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**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-4300

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. ("

thereafter by an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, 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 offices located at 601 Riverside Avenue, Jacksonville, FL 32204.

2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Respondent" or "Fidelity" means Fidelity National Financial, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, joint ventures, groups and affiliates in each case controlled by Fidelity (including, but not limited to, the LFG Underwriters, Security Title Guaranty Co., and Ticor Title Insurance Company), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "LandAmerica" means LandAmerica Financial Group, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 5600 Cox Road, Glen Allen, VA 23060.
- C. "Commission" means the Federal Trade Commission.
- D. “Acquirer(s)” means the acquirer(s) approved by the Commission pursuant to Paragraph II. and Paragraph III. (or Paragraph IV.) of this Order. If approved by the Commission, “Acquirer(s)” includes Northwest Title and Datatrace.
- E. “Acquisition” means the acquisition by Fidelity of Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation, and United Capital Title Insurance Company (collectively, the “LFG Underwriters”) from LandAmerica pursuant to an amended stock purchase agreement dated November 25, 2008.
- F. “Copy” means a reproduction of a Title Plant that will enable an Acquirer to use the reproduction in a qualitatively similar way to the original Title Plant. A Copy 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

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 Datatrace 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, 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 3000 A Street, Suite 200, Anchorage, AK 99503.
- Q. “Northwest Title Downstate Divestiture Agreement” means any and all agreement(s) between the Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph IV. 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 TriPlant Divestiture Agreement” means any and all agreement(s) between the Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph IV. 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 Acquirer(s).

- U. "Title Plant" means a 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 are not regularly updated.
- V. "TriCounty Title Plant" means the joint venture Title Plant established pursuant to the TriCounty Title Plant Partnership Agreement that covers records and/or indices regarding the ownership of and interests in real property located in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington Counties, Oregon, in which both Fidelity and LandAmerica owned Interests prior to the Acquisition.
- W. "TriCounty Title Plant Divestiture Interest" means a membership share and

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, or appoint a Divestiture Trustee pursuant to Paragraph IV. 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 consents, 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 II.A. and B. (or Paragraph IV., 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

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest, grant, license, transfer or otherwise convey the assets and/or rights that are required by this Order to be divested, granted, licensed, transferred or otherwise conveyed.
2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the specified divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets and/or rights that are required to be divested, granted, licensed, transferred or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture or license. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute a

Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

V.

IT IS FURTHER ORDERED that Respondent shall comply with all terms of any Divestiture Agreement(s), and any breach by Respondent of any term of a Divestiture Agreement shall constitute a violation of this Order. If any term of a Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Any material modification of any Divestiture Agreement between the date the Commission approves the Divestiture Agreement and the Divestiture Date, without the prior approval of the Commission, or any failure to meet any material condition precedent to closing (whether waived or not), shall constitute a violation of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondent shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission, acquire any Interest in any joint Title Plant serving any county or other local jurisdiction in the states listed below where, as a result of such acquisition (including as aggregated with any Interest(s) already owned or otherwise held by Respondent), Respondent would own or otherwise hold an Interest of fifty (50) percent or more in such joint Title Plant:

California
Colorado
Nevada
New Mexico
Oregon
Texas

- B. The prior notification required by this Paragraph VI. 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 being updated; the indexing system or systems used with respect to each category of title records; and the names of all Persons, including but not limited to title insurers or agents, who have access to the Title Plant.
- C. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the wa

the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the

X.

IT IS FURTHER ORDERED that this Order shall terminate on September 13, 2020.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 13, 2010