

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 PORTLAND TITLE AGENCY INTEREST
AND THE POLK COUNTY TITLE PLANT ASSETS TO
OLD REPUBLIC TITLE COMPANY OF OREGON**

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

*Counsel for Respondent Fidelity National
Financial, Inc.*

TABLE OF CONTENTS

INTRODUCTION1

REQUEST FOR CONFIDENTIAL TREATMENT2

I. THE PURCHASE AND SALE AGREEMENT IS CONSISTENT WITH THE
TERMS OF THE DECISION AND ORDER3

A. The Purchase Agreement Divests the Portland Title Agency Interest and
Polk County Title Plant Assets Absolutely and in Good Faith4

B. Fidelity is Seeking Prior Approval of the Proposed Divestiture from the
Commission4

C. The Proposed Divestiture Satisfies the Ownership Limitations Contained
in the Decision and Order5

D. The Proposed Divestiture Satisfies the Remaining Requirements of the
Decision and Order5

II. THE PROPOSED DIVESTITURE WILL ACHIEVE THE PURPOSES OF THE
DECISION AND ORDER6

CONCLUSION8

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 II of the Decision and Order issued by the Commission on March 4, 2014 (the “Decision and Order”), Respondent Fidelity National Financial, Inc. (“Fidelity”) hereby respectfully petitions the Commission to approve the divestiture (the “Proposed Divestiture”) of (1) the Portland Title Agency Interest¹ to Old Republic Title Company of Oregon (“Old Republic”) and (2) the Title Plant covering Polk County, and all rights associated with each Copy, owned or otherwise held by LPS prior to the Acquisition (the “Polk County Title Plant Assets”). The Portland Title Agency Interest and Polk County Title Plant Assets will be sold to Old Republic pursuant to the Amended and Restated Purchase and Sale Agreement dated May 14, 2014 (the “Purchase Agreement”). 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 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

¹ 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.

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 Portland Title Agency Interest, 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.” and must “divest the [Polk County] 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 Portland Title Agency Interest and Polk County Title Plant Assets to Old Republic. Approval of the Proposed Divestiture is appropriate because the Proposed Divestiture complies with the terms of the Decision and Order and achieves the purposes of the Commission in requiring the divestiture of the Portland Title Agency Interest and Polk County 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 Portland Title Agency Interest – the disclosure of which may prejudice Fidelity

and Old Republic 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

Paragraphs II and III of the Decision and Order require Fidelity to divest the Portland Title Agency Interest and Polk County Title Plant Assets to a purchaser approved by the Commission. Pursuant to this requirement, Fidelity proposes to sell the Portland Title Agency Interest and Polk County Title Plant Assets to Old Republic. On May 14, 2014, Fidelity entered into the Purchase Agreement to sell the Portland Title Agency Interest and Polk County Title Plant Assets to Old Republic. The Purchase Agreement complies with the requirements of Paragraphs II and III of the Decision and Order, and would thus meet Fidelity's obligation to divest the Portland Title Agency Interest and Polk County Title Plant Assets absolutely and in good faith.

A. The Purchase Agreement Divests the Portland Title Agency Interest and Polk County Title Plant Assets Absolutely and in Good Faith

Paragraphs II and III of the Decision and Order require that Fidelity “divest the Portland Title Agency Interest[] and Polk County Title Plant Assets “absolutely and in good faith.” The Proposed Divestiture satisfies this requirement. The Purchase Agreement provides that Fidelity “agrees to sell, transfer and deliver to [Old Republic], all right of Seller in and to the Partnership Interest . . . [and] the Copy [of the Polk County Title Plant] at the Closing.”

Additionally, the form of Partnership Interest Transfer attached to the Purchase Agreement as Exhibit A and required to be delivered to Old Republic at or before the closing of the sale states that “Portland Title Company, LLC[] hereby sells, assigns and delivers unto Old Republic Title Company of Oregon its partnership interest . . . of Tricounty Title Plant.” Furthermore, Section 2 of the Purchase Agreement contains numerous representations and warranties of Fidelity, indicating that Fidelity is selling the Portland Title Agency Interest and Polk County Title Plant Assets in good faith. Thus, the Proposed Divestiture satisfies the requirement of the Decision and Order that Fidelity divest the Portland Title Agency Interest and Polk County Title Plant Assets “absolutely and in good faith.”

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

Paragraphs II and III of the Decision and Order requires that Fidelity “divest the Portland Title Agency Interest . . . [and] Polk County 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 Old Republic as the Acquirer and that the Commission approve the Purchase Agreement attached hereto as Confidential

Exhibit A. In addition, the Purchase Agreement conditions closing of the Proposed Divestiture on “qualification of [Old Republic] as an approved purchaser under any order, settlement, or other agreement of the Federal Trade Commission requiring Seller, or its parent or affiliates, to (A) divest an interest in the Tricounty Plant and (B) transfer a Copy of the Polk Title Plant.”

C. The Proposed Divestiture Satisfies the Ownership Limitations Contained in the Decision and Order

Paragraph II of the Decision and Order states “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.” The Proposed Divestiture satisfies this condition. The proposed Acquirer, Old Republic, currently does not own or control any Title Plant Interest in the Tri-County Plant.

D. 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 the Portland Title Agency Interest . . . [and the Polk County] Title Plant Assets and transfer all associated rights to the Acquirer.” All such consents, approvals, and waivers will be obtained prior to the Divestiture Date. Specifically, Prior to the Divestiture Date, Fidelity will obtain an amendment to the Tri-County Title Plant Partnership Agreement necessary to allow the sale of the Portland Title Agency Interest to Old Republic. Additionally, 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.

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

As indicated in Paragraph II of the Decision and Order, “[t]he 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.” In the Complaint, the Commission alleges that Fidelity’s acquisition of LPS may substantially lessen competition in the provision of title information services in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties in Oregon. Specifically, the Commission alleges that the Acquisition may substantially lessen competition in the provision of title information services in the tri-county Portland metropolitan area consisting of Clackamas, Multnomah, and Washington counties, Oregon “by increasing the likelihood of collusion or coordinated interaction [because] . . . the proposed acquisition reduces the number of joint title plant owners necessary to expel other owners from the joint title plant.” 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 . . . Polk [County], Oregon, where the proposed acquisition reduces the number of independent title plants from four to three.”

The Commission’s concerns are addressed by the Proposed Divestiture. Old Republic is independent from the other partners in the Tri-County Title Plant. By divesting the Portland Title Agency Interest to Old Republic, the number of joint title plant owners necessary to expel other owners from the joint title plant remains the same as it was prior to the

Acquisition. Thus, divesting the Portland Title Agency Interest to Old Republic will ensure competition remains at the level that existed prior to the Acquisition and will achieve the purposes of Paragraph II of the Decision and Order.

Additionally, after the Proposed Divestiture and Old Republic's acquisition of the Polk County Title Plants Assets, Old Republic will become the fourth owner of an independent title plant in Polk County, restoring the number of independent title plant owners in Polk County to the number of independent title plant owners in existence in the county prior to the Acquisition.

Furthermore, Old Republic is a qualified and viable purchaser of the Portland Title Agency Interest and Polk County Title Plant Assets. Old Republic's parent, Old Republic International Corporation, is a Fortune 500 company and "one of the 50 largest publicly held insurance organizations."² Old Republic Title Insurance Group has "[f]or 21 straight years . . . earned the highest overall financial strength ratings in the title insurance industry."³ Old Republic itself has both an Agency Division and Underwriting Division in Portland, Oregon.⁴ It offers title services (including title insurance), centralized services, escrow services and trustee services, among other things.⁵ Old Republic's independent involvement in title insurance underwriting and related businesses in Portland, coupled with its participation in the Tri-County Plant and use of the Polk County Title Plant, will make it a strong competitor in the relevant markets.

² Old Republic Title Insurance Company, About: Parent Company, *available at* <https://www.ortconline.com/web/about/parentcompany/default.aspx?sid=&>.

³ Old Republic Title Insurance Group, 2012 Annual Report 4, *available at* Old Republic Title Insurance Group.

⁴ Old Republic National Title Insurance Company, About: Oregon, *available at* <https://www.ortconline.com/web/about/locations/oregon/default.aspx?sid=&>.

⁵ Old Republic Title Company, Products and Services, *available at* <https://www.ortconline.com/web/productsservices/default.aspx?sid=>.

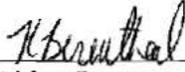
CONCLUSION

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,

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By:  _____
Aidan Synnott
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000
asynnott@paulweiss.com

Karen Berenthal
2001 K Street, N.W.
Washington, D.C. 20006
kberenthal@paulweiss.com

*Counsel for Respondent Fidelity National
Financial, Inc.*

CONFIDENTIAL EXHIBIT A

[REDACTED]