



STATE OF OREGON

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

INSURANCE DIVISION

REPORT OF MARKET CONDUCT EXAMINATION

OF

**FIDELITY NATIONAL TITLE INSURANCE COMPANY
IRVINE, CALIFORNIA**

NAIC COMPANY CODE 51586

AS OF

DECEMBER 31, 2000

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February 25, 2002

Honorable Mary Neidig, Director
Department of Consumer and Business Services
State of Oregon
350 Winter Street NE, Room 440
Salem, Oregon 97301-3883

Dear Director:

In accordance with your instructions and pursuant to ORS 731.300, we have examined the
business affairs of

FIDELITY NATIONAL TITLE INSURANCE COMPANY
17911 Von Karman Avenue, Suite 300
Irvine, California 92614

NAIC Company Code 51586

hereinafter referred to as the “Company.” The following report of examination is
respectfully submitted.

SCOPE OF EXAMINATION

The market conduct examination of the Company was conducted as of December 31, 2000, covering the period of January 1, 1997 through December 31, 2000, and included a review of material transactions or events which occurred subsequent to the examination cut-off date and were noted during the examination.

A target market conduct emphasis examination was performed focusing only on the American States Title Company title plant for Deschutes County, Oregon. The examination of the Company was conducted pursuant to ORS 731.300 and in accordance with procedures and guidelines established by the Oregon Insurance Division Market Conduct Program. The program generally follows the Market Conduct Examination Handbook as adopted by the National Association of Insurance Commissioners (NAIC) to the extent that it is consistent with Oregon law. The purpose was to determine the Company's ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, whether it has given proper treatment to policyholders, and its compliance with the Oregon Insurance Code and Administrative Rules.

In order to determine the practices and procedures of the Company's operations, one or more of the following procedures was performed in each phase:

1. A sample of files was selected from listings provided by the Company. The examiner then reviewed each file.
2. The procedure manuals and/or memorandum were evaluated.
3. The Company responded to a series of questions regarding the phase being examined.

The examination was comprised of the following phase:

Title Plant

The Company's underlying data was measured against an established standard. A list of all standards considered can be found in Appendix A at the end of the report. The examiner used the following three classifications to disclose the examination results:

Passed without Comment	The standards the Company passed are displayed in a chart at the beginning of the Findings section of each phase. Items included in this category passed the standard and the examiner did not find it necessary to comment on the findings.
Passed with Comment	Standards the Company passed with some errors noted are included in this classification. Items in this category are not considered to be indicative of a general business practice of noncompliance. Usually, a recommendation is not warranted, but in certain instances a recommendation might be made.
Failed	The Company has not demonstrated compliance with standards that fall into this category. A recommendation for compliance is usually made for each standard the Company fails.

Information regarding some items might be noted in the examination without remarks.

Other areas of concern discovered during the examination that do not fall within the scope of the standards might be appear in the report as the last section of each phase and titled Additional Findings and Procedures.

If the examiner discovers a material finding not included in the established standards, it is noted under the additional findings section of the specific phase.

Certain unacceptable or noncomplying practices may not have been discovered in the course of this examination. Failure to identify or criticize specific Company practices does not constitute acceptance or approval by the Oregon Insurance. Examination findings may result in administrative action or further inquiry.

TITLE PLANT

American States Title Company maintains a geographic slip title plant for Deschutes County. The current owners of American States Title Company acquired the operation on August 2, 1999.

Findings

The Company passed the following standards without comment:

Standard	Regulatory Authority
<u>Standard #2</u> – The plant contains adequate maps.	ORS 731.438(1), OAR 836-010-0135(1), OAR 836-010-0140(1).
<u>Standard #3</u> – The maps enable a person working in the title plant to locate a tract of land which is the subject of a title search with reference to the government survey system.	OAR 836-010-0140(1)
<u>Standard #4</u> – The plant contains a general index.	OAR 836-010-0140(2)
<u>Standard #5</u> – The general index is maintained in either alphabetical or phonetical order.	OAR 836-010-0140(2)
<u>Standard #6</u> – The plant contains currently posted tracts or geographic index for all lands in the county.	OAR 836-010-0140(3)
<u>Standard #9</u> – Records are maintained in this state.	ORS 731.438(2)

The following exceptions were noted:

Standard #1 – The plant covers a period including at least the 50 immediately preceding years except years before 1960. A title plant that conforms on December 31, 1999, with ORS 731.438(1) and (2) (1997 Edition) satisfies these requirements if it also contains, after that date, a general index, adequate maps and currently posted tracts or geographic indexes for all lands in the county. Reference: ORS 731.438(1), ORS 731.439, OAR 836-010-0135(4), OAR 836-010-0140(3).

Findings: Failed.

The title plant does not qualify to be grandfathered as a 20-year plant in accordance with this standard because it does not meet the minimum requirements as of December 31, 1999. The title plant does not have complete information for the period of September 1984 through 1989. This title plant does not have records dating back 50 years except for years prior to 1960.

In December of 1999, the current owners of the title plant discovered that certain items were missing from the plant. The title plant owners disclosed the following information to the examiners:

When orders for title searches were received by the prior owner of the title plant, the title examiners would go into the plant, pull the recorded documents and create a chain of title. The recorded documents were not returned to the title plant. Even though the recorded instruments were not maintained in the plant, the chain of title included a listing of the recorded instruments. A starter file would also provide this information.

The chains of title and starter files are maintained in four formats: microfiche, OEC word processing system, computer disks, and hard copy files. OEC is a Eugene, Oregon based computer company. The OEC system was installed in the plant in 1988, but was not used consistently until 1990. The OEC system is used to create a chain of title or a preliminary title report. The information in OEC can be accessed by title search order number but not by legal description of the property.

The title plant has no microfiche records or data on the OEC system for the period of 1984 through 1989. The title plant does not have hard copy files for title searches conducted from 1984 to 1992. The title plant has hard copy files created by the prior

owner for the period of 1992 through 1999. The current owners requested all title plant documentation from the prior owner for the period of 1984 through 1989 and received six computer disks that include data dealing with activity during that period of time. The title plant has not been able to confirm that the information on those computer disks is complete and does not know exactly how many title search orders are missing from its documentation. The plant does not have an order log or order books prior to August 2, 1999, to use in verifying the information on the computer disks.

The title plant believes it is able to recreate the chain of title for most properties, but is unable to recreate the chain of title for others because the prior owners removed the recorded instruments from the title plant when the title searches were conducted and the documentation regarding starter files or chains of title is incomplete.

In December 1999, the plant became aware of problems associated with covenants, conditions and restrictions that should be in the general files. Documents that affect a platted subdivision are retained in the general file for that subdivision. The title plant knows that some of the general folders are incomplete.

In addition to the above, the examiners selected four tracts for review using the title plant's work maps. These cases were reviewed for compliance with this standard even though the policies might not have been issued during the examination period. The findings are as follows:

Unit #1 –No findings.

Unit #2 –A deed is missing from the file.

Unit #3 –No findings.

Unit #4 –The chain of title dated August 28, 1989 does not include covenants recorded in 1978 although the title plant was able to produce Schedule B from a previous policy dated September 20, 1989 that does include the information that is missing from the chain of title.

I recommend the Company maintain a title plant for Deschutes County, Oregon, that covers a period including at least the 50 immediately preceding years except years before 1960 in accordance with ORS 731.438(1).

Subsequent to the examination the Company reported that the prior owner of the title plant recently provided some of the missing starter files which reduced the number of properties for which the title plant is missing data. At this point the Company estimates that approximately 1800 to 2000 starter files remain missing. The Company indicated it is currently evaluating how it can replace this data once it is able to determine which properties are involved.

Standard #7 – The tracts or geographic index are maintained in an acceptable manner: ledger sheets, separate cards or sheets of film whether bound in books or contained in envelopes or storage files, or maintenance of the information on punch card, computer tape, disk or similar machine compatible form. Reference: ORS 731.438(2), OAR 836-010-0135(3)(c), OAR 836-010-0140(3).

Findings: Failed.

As referenced under Standard #1 above, the title plant is aware that its records are incomplete and estimates that information regarding 1800 to 2000 properties which have not been identified is missing.

Additional Findings and Procedures

The examiner first located a geographic slip file for unit #2 that did not reference the title order. The file was correctly labeled with the assessor's tax number, but because it was part of a subdivision, the complete file documentation was located in another geographic slip file identified by the subdivision name. These files were not cross-referenced.

I recommend the Company maintain a title plant for Deschutes County that retains tracts or geographic index in an acceptable manner in accordance with OAR 836-010-0135(3)(c), OAR 836-010-0140(3) and ORS 731.438(2).

Standard #8 – The tracts or geographic index are currently posted meaning entries are posted within 15 working days of recording or filing. Reference: OAR 836-010-0135(4), OAR 836-010-0140(3).

Findings: Passed with Comment.

The title plant does not make written entries to the geographic index. The title plant's geographic index is maintained in the form of its population of geographic slip files. When a recorded instrument is received, the title plant places the instrument in the geographic slip file folder.

To confirm the title plant's standard operating procedure, the examiners selected at random one day during the examination period, July 17, 2000, and asked for a list of all recorded instruments received that day. The title plant identified 243 items received on July 17, 2000. Using an interval sampling method, the examiners selected twelve items for review. This standard did not apply to five of the chosen items because they were not required to be posted to the geographic index. One of the seven items (14%) was not filed in the correct geographic slip folder. The other six items (86%) were filed in their correct folders.

Although the error rate is 14%, a failure of one item does not appear to indicate a pattern, therefore, no recommendation is warranted.

COMPLIANCE WITH PRIOR EXAMINATION RECOMMENDATIONS

Since this was the first market conduct examination of this Company, no prior recommendations exist.

CONCLUSION

	Recommendation	Page
1	I recommend the Company maintain a title plant for Deschutes County, Oregon, that covers a period including at least the 50 immediately preceding years except years before 1960 in accordance with ORS 731.438(1).	9
2	I recommend the Company maintain a title plant for Deschutes County that retains tracts or geographic index in an acceptable manner in accordance with OAR 836-010-0135(3)(c), OAR 836-010-0140(3) and ORS 731.438(2).	10

MANAGEMENT AFFIRMATION

ACKNOWLEDGMENT

The cooperation and assistance rendered by the officers and employees of the title plant during this examination is hereby acknowledged and appreciated.

A special thanks is extended to the examination coordinator for her courtesy and assistance providing, correlating, or coordinating all requested documents and statistics necessary to ensure a smooth transition during the overall examination process. The responsibilities that were undertaken during this examination were in addition to the scope of her regular assigned duties.

In addition to the undersigned, Gayle L. Woods, AIE, and Donald Lamb, an independent contractor participated in this examination.

Respectfully submitted,

Gayle L. Woods, AIE
Supervising Market Conduct Examiner
Market Conduct Section
Department of Consumer and Business Services
Insurance Division
State of Oregon

AFFIDAVIT

STATE OF OREGON }
 } ss
County of Marion }

Gayle L. Woods, being duly sworn, deposes and says that the foregoing market conduct report of examination as of December 31, 2000, of Fidelity National Title Insurance Company, Irvine, California, subscribed by her is true to the best of her knowledge and belief.

Gayle L. Woods, AIE
Supervising Market Conduct Examiner
Market Conduct Section
Department of Consumer and Business Services
Insurance Division
State of Oregon

Subscribed and sworn to before me on the _____ day of _____, 2002.

Linda J. Rothenberger
Notary Public for the State of Oregon
My Commission Expires: March 22, 2005

APPENDIX

**STANDARDS
FIDELITY NATIONAL TITLE INSURANCE COMPANY
MARKET CONDUCT EXAMINATION**

Title Plant

#	Standard	Regulatory Authority
1	The plant covers a period including at least the 50 immediately preceding years except years before 1960. A title plant that conforms on December 31, 1999 with ORS 731.438(1) and (2) (1997 Edition) satisfies these requirements if it also contains after that date a general index, adequate maps and currently posted tracts or geographic indexes for all lands in the county.	OAR 836-010-0135(4), OAR 836-010-0140(3), ORS 731.438(1), ORS 731.439
2	The plant contains adequate maps.	OAR 836-010-0135(1), OAR 836-010-0140(1), ORS 731.438(1)
3	The maps enable a person working in the title plant to locate a tract of land which is the subject of a title search with reference to the government survey system.	OAR 836-010-0140(1)
4	The plant contains a general index.	OAR 836-0101-0140(2)
5	The general index is maintained in either alphabetical or phonetical order.	OAR 836-010-0140(2)
6	The plant contains currently posted tracts or geographic index for all lands in the county.	OAR 836-010-0140(3)
7	The tracts or geographic index are maintained in an acceptable manner: ledger sheets, separate cards or sheets of film whether bound in books or contained in envelopes or storage files, or maintenance of the information on punch card, computer tape, disk or similar machine compatible form.	OAR 836-010-135(3)(c), OAR 836-010-0140(3), ORS 731.438(2)
8	The tracts or geographic index are currently posted meaning entries are posted within 15 working days of recording or filing.	OAR 836-010-0135(4), OAR 836-010-0140(3)
9	Records are maintained in this state.	ORS 731.438(2)

Following is the response from Fidelity National Title Insurance Company to the market conduct examination performed as of December 31, 2000 by the Oregon Insurance Division. The Company has requested that their response be publicly posted with the examination report. The Division has not performed a re-examination of the Company and will not confirm the information presented in the response.

**MARKET CONDUCT EXAMINATION
RESPONSES TO "CONFIDENTIAL WORKING DRAFT REPORT" dated
October 16, 2001**

BACKGROUND:

The title plant at issue is a geographical slip plant consisting of geographical index with slip folders. The recorded documents posted to the slip folders date back prior to 1950. Microfilm for deeds goes back to patent and mortgages goes back to 1920's. The plant also has Grantee/Grantor Deed Index books dating from early 1900's through 1969. In addition, the plant has starters or bases on microfiche beginning May 1973 from Pioneer Title Company (predecessor to Key Title Company) continuing through October 1979 when Key Title acquired the Pioneer Title operation. Key Title's starters on microfiche began in 1979 and continued to September 1984, which is the last date on microfiche for a starter file. Then, in February 1989, Key began to utilize a word processing computer system called OEC (Office Equipment Company) for processing of prelims and policies. This system allowed them to create the "chain of title" in a word processing format.

Key Title "posted" documents to the title plant by placing a copy of the recorded documents in the appropriate slip folders. American States has continued with this procedure from the time we acquired the plant.

During Key Title's ownership of the plant, their standard procedure when performing a search of a property was to remove the posted documents from the slip folder and to place the documents in the search file. The recorded documents were not returned to the slip folder after completion of the search or the issuance of a policy. American States has not continued this practice or procedure. American States Title does not remove posted recorded documents from the slip folders when a title search is performed, thereby maintaining the posted documents in the appropriate slip folder in title plant.

Consequently due to Key Title's removal and failure to return the documents to the slip folders in the plant, not all slip folders contain the posted documents making up the "chain of title". In order to examine the records for some properties in which Key Title performed a prior search, we must obtain the search records or chain from one of their starter files and then examine on a go forward basis from that point. In the event a search was performed and no starter file is available through the microfiche or OEC system, then we create a "chain of title" for that property by searching through the County Clerks records and performing adjacent property searches. In some cases, the exceptions or items affecting the properties were referenced on prior deeds that were recorded, so we can also check the deeds for exceptions.

In addition to removal of the recorded indexed documents in the slip folders, some CC&R's and other documents were pulled from the General Slip Folders. Again, if the "starter files" are available we will have the instrument numbers to pull the documents.

However, if no starter is available we then utilize the County Records, checking adjacent properties for CC & R's, or looking for references to the CC & R's on prior deeds that have been recorded.

In response to a lawsuit initiated by Key Title Company, American States Title Company filed a counter claim against Key Title. As a resolution of the lawsuit, American States Title Company entered into an agreement in October of 2000, which stipulated that Key Title was to provide all "starter files" which would thereby allow American States Title Company to create a "chain of title" for all properties in Deschutes County. All starter files were to be provided before December 19, 2000.

In an effort to resolve the issue of compliance of our plant with the ORS 731.438 and OAR's 836-010-0135 to 0140, we requested an audit of our plant when Key Title Company failed to deliver "all" starter files as agreed on December 19, 2000. During the audit of the plant, which was performed, March 13 - 15, 2001, by the Insurance Division, the auditors worked with Ron Jones and myself to review the plant and at times provided us with memos and work notes regarding their preliminary findings. In addition to the issue of the missing "starter files" the Insurance Division brought up other compliance issues. We believe some of their issues are not the general practice of title companies in Oregon.

We are also in the process of determining the remaining number of missing starter files we did not receive from Key Title. Key Title provided us with some starter files on December 19, 2000 and then pursuant to a Court Order provided additional files on June 4, 2001. The receipt of these files has reduced the number of properties in which we have data missing on. At this point we believe approximately 1800 to 2000 starter files remain missing. These starter files would correspond to 1800 to 2000 properties in which we believe we may not have a full chain of title for in the title plant. We are currently looking at various manners or methods of ascertaining which properties we are missing the data for and then how to best replace the data.

The following information is to provide you with detailed accurate data regarding the Standards as described in the Draft Report:

STANDARD #1

Our plant does predate 1950. With the Grantee/Grantor Index books and microfilm our plant documents go back to the early 1900's. The title plant does qualify as a 50-year plant, with the exception of the missing "starter files" of approximately 1800 to 2000 properties.

When Key Title performed a search the "starter file" number was written on the slip folder to allow for reference back to the starter file where a chain of title then allows for retrieval of the recorded documents from the daily microfilm commonly known as "daily take offs".

Our policy effective when we began operations on Aug. 2, 1999 is that posted documents are not removed from the slip folders and placed in the title search file. We write the starter file number on the slip folder in the title plant, which allows for reference back to the starter file.

With respect to the examination of the four tracts, we concur with the findings of Unit 2, we do not concur with the findings of Unit 3 & 4. On Unit 3, a portion of Homestead IV was replatted and it is referenced on the outside of the slip folder. (See attached Exhibit "1".) With respect to Unit 4, the covenants, conditions and restrictions were located in the general geographic slip folder, so they were posted. In addition, the covenants, conditions and restrictions are included on Schedule "B" of the Policy and the Schedule "B" of the previous policies. Therefore, a summary of the segregated account does accurately reflect the existence of the Covenants recorded on February 22, 1978 in Book 268, Pages 98 through 100.

We are currently working on a resolution of the issues raised in Standard 1, regarding the missing "starter files" and the incomplete general folders. We believe that if all starter files are recreated we will be able to complete the general slip folders for all subdivisions.

Once the missing "starter files" containing the chains of title for approximately 1800 to 2000 properties are identified and replaced and some general folders are completed the title plant will meet the requirements of a fifty (50) year plant pursuant to ORS 731.438.

Standard #2

The maps used in this title plant are the Assessor's Maps that are updated every two weeks. We use the Assessor's Tax Lot Number as our corresponding arbitrary numbers. Key Title had utilized this same system in our title plant for over 20 years. Key Title and other title companies have been using this practice for over 20 years.

The tax lot number given to a parcel of land is the "ARBITRARY" number assigned to the parcel in our plant. This arbitrary number, which is the same as the Tax Lot Number does allow for identification of the property back to the Government Survey System. Deschutes County is one of the most up to date and sophisticated counties in the State of Oregon in this respect, thereby furnishing accurate and up to date information. The procedure of using Tax Lot Numbers as the arbitrary reference is a common practice among other title companies in the State of Oregon.

Our research into the practice of utilizing County Assessor Maps revealed at least thirteen (13) other title companies in the State of Oregon use this procedure. This practice by other Companies has been openly and commonly used for over 25 years in various counties throughout the State. Our research indicates the maps used in our title plant do meet the description of "Adequate maps" as defined in OAR 836-010-0135 (1) (a), (b)(c) and (d).

According to OAR 836-010-0135, the following is the description of "Adequate Maps":

- (a) A map record of all recorded plats in the County covered by the title plant;
- (b) Maps based on a complete set of government surveys showing all surveyed sections, government lots and donation land claims within the county covered by the title plant;
- (c) Maps of such scale that they are readily workable. In an area where the majority of the parcels are of less than one sixteenth of a section, maps shall be of a scale no smaller than 400 feet to the inch. A full section of land shall not be represented in a scale smaller than 2,000 feet to the inch;
- (d) Maps showing all public streets, roads, highways and railroad rights of way of record which can be accurately located by a reasonable search of the records.

Our maps do comply and our title plant does meet Standard #2 in compliance with OAR 836-010-0140.

Standard #3

Our research into the using County Assessor maps does comply with the standard for referencing back to the government survey system and does indicate that the County Assessor Tax Maps do comply with this standard.

Our current work maps do meet the requirements of this standard. Attached as Exhibit "2" are copies of information regarding the Government Survey System as printed by the Land Title Insurance Institute in Washington, D. C. The Land Title Institute provides education to title companies nationally.

Our research into this practice of utilizing County Assessor maps is used by at least thirteen (13) other title companies in the State of Oregon. This practice by other Companies has been openly and commonly used for over two decades in various counties throughout the State. Our research indicates the maps used in our title plant do meet the description of "Adequate maps" as defined in OAR 836-010-0135 (1) (a), (b)(c) and (d).

In accordance with OAR 836-010-0135 and OAR 836-010-0140, we do maintain "adequate maps" pursuant to those provisions.

Standard #7

According to OAR 835-010-0135(3)(c) as discussed above, an acceptable practice is the maintenance of the indexes on ledger sheets, separate cards, sheets of film, or any other form or system, whether manual, mechanical, electronic or otherwise, or any combination of such forms or systems.

During the time of Key Title's ownership of the plant their standard procedure when performing a search of a property was to remove the posted documents from the slip folder and to place the documents in the search file. The recorded documents were not returned to the slip folder after completion of the search or the issuance of a policy. Consequently, due to Key Title's removal and failure to return the documents to the slip folders, in some cases the folders do not all contain the posted documents making up the "chain of title".

However, each individual title search file does contain the "chain of title" or reference to the "geographical index" in a summary form. The title search file then becomes integrated into the title plant and that is called or referred to as a "starter file". Key Title's procedure was to write the Title Search Number or Order Number on the slip folder which does allow for the "chain of title" to be created in summary form for that property. If all "starter files" are maintained in the title plant, then a "summary" for all geographical index which had documents removed from the slip folder, can still be utilized. Thereby integrating one system into another as permitted under the OAR provisions.

The "starter files" containing the summaries are actually in one (1) of four (4) different systems. The systems are microfiche, OEC computer word processing system, computer discs with document imaging and hard copy files. The integration of these four (4) systems make the title plant complete, with the exception of some "starter files" which Key Title company has been unable to locate. On December 19, we received some of the starter files from Key Title as agreed to in our mediation settlement. On June 4, 2001, Key Title provided us with approximately 3000 additional starter files pursuant to an order from the Court. Then in addition during the evidentiary portion of the trial proceedings on September 18 through September 20, 2001, we were provided additional data that allowed us to locate approximately another 200 starter files on the OEC system. The current estimated total number of missing starter files stand at approximately 1800 to 2000.

Once the missing "starter files" containing the chains of title for approximately 1800 to 2000 properties are identified and replaced and some general folders are completed the title plant will meet the requirements of a fifty (50) year plant pursuant to ORS 731.438.

Standard #8

When documents are recorded with the County Clerk, we receive copies daily. These copies are called "daily take offs" and they are then located and posted. We post the daily take off into the geographical slip folder. The placement and filing of the instrument in the slip folder constitutes "posting" as is standard practice in the industry for a geographical slip plant. In the test case one of the seven items was not posted correctly. We do agree with that finding.

We comply with this standard pursuant to OAR 836-010-0135(4). Our procedure of filing the recorded documents into the appropriate index is considered "posting" as is

standard and practices in the industry for a title plant consisting of geographic slip indexes and our plant postings are completed within 15 working days of the recording or filing.

CONCLUSION

The procedures and methods utilized by American States Title Company for the title plant have generally been the procedures that Key Title Company maintained for over the 20-year period the Company was in operation.

Had Key Title maintained "all starter files" and "all starter files" were integrated into the title plant there would be no issue of compliance. However, the fact is that in December of 1999, after owning the title plant for only a few months, American States Title Company discovered the "missing" starter or title files. We have been working consistently and diligently through the Court proceedings and cooperating with the regulating agencies to bring the plant into full compliance diligently since that time.

Our position on the condition of the title plant has not changed. Our title plant will meet with the requirements of the Oregon Statutes upon receipt of "all starter files" from Key Title Company. In the event they cannot provide us with all "starter files" we will implement a procedure to identify and replace the missing data from those files.