

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Jon Leibowitz, Chairman**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**  
                                  **Edith Ramirez**  
                                  **Julie Brill**

In the Matter of

**FIDELITY NATIONAL FINANCIAL, INC.,**

a corporation.

**Docket No. C-**

**DECISION AND ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by Respondent Fidelity National Financial, Inc. ("Fidelity") of three title insurance underwriters from LandAmerica Financial Group, Inc. ("LandAmerica"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent, its attorneys and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the laws have been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission's Rules, and that a Complaint should

issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure

described in Commission Rule 2.34, 16 C.F.R. § 234, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Fidelity is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive of

will reproduce all of the records, indices, documents and other information contained in the original Title Plant and enable such information to be accessed no less quickly and no less conveniently than it could be using the original Title Plant.

- G. "Datatrace" means Datatrace Information Services LLC, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 4 First American Way Santa Ana, CA 92707.
- H. "Datatrace Access Agreement" means the Title Plant Services, Access and Marketing Agreement, dated as of July 31, 2000, between Datatrace and LandAmerica.
- I. "Divestiture Agreement(s)" means any and all agreement(s) between the Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer, and all amendments, exhibits, attachments, agreements and schedules thereto, that have been approved by the Commission pursuant to Paragraph I. and/or Paragraph II. (or Paragraph V.) of this Order. All Divestiture Agreements are incorporated by reference into this Order and made a part hereof as a confidential appendix. If approved by the Commission, "Divestiture Agreement(s)" includes the Northwest Title TriPlant Divestiture Agreement and the Northwest Title Downstate Divestiture Agreement.
- J. "Divestiture Assets" means, individually and collectively: (1) with respect to Paragraph I. of this Order, the TriCounty Title Plant Divestiture Interest and the Downstate Title Plant Assets; and (2) with respect to Paragraph II. of this Order, the Michigan Title Plant Assets.
- K. "Divestiture Date(s)" means the date(s) on which Respondent (or a Divestiture Trustee) fully completes the divestiture of each of the Divestiture Assets, as applicable as required under 000 0.0000 TD ( 0.00000 1.00000 068m 15.3600 0.0000 TD (a)Tj u

the Acquisition or by the LFG Underwriters prior to the Acquisition and serving each such county or local jurisdiction:

Benton County Oregon  
Jackson County Oregon  
Linn County Oregon  
Marion County Oregon

- N. "Interest" means any and all rights, present or contingent, to hold any membership or partnership share, voting or nonvoting stock, share capital, equity or other interests, and/or beneficial ownership in a Title Plant.
- O. "Michigan Title Plant Assets" means a Copy of the Title Plants owned or otherwise held by the LFG Underwriters immediately prior to the Acquisition, as more particularly set out in the Data Access Agreement, and serving each of the following counties or local jurisdictions:

Macomb County Michigan  
Oakland County Michigan  
Wayne County Michigan

- P. "Northwest Title" means Northwest Title, LC, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3000 A Street, Suite 200, Anchorage, AK 99503.
- Q. "Northwest Title Downstate Divestiture Agreement" means any and all agreement(s) between the Respondent (or been a Divestiture Trustee appointed pursuant to Paragraph M. of this Order) and Northwest Title for the divestiture of the Downstate Title Plant Assets, and all amendments, exhibits, attachments, agreements and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- R. "Northwest Title TriCounty Divestiture Agreement" means any and all agreement(s) between the Respondent (or been a Divestiture Trustee appointed pursuant to Paragraph M. of this Order) and Northwest Title for the divestiture of the TriCounty Title Plant Divestiture Interest, and all amendments, exhibits, attachments, agreements and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- S. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business entity and any subsidiaries, divisions, groups or affiliates thereof.

- T. "Third Party(ies)" means any non-governmental Person other than the Respondent or the Acquire(s).
- U. "Title Plant" means privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that

*provided, however,* that if Respondent has divested the TriCounty Title Plant Divestiture Interest and/or the Downstate Title Plant Assets ("Divestiture Assets") to Northwest Title prior to the date this Order becomes final and if, at the time the Commission determines to make this Order final:

1. The Commission determines and notifies Respondent that Northwest Title is not an acceptable acquirer of one or both of the Divestiture Assets, then Respondent shall immediately rescind the relevant transaction(s) with Northwest Title and shall divest the relevant Divestiture Asset(s) no later than six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer or Acquirers and only in a manner that receives the prior approval of the Commission; or
  2. The Commission determines and notifies Respondent that the manner in which one or both of the divestitures was accomplished is not acceptable, the Commission may direct the Respondent, appoint a Divestiture Trustee pursuant to Paragraph M. of this Order, to effect such modifications to the manner of divesting the relevant Divestiture Asset(s) to Northwest Title (including but not limited to, entering into additional agreements or arrangements) as may be necessary to satisfy the requirements of this Order
- B. Prior to the Divestiture Date, Respondent shall obtain all necessary approvals and waivers from all Third Parties that are necessary to permit Respondent to divest the relevant Divestiture Assets and transfer all associated rights to the Acquirer(s).
- C. Until Respondent fully complies with Paragraphs I.A. and B (or Paragraph M., if applicable) of this Order, Respondent:
1. shall take such actions as are necessary to maintain the viability and marketability of the Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Assets except for ordinary wear and tear;
  2. shall not sell, transfer, encumber or otherwise impair the Divestiture Assets (other than as required by this Order) nor take any action that lessens their viability, marketability or competitiveness; and
  3. shall maintain the operations of the Downstate Title Plant Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such

business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Downstate Title Plant Assets. Among other things as may be necessary, with respect to the Title Plants comprising the Downstate Title Plant Assets, Respondent shall cause the Title Plants to be maintained, including but not limited to updating the records and/or indices contained in the Title Plants, to the extent and in the manner maintained prior to the Acquisition.

- D. Respondent shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, exercise any of its voting rights under Section 11.01 of the TriCounty Title Plant Partnership Agreement to expel the Acquirer of the TriCounty Title Plant Divestiture Interest.
- E. The purpose of the divestiture:
1. of the TriCounty Title Plant Divestiture Interest is to remedy the lessening of competition in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington Counties, Oregon resulting from the Acquisition as alleged in the Commission's Complaint; and
  2. of the Downstate Title Plant Assets is to remedy the lessening of competition in Benton County, Jackson County, Linn County and Marion County, Oregon, resulting from the Acquisition as alleged in the Commission's Complaint.

### III.

#### IT IS FURTHER ORDERED that:

- A. Not later than one-hundred twenty (120) days after the date the Consent Agreement is accepted by the Commission for public comment, Respondent shall divest the Michigan Title Plant Assets, absolutely and in good faith, at no minimum price, to an Acquirer, and in a manner (including execution of a Divestiture Agreement with the Acquirer), that receives the prior approval of the Commission. Respondent shall comply with all provisions of any Divestiture Agreement approved by the Commission (which agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondent under such agreements), and failure by Respondent to comply with any provision of a Divestiture Agreement shall constitute a failure to comply with this Order. Such agreement, if it becomes a Divestiture Agreement, is incorporated by reference into this Order and made a part hereof.

B. Prior to the Divestiture Da



- C. Not later than ten (10) days after the appointment of Divestiture Trustee, Respondent shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture(s) license grant or other specified transaction(s) required by this Order.
- D. If a Di

The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select each Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve without bond or other security, at the cost and expense of 0 TD (with TD (e)Tj 5.2800, 5.00 shall be 000 TD (e)Tj 5.2800



Nevada  
New Mexico  
Oregon  
Texas

B. The prior notification required by this Paragraph M. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent and not of any other party to the transaction. In addition to the information required to be supplied on such Notification and Report Form pursuant to the above-referenced regulation, Respondent shall submit the following supplemental information in Respondent's possession or reasonably available to Respondent:

1. The name of each county or local jurisdiction to which the terms of Paragraph VI.A. are applicable;
2. A description of the Title Plant assets or interests that are being acquired; and
3. With respect to each Title Plant serving each county or local jurisdiction to which the terms of Paragraph VI.A. are applicable (including all Title Plants in which the Respondent owns or otherwise holds a direct or indirect interest as well as other Title Plants known to the Respondent), the names of all Persons that own or otherwise hold any direct or indirect interest in the Title Plant and the percentage interest held by each Person; the time period covered by each category of title records contained in the Title Plant; whether the respective categories of title records are regularly

this Paragraph VI. maybe requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## VII.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs I., III. and V. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply with this Order and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II., III. and IV. of this Order, including a description of all substantive contacts or negotiations for accomplishing the specified actions and the identity of all parties contacted. Respondent shall include in its compliance report

**IX.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege and upon written request and five (5) days notice to Respondent, Respondent shall, without unreasonable interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours and in the presence of counsel, to all facilities and to inspect and copy all books, ledgers, accounts, correspondence memoranda and all other records and documents in the possession or under the control of Respondent relating to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**X.**

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the date on which this Order becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL

ISSUED: