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FILED
DEC 28 2016 AM
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:

LAND TITLE AND ESCROW, INC.
[Gooding County]

Idaho Title Agency License No. 5653

Docket No. 18-3261-16

**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 LAND TITLE ESCROW, INC. (Land 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 Land Title Escrow, Inc. [Gooding County] for the Period January 1, 2011 to December 31, 2015 (Report), as filed.

FINDINGS OF FACT

1. Land Title is a title agency licensed by the Department to transact title insurance

in Gooding County, Idaho, under Title Agency License No. 5653.

2. The Department completed an examination of Land Title pursuant to Idaho Code §§ 41-2710(7) and 41-219(1) and (5) on or about October 26, 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 26, 2016, and was transmitted to Land Title on the same date. A copy of the Report is attached hereto as Exhibit A.

4. Pursuant to Idaho Code § 41-2710(7), Land 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 Land 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 Land Title, the comments and recommendations contained in the Report, including the Examiner's determination of violations by Land Title and corrective actions to be taken identified at page 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 Land Title and Escrow, Inc. [Gooding 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, Land 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, Land Title shall provide written evidence to the Department that it has revised its processes and fully implemented procedures to ensure that adequate supporting documentation of expenses is being maintained to confirm that Land Title is compliant with title 41, Idaho Code, and related Department rules.

IT IS FURTHER ORDERED that, no later than thirty (30) days from the date of verification of the Report attached hereto, Land 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 six hundred dollars (\$600.00) is imposed against Land 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 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; and
- Land Title shall provide to the Department, by no later than June 30, 2017, a report of all cancellations of title commitments for the period December 1, 2016, through May 31, 2017. Such report shall be provided in the manner and include such information as prescribed by the Department.

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:

Cameron McFadden
General Counsel
Land Title & Escrow
706 Main Street
Gooding, ID 83330
cmcfadden@titleonecorp.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

LAND TITLE AND ESCROW, INC.
(a title agent corporation - license #5653 – Gooding County)
as of

December 31, 2015

Equal Opportunity Employer



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Boise, Idaho
October 25, 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;

Land Title and Escrow, Inc.
706 Main Street
Gooding, Idaho 83330
License #5653 – Gooding 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 Land Title and Escrow, Inc. (Title Agent) an Idaho Title Agent licensed in Gooding 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 Title Agent's corporate offices located at 1101 W. River Street, Suite #201 in Boise 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 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 this 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 this 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

Land Title And Escrow, Inc. was established and registered with the Idaho Secretary of State's office on March 26, 1959. They were required by statute and became licensed in Gooding County with the Department on November 2, 1973. On March 20, 2014 they were purchased by TitleOne Corporation. They conduct business out of offices in Gooding, Idaho.

PRIOR EXAMINATION

This examination included a review to determine if exceptions were noted in our preceding report of examination dated June 29, 2011, which covered the period of January 1, 2006 to December 31, 2010 and whether these exceptions have been addressed. No exceptions were noted in the prior examination report. No exceptions were noted as a result of this current examination.

PRIOR ESCROW AUDIT

This examination included a review to determine if exceptions were noted in the October 1, 2015 escrow audit completed by Mr. Randy Rabehl of Fidelity National Title Group which covered the period July 1, 2012 through June 30, 2015 and whether these exceptions have been addressed. Four (4) exception conditions were noted. We determined that the Title Agent satisfactorily addressed all four of those exception conditions in October 2015. No additional exceptions were noted as a result of this 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 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 current corporate officers are Cameron McFaddan as the current registered agent and Secretary, Mark Tidd as the Chief Executive Officer and Director, Doug Brigham as President and Director and Vickie White as Director. No exceptions were noted as a result of this examination.

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

This Title Agent has underwriting contracts with Fidelity National Title Insurance Company and Old Republic Title Insurance Company, Stewart Title Guaranty Company, Western Surety Company and Commonwealth Land Title Insurance Company. All premiums appear to be paid current. All underwriting contracts require a high liability approval of \$4,000,000.00 with deductibles for loss of \$2,500.00 to \$5,000.00. No exceptions were noted as a result of this examination.

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

The Department has on file surety bond # B8892019 in the amount of \$50,000.00 issued by The Cincinnati Insurance 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 examination.

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

The Title Agent reported no claims for the examination period. No exceptions were noted as a result of this examination.

II. ADVERTISING AND MARKETING

Idaho Code § 41-2708(3) & (4)

IDAPA 18.01.39.014 & 18.01.56

This 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 our examination we noted that supporting documentation for the sampled expenses incurred in the calendar years 2012 and 2013 were not provided by the Title Agent. We were not able to determine the compliance of these expenses. The Title Agent explained that these records were inadvertently destroyed.

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.

Recommendations

It is recommended that the Title Agent submit to the Department in writing the proposed procedures that the Title Agent will implement in order to maintain accurate and complete records sufficient to ascertain compliance with Title 41, Idaho Code and associated rules. No administrative sanctions or penalties are recommended at this time as this is the first instance of this violation noted in an examination and the sampled expenses for the other years in the examination period appear to be compliant.

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 Kaylin Garrard and is comprised of seven (7) title officers. The title plant is posted and maintained at the offices in Gooding, 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.

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

Commitment #14243862 was cancelled after 07/23/14 and no cancellation fee was charged.
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Commitment #15254600 was cancelled after 07/23/14 and no cancellation fee was charged.
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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 \$600.00.

IV. ESCROW FIDUCIARY ACCOUNTS AND FILE REVIEW

The Title Agent's Escrow Department is managed by Justin Robertson and is comprised of one (1) escrow officer and one (1) assistant.

A. FIDUCIARY ACCOUNTS

IDAPA 18.01.25.011.04, 05 & 10

This 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 and reconciled on a monthly basis at the corporate offices in Boise, Idaho. Monthly reconciliations are reviewed by Randy Rabehl. No exceptions were noted as a result of this 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 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 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 12, 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).

No later than thirty (30) days from the date this Examination was verified, the Title Agent shall provide written evidence to the Department that it has revised its processes and fully implemented procedures to ensure that adequate supporting documentation of expenses is being maintained which will confirm that they are compliant with title 41, Idaho Code, and related rules.

2. 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.

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 \$600.00 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 retains the right to perform a target exam anytime in the future regarding cancellations and billings for such cancellations and impose new penalties based on any findings of violations. The Department requires the Title Agent to provide a report to the Department of all cancellations of title commitments for the period December 1, 2016 through May 31, 2017 with the information in the Excel format attached. This report is due June 30, 2017.


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 26th 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:

Cameron McFaddan
General Counsel
Land Title & Escrow
706 Main Street
Gooding, Idaho 83330
cmcfaddan@titleonecorp.com

SUBSCRIBED AND SWORN to before me this 26th day of October, 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

