

REPORT ON EXAMINATION

OF THE

STEWART TITLE INSURANCE COMPANY

AS OF

DECEMBER 31, 2013

DATE OF REPORT

AUGUST 5, 2014

EXAMINER

KEVIN MCNAMEE

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

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August 5, 2014

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and in compliance with the instructions contained in Appointment Number 31080 dated November 14, 2013 attached hereto, I have made an examination into the condition and affairs of Stewart Title Insurance Company as of December 31, 2013, and submit the following report thereon.

Wherever the designation “the Company” appears herein without qualification, it should be understood to indicate Stewart Title Insurance Company.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the Company’s home office located at 300 East 42<sup>nd</sup> Street, New York, NY 10017.

## **1. SCOPE OF EXAMINATION**

The Department has performed an individual examination of the Company, a single-state insurer. The previous examination was conducted as of December 31, 2008. This examination covered the 5 year period from January 1, 2009 through December 31, 2013. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings for the following items as called for in the Handbook:

- Significant subsequent events
- Company history
- Corporate records
- Management and control
- Territory and plan of operation
- Growth of Company
- Loss experience
- Reinsurance
- Accounts and records
- Financial statements
- Summary of recommendations

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

## **2. DESCRIPTION OF COMPANY**

Stewart Title Insurance Company was incorporated under the provisions of Article 64 of the New York Insurance Law on October 26, 1987. It became licensed on December 2, 1987 and commenced business on the same date.

On February 3, 2006, the Company acquired a 100% interest in Monroe Title Insurance Corporation (“Monroe Title”). On May 12, 2009, the Company merged with Monroe Title, with the Company as the surviving entity. The transaction was accounted for as a statutory merger.

Capital paid in is \$1,100,000, comprised of 100,000 shares of Class A common stock with a par value of \$2 per share and 90,000 shares of Class B common stock with a par value of \$10 per share. Gross paid in and contributed surplus increased by \$5,115 during the examination period as follows:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
2009	Beginning gross paid in and contributed surplus	\$23,765,535
2011	Surplus contribution	<u>5,115</u>
2013	Ending gross paid in and contributed surplus	<u>\$23,770,650</u>

### **A. Management**

Pursuant to the Company’s charter, and by-laws, management of the Company is vested in a board of directors consisting of not less than seven nor more than eleven members. The board meets four times during each calendar year. At December 31, 2013, the board of directors was comprised of the following seven members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Glenn Clements Houston, TX	Executive Vice President, Stewart Title Guaranty Company
Julie A. Curlen Rye, NY	President & Agency District Manager, Stewart Title Insurance Company.
George Houghton Houston, TX	Executive Vice President - Agency Services Group, Stewart Title Guaranty Company
John L. Killea Katy, TX	Chairman & Chief Executive Officer, Stewart Title Insurance Company
Matthew J. Leeds Chappaqua, NY	Partner, Ganfer & Shore, LLP
Steven Lessack Cazenovia, NY	Chief Executive Officer, Stewart Title Limited
Richard A. Nardi, Esq. Armonk, NY	Partner, Loeb & Loeb

Examiner's review of the board of directors' minutes from 2009 to 2013, showed meetings were generally well attended and each current member had an acceptable record of attendance.

During 2013, John F. Welling, the Company's President, Chief Operating Officer and Chairman of the Board, passed away. He was replaced as President by Julie Curlen, as Chairman of the Board by John Killea, and the vacancy on the Board was filled by Steven Lessack.

As of December 31, 2013, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
John Killea	Chairman of the Board, Chief Executive Officer
Julie Curlen	President
J. Allen Berryman	Chief Financial Officer
Denise Carraux	Secretary
Emily Thai-DeRago	Treasurer and Vice President
John Frates	Executive Vice President
John Foley	Senior Vice President
Craig Goldenberg	Senior Vice President
Thomas Vinci	Senior Vice President

The Company does not require its employees to fill out Conflict of Interest Statements. Instead, employees are required to complete Biographical Affidavits annually. However, these affidavits do not address potential conflicts of interests. The Company's ultimate parent, Stewart Information Services Corporation, has a process for disclosing conflicts of interests. However, as an independent reporting entity, the Company has no established procedure for disclosure to its board of directors of any material interest or affiliation on the part of any of its officers or responsible employees which is in or likely to conflict with the official duties of such person.

It is recommended that the Company require its officers, directors and key employees to complete and sign Conflict of Interest Statements on an annual basis and retain them in its files. It is further recommended that the completed and signed Conflict of Interest Statements be provided to the Company's board of directors annually and that the minutes of the board of directors' meetings indicate acknowledgment of their review.

It is also noted that the Company did not respond accurately to Question No. 18 of the 2013 General Interrogatories which states:

Has the reporting entity an established procedure for disclosure to its board of directors of any material interest or affiliation on the part of any of its officers, directors, trustees or responsible employees which is in or likely to conflict with the official duties of such person?

It is recommended that the Company respond accurately to all General Interrogatory questions on the annual statement.

B. Territory and Plan of Operation

As of December 31, 2013, the Company was authorized to transact title insurance as defined in paragraph 18 of Section 1113(a) of the New York Insurance Law. The Company is a single-state insurer authorized to write title insurance business in New York only.

Based upon the line of business for which the Company is licensed, its current capital structure, and pursuant to the requirements of Article 64 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$1,100,000.

The following schedule shows the direct premiums written by the Company during the examination period:

<u>Year</u>	<u>Direct Premiums Written</u>
2009	\$110,444,150
2010	\$124,694,025
2011	\$154,064,789
2012	\$176,452,043
2013	\$208,149,503

C. Reinsurance

Assumed:

The Company assumes a minimal amount of reinsurance on a facultative basis. Almost all of the business assumed is from affiliates.

Ceded:

The Company has a facultative arrangement in place with its direct parent, Stewart Title Guaranty Company, which allows the Company to cede and reinsure on a treaty basis all or a part of its Excess Loss Risk, on policies or reinsurance assumed by the Company which involve Excess Loss Risk. As of December 31, 2013, Excess Loss Risk was defined as exposures over \$20 million. A minimal amount of reinsurance is also ceded to unaffiliated, authorized companies on a facultative basis.

It should be noted that there have been no instances of the Company paying a loss which triggered making a claim on its ceded facultative contracts. The Company accordingly has not reported any reinsurance recoverables on paid losses or reflected any reinsurance recoverables in its known claim reserves.

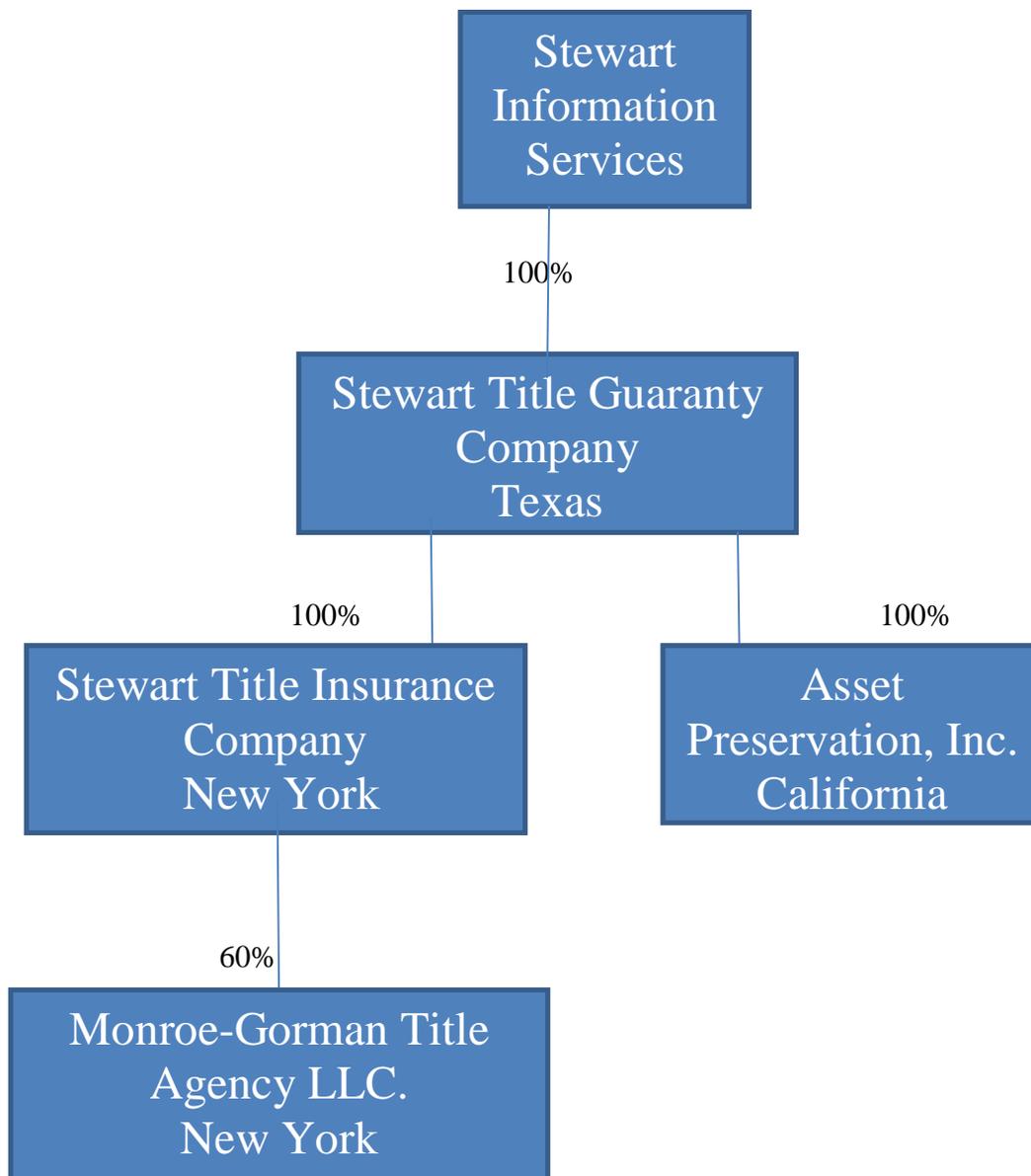
Examination review found that the Schedule F data reported by the Company in its filed annual statement accurately reflected its reinsurance transactions. Examination review indicated that the Company was not a party to any finite reinsurance agreements. All ceded reinsurance agreements were accounted for utilizing reinsurance accounting as set forth in SSAP No. 62R.

D. Holding Company System

The Company is a member of the Stewart Group. The Company is 100% wholly-owned subsidiary of Stewart Title Guaranty Company, domiciled in the State of Texas, which is ultimately controlled by Stewart Information Services Corporation, a publicly traded Delaware Corporation.

A review of the Holding Company Registration Statements filed with this Department during the examination period indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is an abridged chart of the holding company system at December 31, 2013:



As of the examination date, the Company was party to the following agreements with other members of its holding company system:

Intercompany Cost Allocation Agreement

Effective July 1, 2012, the Company entered into a Cost Allocation Agreement with its parent, Stewart Title Guaranty Company (“STG”). The terms of the agreement describe that each party to the agreement has employees experienced in the service areas of finance and accounting, policy services, information technology, human resources, procurement, marketing, legal services, underwriting, and claims management (together “Services”). Each party may allocate some or all Services to the other party to the agreement, pay direct costs for any Services, and have certain employees from either party provide certain Services to the other party of the contract.

The executed copy of the agreement differs from the copy submitted to the Department on August 20, 2012, which was non-disapproved on August 24, 2012, as follows:

- The executed copy indicates an effective date of July 1, 2012. The copy submitted to the Department provides that the agreement will become effective 30 days from the date approved by either the New York Department of Financial Services and/or the Texas Insurance Commissioner, whichever is later in time.
- The copy submitted to the Department states that either party has the right to withdraw from the agreement at any time upon 30 days written notice to the other. The executed copy leaves out the 30 day written notice requirement.

The effective date of July 1, 2012 in the executed agreement precedes the date that the agreement was submitted to the Department for non-disapproval. Section 1505(d)(3) of the New York Insurance Law states in part:

The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(3) rendering of services on a regular or systematic basis.

It is recommended that the Company submit any agreements with its affiliates to the Department at least 30 days prior to implementation pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.

Additionally, the executed copy does not include the safeguard of requiring 30 days prior written notice for either party to withdraw from the agreement. It is recommended that the Company's executed agreement include all provisions contained in the version that was non-disapproved by the Department.

#### Eighth Consolidated Federal Income Tax Return Settlement Agreement

Effective January 1, 1974, the holding company entered into a consolidated federal income tax return settlement agreement. Stewart Title Insurance Company was added to this agreement when it was incorporated on October 26, 1987. The agreement has since been amended over the years. The last amendment was filed with the Department and was non-objected to on November 14, 2011. The Texas Insurance Department approved this agreement on October 21, 2011. The amendment covers the 2011 tax year and later years. The agreement was amended to clarify the meaning, terms and operation of the agreement related to tax losses, and foreign tax credits. The terms of the agreement describe that the corporate parties each of whom is named in this agreement agrees to file a consolidated Federal Income Tax return.

#### Sublease Agreement

Effective January 1, 2010, the Company entered into a Sublease Agreement with Asset Preservation, Inc. The terms of the agreement describes that Asset Preservation, Inc. agrees to pay the rent and other charges as required in the agreement. This agreement was submitted to the Department on December 1, 2009 and was non-objected to on December 23, 2009.

#### Operating and Underwriting Agreement

In 2006, the Company acquired Monroe Title Insurance Corporation ("Monroe Title") as a wholly owned subsidiary. On May 12, 2009, the Company merged Monroe Title into its operations with the Company as the surviving entity.

On August 24, 2000, Monroe Title and Michael Gorman had entered into an Operating Agreement and formed Monroe-Gorman Title Agency, LLC (Monroe-Gorman). Monroe-Gorman was formed upon the filing of Articles of Organization with the New York State Department of State whereby Monroe Title had 60% ownership and Michael Gorman had 40% ownership of Monroe-Gorman. After the merger of the Company and Monroe Title, 60% ownership of Monroe-Gorman was maintained by the Company. The Company assumed the terms of this agreement.

The terms of the agreement establish that Monroe-Gorman Title Agency, LLC shall be a non-exclusive agent of the Company for title insurance within Wayne County, State of New York and Monroe-Gorman will enter into the Company's standard form of Non-Exclusive Agency Agreement for such purposes. The Company shall refer all business opportunities related to properties in Wayne County to Monroe-Gorman and Monroe-Gorman will refer all business opportunities related to properties outside Wayne County to the appropriate office of the Company.

The Company agrees to make loans, from time to time at the request of the Board of Managers of Monroe-Gorman, in a principal amount of up to \$50,000, in connection with the working capital requirements of the Monroe-Gorman. Such loans shall bear interest at the prime rate of HSBC, with any such loans to be repaid over a term of 10 years, or such lesser term as may be agreed to between The Company and Monroe-Gorman.

E. Significant Operating Ratios

The underwriting ratios presented below are on an earned/incurred basis and encompass the five-year period covered by this examination:

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$ 36,486,200	4.49%
Other underwriting expenses incurred	758,978,713	93.43
Net underwriting gain (loss)	<u>16,911,256</u>	<u>2.08</u>
Premiums earned	<u>\$812,376,169</u>	<u>100.00%</u>

F. Insurance Frauds Prevention

The Company's insurance application form and claims forms were reviewed to determine compliance with Section 403(d) of the New York Insurance Law ("NYIL"), which states:

All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms, except as provided for in subsection (e) of this section, shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information

concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.”

The review of a sample insurance application form revealed that such form did not include the required fraud awareness clause pursuant to Section 403(d) of the NYIL. Additionally, the Company has indicated that they do not have claim forms and that claims are submitted in writing by letter or email and online. As such, it appears that the Company did not meet the requirements of Section 403(d) of the NYIL for notifying claimants of the penalties for filing fraudulent claims.

It is recommended that the Company's applications for insurance contain the required fraud awareness clause and that the Company notify claimants of the penalties of filing fraudulent claims as part the claims submission process pursuant to Section 403(d) of the New York Insurance Law.

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2013 as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Examination</u>	
		<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$ 84,030,868	\$ 0	\$ 84,030,868
Properties occupied by the company	1,127,438	0	1,127,438
Cash, cash equivalents and short-term investments	11,864,783	0	11,864,783
Receivable for securities	61,021	0	61,021
Title plants	709,649	0	709,649
Investment income due and accrued	1,082,274	0	1,082,274
Uncollected premiums and agents' balances in the course of collection	5,080,926	717,175	4,363,751
Other amounts receivable under reinsurance contracts	32,952	0	32,952
Net deferred tax asset	6,484,658	3,421,400	3,063,258
Guaranty funds receivable or on deposit	0	0	0
Electronic data processing equipment and software	68,080	0	68,080
Furniture and equipment	387,307	387,307	0
Aggregate write-ins for other than invested assets	<u>2,062,711</u>	<u>1,809,586</u>	<u>253,125</u>
Total assets	<u>\$112,992,667</u>	<u>\$6,335,468</u>	<u>\$106,657,199</u>

#### Liabilities, surplus and other funds

	<u>Examination</u>
Known claims reserve	\$ 9,714,527
Statutory premium reserve	45,427,068
Other expenses (excluding taxes, licenses and fees)	3,342,617
Taxes, licenses and fees (excluding federal and foreign income taxes)	172,572
Current federal and foreign income taxes	5,803,396
Payable to parent, subsidiaries and affiliates	447,401
Deferred rents	<u>256,119</u>
Total liabilities	\$ <u>65,163,700</u>
Common capital stock	\$ 1,100,000
Gross paid in and contributed surplus	23,770,650
Unassigned funds (surplus)	<u>16,622,849</u>
Surplus as regards policyholders	\$ <u>41,493,499</u>
Total liabilities, surplus and other funds	<u>\$106,657,199</u>

Note: The Internal Revenue Service (“IRS”) has completed its audits of the Company’s parent company’s (“SISCO’s”) Federal income tax returns through tax year 2008. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. An audit covering SISCO’s tax year 2012 is currently underway but in its early stages. The statutes of limitations for SISCO’s Federal income tax returns for tax years 2008 (through November 15, 2014), 2010 (through August 30, 2014), and 2011 remain open for examination. SISCO will be filing its 2013 Federal income tax return on or before September 15, 2014. SISCO expects no material adjustment relating to the Company from any tax return examination.

B. Statement of Income

Surplus as regards policyholders increased \$13,877,069 during the 5-year examination period January 1, 2009 through December 31, 2013, detailed as follows:

Underwriting Income

Premiums and fees earned		\$812,376,169
Deductions:		
Loss and loss adjustment expenses incurred	\$ 36,486,200	
Operating expenses incurred	<u>758,978,713</u>	
Total underwriting deductions		<u>795,464,913</u>
Net underwriting gain or (loss)		\$ 16,911,256

Investment Income

Net investment income earned	\$ 13,520,312	
Net realized capital gains (losses)	<u>5,450,544</u>	
Net investment gain or (loss)		\$ <u>18,970,856</u>

Other Income

Miscellaneous income	<u>\$ 206,185</u>	
Total other income		\$ <u>206,185</u>
Net income before federal income taxes		\$ <u>36,088,297</u>
Federal and foreign income taxes incurred		\$ 15,417,323
Net income (loss)		\$ <u>20,670,974</u>

C. Capital and Surplus Accounts

Surplus as regards policyholders per report on examination as of December 31, 2008			\$27,616,430
	<u>Gains in</u>	<u>Losses in</u>	
	<u>Surplus</u>	<u>Surplus</u>	
Net income	\$20,670,974		
Net unrealized capital gains or (loss)	253,847		
Change in net deferred income tax	892,221		
Change in nonadmitted assets	1,152,200		
Paid in capital changes	5,115		
Dividends to stockholders		\$10,600,000	
Prior year adjustment	1,565,015		
Miscellaneous	<u>0</u>	<u>62,303</u>	
Total gains and losses	<u>\$24,539,372</u>	<u>\$10,662,303</u>	
Net increase (decrease) in surplus			<u>\$13,877,069</u>
Surplus as regards policyholders per report on examination as of December 31, 2013			<u>\$41,493,499</u>

4. **KNOWN CLAIMS RESERVE AND STATUTORY PREMIUM RESERVE**

A. Known Claims Reserve

The examination liability for the captioned items of \$9,714,527 is the same as reported by the Company as of December 31, 2013. The examination analysis of the loss and loss adjustment expense reserves was conducted in accordance with generally accepted actuarial principles and statutory accounting principles, including the NAIC Accounting Practices & Procedures Manual, Statement of Statutory Accounting Principle No. 55 (“SSAP No. 55”).

B. Statutory Premium Reserve

The examination reserve of \$45,427,068 is the same as the amount reported by the Company as of December 31, 2013. The reserve was calculated based on a formula pursuant to Section 6405(a) of the New York Insurance Law, which includes a provision for the application of a dollar amount for each policy written and a percentage amount of the face amount of each policy.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained two recommendations as follows:

<u>ITEM</u>		<u>PAGE NO.</u>
A.	It was recommended that board members who are unable or unwilling to attend meetings consistently should resign or be replaced.	4
	The Company has complied with this recommendation.	
B.	It was recommended that the custodial agreement between the Company and its investment securities custodian be revised to contain the safeguards and provisions stated in Section 3(III)(H) of the NAIC Financial Condition Examiners Handbook.	9
	The Company has complied with this recommendation.	

6. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
i. It is recommended that the Company require its officers, directors and key employees to complete and sign Conflict of Interest Statements on an annual basis and retain them in its files. It is further recommended that the completed and signed Conflict of Interest Statements be provided to the Company's board of directors annually and that the minutes of the board of directors' meetings acknowledge their review.	5
ii. It is recommended that the Company respond accurately to all General Interrogatory questions on the annual statement.	5
B. <u>Holding Company</u>	
It is recommended that the Company submit any agreements with its affiliates to the Department at least 30 days prior to implementation pursuant to the provisions of Section 1505(d)(3) of the New York Insurance Law.	8
It is recommended that the Company's executed agreement include all provisions contained in the version that was non-disapproved by the Department.	9
C. <u>Insurance Frauds Prevention</u>	
It is recommended that the Company's applications for insurance contain the required fraud awareness clause and that the Company notify claimants of the penalties of filing fraudulent claims as part the claims submission process pursuant to Section 403(d) of the New York Insurance Law.	11

Respectfully submitted,

\_\_\_\_\_/s/  
Kevin McNamee  
Senior Insurance Examiner

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

Kevin McNamee being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

\_\_\_\_\_/s/  
Kevin McNamee

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPOINTMENT NO. 31080

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **BENJAMIN M. LAWSKY**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**Kevin McNamee**

as a proper person to examine the affairs of the

**Stewart Title Insurance Company**

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

**COMPANY**

with such other information as he shall deem requisite.

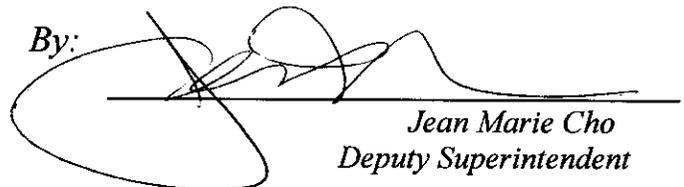
In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 14th day of November, 2013

**BENJAMIN M. LAWSKY**  
Superintendent of Financial Services



By:

  
Jean Marie Cho  
Deputy Superintendent