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**FILED**  
**MAR 02 2018**  
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:

TRANSNATION TITLE & ESCROW, INC.  
dba FIDELITY NATIONAL TITLE  
COMPANY  
[Ada County]

Idaho Title Agency License No. 51623

Docket No. 18-3448-18

**ORDER ADOPTING REPORT  
OF EXCEPTION EXAMINATION  
AS OF DECEMBER 31, 2016**

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 TRANSNATION TITLE & ESCROW, INC. dba FIDELITY NATIONAL TITLE COMPANY [Ada County] (“Transnation”) 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 Transnation Title & Escrow, Inc., dba Fidelity National Title [Ada County] for the Period January 1, 2012 to December 31, 2016 (“Report”), as filed.

## **FINDINGS OF FACT**

1. Transnation is a title agency licensed by the Department to transact title insurance in Ada County, Idaho, under Title Agency License No. 51623.

2. The Department completed an examination of Transnation pursuant to Idaho Code §§ 41-2710(7) and 41-219(1) and (5) on or about January 19, 2018. 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 January 19, 2018, and was transmitted to Transnation on the same date. A copy of the Report is attached hereto as Exhibit A.

4. Pursuant to Idaho Code § 41-2710(7), Transnation had twenty-eight (28) days from service of the Report within which to review, comment, or request a hearing on the Report.

5. On or about January 25, 2018, the Department received a Waiver from Transnation signed by Erik Helgeson, its Vice President and Treasure Valley Manager. By execution of such Waiver, a copy of which is attached hereto as Exhibit B, Transnation consented to the immediate entry of a final order by the Director of the Department ("Director") adopting the Report without any modifications; waived its right to make a written submission or rebuttal to the Report; and waived its right to request a hearing and to seek reconsideration or appeal from the Director's final order.

6. No request for hearing, written submission, or rebuttal with respect to any matter contained in the Report was received by the Department from Transnation.

## **CONCLUSIONS OF LAW**

7. 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.

8. Having fully considered the Report, the Director concludes that, with regard to the matters examined and information provided by Transnation, the comments, findings, and recommendations contained in the Report, including the Examiner’s determination of violations of Department rules by Transnation and corrective actions to be taken identified at page 11 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 Transnation Title & Escrow, Inc., dba Fidelity National Title [Ada County] for the Period January 1, 2012 to December 31, 2016, 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, Transnation 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 an administrative penalty in the amount of six hundred (\$600.00) is imposed against Transnation, pursuant to IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56.011, and Exhibit 19 of 18.01.56, for failure to charge cancellation fees for cancelled title commitments; PROVIDED, HOWEVER, that such penalty is waived in

accordance with and for the reasons stated at page 11 of the Report, i.e., that the Department is in the negotiated rulemaking process of proposing changes to IDAPA 18.01.25 and 18.01.56 as they pertain to collection of cancellation fees.

IT IS FURTHER ORDERED that an administrative penalty of four hundred fifty-four dollars and sixty-eight cents (\$454.68) is imposed against Transnation, pursuant to IDAPA 18.01.56.018.01, for expending more than one hundred dollars per day for meals and/or events for producers of title business; PROVIDED, HOWEVER, that such penalty is waived in accordance with and for the reasons stated at page 11 of the Report.

IT IS FURTHER ORDERED that, no later than thirty (30) days from the date of entry of the Final Order adopting the Report, Transnation shall provide written evidence to the Department that it has revised its processes and fully implemented procedures to ensure that Transnation's future business entertainment expenses are in compliance with IDAPA 18.01.56.015.01.

IT IS FURTHER ORDERED that, waiver of the penalties set forth above notwithstanding, the Department retains the right to impose new penalties based on any future findings of the same violations.

**IT IS SO ORDERED.**

DATED this 2 day of <sup>March</sup> ~~February~~, 2018.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE



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 2<sup>nd</sup> day of March, 2018, I caused a true and correct copy of the foregoing ORDER ADOPTING REPORT OF EXCEPTION EXAMINATION AS OF DECEMBER 31, 2016, to be served upon the following by the designated means:

Transnation Title & Escrow, Inc.  
Erik Helgeson, Vice President & Manager  
950 W. Bannock Street, Ste. 420  
Boise, ID 83702-6117  
erik.helgeson@fnf.com

- first class mail
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Nathan Faragher  
Chief Examiner, Company Activities Bureau Chief  
Idaho Department of Insurance  
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Boise, ID 83720-0043

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

  
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REPORT OF EXCEPTION EXAMINATION  
For the Period January 1, 2012 to December 31, 2016

Of

Transnation Title & Escrow Inc.  
dba Fidelity National Title  
(a title agent corporation - license #51623 – Ada County)

As of

December 31, 2016

*Equal Opportunity Employer*



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Boise, Idaho  
December 28, 2017

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;

Transnation Title & Escrow Inc.  
dba Fidelity National Title  
950 W Bannock St, Ste 420  
Boise, Idaho 83702-6117  
License #51623– Ada 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 Transnation Title & Escrow Inc. dba Fidelity National Title (Title Agent) an Idaho Title Agent licensed in Ada 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 at the Title Agent's office located at 950 W Bannock St, Ste 420, in Boise, Idaho and remotely at the offices of the Department located at 700 West 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 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, 2012 through December 31, 2016. 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**

Transnation Title & Escrow, Inc. dba Fidelity National Title was licensed in Ada County in July of 1996. Fidelity National Title is a subsidiary of Fidelity National Financial (FNF). In 2008, FNF purchased LandAmerica Financial Group which included Commonwealth Land Title Insurance Company, Lawyers Title Insurance Company as well as United Capital Title Insurance Company. They conduct business in Ada County out of offices in Boise, Meridian and Eagle Idaho.

## **PRIOR EXAMINATION**

The examination included a review to determine if exceptions were noted in the preceding report of examination dated July 13, 2012 for the period January 1, 2007 to December 31, 2011 and whether those exceptions were addressed. No exceptions were 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 December 1, 2015 escrow audit completed by Ms. Elizabeth Dantin Franklin with Fidelity National Financial, Inc. which covered the period July 1, 2011 through October 31, 2014 and whether those exceptions were addressed. Three (3) exception conditions were noted. We determined that the agent satisfactorily addressed those exceptions in December of 2015. 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 of Transnation Title & Escrow, Inc. as Raymond R. Quirk as President and Michael L. Gravelle as Secretary. The registered agent is listed as C T Corporation System. Erik Helgeson is a Vice President and the current County Manager. No exceptions were noted as a result of this portion of the examination.

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

The Title Agent has underwriting agreements with Chicago Title Insurance Company, Commonwealth Title Insurance Company, National Title Insurance of New York and Fidelity National Title Insurance Company. The underwriting contracts call for a high liability approval requirement of \$10,000,000.00 with a \$5,000.00 deductible for loss. 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 a Custody Agreement for a CD in the amount of \$50,000.00 issued by US Bank on behalf of the Title Agent. The examination confirmed this CD to be currently funded. 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 that there were thirty five (35) claims opened during the examination period. The claims appear to be oversights on the part of employees of the Title Agent and were remedied prior to our examination. 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 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.

During the examination the following exceptions regarding entertainment expenses were noted:

<b>Date of Entertainment Expense</b>	<b>Violation of IDAPA 18.01.56.015.01</b>
January 2016	Staff member Michael Marks spent \$138.28 each on six (6) producers of title business for dinner.
January 2016	Staff member Michael Marks spent \$175.00 each on three (3) producers of title business for golf course green fees and cart rentals.

IDAPA 18.01.56.015.01 states that "a title entity shall not expend more than one hundred dollars (\$100) per person per day for all meals and/or events. Meals and events shall include, but not be limited to, breakfast, brunch, lunch, dinner, cocktails, sporting events, sporting activities, trips and music and art events. In addition, a title entity may entertain no more than four (4) persons who are employed by or agents of any single producer of title business in a single day. Spouses and/or guests of the producers of title business or employees or agents thereof shall be included in the count for purposes of determining the four (4) person maximum." The Title Agent, on two (2) occasions, was in violation of IDAPA 18.01.56.015.01 by expending more than one hundred dollars (\$100) per person per day for meals and/or events for producers of title business.

### **Recommendations**

It is recommended that the Title Agent submit to the Department in writing what proposed procedures the Title Agent will implement to ensure that future business entertainment expenses subject to IDAPA 18.01.56.015.01 will be compliant.

Pursuant to IDAPA 18.01.56.015.01, this should be considered a violation and an administrative penalty in the amount of \$454.68 is appropriate. However, as this is the first instance of this violation noted in an examination, it is the recommendation of this examiner that the administrative penalty be waived.

### **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 Matt Carey and is comprised of three (3) title officers and one (1) assistant. The title plant is owned by the Title Agent. 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 #34601600615 was cancelled after July 23, 2014 and no cancellation fee was charged.
Commitment #34601601373 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.

## **Recommendations**

Pursuant to IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56, EXHIBIT 1.9, and 18.01.56.11, this should be considered a violation and an administrative penalty in the amount of \$600.00 is appropriate. The Department is in the negotiated rule making process of proposing changes to the sections of IDAPA Rule 25 and IDAPA Rule 56 as they pertain to the failing to charge cancellation fees and the failure to attempt to collect them as being an illegal inducement or rebate. Therefore, it is the recommendation of this examiner that the administrative penalty be waived.

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

The Title Agent's Escrow Department is managed by Tauni Roberts and is comprised of ten (10) escrow officers, and six (6) escrow assistants.

#### **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 account was reviewed for correct labeling, separation from operating funds, reconciliation, and negative balances. The fiduciary account for this office is balanced on a daily basis and reconciled on a monthly basis by the Operational Accounting Center (OAC). Monthly reconciliations are also reviewed by the OAC. 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**

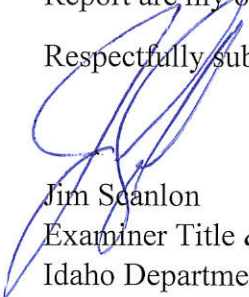
The examination included a review of the escrow files opened during the examination period. A sample of the escrow files were reviewed within the parameters of our examination for adequate written instructions, conformity to the written instructions by the Title Agent, rates charged as filed, signed 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 and the recommendations of the Examiner.

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

1. The Title Agent, on two (2) occasions, failed to charge cancellation fees for cancelled title commitments. These failures constitute violations of IDAPA 18.01.25.004.01, 18.01.25.004.02.d, 18.01.56, EXHIBIT 1.9, and 18.01.56.11.

The Department shall assess a penalty in the amount of \$600.00 in accordance with IDAPA 18.01.25.004.01 and 18.01.56.018.01. The Department is in the negotiated rule making process of proposing changes to the sections of IDAPA Rule 25 and IDAPA Rule 56 as they pertain to the failing to charge cancellation fees and the failure to attempt to collect them as being an illegal inducement or rebate. Therefore, the Department waives this penalty with the stipulation and understanding that the Department retains the right to impose new penalties based on any future findings of these same violations should the proposed changes of IDAPA Rule 25 and IDAPA Rule 56 not be approved by the legislature.

2. The Title Agent, on two (2) occasions, expended more than one hundred dollars (\$100) per person per day for meals and/or events for producers of title business. These actions constitute violations of IDAPA 18.01.56.015.01.

The Department shall assess a penalty in the amount of \$454.68 in accordance with IDAPA 18.01.56.018.01. As this is the first instance of this violation noted in an examination, the Department waives this penalty with the stipulation and understanding that the Department retains the right to impose new penalties based on any future findings of these same violations.

No later than thirty (30) days from the date the Final Order is adopted, the Title Agent shall provide written evidence to the Department that it has revised its processes and fully implemented procedures to ensure that future business entertainment expenses are in compliance with IDAPA 18.01.56.015.01.

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.

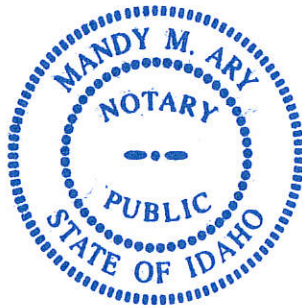
*lms* I certify that on this <sup>19<sup>th</sup> JCS</sup> 8<sup>th</sup> day of January, 2018, I submitted a final copy of this Report to the Director of the Idaho Department of Insurance and served a final copy of the same by Electronic Mail to:

Mr. Erik Helgeson  
950 W Bannock Street, suite #420  
Boise, Idaho 83702  
erik.helgeson@fnf.com



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

SUBSCRIBED AND SWORN to before me this <sup>19<sup>th</sup></sup> day of January, 2018.



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

State of Idaho  
**DEPARTMENT OF INSURANCE**

C. L. "BUTCH" OTTER  
Governor

700 West State Street, 3rd Floor  
P.O. Box 83720  
Boise, Idaho 83720M0043  
Phone (208)334-4250  
FAX# (208)334-4398

DEAN L CAMERON  
Director

**WAIVER**

In the matter of the Report of Examinations as of December 31, 2016, of:

**Transnation Title & Escrow Inc.  
dba Fidelity National Title  
950 W Bannock St, Ste 420  
Boise, Idaho 83702-6117  
License #51623-- Ada County**

By executing this Waiver, the Agent hereby acknowledges receipt of the above-described examination report, verified as of the 19th day of January 2018, and by this Waiver hereby consents to the immediate entry of a final order by the Director of the Department of insurance adopting said report without any modifications.

By executing this Waiver, the Company also hereby waives:

1. its right to examine the report for up to thirty (28) days as provided in Idaho Code section 41-2710(7),
2. its right to make additional written submissions or rebuttals to the report prior to entry of a final order as provided in Idaho Code section 41-2710(7) and,
3. any right to request a hearing under Idaho Code sections 41-227(5) and (6), 41-232(2)(b), or elsewhere in the Idaho Code, and
4. any right to seek reconsideration and appeal from the Director's order adopting the report as provided by section 41-227(6), Idaho Code, or elsewhere in the Idaho Code.

Dated this 25 day of January, 2018

**Transnation Title & Escrow Inc.  
dba Fidelity National Title**

Erik Helgeson

Name (print)

[Signature]

Name (signature)

VP / Treasure Valley Manager

Title

