

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

Commissioners: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of

**FIDELITY NATIONAL FINANCIAL,
INCORPORATED,**
a corporation,

DOCKET NO. C-3929

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by respondent Fidelity National Financial, Incorporated ("FNF") of Chicago Title Corporation ("CT"), and respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and of 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 a consent order ("Consent Agreement"), containing an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent

Agreement and placed such 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. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following order:

1. Respondent FNF 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 17911 Von Karman Avenue, Irvine, California 92614-6253.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of 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 "FNF" means Fidelity National Financial, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by FNF, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "CT" means Chicago Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by CT, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "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.
- E. "Acquisition" means FNF's proposed acquisition of the common stock of CT pursuant to the Agreement and Plan of Merger dated August 1, 1999.
- 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. A Copy will reproduce all of the information contained in the original and enable the information to be accessed no less quickly and no less conveniently than it could be using the original.

II.

IT IS FURTHER ORDERED that:

- A. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall, for each of the following counties or local jurisdictions listed below, either (1) divest at no minimum price, absolutely and in good faith, either the rights, title, and interest held by FNF prior to the Acquisition or the rights, title, and interest held by CT prior to the Acquisition in all title plants serving such county or local jurisdiction, or (2) sell at no minimum price or otherwise permanently transfer, absolutely and in good faith, a Copy of all title plants serving such county or local jurisdiction in which FNF prior to the Acquisition held rights, title, and interest or a Copy of all title plants serving such county or local jurisdiction in which CT prior to the Acquisition held rights, title, and interest:

Merced County, California
Napa County, California
San Benito County, California
Tehama County, California
Yolo County, California.

- B. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall either (1) divest at no minimum price, absolutely and in good faith, the rights, title, and interest, other than the right, subject to the approval of the Commission, to a copy of the joint title plant's data covering the period prior to divestiture, held by FNF or CT prior to the Acquisition in the San Luis Obispo Joint Title Plant ("San Luis Obispo JTP") to an entity that is not currently an owner of San Luis Obispo JTP ("New Owner"); or (2) relinquish all of the voting rights held by FNF prior to the Acquisition or all of the voting rights held by CT prior to the Acquisition in the San Luis Obispo JTP, and obtain the admission to full participating ownership in the San Luis Obispo JTP of a New Owner, which New Owner shall have (i) the equivalent voting rights in the San Luis Obispo JTP after the admission of the New Owner to those retained by Respondent or CT, (ii) an ownership share no less than that of the other owners, and (iii) no greater financial responsibilities with respect to the San Luis Obispo JTP than those of the other owners.
- C. Respondent shall divest the properties or sell or otherwise permanently transfer the Copies specified in Paragraphs II. A. and II. B. of this order only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Respondent shall obtain the admission to ownership specified in Paragraph II. B. of this order only by a New Owner that receives the prior approval of the Commission and only in a manner that

receives the prior approval of the Commission. The purpose of the divestiture, sale, transfer, or obtaining admission to ownership pursuant to Paragraphs II. A. and II. B. of this order is to ensure the continued use of the divested or copied title plants as ongoing, viable title plants used in the production and/or sale of title information, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

D. Pending divestiture, sale, or transfer of the properties as specified in Paragraphs II. A. and II. B. of this order, Respondent shall take such actions as are necessary to maintain the viability and marketability of such properties and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the properties. FNF shall comply with the following requirements with respect to all title plants serving the counties or other local jurisdictions listed in Paragraphs II. A. and II. B. of this order in which either FNF or CT has any rights, title or interest, during the period prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order:

1. FNF 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.
2. FNF shall cause to be maintained in good faith all contracts or agreements for access to the title plants subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable under the terms of such contracts or agreements.
3. FNF shall cause access to the title plants to continue to be provided to accessors whose contracts or agreements for access to the title plants expire by their terms prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order, in good faith on terms, conditions and stipulations identical to those set forth in such contracts or agreements.

III.

IT IS FURTHER ORDERED that:

- A. If FNF has not, within four (4) months from the date the Consent Agreement is signed by Respondent, divested, sold, or otherwise permanently transferred, absolutely and in good faith and with the Commission's prior approval, all of the properties specified in Paragraphs II. A. and II. B. of this order or not obtained the admission to ownership specified in Paragraph II. B. of this order, the Commission may appoint a trustee to accomplish the actions specified in Paragraphs II. A. and Paragraph II. B. of this

order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, FNF shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the actions specified in Paragraphs II. A. and II. B of this order with respect to the properties or rights that have not been divested or sold or transferred by FNF, including the authority, subject to the approval of the Commission, with respect to any of the listed counties or local jurisdictions as to which divestiture or sale or transfer has not been completed by FNF, to determine whether to divest, sell, or transfer the rights, title and interest held by FNF prior to the Acquisition or the rights, title and interest held by CT prior to the Acquisition in title plants serving such county or local jurisdiction, and to determine, subject to the approval of the Commission, whether to accomplish the relief specified in Paragraph II. A. of this order through divestiture or sale of a Copy and whether to accomplish the relief specified in Paragraph II. B. of this order through divestiture or by obtaining a New Owner under the terms and conditions specified in Paragraph II. B. of this order, provided that if the trustee determines to accomplish the relief specified in Paragraph II. A. or Paragraph II. B. of this order through divestiture, Respondent may retain a copy of the divested assets, subject to the approval of the Commission.
 3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the

case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to accomplish the actions specified in Paragraphs II. A. and II. B. of this order.

4. The trustee shall have twelve (12) months from the date the Commission or a court approves the trust agreement described in Paragraph III. B. 3. to accomplish the actions specified in Paragraphs II. A. and II. B. of this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan to accomplish the specified actions or believes that the specified actions can be accomplished within a reasonable time, the period to accomplish the specified actions may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the properties or rights specified in Paragraphs II. A. and II. B. that have not been divested, sold, or transferred by FNF, and to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the specified actions. Any delays caused by Respondent in accomplishing the specified actions shall extend the trustee's period for accomplishing the specified actions under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest or sell at no minimum price. The transactions shall be made in the manner and with the acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall enter into transactions with the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided, however, that Respondent shall select such entity within five (5) business days of receiving notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys,

investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the transactions and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's completing the actions specified by Paragraphs II. A. and II. B. of this order with respect to the properties specified therein that have not been divested or sold or transferred by FNF.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the relief required by this order.
11. The trustee shall have no obligation or authority to operate or maintain the properties specified in Paragraphs II. A. and II. B.
12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this order becomes final, Respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:
1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction; or
 2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction.

Notification is not required to be made pursuant to this Paragraph IV. with respect to any acquisition by Respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and where competition in the ordinary course between the parties is not otherwise restrained.

- B. Notification pursuant to this Paragraph 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 IV. A. 1. or 2. 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 IV. A. 1. or 2. are applicable (including title plants in which the Respondent has a direct or indirect ownership interest as well as other title plants known to the Respondent), the names of all persons or entities who hold any direct or indirect ownership interest in the title plant and the percentage interest held by each; 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 twenty (20) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be 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.

V.

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 II. and III. 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, is complying, and has complied with Paragraphs II. and III. of 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. and III. 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 reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the accomplishment of the specified actions.
- B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the

Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV. of this order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VIII.

IT IS FURTHER ORDERED that this order shall terminate ten (10) years after the actions required by Paragraphs II. A. and II. B. of this order have been accomplished.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: February 17, 2000