

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )

Fidelity National Financial, Inc., )  
a corporation, and )

Lender Processing Services, Inc., )  
a corporation. )

File No. 131 0159



**AMENDED APPLICATION FOR APPROVAL OF PROPOSED DIVESTITURE  
OF THE FIVE TITLE PLANT ASSETS TO AMERITITLE, INC.**

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Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph III of the Decision and Order issued by the Commission on March 4, 2014 (the “Decision and Order”), Respondent Fidelity National Financial, Inc. (“Fidelity”) hereby withdraws its April 22, 2014 petition to approve the divestiture of the Title Plant Assets<sup>1</sup> to AmeriTitle, Inc. (“AmeriTitle”), and submits this amended petition to the Commission to approve the divestiture (the “Proposed Divestiture”) of a Copy of each Title Plant, and all rights associated with each Copy, owned or otherwise held by LPS prior to the Acquisition, covering each of the following Oregon counties: Clatsop, Columbia, Coos, Josephine, and Tillamook (the “Five Title Plant Assets”). The Five Title Plant Assets will be sold to AmeriTitle pursuant to the Purchase and Sale Agreement dated April 10, 2014 (the “Purchase Agreement”).<sup>2</sup> The executed Purchase Agreement is attached hereto as Confidential Exhibit A.

### **INTRODUCTION**

On May 28, 2013, Fidelity National Financial, Inc. (“Fidelity”) and Lender Processing Services, Inc. (“LPS”) entered into an Agreement and Plan of Merger pursuant to which Fidelity was to acquire LPS (the “Acquisition”). On or about December 13, 2013, Fidelity executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Maintain Assets (the “Consent Agreement”) to settle the Commission’s charges that the

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<sup>1</sup> Capitalized terms in this submission if not otherwise defined have the same meanings ascribed in the Decision and Order issued by the Commission in this matter.

<sup>2</sup> Although the Purchase Agreement includes sale of all six title plants comprising the Title Plant Assets (including Polk County), this petition seeks the Commission’s approval for the divestiture of only the Five Title Plant Assets. The divestiture of the Polk County title plant is addressed in a separate petition for the divestiture of a copy of the Polk County title plant to another purchaser, Old Republic Title Company of Oregon (“Old Republic”).

Fidelity will divest a copy of the Polk County title plant to Old Republic, allowing for Old Republic’s entrance as a competitor in Polk County. After the Polk County divestiture to Old Republic, there will be four independent title plant owners in Polk County, which was the number of independent title plant owners in existence in Polk County prior to the Acquisition.

proposed Acquisition would violate 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.

Specifically, the Commission's complaint alleges that Fidelity's acquisition of LPS may substantially lessen competition in the provision of Title Information Services in Clatsop, Columbia, Coos, Josephine, Polk, and Tillamook counties in Oregon; and the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties in Oregon.

The Commission accepted the Consent Agreement for public comment on December 23, 2013 by a vote of three to one, with Commissioner Wright dissenting, and issued the Order to Maintain Assets. On January 2, 2014, Fidelity acquired LPS. On March 4, 2014, the Commission issued the Decision and Order.

Pursuant to the terms of the Decision and Order, Fidelity must "divest the Title Plant Assets, absolutely and in good faith, at no minimum price, to an Acquirer that receives prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission." By this Application, Fidelity seeks approval to divest the Five Title Plant Assets to AmeriTitle. Approval of the Proposed Divestiture is appropriate because the Proposed Divestiture complies with the terms of the Decision and Order with respect to the Five Title Plant Assets, and achieves the purposes of the Commission in requiring the divestiture of the Five Title Plant Assets.

Fidelity accordingly requests that the Commission grant this Application and approve the Proposed Divestiture as soon as practicable.

**REQUEST FOR CONFIDENTIAL TREATMENT**

Because the confidential version of this application, including Confidential Exhibit A, contains confidential and competitively-sensitive business information relating to the

divestiture of the Five Title Plant Assets – the disclosure of which may prejudice Fidelity and AmeriTitle, cause harm to the ongoing competitiveness of the Five Title Plant Assets, and impair Fidelity’s ability to comply with its obligations under the Decision and Order – Fidelity has redacted such confidential information from the public version of this Application. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c), Fidelity requests that the confidential version of this application and the information contained herein be accorded confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2). The confidential version of this Application is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

**I. THE PURCHASE AND SALE AGREEMENT IS CONSISTENT WITH THE TERMS OF THE DECISION AND ORDER**

Paragraph III of the Decision and Order requires Fidelity to divest the Title Plant Assets to a purchaser approved by the Commission. Pursuant to this requirement, Fidelity proposes to sell the Five Title Plant Assets to AmeriTitle. On April 10, 2014, Fidelity entered into the Purchase Agreement to sell the Title Plant Assets to AmeriTitle. The Purchase Agreement complies with the requirements of Paragraph III of the Decision and Order with respect to the Five Title Plant Assets, and would thus meet Fidelity’s obligation to divest the Five Title Plant Assets absolutely and in good faith.

**A. The Purchase Agreement Divests the Five Title Plant Assets Absolutely and in Good Faith**

Paragraph III of the Decision and order requires that Fidelity “divest the Title Plant Assets[] absolutely and in good faith.” The Proposed Divestiture satisfies this requirement with respect to the Five Title Plant Assets. The Purchase Agreement provides that Fidelity “agrees to sell, transfer and deliver to [AmeriTitle], all right of Seller in and to the Copy [of the Title Plants to be divested] at the Closing.” Additionally, the form of Bill of Sale attached to the Purchase Agreement as Exhibit A and required to be delivered to AmeriTitle at or before the closing of the sale states that “Ticor Title Company of Oregon . . . hereby sells, assigns and delivers unto AmeriTitle, Inc. . . . a Copy of the Title Plants (as such terms are defined in the Purchase and Sale Agreement . . .).” Furthermore, Section 2 of the Purchase Agreement contains numerous representations and warranties of Fidelity, indicating that Fidelity is selling the Title Plant Assets in good faith. Thus, the Proposed Divestiture satisfies the requirement of the Decision and Order that Fidelity divest the Five Title Plant Assets “absolutely and in good faith.”

**B. Fidelity is Seeking Prior Approval of the Proposed Divestiture from the Commission**

Paragraph III of the Decision and Order requires that Fidelity “divest the Title Plant Assets . . . to an Acquirer that receives the prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives prior approval of the Commission.” By submitting this Application, Fidelity is respectfully requesting that the Commission approve AmeriTitle as the Acquirer of the Five Title Plant Assets and that the Commission approve the Purchase Agreement attached hereto as Confidential Exhibit A with respect to the divestiture of the Five Title Plant Assets. In addition, the Purchase Agreement conditions closing of the Proposed Divestiture on “qualification of [AmeriTitle] as an approved purchaser under any order, settlement, or other agreement of the Federal Trade Commission requiring Seller, or its parent or affiliates, to divest the Copy [of the Five Title Plant Assets].”

**C. The Proposed Divestiture Satisfies the Remaining Requirements of the Decision and Order**

In addition to the requirements described above, the Decision and Order requires that “[p]rior to the Divestiture Date, Respondents shall obtain all consents, approvals, and waivers from all Third Parties that are necessary to permit Respondents to divest each of the Title Plant Assets and transfer all associated rights to the Acquirer.” Indeed, the Purchase Agreement provides that “all consents or approvals required for Seller to enter into and consummate the transactions contemplated by this Agreement shall have been obtained” prior to the Proposed Divestiture of the Five Title Plant Assets. All such consents, approvals, and waivers have been obtained, and no further Third Party consents are necessary.

**II. THE PROPOSED DIVESTITURE WILL ACHIEVE THE PURPOSES OF THE DECISION AND ORDER**

As indicated in Paragraph III of the Decision and Order, “[t]he purpose of the divestiture of the Title Plant Assets is to remedy the lessening of competition in Title Information Services resulting from the Acquisition as alleged in the Commission’s Complaint.” In the Complaint, the Commission alleges that the Acquisition may substantially lessen competition in the provision of title information services “by increasing the likelihood of collusion or coordinated interaction in Clatsop, Columbia, Coos, and Tillamook counties, Oregon, where the proposed acquisition reduces the number of independent title plants from three to two.” This concern is addressed by the Proposed Divestiture. Selling the Five Title Plant Assets, which include Copies of the title plants covering these counties, to AmeriTitle will ensure competition remains at the level that existed prior to the Acquisition. After the Proposed Divestiture, there will be three independent title plants in these counties, which was the number of independent title plants in existence in these counties prior to the Acquisition.

Additionally, the Commission alleges that the Acquisition may substantially lessen competition in the provision of title information services “by increasing the likelihood of collusion or coordinated interaction in Josephine [county], Oregon, where the proposed acquisition reduces the number of independent title plants from four to three.” This concern is addressed by the Proposed Divestiture. After the Proposed Divestiture, there will be four independent title plants in Josephine County, which was the number of independent title plants in existence in this county prior to the Acquisition.

Thus, divesting the Five Title Plant Assets to AmeriTitle, will achieve the purposes of Paragraph III of the Decision and Order.

Furthermore, AmeriTitle is a qualified and viable purchaser of the Five Title Plant Assets. AmeriTitle has served real estate professionals in the Pacific Northwest for over twenty-five years,<sup>3</sup> growing from a single office to a regional network.<sup>4</sup> The company offers title insurance, escrow services, account services and other services.<sup>5</sup> Additionally, while AmeriTitle operates in many Oregon counties, it currently does not serve Clatsop, Columbia, Coos, Josephine or Tillamook Counties.<sup>6</sup> Thus, by acquiring the Five Title Plant Assets, AmeriTitle will become an additional entrant in these counties with the resources it needs to compete effectively.

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<sup>3</sup> AmeriTitle, Company Profile, *available at* [http://www.ameri-title.com/about/Company\\_Profile.php](http://www.ameri-title.com/about/Company_Profile.php).

<sup>4</sup> AmeriTitle, History, *available at* [http://www.ameri-title.com/about/AmeriTitle\\_History.php](http://www.ameri-title.com/about/AmeriTitle_History.php).

<sup>5</sup> *Id.*

<sup>6</sup> *See* AmeriTitle, “Counties We Serve,” <http://www.ameri-title.com/>.



CONCLUSION

Because the Proposed Divestiture is pro-competitive, in the public interest, addresses the competitive concerns raised in the Complaint and Decision and Order, fully complies with the terms of the Decision and Order, and for all of the additional reasons set forth above, Fidelity respectfully requests that the Commission approve the Proposed Divestiture.

Dated: New York, New York  
May 21, 2014

Respectfully submitted,

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**CONFIDENTIAL EXHIBIT A**

**[REDACTED]**