

No. 2019-5951

**Official Order
of the
Texas Commissioner of Insurance**

Date: MAY 03 2019

Subject Considered:

Fidelity National Title Insurance Company
601 Riverside Avenue
Jacksonville, Florida 32204

Consent Order
SOAH Docket No. 454-17-1333.C
TDI Enforcement File No. 9064

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Fidelity National Title Insurance Company (Fidelity).

Waiver

Fidelity acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Fidelity waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

Pursuant to TEX. INS. CODE § 82.055(b), Fidelity agrees to the entry of this consent order with the express reservation that Fidelity does not admit to a violation of the Texas Insurance Code or of a rule, and the existence of a violation is in dispute.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

1. Fidelity National Title Insurance Company (Fidelity) holds a certificate of authority issued by TDI.

2. Fidelity contracted with a fee attorney who was authorized to close transactions on Fidelity's behalf.

Unsound Underwriting

3. In August 2005, Fidelity, through its fee attorney, issued a title insurance commitment to a lender concerning a proposed home equity loan to an individual. The commitment stated that record title to the land that would secure the loan appeared to be vested in two people, the borrower and her stepfather. The commitment also noted that if title was offered solely by the borrower, Fidelity would require a deed from the stepfather to the borrower.
4. The stepfather had died in 1993, and while he apparently left a will, it was never probated. Fidelity's fee attorney did not investigate the status of the stepfather's interest before issuing the commitment or closing the transaction.
5. The loan documents were signed only by the borrower and no deed from the stepfather was procured. Fidelity's fee attorney closed the loan transaction and Fidelity underwrote a Mortgagee Policy of Title Insurance, which reflected that title continued to be vested in the borrower and her stepfather. Neither Fidelity nor its fee attorney required that all of the stepfather's heirs sign the loan documents. Fidelity endorsed this policy with a T-42 Equity Loan Mortgage Endorsement, insuring against the invalidity or unenforceability of the lien of the insured mortgage by reason of failure of the insured mortgage to be created under a written agreement with the consent of each owner described in the policy in accord with the Texas Constitution.
6. In January of 2007, the borrower refinanced the loan and Fidelity again insured the transaction. This lender instructed Fidelity that Fidelity's fee attorney only had authority to close the transaction if all owners signed the loan documents and if Fidelity could ensure that the lender received a valid first-position lien securing the loan. The loan documents were signed only by the borrower.
7. Fidelity underwrote a Mortgagee Policy of Title Insurance for this 2007 transaction. This policy insures title to the estate or interest in the land as vested in the borrower without mention of her stepfather and his interest. Fidelity endorsed the policy with a T-42 Equity Loan Mortgage Endorsement.

Improper Claims Handling

8. In August of 2012, the policyholder filed a claim with Fidelity against the 2007 policy, explaining it was preparing to foreclose the loan and could not find a probate or conveyance deed for the stepfather's interest. In response to the notice of claim and the title defect, Fidelity informed the policyholder that it "offer[ed] to issue its standard letter of indemnity to another title insurance underwriter" or issue a new policy to a purchaser or lender without taking exception to the defect. Fidelity explained its offer was "conditioned upon [the lender] being the grantor or the mortgagor in the new transaction."
9. In November of 2012, the policyholder filed an expedited foreclosure action under rule 736 of the Texas Rules of Civil Procedure. In September of 2013, the policyholder wrote to Fidelity, requesting it pay the policy limits. On October 9, 2013, Fidelity declined because the foreclosure action was not resolved and no challenge to the validity or enforceability of the policyholder's lien existed at that time. Then, on October 25, 2013, the court denied the expedited foreclosure action.
10. On November 1, 2013, the policyholder again wrote to Fidelity seeking coverage. On December 26, 2013, Fidelity responded, explaining that the order denying expedited foreclosure carries no preclusionary effect. Fidelity further explained that because the policyholder had not yet tried and failed to foreclose via a traditional process, and because the borrower had not yet initiated an independent action to invalidate the security instrument, Fidelity was not obligated to take any action.
11. On January 8, 2014, the policyholder again wrote to Fidelity seeking coverage. On February 27, 2014, Fidelity responded that the order denying expedited foreclosure carries no preclusionary effect and acknowledged the broken chain of title. But Fidelity did not state whether it accepted, denied, or conditionally accepted coverage. However, Fidelity did announce that it had "elect[ed] to retain counsel on behalf of the Claimant to establish the enforceability of the [security instrument] as an accommodation, and not as an admission of coverage under the policy."
12. In July of 2014, Fidelity filed a petition for declaratory judgment against the borrower and the stepfather's heirs.

13. In June of 2015, the borrower filed counterclaims against the policyholder. Fidelity continued to litigate the title consistent with its previous accommodation, but Fidelity did not issue formal correspondence accepting coverage of some of the borrower's claims until November of 2016, after the borrower had amended her counterclaims.

Conclusions of Law

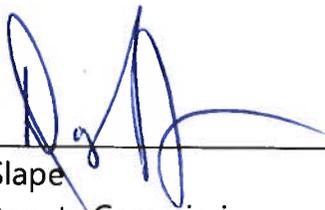
1. The Commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.056, 84.021 – 84.022, 2501.006, 2703.052 – 2703.053 and 2704.001; 28 TEX. ADMIN. CODE §§ 9.1 (adopting the *Texas Title Insurance Basic Manual* "Basic Manual"); and TEX. GOV'T CODE §§ 2001.051 – 2001.178.
2. The Commissioner has the authority to dispose of this case informally pursuant to TEX GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Fidelity has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the Commissioner, and judicial review.
4. Fidelity issued a title policy without determining insurability in accordance with sound underwriting practices, in violation of TEX. INS. CODE § 2704.001.
5. Fidelity, through its fee attorney, failed to close the transaction in violation of TEX. INS. CODE § 2501.006.
6. Fidelity failed to promptly investigate the validity of a title defect not excepted or excluded from the policy, in violation of TEX. INS. CODE § 2703.052.
7. Fidelity failed to accept, deny, or conditionally accept a claim within 30 days or notify the insured of its inability to do so, in violation of Claims Handling Principles and Procedures III.B of the *Basic Manual*.
8. Fidelity failed to conditionally accept coverage and provide a defense in the lawsuit which is the subject of a claim, in violation of Claims Handling Principles and Procedures II.B of the *Basic Manual*.

- 9. Fidelity failed to reclassify the claim within 30 days of receiving new information supporting the change, in violation of Claims Handling Principles and Procedures III.E of the *Basic Manual*.

Order

It is ordered that Fidelity National Title Insurance Company must pay an administrative penalty of \$90,000 within 30 days from the date of this order. The penalty must be paid by cashier's check or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Kent C. Sullivan
Commissioner of Insurance

By: 
Doug Slape
Chief Deputy Commissioner
Commissioner's Order No. 2018-5528

Recommended and reviewed by:


Leah Gillum, Associate Commissioner
Enforcement Section


Casey Seeboth, Attorney
Enforcement Section
Texas Department of Insurance

