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FILED
DEC 28 2016 *BJ*
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:

TITLEFACT, INC. [Twin Falls County]

Idaho Title Agency License No. 5713

Docket No. 18-3257-16

**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 TITLEFACT, INC. (TitleFact), 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 TitleFact, Inc. [Twin Falls County] for the Period January 1, 2011 to December 31, 2015 (Report), as filed.

FINDINGS OF FACT

1. TitleFact is a title agency licensed by the Department to transact title insurance in

Twin Falls County, Idaho, under Title Agency License No. 5713.

2. The Department completed an examination of TitleFact pursuant to Idaho Code §§ 41-2710(7) and 41-219(1) and (5) on or about October 17, 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 October 17, 2016, and was transmitted to TitleFact on the same date. A copy of the Report is attached hereto as Exhibit A.

4. Pursuant to Idaho Code § 41-2710(7), TitleFact 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 TitleFact.

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 TitleFact, the comments and recommendations contained in the Report are appropriate.

ORDER

NOW, THEREFORE, based on the foregoing, IT IS HEREBY ORDERED that the Report of Exception Examination of TitleFact, Inc. [Twin Falls 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, TitleFact 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 SO ORDERED.

DATED this 27 day of December, 2016.

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 28th 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:

TitleFact, Inc.
163 4th Avenue N.
Twin Falls, ID 83301-6137
keasterday@titlefact.com

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

Georgia Siehl, CPA, CFE
Bureau Chief / Chief Examiner
Idaho Department of Insurance
700 W. State Street, 3rd Floor
Boise, ID 83720-0043
georgia.siehl@doi.idaho.gov

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





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

of

TITLEFACT, INC.
(a title Agent corporation - license #5713 – Twin Falls County)

as of

December 31, 2015

Equal Opportunity Employer



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Boise, Idaho
September 9, 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;

TitleFact, Inc.
163 4th Avenue North
Twin Falls, Idaho 83301
License #5713 – Twin Falls County

Hereinafter referred to as the “Agent”.

The following Report of Exception Examination is respectfully submitted.

FOREWORD

This is an exception examination report of the practices and procedures of TitleFact, Inc. (Agent) an Idaho Title Agent licensed in Twin Falls 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 title and escrow file portion of the examination was conducted at the Agent's home offices located at 163 4th Avenue North in Twin Falls Idaho. The remaining portions of the examination was conducted 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 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 Agent.

During the examination, the examiner(s) may cite violations made by the 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 Agent. The report indicates where agreement was not possible.

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

PURPOSE AND SCOPE OF EXAMINATION

The purpose of this examination is to determine compliance with applicable Idaho Statutes, Idaho Department of Insurance regulations, and promulgated rules issued 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 authority of the Idaho Department of Insurance to perform this examination includes, but is not limited to, Idaho Code §41-2710(7), which grants authority to the Idaho Department of Insurance to regular examination of the tract indexes, abstract records, and any other records to ascertain compliance with title 41, Idaho Code, and related rules, of a title Agent not more than every fifth year, unless the Agent otherwise requests or the director has cause to believe the same does not comply with this chapter or the rules thereunder.

HISTORY AND DESCRIPTION

Boone County Title Company was established in 1963 by T.W. Stivers, the father of the current owner. He was granted a certificate of authority by the Idaho Secretary of State on March 25, 1970 when the name was changed to TitleFact, Inc. They were required by statute and became licensed in Twin Falls County with the Idaho Department of Insurance on December 12, 1973. They conduct business out of newly constructed owned offices in Twin Falls, Idaho.

PRIOR EXAMINATION

Our examination included a review to determine if exceptions were noted in our preceding report of examination dated September 8, 2011, which covered the period of January 1, 2006 to December 31, 2010 and whether they were addressed. No exceptions were noted in the prior examination report.

PRIOR ESCROW AUDIT

Our examination included a review to determine if exceptions were noted in the November 24, 2014 escrow audit completed by Mr. Richard J. Monthei of Old Republic National Title Insurance Company which covered the period July 1, 2011 through June 30, 2014 and whether these exceptions were addressed. No exceptions were noted in the prior escrow audit report.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

I. OPERATIONS AND MANAGEMENT

The examination included a review of the Agent's operations and management. The focus of this section of the examination includes review of 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 Richard B. Stivers as the current registered Agent, Director and President, Robert Todd Blass as Director and Kathy C. Easterday as Secretary. No exceptions were noted as a result of the examination.

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

This Agent has underwriting contracts with Fidelity National Title Insurance Company and Old Republic Title Insurance Company. All premiums appear to be paid current. All underwriting contracts require a high liability approval of \$1,000,000.00 with deductibles for loss of \$5,000.00. No exceptions were noted as a result of the examination.

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

The Idaho Department of Insurance has on file surety bond # PB11831700192 in the amount of \$50,000.00 issued by Philadelphia Indemnity Insurance Company on behalf of the Agent. The examination confirmed this bond to be currently active. No exceptions were noted as a result of the examination.

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

The Agent has had seven claim losses totaling \$29,222.94 for the examination period. The claims do not appear to be an oversight on the part of the Agent and we did not find material issues with the title plant during the examination. No exceptions were noted as a result 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, 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 our examination we noted several sampled expenses without 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.

During our examination we noted the following exception regarding donations:

On January 22, 2013 the Agent donated \$200 to realtor Susan Brown for her participation in U.S. Olympic trials.
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IDAPA 18.01.56.011 states that a title entity shall not provide things of value to a producer of title business except as permitted in sections 012,013,014 and 015 of Rule 56. This type of a donation is not allowed in any of these sections. The Agent was in violation of IDAPA 18.01.56.011 by providing a thing of value to a producer of title business that is not permitted.

Recommendations

It is recommended that the Agent submit to the Department in writing what proposed procedures will be implemented in order to maintain accurate and complete records sufficient to ascertain compliance with Title 41, Idaho Code and associated rules. No administrative fine or penalty is recommended at this time.

It is recommended that the Agent submit to the Department in writing what proposed procedures will be implemented to ensure that future donations subject to IDAPA 18.01.56.013.02 will be compliant. No administrative fine or penalty is recommended at this time.

III. TITLE FILE REVIEW

Idaho Code §§ 41-2702, 2708 & 2709

IDAPA 18.01.25 & 18.01.56.017 & Exhibit 1(9)

The title department is managed by R. Todd Blass and consists of 3 title officers. The title plant is posted and maintained at the corporate offices in Twin Falls, Idaho. 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. No exceptions were noted as a result of the examination.

IV. ESCROW FIDUCIARY ACCOUNTS AND FILE REVIEW

The escrow department is managed by Kathy Easterday and consists of 1 long term escrow officer and 3 closing escrow officers.

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 2 fiduciary accounts for this office are balanced on a daily basis and reconciled on a monthly basis by Kathy Easterday at the corporate offices in Twin Falls, Idaho. Monthly reconciliations are reviewed by R. Todd Blass and/or Richard B. Stivers. No exceptions were noted as a result of the examination.

B. ESCROW FILE REVIEW

Idaho Code § 41-2705(3)

IDAPA 18.01.25.011 & 12, 18.01.56.017

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 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 the examination.

During our examination we noted the following exception regarding the disbursements of escrow fees:

In file #61740, there were 2 deposits, one on February 4, 2011 and another on February 8, 2011. Disbursements from the file, including escrow fees, were made on February 7, 2011.
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IDAPA 18.01.25.011.05 states that disbursements may not be drawn against an escrow account without sufficient credit balance. Further, it states that all services must be performed and the escrow account ready to close before any escrow fees may be charged and drawn from the escrow account. The Agent was in violation of IDAPA 18.01.25.011.05 by disbursing funds and escrow closing fees prior to having a sufficient credit balance.

During the exit interview, the practice of reimbursing employees for title and escrow fees was discussed. It was determined that the Agent does reimburse its employees the Agent's portion of the title insurance premium and all escrow fees when an employee transacts title and escrow business on their personal residence.

It was presented to the Agent that Idaho Code § 41-2708(3) states that Section 41-1314(1), Idaho Code, shall be applicable and prohibits title insurers and title Agents from providing rebates in connection with underwriting premium, abstracting charges, title examination fees, closing charges and escrow fees. However, Idaho Code § 41-1315A, does allow for employees of an insurer, Agent or broker to receive a rebate or reimbursement of insurance premium up to, and not to exceed, the amount of commission received. There is no mention of an allowed reimbursement for any other costs or fees except insurance premium.

Recommendations

The examination included a review of 34 escrow files. File #61740 is the only file that indicated a violation of IDAPA 18.01.25.011.05. It is recommended that the Agent submit to the Department in writing what proposed procedures will be implemented to ensure that in the future, no disbursements will be made from an escrow account prior to having a sufficient credit balance. No administrative fine or penalty is recommended at this time.

It is recommended that the Agent submit to the Department in writing what proposed procedures will be implemented in order to be in compliance with Idaho Code § 41-2708(3) regarding the reimbursement of escrow fees and underwriter title premium to employees. No administrative fine or penalty is recommended at this time.

CONCLUSION

I certify and attest that I have examined the Agent's tract indexes, abstract records, as well as other records, and the operation of the Agent's business and other matters relevant to the affairs of the Agent. I further certify that I have no relationship, other than in my capacity as examiner and/or regulator, with the Agent or its employees and that no conflict of interest exists that would prevent me from conducting the examination. I acknowledge that the assistance and cooperation of the 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

I further certify that on this 17th day of October, 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:


Kathy Easterday
TitleFact. Inc.
163 4th Avenue North
Twin Falls, Idaho 83301
keasterday@titlefact.com

SUBSCRIBED AND SWORN to before me this 17th day of October, 2016.



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




Notary Public for Idaho
Residing at: POB, ID
Commission Expires: 7/24/18