

FINAL ORDER

Effective: 12-15-08

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Kansas Resident)
Insurance Agency's License of) **Docket No. 3901-SO**
UNITED TITLE COMPANY LLC)

**SUMMARY ORDER
(Pursuant to K.S.A. 2007 Supp. 40-4909 and K.S.A. 77-537)**

Pursuant to authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 2007 Supp. 40-4909, the Commissioner hereby makes the following findings of facts regarding the resident agency license of Respondent by way of Summary Order as provided by K.S.A. 77-537.

This Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made pursuant to K.S.A. 77-542.

Findings of Fact

The Commissioner has been shown the following facts:

1. Records maintained by the Kansas Insurance Department ("KID") indicate that United Title Company LLC ("Respondent") is licensed as a resident title agency to transact the business of title insurance in the State of Kansas, and has been so licensed since November 22, 2004. KID records further indicate a legal address and a mailing address of 15510 State Avenue, Suite 7, Basehor, KS 66007.

2. The Commissioner of Insurance ("the Commissioner") has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

3. On or about November 22, 2004, Respondent was issued a Kansas resident agency license.

4. On or before November 22, 2004, Respondent provided to KID a legal and mailing address of 15510 State Avenue, Suite 7, Basehor, KS 66007.

5. On or about November 22, 2004, KID sent Respondent a copy of Kansas Statutes Annotated ("K.S.A.") 40-1137 and other filing requirements to Respondent at the address that was provided by Respondent.

6. KID did not receive a report from Respondent for 2005 through 2007 prior to April 18, 2008.

7. On or about April 14, 2008, KID requested from Respondent a report showing the number of closed title orders written and the percentage of the closed title orders that were from a controlled source for each year that Respondent conducted business in Kansas.

8. On or about April 18, 2008, Respondent provided a report which indicated that 8% of its closed title policies in 2005 originated from First State Bank and Trust and 8% of its closed title policies in 2005 originated from Reece and Nichols Premier Realty.

9. On or about April 18, 2008, Respondent provided a report which indicated that 19% of its closed title policies in 2006 originated from First State Bank and Trust and 5% of its closed title policies in 2006 originated from Reece and Nichols Premier Realty.

10. On or about April 18, 2008, Respondent provided a report which indicated that 21% of its closed title policies in 2007 originated from First State

Bank and Trust and 4% of its closed title polices in 2007 originated from Reece and Nichols Premier Realty.

Applicable Law

11. Kansas Statutes Annotated ("K.S.A.") 2007 Supp. 40-2404(14)

states, in relevant part:

(e) As used in paragraphs (e) through (i)(7) of this subpart, unless the context otherwise requires:

- (i) "Associate" means any firm, association, organization, partnership, business trust, corporation or other legal entity organized for profit in which a producer of title business is a director, officer or partner thereof, or owner of a financial interest; the spouse or any relative within the second degree by blood or marriage of a producer of title business who is a natural person; any director, officer or employee of a producer of title business or associate; any legal entity that controls, is controlled by, or is under common control with a producer of title business or associate; and any natural person or legal entity with whom a producer of title business or associate has any agreement, arrangement or understanding or pursues any course of conduct, the purpose or effect of which is to evade the provisions of this section.
- (ii) "Financial interest" means any direct or indirect interest, legal or beneficial, where the holder thereof is or will be entitled to 1% or more of the net profits or net worth of the entity in which such interest is held. Notwithstanding the foregoing, an interest of less than 1% or any other type of interest shall constitute a "financial interest" if the primary purpose of the acquisition or retention of that interest is the financial benefit to be obtained as a consequence of that interest from the referral of title business.
- (iii) "Person" means any natural person, partnership, association, cooperative, corporation, trust or other legal entity.

(iv) "Producer of title business" or "producer" means any person, including any officer, director or owner of 5% or more of the equity or capital or both of any person, engaged in this state in the trade, business, occupation or profession of:

- (A) Buying or selling interests in real property;
- (B) making loans secured by interests in real property; or
- (C) acting as broker, agent, representative or attorney for a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

(f) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(h) Within 90 days following the end of each business year, as established by the title insurer or title agent, each title insurer or title agent shall file with the department of insurance and any title insurer with which the title agent maintains an underwriting agreement, a report executed by the title insurer's or title agent's chief executive officer or designee, under penalty of perjury, stating the percent of closed title orders originating from controlled business. The failure of a title insurer or title agent to comply with the requirements of this section, at the discretion of the commissioner, shall be grounds for the suspension or revocation of a license or other disciplinary action, with the commissioner able to mitigate any such disciplinary action if the title insurer or title agent is found to be in substantial compliance with competitive behavior as defined by federal housing and urban development statement of policy 1996-2.

12. K.S.A. 2007 Supp. 40-4909 states, in relevant part:

- (a) The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:
 - (2) Violated:

Any provision of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, or any rule and regulation promulgated thereunder.
 - (7) Admitted to or been found to have committed any insurance unfair trade practice or fraud in violation of K.S.A. 40-2404 and amendments thereto.
- (c) Any action taken under this section which affects any license or imposes any administrative penalty shall be taken only after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedures act.
- (e) None of the following actions shall deprive the commissioner of any jurisdiction or right to institute or proceed with any disciplinary proceeding against such license, to render a decision suspending, revoking or refusing to renew such license, or to establish and make a record of the facts of any violation of law for any lawful purpose:
 - (1) The imposition of an administrative penalty under this section;
- (f) Whenever the commissioner imposes any administrative penalty or denies, suspends, revokes or refuses renewal of any license pursuant to subsection (a), any costs incurred as a result of conducting an administrative hearing authorized under the provisions of this section shall be assessed against the person who is the subject of the hearing or any business entity represented by such person who is the party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

- (h) In lieu of taking any action under subsection (a), the commissioner may:
 - (2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months from the date of the original violation unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the imposition of the original administrative penalty.

13. Kansas Administrative Regulation (“K.A.R.”) 40-3-52 states, in relevant part:

- (b) As a part of the report stating the percentage of closed title orders originating from a controlled business arrangement pursuant to K.S.A. 40-2404(14)(h) and amendments thereto, each title insurer or title agent engaged in a controlled business arrangement shall submit the following information to the commissioner:
 - (1) The identity of each producer of title business involved in the controlled business arrangement;
 - (2) the date on which the business year began for the controlled business arrangement;
 - (3) the identity of any federally chartered bank or savings association affiliated with the title insurer, if such an affiliation exists; and
 - (4) the date of the end of the title insurer’s or title agency’s business year.

- (c) Each insurer or title agent required by subsection (b) to file a report shall submit the report to the commissioner pursuant to K.S.A. 40-2404(14)(h) and amendments thereto.

Conclusions of Law

14. The Commissioner has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

15. Based on the facts and circumstances set forth herein, United Title Company engaged in a controlled business arrangement; and United Title Company failed to file in a timely manner a Controlled Business Report for 2005 through 2007 within 90 days following the end of its business year, as established by the title insurer or title agent.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. United Title Company LLC shall remit to the Kansas Insurance Department an administrative penalty in the sum of one thousand dollars (\$1,000) for violating K.S.A. 40-2404(14)(h) and K.A.R. 40-3-52.
2. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

Notice of Right to Hearing or Appeal

You are entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If you desire a hearing, you must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If you request a hearing, the Kansas Insurance Department will notify you of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event that you file a petition for judicial review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612.

**IT IS SO ORDERED THIS __25th__ DAY OF NOVEMBER, 2008, IN THE
CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



_____/s/ Sandy Praeger_____
Sandy Praeger
Commissioner of Insurance
BY:

_____/s/ John W. Campbell_____
John W. Campbell
General Counsel

Approved and Submitted by:

/s/ John Wine
John Wine
Staff Attorney

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepared, on this 25th day of November, 2008, addressed to the following:

Mary J. Fallesen
Business Manager
United Title Copmay
15395 Briar Road
Basehor, KS 66007

Michael D. Gibbens
Gibbens & Sonntag LLC
15510 State Avenue
Basehor, KS 66007

/s/ John W. Wine
John W. Wine
Staff Attorney