

**MARKET CONDUCT REPORT ON EXAMINATION**

**OF**

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

**LAWYERS TITLE INSURANCE CORPORATION**

**TRANSNATION TITLE INSURANCE COMPANY**

**TRANSNATION TITLE INSURANCE COMPANY OF NEW YORK**

**AS OF**

**DECEMBER 31, 2005**

**DATE OF REPORT:**

**JANUARY 26, 2009**

**EXAMINER:**

**Kamal Mohamed**

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

*I, HOWARD MILLS, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:*

**Kamal Mohamed**

*as proper person to examine into the affairs of the*

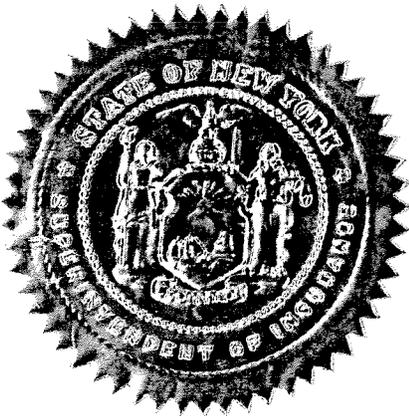
**Commonwealth Land Title Insurance Company**

*and to make a report to me in writing of the condition of the said*

**Title Insurance Company**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York,*



*this 30<sup>th</sup> day of May, 2006*

A handwritten signature in cursive script, appearing to read "Howard Mills", written over a horizontal line.

**HOWARD MILLS**  
*Superintendent of Insurance*

*STATE OF NEW YORK  
INSURANCE DEPARTMENT*

*I, HOWARD MILLS, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:*

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**Lawyers Title Insurance Corporation**

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*this 30<sup>th</sup> day of May, 2006*

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**HOWARD MILLS**  
*Superintendent of Insurance*

*Appointment No 22509*

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

*I, HOWARD MILLS, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:*

**Kamal Mohamed**

*as proper person to examine into the affairs of the*

**Transnation Title Insurance Company**

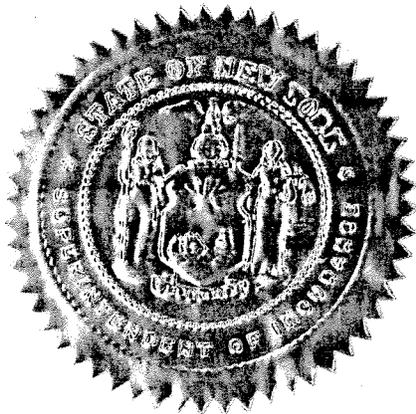
*and to make a report to me in writing of the condition of the said*

**Title Insurance Company**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*

*this 30<sup>th</sup> day of May, 2006*



*Howard Mills*  
\_\_\_\_\_  
**HOWARD MILLS**  
*Superintendent of Insurance*

STATE OF NEW YORK  
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**Kamal Mohamed**

*as proper person to examine into the affairs of the*

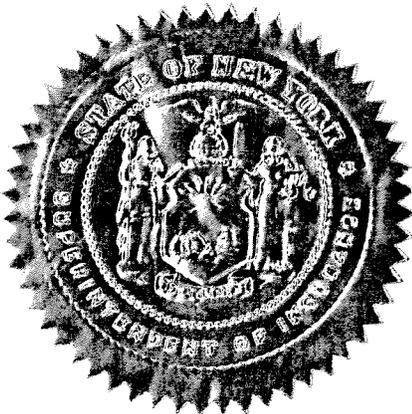
**Transnation Title Insurance Company of New York**

*and to make a report to me in writing of the condition of the said*

**Title Insurance Company**

*with such other information as he shall deem requisite.*

*In Witness Whereof, I have hereunto subscribed by the  
name and affixed the official Seal of this Department, at  
the City of New York,*



*this 30<sup>th</sup> day of May, 2006*

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HOWARD MILLS  
Superintendent of Insurance

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NY 10004

January 26, 2009

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the provisions of the New York Insurance Law, and acting in accordance with directions contained in Appointment Numbers 22506, 22507, 22508 and 22509 dated May 31, 2006 and annexed hereto, I have made an examination into the affairs of Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation, Transnation Title Insurance Company of New York and Transnation Title Insurance Company ("the Companies"), four for-profit title insurance companies licensed in the State of New York pursuant to the provisions of Article 64 of the New York Insurance Law. During the period of the examination, the aforementioned companies were wholly-owned title insurance company subsidiaries of LandAmerica Financial Group, Inc. The following report addresses findings concerning the manner in which the Companies conduct their business practices and fulfill their contractual obligations to the policyholders.

Whenever the term "the Companies" appears herein without qualification, it should be understood to collectively refer to Commonwealth Land Title Insurance Company ("Commonwealth"), Lawyers Title Insurance Corporation ("Lawyers Title"), Transnation Title

Insurance Company of New York (“Transnation-NY”) and Transnation Title Insurance Company (“Transnation”).

Whenever the term “LandAmerica” appears herein without qualification, it should be understood to collectively refer to LandAmerica Financial Group, Inc., the ultimate parent of the title insurers under examination.

Wherever the term "Department" appears herein without qualification, it should be understood to mean the New York Insurance Department.

## **1. SCOPE OF EXAMINATION**

Pursuant to New York Insurance Law (“NYIL”) §309(a), the superintendent may conduct an examination “into the affairs of any insurance corporation or other insurer doing or authorized to do any insurance business in this state.” In conjunction with a joint investigation by the New York Attorney General’s Office and the Department into title insurance industry practices, the Department conducted an examination of four title insurance companies, wholly-owned by LandAmerica, that are licensed to do title insurance business in New York. The examination focused on the manner in which those companies conduct their businesses and fulfill their contractual obligations to their policyholders. Unless stated otherwise, this examination covers the three-year period from January 1, 2003 through December 31, 2005, and is limited in scope to the review of underwriting and rating of policies insuring residential and commercial properties located in the State of New York, the accounting treatment for national commercial accounts, and rebating.

## **2. EXECUTIVE SUMMARY**

The examination revealed the following deficiencies and resulted in the following findings and violations of the NYIL:

- The Companies failed to rate policies properly by repeatedly charging rates both above and below the filed rates, in violation of NYIL §6409(b) and 11 NYCRR Part 160 (Regulation 57);
- The Companies failed to file certain policy forms with the Department in violation of

NYIL §6409(a);

- The Companies engaged in blending and delayed blending of premiums on transactions involving New York properties, resulting in improper accounting and a discount of premium in connection with New York properties in violation of NYIL §§6409(b) and (d); and
- The Companies were unable to produce certain policy files requested by the Department's examiners, and produced incomplete files, in violation of 11 NYCRR Part 243 (Regulation 152).

### **3. BACKGROUND**

Article 64 of the NYIL governs the title insurance industry in New York. NYIL §6409(b) provides that every title insurer in New York must file with the superintendent a rate manual that sets forth "its basic schedule of rates and classification of risks [and] its rating plan and rules, in connection with the writing or issuance of title insurance." Article 23 of the NYIL, which governs rate filings by property/casualty companies, and specifically NYIL §2306, allows insurers to discharge their rate filing obligations by using rates and rate information prepared by a designated rate service organization. Currently, the rate service organization licensed to prepare and file title insurance premiums in New York is Title Insurance Rate Service Association, Inc. ("TIRSA"). The Companies are all members of TIRSA, which files proposed rates, published in the TIRSA rate manual, on behalf of all of its members.

While all licensed title insurers must report annual statistics to TIRSA, title insurers are not required to follow the TIRSA manual, but instead may file for a deviation above or below the

filed rates. Indeed, NYIL §6409(b) provides that “[a]fter any such filing no such corporation shall, in connection with the writing or issuance of any such policy, deviate from the rates, classifications of risks and rules last filed by it, either by making any reduction in rates without having filed the same as herein provided, or by way of any discriminations in favor of or against any insured”. For the period of this examination, no deviations were requested by the Companies.<sup>1</sup>

#### **4. UNDERWRITING AND RATING**

The underwriting and rating portion of the examination was conducted at LandAmerica’s office located at 140 East 45th Street in New York City.

The review focused on the underwriting and rating of policies insuring properties located in the State of New York. Only three companies, Lawyers Title, Commonwealth, and Transnation-NY, qualified for the rating review. The fourth company, Transnation, an accredited reinsurer in New York, did not write any direct premium in New York, and accordingly was excluded from the rating review.

The Companies used the TIRSA manual to rate the title policies. Those rates were approved by the Department on November 5, 2001. The TIRSA manual contains a schedule of premium rates for policies written in New York. The manual includes different rates for the two zones in New York (Zone 1 (upstate) and Zone 2 (downstate)); different rates for owner’s, loan, and refinance policies; and discounted rates for certain policies (including the simultaneous issue

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<sup>1</sup> Subsequent to the review period, and following the requests for a downward deviation of 15% on all owner’s policies insuring a purchase price of up to \$1 million, made by two major title insurance companies licensed in New York as a result of the joint investigation by the New York Attorney General and the Department, the Companies, in

of an owner's and loan policy and certain refinancing policies).

The samples selected for the rating review were from the period January 1, 2005 through December 31, 2005.

#### **A. Rating Review**

NYIL §6409(b) provides that after a title insurance corporation files its rates with the Department, the corporation shall not deviate from those rates. The Department finds that during the period of review, the Companies failed to comply with NYIL §6409(b) by charging incorrect rates, both higher and lower than those filed with the Department.

For the period under review, Lawyers Title wrote 40,216 owner's, loan, and refinance policies. From that population, forty policies were selected for review. Thirty-nine policies were produced, and one policy file could not be located. The results of the Department's review indicated that for sixteen of the thirty-nine policies, Lawyers Title failed to charge the correct rate, in violation of NYIL §6409(b). Of the sixteen policies rated incorrectly, seven were rated in excess of the filed rates, while nine policies were undercharged. In addition, the files for two policies were deficient and did not contain sufficient information to determine the correct rate. The overcharges ranged from \$136 to \$488.

Commonwealth wrote 75,171 owner's, loan, and refinance policies during the period under review. From that population, forty policies were selected for review by the Department. The results of the Department's review indicated that for fourteen of the forty policies, Commonwealth failed to charge the correct rate, in violation of NYIL §6409(b). Of the fourteen policies rated incorrectly, eight were rated in excess of the filed rates. These overcharges ranged

from \$24 to \$333. Six policies were undercharged, three of which were materially different from the filed rate. In addition, three policy files did not contain sufficient information to determine the correct rate.

For the period under review, Transnation-NY wrote 4,142 owner's, loan, and refinance policies. Twenty of those policies were selected for review. The results of the Department's review indicated that for eleven of the twenty policies, Transnation-NY failed to charge the correct rate, in violation of NYIL §6409(b). Of the eleven policies rated incorrectly, seven were overcharged while four policies were undercharged. The overcharges ranged from \$61 to \$432.50. In addition, one policy file did not have sufficient information to determine the correct rate.

In addition to violating NYIL §6409(b), by failing to establish adequate procedures to minimize the occurrence of improperly charged rates, the Companies have run afoul of Section 160.2(g) of Regulation 57, which requires that such procedures be established. The Department recommends that LandAmerica institute procedures for proper policy rating, to ensure compliance with NYIL §6409(b) and Regulation 57, within 90 days of the filing of this report, and that LandAmerica provide a copy of such procedures to the Department. In addition, the Department recommends that LandAmerica conduct a review on an annual basis to verify compliance with NYIL §6409(b). That review should be conducted for each calendar year, prior to April 30<sup>th</sup> of the subsequent year, and the results of such review must be made available to the Department upon request.

Subsequent to the Department's review, Fidelity National Financial, Inc ("Fidelity") acquired control of the Companies. The Department has been advised by representatives of Fidelity that the Companies will be subject to New York rate compliance standards established

for the Fidelity title insurers licensed to write business in New York.

A summary of violations is set forth in the following table:

| <u>Section of Law/Regulation</u>  | <u>Type of violation</u>   | <u>Policies reviewed</u>                  | <u>Violations</u> |
|---|--|---|-------------------|
| A. No corporation shall deviate from filed rates<br>NYIL §6409(b)   | Failure to charge filed rates by<br>Lawyers  | 39 policies reviewed by the<br>Department | 16                |
|   | Failure to charge filed rates by<br>Commonwealth   | 40 policies reviewed by the<br>Department | 14                |
|   | Failure to charge filed rates by<br>Transnation-NY   | 20 policies reviewed by the<br>Department | 11                |
| B. Insurers shall establish adequate procedures to minimize the occurrence of improperly charged rates<br><br>Regulation 57 §160.2(g) | Failure to establish adequate rate verification procedures<br><br>Lawyers Title,<br>Commonwealth,<br>and Transnation |   | 3                 |

### **B. Coinsurance Manuscript Forms**

NYIL §6409(a) states that no title insurance policy may be issued or delivered in this state unless a copy of the form has been filed with the Superintendent. The coinsurance manuscript form is an endorsement that is made part of the policy and is subject to all the terms and provisions of the underlying policy. It is used when multiple title insurers share a title insurance risk. The coinsurance manuscript form specifies to the insured the amount of title insurance being afforded by each title insurer, and provides that each of the coinsurers is liable to

the insured only for its portion of loss as set forth in the coinsurance manuscript form.

Lawyers Title and Commonwealth failed to comply with NYIL §6409(a) by using coinsurance manuscript forms on policies issued in New York that had never been filed with the Department. (Based upon the information provided to the Department by LandAmerica, there is no indication that Transnation-NY issued coinsurance manuscript forms in New York.)

LandAmerica advised the Department that coinsurance manuscript forms are usually used in New York in connection with title policies where premiums exceed \$5 million. LandAmerica further advised the Department that during the review period, Lawyers Title issued 300 policies in New York in excess of \$5 million, and that Commonwealth issued 712 such policies. From the population of coinsurance policies, the Department selected sixty policies for review; however, one selected file did not exist and accordingly, the sample was reduced to fifty-nine policies. Nine policies from this fifty-nine policy sample were found to include a coinsurance manuscript form, indicating an error rate of 15.3%. Based upon this 15.3% error rate, the Department projected the number of violations for issuing coinsurance manuscript forms not filed with the Department to be 46 for Lawyers Title (15.3% error rate times 300 policies issued in New York where coinsurance forms would be included), and 109 for Commonwealth (15.3% error rate times 712 policies issued in New York where coinsurance forms would be included).

A summary of violations is set forth in the following table:

| <u>Section of Law/Regulation</u>  | <u>Type of violation</u>                                       | <u>Policies reviewed</u>               | <u>Percentage of violation</u> | <u>Violations</u> |
|---|--|--|--------------------------------|-------------------|
| No policy shall be issued or delivered in New York unless a copy of the form has been filed | Failure to file coinsurance forms by Lawyers and Commonwealth, | 59 policies reviewed by the Department | 15.3%                          | 9                 |

| <u>Section of Law/Regulation</u> | <u>Type of violation</u>                          | <u>Policies reviewed</u>            | <u>Percentage of violation</u> | <u>Violations</u> |
|----------------------------------|---|-------------------------------------|--------------------------------|-------------------|
| NYIL §6409(a)                    | error rate of 15.3%                               |                                     |                                |                   |
|                                  | Failure to file coinsurance forms by Lawyers      | Company self report<br>300 policies | 15.3%                          | 46                |
|                                  | Failure to file coinsurance forms by Commonwealth | Company self report<br>712 policies | 15.3%                          | 109               |

The Department recommends that LandAmerica institute procedures for the filing of all coinsurance manuscript forms with the Department, within 90 days of the filing of this report, to ensure compliance with NYIL §6409(a), and that LandAmerica provide a copy of such procedures to the Department.

## **5. NATIONAL ACCOUNTS**

The Department reviewed the manner in which Commonwealth and Lawyers Title underwrote and provided discounts by providing blended or delayed blended premiums for large, commercial multi-state transactions. The Department's review found that only Lawyers Title and Commonwealth had established accounts to account internally for the difference in premiums charged and premiums required to be collected. In addition, supporting documents for all sampled policies for national accounts indicated that these policies were issued by either Commonwealth or Lawyers Title. Accordingly, Transnation-NY was not included in this review.

### **A. Blended Transactions**

A blended transaction typically involves a large commercial real estate transaction that includes properties in both regulated and unregulated states. In those situations, Commonwealth

and Lawyers Title often would give the customers discounts on premiums for policies insuring properties in unregulated states by allocating premiums from policies insuring properties in the regulated states to account for the discounted premiums. Because the premium could not be discounted directly in a regulated state such as New York, LandAmerica would pool together the premiums for the properties in the regulated and unregulated states and create a “blended” rate which constituted a discount for the entire transaction. The amount of the premium paid in the regulated state was reported in full, but the amount charged in the unregulated state was heavily discounted and could be “zeroed out” (i.e., discounted to zero).

Commonwealth and Lawyers Title indicated they had blended arrangements with 11 customers during the examination period of January 1, 2003 to December 31, 2005, and provided the worksheets, called “bidmasters”, for the 11 portfolios in which discounted rates were charged. Commonwealth and Lawyers Title also provided a listing of 46,949 commercial transactions closed during the examination period.

The 11 bidmasters for policies insuring properties in multiple states, including New York, showed premiums and fees totaling \$7,099,751, for which Commonwealth and Lawyers Title gave a total discount of \$1,338,888--approximately 19% of premiums and fees charged. The specifics for the 11 bidmasters are set forth in the chart below:

| <u>Portfolio</u> | <u>Total Portfolio Premiums and Fees Charged</u> | <u>Total Portfolio Premiums and Fees Paid by Customer</u> | <u>Discount of Premiums and Fees given to Customer</u> | <u>Percent of Discount</u> | <u>Number of transactions</u> | <u>Number of NY transactions</u> | <u>NY Premiums and fees Paid by Customer</u> | <u>Percent of NY Premium to Total Premium &amp; Fees</u> |
|------------------|--|---|--|----------------------------|-------------------------------|----------------------------------|--|--|
| 1                | 605,386  | 592,671   | 12,715   | 2%                         | 14                            | 1                                | \$304,603                                    | 51%  |
| 2                | 165,288  | 154,047   | 11,241   | 7%                         | 8                             | 1                                | \$29,190                                     | 19%  |

| <u>Portfolio</u> | <u>Total Portfolio Premiums and Fees Charged</u> | <u>Total Portfolio Premiums and Fees Paid by Customer</u> | <u>Discount of Premiums and Fees given to Customer</u> | <u>Percent of Discount</u> | <u>Number of transactions</u> | <u>Number of NY transactions</u> | <u>NY Premiums and fees Paid by Customer</u> | <u>Percent of NY Premium to Total Premium &amp; Fees</u> |
|------------------|--|---|--|----------------------------|-------------------------------|----------------------------------|--|--|
| 3                | 390,186  | 348,446   | 41,740   | 11%                        | 95                            | 4                                | \$4,204                                      | 1%   |
| 4                | 242,041  | 215,319   | 26,722   | 11%                        | 5                             | 1                                | \$91,945                                     | 43%  |
| 5                | 130,982  | 110,612   | 20,370   | 16%                        | 2                             | 1                                | \$110,612                                    | 100%   |
| 6                | 514,452  | 474,452   | 40,000   | 8%                         | 4                             | 1                                | \$198,196                                    | 42%  |
| 7                | 1,576,595  | 1,044,245   | 532,350  | 34%                        | 12                            | 1                                | \$20,065                                     | 2%   |
| 8                | 734,198  | 449,566   | 284,632  | 39%                        | 75                            | 2                                | \$14,052                                     | 3%   |
| 9                | 964,570  | 799,505   | 165,065  | 17%                        | 24                            | 1                                | \$91,995                                     | 12%  |
| 10               | 911,716  | 846,941   | 64,775   | 7%                         | 24                            | 1                                | \$104,774                                    | 12%  |
| 11               | 864,337  | 725,059   | 139,278  | 16%                        | 12                            | 1                                | \$194,476                                    | 27%  |
|                  |  |   |  |                            |                               |                                  |  |  |
| <b>Total</b>     | <b>7,099,751</b>                                 | <b>5,760,863</b>  | <b>1,338,888</b>                                       | <b>19%</b>                 | <b>275</b>                    | <b>15</b>                        | <b>\$1,164,112</b>                           | <b>20%</b>   |

Because the Companies had to show a premium charge in the unregulated state—despite having heavily discounted the premium for blending purposes—the Companies created the following accounting treatment for the blended transactions: The local offices of Commonwealth and Lawyers Title involved in blended portfolios would record premiums, liabilities, fees, taxes and expense information in their production systems for the respective properties. The revenue and expense information was linked to a revenue recognition system which fed into the general ledger. Since the premium deficits were made up at the parent company level, Commonwealth and Lawyers Title reported the full premiums charged on the blended portfolios, without discounts, as title insurance premiums earned, at line 1.1 of the

Operations and Investment Exhibit of the Annual Statement that was filed with state regulators.

After all the transactions included in a particular blended premium closed, LandAmerica's national commercial service office, which oversees multi-state transactions, would request payment from LandAmerica's Shared Resource Center, for the difference between the premium that was charged in an unregulated state and what would have been charged had no discount been given. In response, the Shared Resource Center produced checks for the discounted amounts and sent them to the local offices of Commonwealth and Lawyers Title. LandAmerica recorded amounts paid by the Shared Resource Center in the general ledgers of Commonwealth and/or Lawyers Title as contra-revenue. LandAmerica then recorded that amount of contra-revenue as reductions of income, and included it as part of its entry for "other title fees and service charges" on line 1.3 of the Operations and Investment Exhibit of the Annual Statement filed with state regulators.

Lastly, LandAmerica reported an inter-company payable, in the amount of the contra-revenue, as a reduction of the receivable from "parent, affiliates and subsidiaries", on line 21 of the Annual Statement filed with state regulators. The amounts paid out by the Shared Resource Center were repaid via settlement of inter-company balances. Ultimately, this reduction in revenue was recorded on the consolidated books of LandAmerica, and not on the books of any branch office, or at the state operating company level.

By accounting for the blended transactions in this manner, Commonwealth and Lawyers Title overstated their premiums earned and overstated their other title fees and service charges. While the amounts involved may not have materially affected those companies' reported income and surplus, the filed financial statements for Lawyers Title and Commonwealth nevertheless contained incorrect financial information.

LandAmerica has argued that its accounting method for blended transactions involved a question of judgment intended to properly account for multi-state transactions. However, that merely begs the question as to why such questionable accounting was necessary at all. It appears to the Department that LandAmerica's method of accounting for blended transactions enabled the Companies to provide to customers engaged in multi-state commercial transactions premium discounts in regulated states, by discounting premiums in unregulated states to unacceptably low rates. Regardless of LandAmerica's intent, basic accounting principles dictate that income and expenses be properly reported.

#### **B. Delayed Blend Transactions**

The Companies also used delayed blend premiums to provide discounts for large commercial transactions. However, unlike a "blended rate" transaction, where a discount of the overall premium was given at the time of the transaction, in a delayed blend transaction, the Companies would provide a credit to the customer, based on the total premium paid for a large, commercial multi-state transaction, which then could be applied to a subsequent transaction.

Commonwealth and Lawyers Title indicated they had delayed blend arrangements with two customers during the target examination period of January 1, 2003 to December 31, 2005. Commonwealth and Lawyers provided a list of 592 closed transactions for one customer totaling \$3,420,591 in premiums and fees, which generated \$226,018 in credits to that customer, and 202 closed transactions for the other customer totaling \$4,039,160 in premiums and fees, which generated \$197,979 in credits to that customer. The accounting treatment for the delayed blend transactions differed slightly, depending on the program.

According to Commonwealth and Lawyers Title, one customer's program operated from

2002 to approximately March 2006, when it was discontinued as a result of investigations by several state insurance departments, including the Department. Commonwealth and Lawyers Title charged this customer full premiums, in accordance with the TIRSA manual, for policies insuring New York properties, full premiums in other regulated states, and discounted rates in unregulated states.

The customer was given the following credits for premiums paid in transactions regardless of the locations of the properties: no credits for premiums under \$2,500 and for endorsements; a 20% credit for premiums between \$2,500 to \$10,000; and a 25% credit for premiums over \$10,000. Credits were given for premiums net of agents' commissions and branch expenses. Branch expenses (overhead) were set at 30% of premiums for liability of up to \$3 million, and 20% of premiums for liability over \$3 million. For example, a \$12,000 policy would generate a \$2,000 credit as follows:

| <u>Premiums net of agents' commissions and branch charges</u> | <u>Discount Rate</u> | <u>Credit Given to Customer</u> |
|---|----------------------|---------------------------------|
| \$ 2,500  | 0%                   | \$ 0                            |
| 7,500   | 20%                  | 1,500                           |
| <u>2,000</u>  | 25%                  | <u>500</u>                      |
| <u>\$12,000</u>   |                      | <u>\$2,000</u>                  |

Periodically, Commonwealth and Lawyers Title would apply the credits as payments for premiums for properties in non-regulated states. As a result, the customer would pay nothing for those policies. As of March 2006, those two companies had given credits totaling \$226,018, which were applied fully as premiums for policies insuring properties in unregulated states.

The accounting for these transactions was similar to that used for blended transactions.

The Shared Resource Center at LandAmerica paid the local branch any applied credits. LandAmerica would debit the contra-revenue account and credit the inter-company payable account. Any amounts paid by the Shared Resource Center would be repaid by LandAmerica as periodic settlement of an inter-company receivable/payable.

For example, the accounting for a transaction in January 2005, involving three properties located in both regulated and non-regulated states, is set forth in the following chart:

| <u>State</u> | <u>Credit Applied</u> | <u>Debit A/C 32265<br/>Contra Rev</u> | <u>Credit Inter-<br/>Company Payable</u> |
|--------------|-----------------------|---------------------------------------|--|
| TX           | \$18,081              | \$18,081                              | \$18,081                                 |
| IL           | 2,342                 | 2,342                                 | 2,342                                    |
| WI           | 2,046                 | 2,046                                 | 2,046                                    |
| Total        | 22,469                | 22,469                                | 22,469                                   |

The method for accounting for the delayed blend discounts given to the other customer, was as follows: Commonwealth and Lawyers Title did not give any credits to this customer for properties in New York and other regulated states. Instead, the customer would pay a discounted premium rate, sometimes discounted to zero, for transactions in unregulated states. This customer's program was also terminated in May 2005 due to the investigations by several state insurance departments, including the Department.

\* \* \* \* \*

The practice by Commonwealth and Lawyers Title of providing blended and delayed blend premiums violates NYIL §6409(b). Accordingly, the Department recommends that these

companies discontinue the practice of blended and delayed blend arrangements. The Department further recommends that they charge only the proper filed rates for policies issued in New York.

In addition to being a rating violation, discounting title insurance premiums is a violation of NYIL §6409(d), which prohibits rebating a portion of the premium to the insured, or representative of the insured. Section 6409(d) reads, in pertinent part, as follows:

No title insurance corporation or any other person acting for or on behalf of it, shall make any rebate of any portion of the fee, premium, or charge made, or pay or give to any applicant for insurance, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for or as compensation for, any title insurance business.

LandAmerica argues that it charged the full New York premium and reported the full New York premium. However, by virtue of the blended premium rate, and but for LandAmerica's questionable accounting, the discount constituted a rebate of a portion of the premiums collected from regulated states, including New York. Accordingly, the practice violates NYIL §6409(d). The Department recommends that the Companies cease all rebating of any portion of the New York filed premium rate.

## **6. ACCOUNTS AND RECORDS**

LandAmerica took more than a month to locate policy files requested during this examination, and provided incomplete files for some policies, which prevented the Department's examiners from determining whether the policy had been rated properly. LandAmerica's inability to provide files in a timely manner, and its maintaining incomplete files, demonstrates

record retention deficiencies that must be corrected. In accordance with 11 NYCRR Part 243 (Regulation 152), an insurer must maintain all rating information used to support a rate in an individual underwriting file for each policy issued. Based upon LandAmerica's inability to locate policy files, and in providing incomplete files, LandAmerica has not demonstrated compliance with Regulation 152.

The Department recommends that LandAmerica establish written record retention guidelines to ensure proper record retention, and distribute the guidelines to all branches and agents within 90 days of the filing of this report. The Department further recommends that LandAmerica monitor compliance with such guidelines on a periodic basis to ensure compliance with Regulation 152.

## **7. SUMMARY OF RECOMMENDATIONS**

In accordance with NYIL §312, the following is a summary of recommendations for remedial actions to be implemented by LandAmerica and the Companies, as set forth in the body of this report:

| <b><u>ITEM</u></b>   | <b><u>PAGE NO.</u></b> |
|--|------------------------|
| A. <u>Underwriting and Rating</u>  |                        |
| i LandAmerica and the Companies are to institute procedures for proper policy rating within 90 days of the filing of this report, to ensure compliance with NYIL §6409(b) and Regulation 57 160.2(g), and provide a copy of such procedures to the Department.   | 6                      |
| ii The Companies are to conduct a review on an annual basis to verify that policy premiums are rated properly, in compliance with NYIL §6409(b). This review should be conducted for each calendar year, prior to April 30 <sup>th</sup> of the subsequent year, and the results of such review must be made available to the Department upon request. | 6                      |
| iii The Companies are to institute procedures within 90 days of the filing of this report, to ensure that all policy forms used in New   | 9                      |

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York have been filed with the Department in compliance with NYIL §6409(a), and provide a copy of such procedures to the Department.

B. National Accounts

- |     |   |       |
|-----|---|-------|
| i   | LandAmerica is to discontinue the practice of blended and delayed blend premium discounts.  | 15-16 |
| ii  | The Companies are to charge only the proper filed rates for policies subject to NYIL §6409(b), with no discounts for properties located in other states or in other transactions. | 16    |
| iii | The Companies are to comply with NYIL §6409(d), and cease rebating any portion of the New York filed title insurance premium.   | 16    |

C. Accounts and Records

- |    |   |    |
|----|---|----|
| i  | LandAmerica is to establish written record retention guidelines and distribute the guidelines to all branches and agents within 90 days of the filing of this report. | 17 |
| ii | The Companies are to monitor compliance with its written record   | 17 |

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retention guidelines on a periodic basis to ensure compliance with  
Regulation 152.