

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

)	
In the Matter of)	
)	
Fidelity National Financial, Inc.,)	
a corporation, and)	Docket No. C-4425
)	
Lender Processing Services, Inc.,)	
a corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by Respondent Fidelity National Financial, Inc. (“Fidelity”), of Respondent Lender Processing Services, Inc. (“LPS”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent 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 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 principal place of business located at 601 Riverside Avenue, Jacksonville, FL 32204.
2. Respondent LPS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 601 Riverside Avenue, Jacksonville, FL 32204.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondents, 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. “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; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Fidelity shall include LPS.
- B. “LPS” means Lender Processing Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its subsidiaries, divisions, joint ventures, groups, and affiliates in each case controlled by LPS; and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means any and all Persons approved by the Commission pursuant to Paragraphs II. and/or III. (or Paragraph IV., if applicable) of this Order.
- E. “Acquisition” means the acquisition by Fidelity of all of the outstanding common stock of LPS pursuant to the Agreement and Plan of Merger dated May 28, 2013.
- 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 Title Plant. A Copy will reproduce all of the records, indices, documents, and other information contained in the Title Plant, as of the Divestiture Date, and enable such information to be accessed no less quickly and no less conveniently than it could be using the Title Plant.
- G. “Divestiture Agreement” means any and all agreements between the Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer, and all amendments, exhibits, attachments, agreements, and schedules thereto,

that have been approved by the Commission pursuant to Paragraphs II. and/or III. (or Paragraph IV., if applicable) of this Order.

- H. “Divestiture Assets” means:
 - 1. Portland Title Agency Interest, and
 - 2. Title Plant Assets.
- I. “Divestiture Date” means each date on which Respondents (or a Divestiture Trustee) fully complete the divestiture of each of the Divestiture Assets, as applicable, as required by Paragraphs II. and/or III. (or Paragraph IV., if applicable) of this Order.
- J. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to Paragraph IV. of this Order.
- K. “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.
- L. “Portland Title Agency” means Portland Title Agency, LLC, a wholly-owned subsidiary of Fidelity.
- M. “Portland Title Agency Interest” means the Title Plant Interest held by Portland Title Agency in the Tri-County Title Plant.
- N. “Respondents” means Fidelity and LPS, individually and collectively.
- O. “Third Party” means any non-governmental Person other than the Respondents or each Acquirer.
- P. “Title Information Services” means providing selected information contained in a Title Plant to a customer or user or permitting a customer or user to have access to information contained in a Title Plant.
- Q. “Title Plant” means a privately-owned collection of records and/or indices regarding the ownership of and interests in real property. Title Plants include 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.
- R. “Title Plant Assets” means 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 Oregon counties listed below:
 - 1. Clatsop,
 - 2. Columbia,
 - 3. Coos,

4. Josephine,
 5. Polk, and
 6. Tillamook.
- S. “Title Plant Interest” means any and all rights, present or contingent, of a Person to hold any membership or partnership share, voting or nonvoting stock, share capital, equity or other interests, and/or beneficial ownership of a Title Plant.
- T. “Tri-County Title Plant” means the joint venture Title Plant established pursuant to the Tri-County Title Plant Partnership Agreement, effective as of October 15, 1992, and all amendments, exhibits, and attachments thereto, which 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.

II.

IT IS FURTHER ORDERED that:

- A. Not later than five (5) months after the date this Order is issued, Respondents shall divest the Portland Title Agency Interest, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission; *provided, however*, that no proposed divestiture of the Portland Title Agency Interest to a Person that owns or controls a Title Plant Interest in the Tri-County Title Plant at the time of the divestiture will be approved if that Person’s Title Plant Interest, when combined with the Portland Title Agency Interest and the Respondents’ Title Plant Interests in the Tri-County Title Plant, would equal or exceed 70% of the outstanding Title Plant Interests in the Tri-County Title Plant.
- B. Prior to the Divestiture Date, Respondents shall obtain all consents, approvals, and waivers from all Third Parties that are necessary to permit Respondents to divest the Portland Title Agency Interest and transfer all associated rights to the Acquirer.
- C. Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, exercise any of their voting rights, or influence any other partners to exercise any of their voting rights, under Section 11.01(f) of the Tri-County Title Plant Partnership Agreement (as reflected in the version of the agreement in effect as of the date Respondents execute the Agreement Containing Consent Orders), to expel the Acquirer of the Portland Title Agency Interest.
- D. The purpose of the divestiture of the Portland Title Agency Interest is to ensure the continuation of the Portland Title Agency Interest as an independent interest in the Tri-County Title Plant and to remedy the lessening of competition in Title Information Services resulting from the Acquisition as alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Not later than five (5) months after the date this Order is issued, Respondents shall divest the Title Plant Assets, absolutely and in good faith, at no minimum price, to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.
- B. Prior 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 each Acquirer.
- C. The 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.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations of Paragraphs II. and III. to divest all of the Divestiture Assets, the Commission may appoint a trustee ("Divestiture Trustee") to complete the divestiture of any remaining Divestiture Assets in a manner that satisfies the requirements 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission,

transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, Paragraphs II. and III. of this Order.

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, Paragraphs II. and III. of this Order.
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, 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 to divest or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 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 Divestiture Assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph for a time period 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 Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to each Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, 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 Respondents, 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.
 6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the specified divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each of the divestitures required by this Order.

V.

IT IS FURTHER ORDERED that, until Respondents fully comply with Paragraphs II.A., II.B, III.A., and III.B. (and Paragraph IV., if applicable) of the Decision and Order, Respondents shall:

- A. Take such actions as are necessary to maintain the viability and marketability of the Divestiture Assets and the Tri-County Title Plant and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Assets and the Tri-County Title Plant except for ordinary wear and tear;
- B. Not sell, transfer, encumber, or otherwise impair the Divestiture Assets (other than as required by this Order) and the Tri-County Title Plant nor take any action that lessens their viability, marketability, or competitiveness; and
- C. Maintain the Divestiture Assets and the Tri-County Title Plant in the regular and ordinary course of business and in accordance with past practice, and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Assets and the Tri-County Title Plant to the extent and in the manner maintained prior to the Acquisition, including, but not limited to, updating the records and/or indices contained in the Divestiture Assets and the Tri-County Title Plant and not compromising the ability and suitability of the Title Plant Assets and the Tri-County Title Plant to meet Oregon state requirements for title insurers and title insurance producers.

VI.

IT IS FURTHER ORDERED that:

- A. No Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.
- B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondents shall comply with all terms of each Divestiture Agreement, and any breach by Respondents of any term of a Divestiture Agreement shall constitute a failure to comply with this Order. If any term of a Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.

VII.

IT IS FURTHER ORDERED that:

- A. For a period of ten (10) years from the date this Order becomes final, Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission, acquire any:
1. Title Plant covering any county in Oregon, if, as a result of such acquisition, there would be three (3) or fewer independent Title Plants covering the county;
 2. Title Plant Interest of any Title Plant covering any county in Oregon:
 - a. if, as a result of such acquisition, when aggregated with any and all Title Plant Interests already owned or otherwise held by Respondents in such Title Plant, Respondents would own or otherwise hold an interest of fifty (50) percent or more in such Title Plant; or
 - b. if, as a result of such acquisition, there would be three (3) or fewer independent Title Plant Interest holders in such Title Plant.
- B. The prior notification required by this Paragraph VII. 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 Respondents 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, Respondents shall submit the following supplemental information in Respondents’ possession or reasonably available to Respondents:
1. The name of each county to which the terms of Paragraph VII.A. are applicable;
 2. A description of the Title Plant or Title Plant Interest that is being acquired; and
 3. With respect to each Title Plant covering each county to which the terms of Paragraph VII.A. are applicable (including all Title Plants in which the Respondents own or otherwise hold a direct or indirect Title Plant Interest, as well as other Title Plants known to the Respondents), the names of all Persons that own or otherwise hold any direct or indirect Title Plant 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 title insurance producers, who have access to the Title Plant.

- C. Respondents 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), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph VII. 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.

VIII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is issued and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II. and III. (and Paragraph IV., if applicable) of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall include in their 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. (and Paragraph IV., if applicable) of this Order, including a description of all substantive contacts or negotiations for accomplishing the specified actions and the identity of all parties contacted. Respondents shall include in their 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 and obligations.
- B. One (1) year from the date this Order is issued, annually for the next nine (9) years on the anniversary of the date this Order is issued, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of a Respondent;

- B. Any proposed acquisition, merger, or consolidation of a Respondent; or
- C. Any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and five (5) days' notice to a Respondent, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours and in the presence of counsel, to all facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent relating to compliance with this Order, which copying services shall be provided by such Respondent at its expense; and
- B. To interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which this Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: