

REPORT ON EXAMINATION
OF THE
NATIONAL TITLE INSURANCE OF NEW YORK INC.
AS OF
DECEMBER 31, 1998

DATE OF REPORT

MAY 11, 2000

EXAMINER

BERNARD LOTT

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GEORGE E. PATAKI
Governor

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

NEIL D. LEVIN
Superintendent of Insurance

May 11, 2000

Honorable Neil D. Levin
Superintendent of Insurance
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 21443 dated July 29, 1999, attached hereto, I have made an examination into the condition and affairs of the National Title Insurance of New York Inc. as of December 31, 1998 and respectfully submit the following report thereon.

The examination was conducted at the administrative office of National Title Insurance of New York Inc., located at 15661 Redhill Avenue, Tustin, California 92780.

Wherever the designation "the Company" appears herein without qualification, it should be understood to indicate the National Title Insurance of New York Inc. Wherever the designation "FNFI" appears herein without qualification, it should be understood to indicate the Fidelity National Financial, Inc. Whenever the designation "Fidelity-New York" appears herein without qualification, it should be understood to indicate the Fidelity National Title Insurance Company of New York. Whenever the designation "the Department" appears herein, without qualification, it should be understood to indicate the New York Insurance Department.

1. SCOPE OF EXAMINATION

The previous examination was conducted as of December 31, 1991. During 1997, this Department commenced an examination of the Company as of December 31, 1996. That examination found that the Company lacked certain key supporting documentation to substantiate amounts reported in its filed annual statement. This is discussed more fully in item 2J herein, "Accounts and Records". Subsequently, the examination was updated to cover the seven-year period from January 1, 1992 through December 31, 1998. Transactions subsequent to that date were reviewed where deemed appropriate by the examiner.

This examination comprised a complete verification of assets and liabilities as of December 31, 1998, a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Company's independent certified public accountants. A review or audit was also made of the following items as called for in the Examiners Handbook of the National Association of Insurance Commissioners:

- History of the Company
- Management and control
- Corporate records
- Fidelity bonds and other insurance
- Officers' and employees' welfare and pension plans
- Territory and plan of operation
- Growth of the Company
- Business in force
- Loss experience
- Reinsurance
- Market conduct activities
- Accounts and records
- Financial statements

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

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

2. DESCRIPTION OF COMPANY

Pursuant to a stock purchase agreement consummated January 10, 1994, Nations Holding Group purchased all of the issued and outstanding shares of TRW Title Inc., the Company's immediate parent, from TRW Inc. TRW Title Inc. and the Company, then named New York TRW Title Insurance Inc., subsequently changed their names to Nations Title Inc. and National Title Insurance of New York Inc., respectively.

On April 1, 1996, Fidelity-New York purchased 100% of the issued and outstanding common shares of the Company. The Department approved this acquisition.

The Company is a wholly-owned subsidiary of Fidelity-New York, which in turn is a wholly-owned subsidiary of FNFI.

Subsequent to the examination date, June 10, 1999, American Title Company purchased 100% of the issued and outstanding common shares of the Company from Fidelity-New York. FNFI currently owns 29.4% of American National Financial, Inc., the parent of the American Title Company.

A. Management

Pursuant to the Company's charter and by-laws, as amended, management of the Company is vested in a board of directors consisting of not less than seven (7) nor more than fifteen (15) members. As of the examination date, the board of directors was comprised of seven (7) members. The directors as of December 31, 1998, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
William P. Foley, II Santa Barbara, California	Chairman and Chief Executive Officer, Fidelity National Financial, Inc.
Joseph N. Friedman New York, New York	Senior Vice President, National Title Insurance of New York Inc.
Allen D. Meadows Woodland Hills, California	Executive Vice President, CFO and Treasurer, National Title Insurance of New York Inc.
Jonathan A. Richards New York, New York	Senior Vice President and Senior Counsel, National Title Insurance of New York Inc.
Christopher J. Quintero Lynbrook, New York	Vice President, National Title Insurance of New York Inc.
Frank P. Willey Corona del Mar, California	Executive Vice President, Fidelity National Financial, Inc.
Charles H. Wimer New York, New York	Executive Vice President and Secretary, National Title Insurance of New York Inc.

The minutes of all meetings of the board of directors and committees thereof held during the examination period were reviewed. The meetings were generally well attended, however, the overwhelming majority of the board's resolutions were effectuated through the unanimous written consent of directors, in place of actual board meetings.

The Company indicated that the by-laws did not specifically exclude it from taking action by unanimous written consent in lieu of actual meetings. The Company referenced the provisions of Section 708(b) of the Business Corporation Law (“BCL”), wherein it states, unless otherwise restricted by the certificate of incorporation or the by-laws, any action required or permitted to be taken by the board may be taken without a meeting if all the members of the board consent in writing to the adoption of a resolution authorizing the action. However, Section 708(b) of the BCL is not self-executing. For a corporation to avail itself of the advantages offered under this section, it must amend its by-laws or certificate of incorporation. The Insurance Department’s Office of General Counsel has opined that in the exercise of its statutory authority under the Insurance Law it will permit amendments to the by-laws or the certificate of incorporation of insurers to carry out the intention of Section 708(b) of the BCL. The board of directors or a committee thereof should be permitted to exercise this new ability to act, however, in very limited emergency situations. Any proposed amendment to the by-laws or certificate of incorporation must contain specific language of limitation, and must be based upon a showing of definite necessity.

It is recommended that if the Company wishes to act under the provisions of Section 708(b) of the Business Corporation Law, it should amend its by-laws or certificate of incorporation to provide for such actions in accordance with Section 1206 of the New York Insurance Law. Additionally, it is recommended that the Company utilize this provision in limited emergency situations, as set forth in the opinion issued by the Office of General Counsel.

The examination determined that investment transactions were not being approved by the board of directors as specified in Section 1411(a) of the New York Insurance Law. Section 1411(a) of the New York Insurance Law states in part,

“No domestic insurer shall make any loan or investment, unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment or loan...”

While the Company did elect an investment committee during the period covered by the current examination, a review of the board of directors' minutes did not find any reports submitted from the investment committee to the entire board for its approval.

It is recommended that the Company adhere to the provisions of Section 1411(a) of the New York Insurance Law with regard to the board of directors' approval of investment transactions.

The principal officers of the Company as of December 31, 1998, were as follows:

<u>NAME</u>	<u>TITLE</u>
William P. Foley, II	Chairman and Chief Executive Officer
Patrick F. Stone	President
Allen D. Meadows	Chief Financial Officer and Treasurer
M'Liss Jones Kane	Executive Vice President and General Counsel
Ronald R. Maudsley	Executive Vice President
Peter T. Sadowski	Executive Vice President
Carl A. Strunk	Executive Vice President
Charles H. Wimer	Executive Vice President
Jonathan A. Richards	Senior Vice President and Senior Counsel
Joseph N. Friedman	Senior Vice President
Donald E. Partington	Senior Vice President

B. Territory and Plan of Operation

At December 31, 1998, National Title Insurance of New York Inc. was licensed to transact the business of title insurance, as defined in Paragraph 18 of Section 1113(a) of the New York Insurance Law. As of the examination date, the Company was licensed in thirty-four (34) states and two (2) additional jurisdictions as detailed below:

Arkansas	Maryland	North Dakota
California	Massachusetts	Ohio
Colorado	Minnesota	Oklahoma
Connecticut	Mississippi	Pennsylvania
Delaware	Missouri	South Carolina
Florida	Montana	Tennessee
Georgia	Nebraska	Utah
Indiana	Nevada	Vermont
Kansas	New Hampshire	Wisconsin
Kentucky	New Jersey	Wyoming
Louisiana	New Mexico	District of Columbia
Maine	New York	U.S. Virgin Islands

A comparison between direct premiums written in New York and nationwide during the examination period is detailed below:

DIRECT PREMIUMS WRITTEN

<u>Year</u>	<u>New York State</u>	<u>Nationwide</u>	Premiums written in New York State as a Percentage of <u>Nationwide Premiums</u>
1994	\$660	\$7,163,573	0.01%
1995	0	3,257,710	0.00%
1996	709	128,290	0.55%
1997	0	4,856,439	0.00%
1998	<u>0</u>	<u>282,761</u>	<u>0.00%</u>
Totals	<u>\$1,369</u>	<u>\$15,689,073</u>	<u>0.01%</u>

Based upon the lines of business for which the Company is licensed, the Company's 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 \$250,000.

The Company is engaged primarily in the business of issuing title insurance policies and secondarily in performing other title-related services such as escrow, collection and trust activities in

connection with real estate transactions. These secondary services are provided through the Company's independent agents who issue policies on the Company's behalf.

During the period under examination, the Company maintained full service underwriting and claims regional offices located in Irvine, CA; Walnut Creek, CA; New York, NY; and Dallas, Texas. In addition, business is produced through approximately two thousand six hundred (2,600) independent agents and brokers. One hundred percent (100%) of the Company's premium income was derived from agency operations as of December 31, 1998.

During 1996, Fidelity-New York's management canceled the majority of the Company's agency contracts. Fidelity-New York or an affiliated Fidelity underwriter has signed contracts with the former agents of the Company that met certain quality and productive standards. This process resulted in a significant decline in premiums written by the Company.

C. Reinsurance

The Company assumes a relatively minor volume of business compared to its direct writings (less than one percent). The majority of these assumptions are on a facultative basis and are non-obligatory.

All cede reinsurance contracts effected during the examination period were reviewed. These contracts all contain an insolvency clause meeting the requirements of Section 1308 of the New York Insurance Law.

As of December 31, 1998, the Company had the following ceded excess of loss reinsurance program in place:

<u>Contract</u>	<u>Cession</u>
First Layer 100% authorized	\$1,000,000 excess \$1,000,000 each risk, each occurrence
Second Layer 100% authorized	\$18,000,000 excess \$2,000,000 each risk, each occurrence

The underwriting files for the aforementioned contracts were requested but never provided. The Company could not demonstrate that it kept any formal documentation of its assessment of transfer of risk related to the contracts.

It is recommended that the Company maintain documentation of its evaluation of transfer of risk for all ceded reinsurance contracts to support management's accounting positions relative to these contracts in accordance with Chapter 22 of the NAIC Accounting Practices and Procedures Manual.

D. Holding Company System

FNFI is the ultimate parent in the holding company system. Members of the holding company system are detailed in Exhibit 1, appended to this report. FNFI owns 100% of the authorized, issued and outstanding shares of Fidelity-New York, which in turn owns 100% of the authorized, issued and outstanding shares of the Company. William P. Foley, II is the stockholder on record of approximately 20.5% of the presently issued and outstanding shares of FNFI; no other person owns more than 5% of shares.

National Title Insurance of New York Inc. (formerly known as New York TRW Title Insurance of New York Inc.) became a controlled insurer of Fidelity-New York upon acquisition on April 1, 1996. Control was acquired by a stock purchase agreement with Nations Title Inc., under which FNFI agreed to

purchase 100% of the stock of National Title Insurance of New York Inc. The acquisition was approved by the Department.

A review determined that the Company made the required annual filings, as registrant, pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

Inter-company Transactions

A review of inter-company transactions noted that it was not always possible to determine if settlement between affiliates was completed in a timely manner. The Company's inter-company account summarized its activities with affiliates. When a manual journal entry involving more than one affiliate was posted, the Company's general ledger software package created an "automatic entry" to the inter-company account. This automatic entry served to create a receivable or payable for all affiliates involved, counter-balancing the manual entry. Settlement of these inter-company transactions could occur in one of, or a combination of, three ways: either journal entry (offsets), wire transfer or by check. The Company settled "balances" and not necessarily specific invoices or transactions. Since there were no procedures in place to ensure that the inter-company account was zeroed-out at any specific time, inter-company balances or portions thereof, could remain unsettled indefinitely.

It is recommended that the Company maintain documentation to ensure that inter-company account balances are settled in a timely manner.

In addition, it is recommended that the Company modify its general ledger system to track and accumulate affiliate transactions by each affiliated company on a rolling twelve-month basis. This will enable the Company to determine if transactions exceed the reporting and prior approval thresholds as set forth in Section 1505(d) of the New York Insurance Law.

Cost Reimbursement Agreements

At December 31, 1998 the Company was a party to several “Cost Reimbursement Agreements” with affiliated entities. These agreements provided that various members of the holding company system would provide services on behalf of, or pay for services to other affiliated entities. Upon review it was disclosed that the agreements lacked certain clauses and provisions that should be added for the protection of the Company. It was noted that the agreements did not contain or specify a duration and termination clause or provision that shared expenses were to be allocated in a manner consistent with Department Regulation 30. The agreements did not include provisions that services were to be provided at cost and that an inspection of records was available. Also, clear and complete reporting and settlement requirements should be included in the agreements.

Subsequent to the current examination the Company revised the agreements to include some of the aforementioned provisions. These agreements, however, have not been submitted to the New York Insurance Department and have not been non-disapproved pursuant to Section 1505(d) of the New York Insurance Law.

It is recommended that the Company file its cost reimbursement agreements with the Insurance Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law.

Overhead Expense Allocation

A review was made into the Company’s expense allocation procedures. Overhead expenses, including those related to the aforementioned cost reimbursement agreements, were categorized into various cost centers and allocated, with the exception of legal expenses, based on each insurer’s percentage of the combined direct premiums written for all insurers in the holding company system for the prior year. Legal expenses were allocated based on each insurer’s percentage of the combined outstanding

claims for all insurers in the holding company system for the prior year. Overhead expenses sampled confirmed the above allocation. All other inter-company expenses were allocated based on the particular circumstances of each individual expense. The Company had no written guidelines for the allocation of non-overhead expenses.

It is recommended that the Company prepare written guidelines for the allocation of non-overhead expenses in accordance with Regulation 30.

Tax Allocation Agreement

On April 1, 1996 the Company entered into a Tax Allocation Agreement with its parent, FNFI. Upon review, it was determined that the agreements did not comply with the minimum guidelines set forth in New York's Circular Letter No. 33 (1979).

It is recommended that the Company amend its Tax Allocation Agreement to comply with the guidelines set forth in New York's Circular Letter No. 33 (1979) and submit it to the Insurance Department pursuant to Section 1505 of the New York Insurance Law.

Subsequent to the examination date, a revised Tax Allocation Agreement between FNFI and its subsidiaries was initiated. The Company indicated that the agreement when finalized, would be submitted to the board of directors for ratification and then submitted to the Department for approval.

E. Custodian Agreement

As of December 31, 1998, the Company's custodian agreement with United Missouri Bank lacked certain necessary safeguards, controls and protective covenants prescribed by the Insurance Department, for the custody and safekeeping of securities.

Subsequent to the examination date the Company operates under an amended custodian agreement that includes the missing safeguards, controls and protective covenants.

F. Section 1307 Loan Agreement

As of the examination date, the Company has a loan pursuant to the provisions of Section 1307. The loan has been in place since 1989. The Company was unable to provide a copy of the approval letter for the aforementioned loan from the Insurance Department. Additionally, the Company has failed to include the footnote required by Section 1307(c) of the New York State Insurance Law, in the annual statement for the years covered by this examination. Section 1307(c) of the Insurance Law states in part:

“Any sum so advanced or borrowed shall not be part of the legal liabilities of such insurer and shall not be a basis of any set-off but until repaid all statements published by such insurer or filed with the superintendent shall show, as a footnote, the amount then remaining unpaid.”

As of December 31, 1998, the balance of the loan was \$2,000,000 and accrued interest thereon should be \$2,182,667.

It is recommended that the Company comply with the provisions of Section 1307(c) of the Insurance Law, with respect to disclosure of the loan and the accrued interest as part of the standard footnote.

G. Audited Engagement Contracts

Section 89.2 of Insurance Department Regulation 118 states, in part:

“Every insurer subject to this part shall retain an independent Certified Public Accountant (CPA) who agrees by written contract with such insurer to comply with the provisions of Section 307(b) of the New York Insurance Law, this Part and the Code of Ethics and Professional Standards adopted by the American Institute of Certified Public Accountants (AICPA)....”

The Regulation continues to list the requirements that must be specified in a contract between an insurer and its certified public accountant.

A review of the audit engagement contracts entered into between the Company and its certified public accountants, for the period covered under this examination, revealed that the contracts were not in compliance with the Department Regulation 118. The contracts failed to include the provision specified in Section 89.2.

It is recommended that the Company comply with the provisions of Section 89.2 of Department’s Regulation 118.

H. Conflict of Interest

National Title Insurance of New York Inc. has a procedure to distribute conflict of interest questionnaires annually, to all officers (assistant vice-president and above) and the board of directors. The procedure requires the corporate secretary to bring any conflicts to the attention of the board. It was noted

that the Company has not established written procedures that would permit the board to properly oversee and handle any conflicts of interest that may arise.

The Company has a fiduciary responsibility to its members to ensure that its directors, officers and responsible employees do not use their official positions to promote any interest that is distinct from that of the Company.

It is recommended that the Company establish written procedures that detail the specific actions to be taken by the board of directors if conflicts of interest arise.

It is recommended that the Company maintain complete minutes of its proceedings on such matters.

I. Abandoned Property Law

An examination review indicated that the Company was complying with Section 1317 of the New York State Abandoned Property Law with regard to the filing of such reports.

The Company noted that no unclaimed property report was filed for the years 1997 and 1998 because it had no unclaimed property to escheat. Section 1317 of the Abandon Property Law does not require title insurers to file “negative reports” when there is no unclaimed property to escheat.

J. Accounts and Records

As noted in Item 1 “Scope of Examination”, of this report, in 1997, this Department commenced an examination of the Company as of December 31, 1996. During the course of the examination, Company management was unable to provide key supporting documentation that would enable

verification of certain assets reported in both the Company's filed annual statement as well as the filed annual statements of the immediate parent, Fidelity-New York and an affiliate, Nations Title Insurance of New York, Inc. Management's inability to provide this documentation resulted in credit being disallowed for the certain assets and a determination that each of the three entities was insolvent, as follows:

<u>Company</u>	<u>Surplus to policyholders, per Draft report on examination</u>
Fidelity National Title Insurance Company of New York	\$(13,814,019)
Nations Title Insurance of New York Inc.	\$(6,472,879)
National Title Insurance of New York Inc.	\$(1,205,333)

The draft report on examination was transmitted to the Company during 1999. Company management, in its response to the draft report, noted that they could provide supporting documentation for amounts reported in its most recent annual statement. Based on management's response, the examination was updated to December 31, 1998.

The circumstances described above resulted in unnecessary cost to the Company and a strain on the Department's resources. It is recommended that in the future the Company maintain adequate documentation for all amounts reported in every statement filed with the Department.

Cash

A review of the Company's cash noted reconciling items on bank reconciliations dating as far back as 1995 had not been booked to the general ledger. Additionally, numerous outstanding checks, at least a year old at the examination date, had not been cashed, voided, or otherwise resolved and booked as of

December 31, 1998. It should also be noted that in some cases documentation supporting account balances was either inadequate or not provided.

It is recommended that the Company book its cash adjustments to the general ledger in a timely manner. It is recommended that the Company research and resolve all “stale” outstanding checks. It is recommended that the Company maintain accurate and complete workpapers supporting amounts reported in its filed annual statements.

Agency Agreements

Agency agreements and audit reports of agents doing an insurance business on behalf of the Company in New York State were reviewed to determine whether the Company was following the contractual provisions of the agency agreements. The following exceptions were noted:

- (i) The audit reports revealed that some agents failed to maintain escrow deposits in accordance with the terms of the agency agreements.
- (ii) In some instances agents commingled escrow deposits, which were held on behalf of the Company.
- (iii) Some agents commingled funds with the escrow of other title insurers.
- (iv) The review of the audit reports also indicated that several agents failed to maintain accurate records of escrow deposits held.

With regards to premium remittances, agents routinely disregarded a clause requiring remittance of premiums on a monthly basis, and remitted premiums late.

It is recommended that the Company adhere strictly to the standard provisions of the agreements with its agents, as regards to the maintenance of escrow accounts.

It is recommended that the Company seek to ensure that the agents maintain accurate records of all escrow deposits held and that the Company seek to obtain timely remittances of escrow deposits and premiums from its agents.

Statutory Premium Reserve

While the Company did establish a reinsurance reserve, pursuant to the provisions of Section 6405(a) of the New York Insurance Law, it failed to maintain the corresponding admitted asset in a manner consistent with Section 6405(c). Section 6405(c) states in part,

“The reinsurance reserve required by subsection (a) of this section shall be maintained as follows: Admitted assets of a value at least equal to the amount required for such reserve shall be continuously held by the corporation as a segregated reserve fund at all times distinct and separate from all its other assets...Securities which are part of such fund shall be kept separate from all other securities and shall be clearly identified as securities belonging to such fund...”

It is recommended that the Company maintain admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to the provisions of Section 6405(c) of the New York Insurance Law.

K. Significant Operating Ratios

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

	<u>Amounts</u>	<u>Ratios</u>
Losses incurred	\$4,189,340	<u>7%</u>
Operating expenses incurred	57,657,068	<u>99</u>
Net underwriting gain(loss)	<u>(3,446,418)</u>	<u>(6)</u>
Premiums and fees earned	<u>\$58,399,990</u>	<u>100%</u>

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as determined by this examination. This statement is the same as the balance sheet in the Company's filed Annual Statement:

<u>Assets</u>	<u>Ledger Assets</u>	<u>Non-Ledger Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$2,806,212	\$	\$	\$2,806,212
Mortgage loans:				
First liens	92,127		5,877	86,250
Other than first liens	24,769		24,769	0
Real estate	452,622		452,622	0
Cash and s/t investments	3,580,173			3,580,173
Title plants	40,000			40,000
Title insurance premiums and fees receivable	(4,760)			(4,760)
Federal income tax recoverable	1,156,600		1,156,600	0
Interest, dividends and real estate income due & accrued	36,534			36,534
Receivable from parent, subsidiaries & affiliates	690,432		356,044	334,388
Other assets	49,976		49,976	0
Aggregate write-ins for other than invested assets	<u>133,167</u>	<u> </u>	<u>133,167</u>	<u>0</u>
Total assets	<u>\$9,057,852</u>	<u>\$0</u>	<u>\$2,179,055</u>	<u>\$6,878,797</u>

Liabilities

Known claim reserves	\$1,383,966
Statutory premium reserve	4,293,997
Other expenses	82,875
Taxes, licenses and fees	<u>(36,794)</u>
Total liabilities	\$5,724,044

Surplus and Other Funds

Aggregate write-ins for other than special surplus funds	\$2,000,000	
Common capital stock	977,258	
Gross paid in and contributed surplus	3,532,330	
Unassigned funds (surplus)	(5,184,220)	
Less: Treasury stock	<u>(170,615)</u>	
Surplus as regards policyholders		<u>\$1,154,753</u>
Total liabilities and surplus		<u>\$6,878,797</u>

NOTES:

- (1) The Internal Revenue Service has completed its audits of the consolidated income tax returns filed on behalf of the Company through tax year 1994. 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. Audits covering tax years 1995 and 1996 commenced on March 26, 1999. Except for any impact, which might result from the examination changes contained in this report, the examiner is unaware of any potential exposure of the Company to any further tax assessment and no liability has been established herein relative to such contingency.
- (2) No liability appears in the balance sheet for a loan in the amount of \$2,000,000 and accrued interest thereon in the amount of \$2,182,667. This loan was granted pursuant to Section 1307 of the New York State Insurance Law. As provided in Section 1307, repayment of principal and interest shall only be made out of free and divisible surplus, subject to the prior approval of the Superintendent of Insurance of the State of New York.

B. Operations and Investment Exhibit

Surplus as regards policyholders increased \$634,586 during the seven-year examination period, (January 1, 1992, through December 31, 1998), which is detailed as follows:

Statement of Income

Underwriting Income

Premiums and fees earned		\$58,399,990
Deductions:		
Losses and loss adjustment expenses incurred	\$4,189,340	
Operating expenses incurred	<u>57,657,068</u>	
Total operating deductions		<u>61,846,408</u>
Net operating gain (loss)		\$ (3,446,418)

Investment Income

Net investment income earned	\$ 2,624,293	
Net realized capital gains or (loss)	<u>(127,388)</u>	
Net investment gain		2,496,905

Other Income

Other income		<u>1,057</u>
Net income before federal income taxes		\$(948,456)
Federal income taxes incurred		<u>(1,682,434)</u>
Net income		<u>\$733,978</u>

Capital and Surplus Account

Surplus as regards policyholders, December 31, 1991, per report on examination			\$520,167
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income or loss	\$733,978		
Net unrealized capital gains or losses		\$588,599	
Change in non-admitted assets		1,309,385	
Paid in Capital	1,150,000		
Paid in Surplus	1,086,906		
Other surplus adjustments	<u> </u>	<u>438,314</u>	
Total gains and losses	<u>\$2,970,884</u>	<u>\$2,336,298</u>	
Net increase to surplus as regards policyholders			<u>634,586</u>
Surplus as regards policyholders, December 31, 1998, per report on examination			<u>\$1,154,753</u>

4. KNOWN CLAIMS RESERVE

The examination liability of \$1,383,966 is the same as that reported by the Company as of December 31, 1998. The examination analysis was conducted in accordance with generally accepted actuarial principles and practices and was based on statistical information contained in the Company's internal records and in its filed annual statement.

The Company's reserve for unpaid losses and claims are based on individual case estimates for losses on claims reported to the Company as of December 31, 1998, and estimates for unreported losses are based upon past experience.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

A review was made into the actions taken by the Company with regards to the comments and recommendations contained in the prior report on examination. The item letters and page numbers shown below refer to that of the prior report:

ITEM

PAGE NO.

A. Management

It is strongly recommended that the Company adhere to the provisions of its by-laws.

4

The Company has complied with this recommendation. The Company is currently adhering to the provisions of its by-laws with respect to the number of meetings held by the board of directors.

B. Holding Company System

- i. It is recommended that the Company comply with the requirements of Section 1504 of the New York Insurance Law and Department Regulation No. 52. 8

The Company has complied with this recommendation. The Company is currently filing its holding company registration statement pursuant to the requirements of Section 1504 of the New York Insurance Law and Department Regulation No. 52.

- ii. It is recommended that the Company submit a Federal income tax allocation agreement pursuant to Section 1505 of the New York Insurance Law and Department Circular Letter No. 33 (1979). 9

The Company has not complied with this recommendation. The Company never filed its tax allocation agreement with the Insurance Department. A similar recommendation is included in this report.

C. Abandoned Property Law

- It is recommended that the Company comply with the requirements of Section 1316 of the Abandoned Property Law. 11

The Company has complied with this recommendation. The Company has filed abandoned property reports in accordance with Section 1316 of the Abandoned Property Law. It is noted that the requirement of title insurers filing abandoned property reports is now set forth in Section 1317 of the Abandoned Property Law, which became effective on April 15, 1993.

D. Title Insurance Premiums and Fees and other Fees Receivable

- i. It is recommended that the Company require agents to adhere to the requirements of the agency contracts. 15

The Company has not complied with this recommendation, although, the Company does conduct audits of its agents to enforce adherence to the agency contracts with respect to the submission of monthly remittances. Some agents routinely ignore the remittance provisions of the agency contracts and this resulted in the Company establishing a premium accrual based on an estimation of agency premiums due and outstanding. A similar recommendation is contained in this report.

- ii. It is recommended that the Company review its method of reporting premiums and fees receivable and calculating overdue premiums and fees, to comply with the provisions of Section 6404 (b) of the New York Insurance Law. 16

The Company has not complied with this recommendation. The Company has not resolved the problem with their agents with respect to remitting premiums in a timely manner nor have they institute a program to ensure that overdue premiums are properly reported. A similar recommendation is contained in this report.

E. Reserve for Undetermined Title Losses

It is recommended that the Company review its loss reserving methods. 17

The Company has complied with this recommendation. The Company indicated that the methods of reserving for unpaid title losses has undergone continual improvement in documenting and determination of such reserves. They have an advanced title claim system and management feels that its approach to the determination of reserves is both diligent and proper.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Management</u>	
<p>It is recommended that if the Company wishes to act under provisions of Section 708(b) of Business Corporation Law, it should amend its by-laws or certificate of incorporation to provide for such actions in accordance with Section 1206 of the New York Insurance Law. Additionally, it is recommended that the Company utilize this provision in limited emergency situations as set forth in the opinion issued by the Office of General Counsel.</p>	5
<p>It is recommended that the Company adhere to the provisions of Section 1411(a) of the New York Insurance Law with regard to the board of directors' approval of investment transactions.</p>	6
B. <u>Reinsurance</u>	
<p>It is recommended that the Company maintain documentation of its evaluation of transfer of risk for all ceded reinsurance contracts to support management's accounting positions relative to these contracts in accordance with Chapter 22 of the NAIC Accounting Practices and Procedures Manual.</p>	9
C. <u>Holding Company System</u>	
<p>It is recommended that the Company maintain documentation to ensure that inter-company account balances are settled in a timely manner.</p>	10

	It is recommended that the Company modify its general ledger system to track and accumulate affiliate transactions by each affiliated company on a rolling twelve-month basis. This will enable the Company to determine if transactions exceed the reporting and prior approval thresholds as set forth in Section 1505(d) of the New York Insurance Law.	10
	It is recommended that the Company file its cost reimbursement agreements with the Department pursuant to the provisions of Section 1505(d) of the New York Insurance Law.	11
	It is recommended that the Company prepare written guidelines for the allocation of non-overhead expenses, which are in accordance with Regulation 30.	12
	It is recommended that the Company amend its tax allocation agreement to comply with the guidelines set forth in New York’s Circular Letter No. 33 (1979) and submit it to the Insurance Department pursuant to Section 1505(d) of the New York Insurance Law.	12
D.	<u>Section 1307 Loan Agreement</u>	
	It is recommended that the Company comply with the provisions of Section 1307(c) of the Insurance Law, with respect to the loan and the accrued interest being disclosed as part of the standard footnote.	14
E.	<u>Audit Engagement Contracts</u>	
	It is recommended that the Company comply with the provisions of Section 89.2 of the Department’s Regulation 118.	14
F.	<u>Conflict of Interest</u>	
	It is recommended that the Company establish written procedures that detail the specific actions to be taken by the board of directors if conflicts of interest arise.	15
	It is recommended that the Company maintain complete minutes of its proceedings on such matters.	15
G.	<u>Accounts and Records</u>	
	It is recommended that in the future the Company maintain adequate documentation for all amounts reported in every statement filed with this Department.	16
	It is recommended that the Company book its cash adjustments to the general ledger in a timely manner.	17
	It is recommended that the Company research and resolve all “stale” outstanding checks.	17

It is recommended that the Company maintain accurate and complete workpapers supporting amounts reported in its filed annual statements. 17

It is recommended that the Company adhere strictly to the standard provisions of the agreements with its agents, as regards to the maintenance of escrow accounts. 17

It is recommended that the Company seek to ensure that the agents maintain accurate records of all escrow deposits held and that the Company seek to obtain timely remittances of escrow deposits and premiums from its agents. 17

It is recommended that the Company maintain admitted assets of a value at least equal to the amount required for the statutory premium reserve as a segregated reserve fund, pursuant to the provisions of Section 6405(c) of the New York Insurance Law. 18

Appointment No 21442

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, NEIL D. LEVIN, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Bernard Lott

as proper person to examine into the affairs of the

Nations Title Insurance OF New York Inc.

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

Corporation

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 29th day of July, 1999




NEIL D. LEVIN
Superintendent of Insurance