acknowledge the assistance and cooperation of the Title Agent's employees during the examination. Based on my examination, I prepared this Examiner's Report of Exceptions (the "Report") in accordance with Idaho Code § 41-2710(7). I confirm that the findings, conclusions, and recommendations contained in this Report are my own.

Respectfully submitted,



Jim Scanlon  
Examiner Title & Market Insurance Specialist  
Idaho Department of Insurance

## **PENALTY, STIPULATIONS AND APPEAL NOTIFICATION**

This matter comes before the Idaho Department of Insurance (“Department”) as a result of this Report of Exception Examination (“Examination”). The Department has fully considered and reviewed this Examination, the written submissions and rebuttals provided October 3, 2016, by the Title Agent in response to the Examination, and the recommendations of the Examiner.

The Department makes the following findings of fact and imposes penalties and stipulations:

1. The Title Agent failed to provide adequate supporting documentation of expenses causing the Department to be unable to ascertain if these expenses were in compliance with title 41, Idaho Code, and related rules. This failure constitutes a violation of Idaho Code § 41-2710(7).

As the 2015 response to other license examinations by FATCO concerning the failure to retain supporting documentation of expenses was deemed adequate by the Department and was implemented company wide, the Department understands that the Title Agent has already taken the necessary steps to ensure that future supporting documentation is being retained. No penalties or stipulations are being imposed. The Department retains the right to perform a target exam anytime in the future to ensure that documentation is being retained in order to ascertain that expenses are compliant with Idaho Code and promulgated rules and impose penalties and/or stipulations based on any new findings of violations.

2. The Title Agent, on one (1) occasion, failed to charge a cancellation fee for a cancelled title commitment. This failure constitutes a violation of IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56, EXHIBIT 1.9, and 18.01.56.11.

No later than thirty (30) days from the date this Examination was verified, the Title Agent is required to prepare and distribute written procedures for its staff regarding proper handling and billing of title commitment cancellation fees. A copy of such procedures/instructions should also be provided to the Department within the same time frame.

The Department shall assess a penalty in the amount of \$300.00 in accordance with IDAPA 18.01.25.004.01 and 18.01.56.018.01. However, the Department waives this penalty with the stipulation and understanding that the Department will be examining the Title Agent again in calendar year 2017 and may impose new penalties based on any findings of violations.

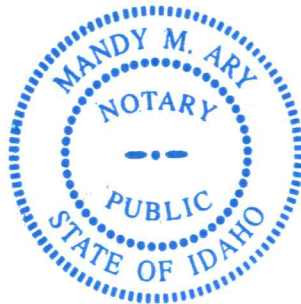
Pursuant to Idaho Code § 41-2710(7), you have twenty eight (28) days to review, comment and request a hearing regarding these findings. Unless a hearing is requested in accordance with Idaho Code §§ 41-227(5) and (6), 41-232(2)(b), or elsewhere in the Idaho Code within the twenty eight (28) day review period, the Director will issue an order adopting the report and it shall be deemed available to the public.

I certify that on this 1st day of November, 2016, I submitted a final copy of this Report to the Director of the Idaho Department of Insurance and served a final copy of the same by Electronic Mail to:

Anne Howe  
Executive Assistant  
Title Financial Corporation  
195 South Broadway  
Blackfoot, Idaho 83221  
ahowe@titlefc.com

Phil E. DeAngeli  
General Counsel  
Title Financial Corporation  
355 W. Myrtle Street, Ste #101  
Boise, ID 83707  
pdeangeli@titlefc.com

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of November, 2016.



Mandy M. Ary  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires: 7/24/18

  
Jim Scanlon  
Examiner Title & Market Insurance Specialist  
Idaho Department of Insurance