

**First American Title Insurance  
Company**

**NAIC Number: 50814**

**Report of the Targeted Market Conduct Examination for  
the Period January 1, 2015 through December 31, 2017**

**October 21, 2019**

**FINAL REPORT**

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## SALUTATION

October 21, 2019

Andrew N. Mais  
Insurance Commissioner  
Connecticut Insurance Department  
153 Market Street, 7<sup>th</sup> Floor  
Hartford, CT 06103

Commissioner Mais:

In accordance with §38a-15, a Targeted Market Conduct Examination of First American Title Insurance Company (“FATIC” or the “Company”) has been conducted regarding certain Company Insurance operations to determine compliance with relevant Connecticut insurance laws.

The Examination covered the period from January 1, 2015 to December 31, 2017.

**First American Title Insurance Company**

**(NAIC Number: 50814)**

**1 First American Way**

**Santa Ana, CA 92707**

The report thereon, as of October 21, 2019 is herein respectfully submitted.

## SCOPE OF EXAMINATION

The purpose of this Targeted Market Conduct Examination (the "Examination") was to determine the Company's compliance with applicable insurance laws, rules and regulations of the State of Connecticut. The scope of the Examination included the period January 1, 2015 through December 31, 2017 (the "Period"). All working papers, draft reports, files, notes and other documents collected or compiled by any person participating in this Examination are the property of the Connecticut Insurance Department ("CID" or the "Department"). The Examination was performed under the supervision of the Department.

The National Association of Insurance Commissioners' ("NAIC") Market Regulation Handbook (the "Handbook") served as guidance for the Examination, along with relevant Connecticut insurance laws. The Handbook Standards served as a basis for this Examination and may have been modified to meet the needs of the CID and to reflect statutes, rules and regulations referenced herein.

The Examiners relied primarily on records and information maintained by the Company and its agents.

The Examination included review of the following:

- Company Operations and Management
- Complaint Handling
- Marketing and Sales including Inducements
- Producer Licensing and Agent Relations
- Policyholder Services
- Underwriting and Rating
- Claims

The Examination report (the "Report") is a report by exception with modifications. References to practices, procedures, or files that did not contain exceptions are limited. All unacceptable or non-complying practices may not have been identified. The failure to identify specific Company practices does not constitute acceptance of these practices.

Risk & Regulatory Consulting, LLC ("RRC") personnel participated in this Examination in their capacity as market conduct Examiners. RRC provides no representations regarding questions of legal interpretation or opinion. Determination of Findings constituting violations or potential violations is the sole responsibility of the CID.

## COMPANY PROFILE

First American Title Insurance Company (FATIC or the Company), is a Nebraska corporation and a wholly subsidiary of First American Financial Corporation, (the Corporation) which is based in Santa Ana, California. The Corporation was incorporated in the state of Delaware in 2008 to serve as the holding company of The First American Corporation's ("FAC") financial services businesses following the separation of those businesses from FAC and is engaged in the business of providing financial services through its title insurance and services segment and its specialty insurance segment.

The Northeast Division of FATIC provides residential and commercial title insurance services in New York, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, and West Virginia. The Company maintains two offices in Connecticut, the first in Hartford and the second in Stamford.

As of March 2019, the Connecticut offices had a combined staff of 25 employees, who principally perform underwriting and some limited claim functions. The staff also conducts training for attorney agents in Connecticut and performs other related general marketing, budget, and management functions. Accounting and full claim processing functions are centralized in Regional processing centers. Attorney agent audits are performed by a separate Agency Audit Department.

FATIC is licensed in 49 states (all states other than Iowa), the District of Columbia, the Commonwealth of Puerto Rico, Guam, Canada, and the U.S. Virgin Islands. Total assets as of December 31, 2018 are approximately \$3.2 billion, with a surplus of \$1.2 billion. The Company has a Fitch rating of A, a Moody's rating of A2, an S&P rating of A-, and a Demotech rating of A".

*Sources: FATIC 2018 Annual Statement and SNL.*

## **EXAMINERS METHODOLOGY**

The Examiners conducted discussions with Company representatives responsible for certain Company functional areas including Complaints, Accounting, and Underwriting. Also, the Examiners discussed testing methodologies with the Company and the Department to arrive at the most efficient option to perform the necessary work.

In addition, throughout the course of the Examination, the Examiners submitted written inquiries directed to the Company to assist in gathering information and/or clarify the Examiner's understanding of a particular matter.

Further, the Examiners submitted Comment Forms (Criticisms) to the Company, which identified and communicated certain preliminary Findings and possible violations of Connecticut insurance statutes and regulations and areas of non-compliance with the Handbook. Finally, the Examiners and the Department met on a frequent basis with the Company to provide an update concerning the progress of the Examination and share relevant Findings as of the date of each meeting.

The following provides more detail regarding the Examiners' investigation of certain operational areas as follows:

### **Company Operations and Management**

The Examiners prepared a data request, which included a request for a variety of background information concerning the Company and related information specific to the scope of the Company's license, fidelity coverages, and title plant standards. Responses were reviewed to determine compliance with the Handbook Standards and certain Connecticut Insurance laws.

### **Marketing and Sales Including Inducements**

The Examiners requested and received a list of all sales and advertising material, training material, and marketing plans in use during the Examination period. Responses were reviewed to determine compliance with the Handbook Standards and certain Connecticut Insurance laws.

Additionally, certain accounting related information was requested, which focused on the Company's expense transactions. A sample of expense transactions was reviewed to investigate any matters regarding possible inducements. The Examiners reviewed the Company's overhead allocation process. In addition, the Examiners selected a blended sample of 57 expense disbursement files from the Period and tested all 57 files, including the invoice or calculation to support the expense.

### **Complaint Handling**

The Examiners requested the Company's complaint handling procedures and related information and identified six (6) complaints occurring during the Period. The complaints were reviewed to determine compliance with the Handbook Standards and Connecticut Insurance laws.

### **Producer Licensing and Agent Relations**

The Examiners requested and received information related to the Company's interaction with their agents. Information reviewed included matters related to policy issuance, premium collection and agent contracts. Responses were reviewed to determine compliance with the Handbook Standards and certain Connecticut Insurance laws.

### **Policyholder Services**

The Examiners requested information related to the Company's policyholder services. Information reviewed included policies and procedures related to premium notices and premium refunds. Responses were reviewed to determine compliance with the Handbook Standards and certain Connecticut Insurance laws.

### **Underwriting and Rating**

The Examiners reviewed the Company's underwriting policies, procedures and rating manuals to determine if there are any unfair rating practices, illegal inducements and rating discrepancies. In addition, the Examiners selected a random sample of 116 underwriting and rating files from the Period and tested 80 samples.

### **Claims**

The Examiners reviewed the Company's claims policies and procedures to determine the Company's approach to handling claims. In addition, the Examiners selected a sample of 112 claim files from the Period and tested 40 samples, including three (3) Litigated files.

## **EXAMINATION REPORT SUMMARY**

The Examination resulted in a total of 28 potential violations in which the Company does not appear to be in compliance with Connecticut insurance laws and three (3) potential instances of non-compliance with Handbook Standards. The following summarizes the Examiner's findings:

### **Company Operations and Management:**

- No exceptions were noted in this area.

### **Complaint Handling:**

- No exceptions were noted in this area.

### **Marketing and Sales Including Inducements:**

- Based on the review of the selected sample, the Examiners identified certain limited instances involving entertainment related expenses such as sporting event tickets and golf outings, incurred by the Company on behalf of their attorney agents that could be viewed as inducements for the referral of title insurance business. Certain similar entertainment related expenses were findings during the prior examination.

### **Producer Licensing and Agent Relations:**

- No exceptions were noted in this area.

### **Policyholder Services:**

- No exceptions were noted in this area.

### **Underwriting and Rating:**

The Examiners identified the following potential violations:

- Failure to charge filed rates. Three (3) potential violations. There were seventeen (17) rate related findings during the prior examination.

The Examiners identified three (3) potential instances of non-compliance with Handbook Standards:

- Failure to charge filed rates. There were seventeen (17) rate related findings during the prior examination.

**Claims:**

The Examiners identified 25 potential violations:

- Failure to demonstrate compliance with the reserving requirements established by the Connecticut Unfair Insurance Practices Act – Unfair Practices Sec.38a-410.

**Level of Cooperation:**

The Company was cooperative throughout the course of the Examination, dialogue with the Company's Examination Coordinators and other FATIC resources was collaborative and timely, and the Company staff was readily accessible and responsive to the Examiner's requests.

## FACTUAL FINDINGS

### Underwriting and Rating Findings

#### **Issue 1: Failure to charge filed rates.**

Examination Standard Gen-1 of the Underwriting and Rating review requires:

"The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity rating plan."

Connecticut General Statute Section 38a-419 provides in part the following:

*"(c) No title insurer or title agent may use or collect any premium after October 1, 1990, except in accordance with the premium rate schedule filed with and approved by the commissioner as required by this section. The commissioner may provide by regulations, adopted in accordance with Chapter 54, for interim use of premium rate schedules in effect prior to October 1, 1990."*

The Examiners selected a random sample of 116 underwriting and rating files and tested 80 of the samples on a "stop and go" basis. As a result of the Examiner's review of the 80 files, there were three (3) instances in which an insurance premium inconsistent with the Company's filed rates was charged.

### Claims Findings

#### **Issue 1: Failure to demonstrate compliance with the reserving requirements established by Connecticut Unfair Insurance Practices Act – Unfair Practices Sec. 38a-410.**

Connecticut Unfair Insurance Practices Act - Unfair Practices Sec. 38a-410 provides in part the following:

*"(a) All title insurers licensed in this state shall establish and maintain reserves against unpaid losses and loss expenses."*

*"(b) Upon receiving written notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim."*

*"(c) Reserves required under this section may be revised from time to time and shall be re-determined at least once each year."*

The Examiners tested a random sample of 40 claims files for the Period on a "stop and go" basis. As a result of the Examiner's review of the 40 files there were 25 instances in which the Company was unable to demonstrate compliance with the reserving requirements established by Connecticut Unfair Insurance Practices Act – Unfair Practices Sec 38a-410.

### **Potential Inducement Findings**

#### **Issue 1: Failure to prohibit rebates and inducements.**

Connecticut Unfair Insurance Practices Act - Unfair Practices Sec. 38a-414 provides in part the following:

*"(a) No title insurer or title agent shall (1) pay, directly or indirectly, to the insured, to any producer of title insurance business, to any associate of a producer or to any other person other than another title agent, any commission, any part of its premiums, fees or other charges or any other consideration or thing of value as inducement or compensation for the referral of title insurance business or (2) issue any title insurance policy in connection with any transaction in which it has paid or intends to pay any commission or any part of its premiums, fees or other charges, or any other consideration or thing of value which it knows to be in violation of this section."*

*"(b) No insured named in a title insurance policy, no producer of title insurance business, no associate of a producer, nor any other person, other than another title agent, may knowingly receive or accept, directly or indirectly, any commission, rebate, consideration, thing of value or inducement referred to in subsection (a) of this section."*

Connecticut Unfair Insurance Practices Act - Unfair Practices Sec. 38a-415 provides the following:

*"(a) Nothing in sections 38a-400 to 38a-425, inclusive, shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent, two or more title insurers and their title agents, two or more title insurers, one or more title insurers and one or more title agents, or two or more title agents, provided such division of premiums and charges does not constitute (1) an unlawful rebate or inducement under the provisions of said sections or (2) payment of a forwarding fee or finder's fee."*

*"(b) Notwithstanding subsection (a) of this section, for any title insurance policy issued after October 1, 1990, no title insurer shall pay to any title insurance agent or permit such agent to retain any amount exceeding sixty per cent of the gross premium for any policy of the title insurer issued by such agent. The maximum commission to a title insurance agent shall not be increased directly or indirectly by an insurer providing anything of value, including services, to an agent for less than the actual cost or fair market value."*

Based on the review of the selected sample, the Examiners identified instances involving entertainment related expenses, such as for sporting event tickets and golf outings, incurred by the Company on behalf of their attorney agents. However, it is noted that a portion of each of the identified incurred expenses included costs incurred for Company employees to also attend such events. Nevertheless, the instances identified could be viewed as inducements or remuneration to the company's agents in violation Connecticut General Statutes, Sections 38a-414 and 38a-415 because there was no documentation reflecting a valid business purpose relating to the services performed by such attorney agents for such expenses.

## OBSERVATIONS AND RECOMMENDATIONS

### Underwriting and Rating Observations And Recommendations:

As a result of the underwriting and rating testing performed by the Examiners, the following was noted:

- **Timeliness:** The Examiners noted 23 samples where First American's agents, in response to a request for files, did not provide sufficient documentation to confirm the timeliness of premium payment to the Company. The Examiners also noted 51 samples where First American's agents did not provide sufficient documentation to confirm timeliness of the issuance of the policy.

**Recommendation:** While the Examiners understand the Company's Attorney Agents are independent, efforts should be made for work closely with the agents to improve premium reimbursement and ensure the agents are maintaining appropriate supporting documentation. Further, both of these matters should be included and highlighted when the Company performs audits of their agents.

- **Charges Assessed to the Consumer:** The Examiners noted 18 samples where First American's agents did not provide sufficient documentation to reconcile the charges, other than title insurance premium, assessed to the consumer. The Examiners were not able to confirm compliance due to not having a copy of the attorney's "schedule of charges;" and/or a copy of the Closing Document; and/or a sufficient understanding of the fees charged.

**Recommendation:** The Examiners recommend that First American notify its independent Attorney Agents that the CID expects title insurance agents maintain and produce to the CID upon request documentation supporting the amount of any fee charges to a customer in connection with a real state closing.

- **Title Searches:** The Examiners noted four (4) samples where a complete copy of the title search support was not provided.

**Recommendation:** The Examiners recommend working more closely with their independent Attorney Agents to ensure complete supporting documentation is included in their files and

available to the Company and the CID. Further, this should be a highlighted matter when the Company performs audits of their agents.

- **Approved Attorneys:** The Examiners noted two (2) samples where the attorney was not included on the approved list provided by the Company.

**Recommendation:** The Company should consider performing a comprehensive review of their approved attorney list and update accordingly.

- **Incorrect Policy Issued:** The Examiners noted three (3) samples where the issued policy contained an error. In the first instance, the Company confirmed "that the agent associated with this transaction mistakenly issued the loan policy to cover a liability amount of \$226,530, rather than the actual loan amount of \$217,979, resulting in an overcharge of \$14." In another instance, the attorney issued a policy without sufficient documentation to support the 25% charitable discount provided. In the final instance, the Company issued an incorrect Enhanced policy when construction loans should only have a Standard policy issued

**Recommendation:** The Company should highlight this area when they perform audits of their agents.

- **Forms:** The Examiners noted one (1) sample where the Assignment of Rents endorsement was issued. Although it is currently an approved ALTA endorsement, the Assignment of Rents endorsement was not on file in Connecticut at the time of the transaction.

**Recommendation:** The Examiners recommend the Company perform a comprehensive list of their forms approved by the CID and where necessary, update their listing of approved forms. Further, the Company should ensure that all of the forms they are using to conduct title business in Connecticut have been approved by the CID.

- **Rating Approaches:** The Examiners noted seven (7) samples where the attorneys are using two approaches in rating. Some attorneys are rounding the amount of coverage to the next \$1,000, while others are not.

**Recommendation:** The Company should institute uniform approaches to rating applicable to all attorneys.

## **Claims Handling Observations and Recommendations**

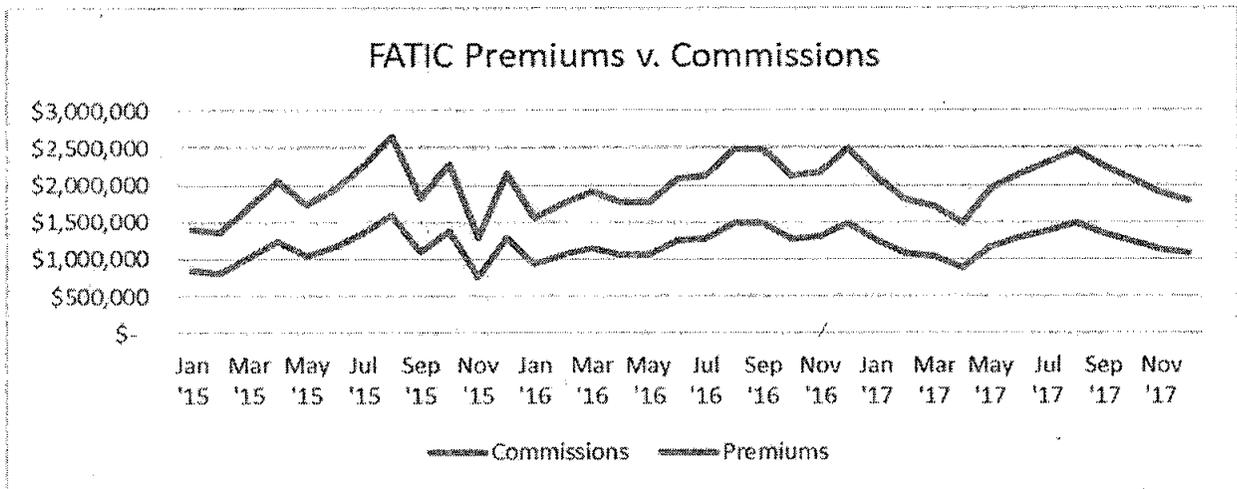
As a result of the claims testing performed by the Examiners, the following was noted:

- **Timeliness:** The Examiners noted one (1) sample where the claim was not assigned to a claims adjuster in a timely manner.

**Recommendation:** The Company should consider updating their claims manual to ensure there is a stated timeframe for assignments made to their claim adjusters.

## APPENDIX A

The following is offered as reference only specific to a Comparison between the Company's Premiums charged during the Period as compared to Connecticut Commissions rendered during the Period.



**EXAMINATION SUMMARY**  
**Summary of Examination Findings**

Finding	Description of Finding	Population	Sample Size	Number of Instances	Error Rate	Applicable Connecticut Statute
Finding #1 Claims (PA13.b)	Failure to maintain adequate loss and loss expense reserves	112	40	25 (H.1.19)	63%	Connecticut Unfair Insurance Practices Act - Unfair Practices Sec. 38a-410
Finding #1 Underwriting and Rating (PA13.c)	Failure to charge filed rates.	116	80	3 (G.1.11)	4%	Connecticut General Statute Section 38a-419

## ACKNOWLEDGMENT

An examination has been conducted on the market conduct affairs of First American Title Insurance Company covering the period from January 1, 2015 to December 31, 2017. This Examination was conducted in accordance with the relevant Connecticut insurance laws and the applicable Handbook procedures in the areas of company operations and management, policyholder services, producer licensing, complaint handling, marketing and sales, including inducements, underwriting and rating, and claims handling practices.

The Examiners wish to express appreciation for the courteous cooperation and assistance given by the officers and employees of the Company during the course of this examination.

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Barry L. Wells  
Examiner-In-Charge  
Risk & Regulatory Consulting, LLC



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

----- X  
 IN THE MATTER OF: DOCKET MC 20-10  
 FIRST AMERICAN TITLE INSURANCE COMPANY:  
 ----- X

### STIPULATION AND CONSENT ORDER

It is hereby stipulated and agreed between First American Title Insurance Company and the State of Connecticut Insurance Department by and through Andrew N. Mais, Insurance Commissioner to wit:

#### I

WHEREAS, pursuant to a Market Conduct examination, the Insurance Commissioner alleges the following with respect to First American Title Insurance Company:

1. First American Title Insurance Company, hereinafter referred to as Respondent, is domiciled in the State of Nebraska and is licensed to transact title insurance in the State of Connecticut. The NAIC company code number is 50814.
2. From September 4, 2018 to on or about October 21, 2019, the Department conducted an examination of Respondent's market conduct practices in the State of Connecticut covering the period January 1, 2015 through December 31, 2017.
3. The Commissioner alleges that during the period under examination, Respondent, in certain instances, failed to follow established practices and procedures to ensure compliance with statutory requirements resulting in instances of:
  - a) instances where the Respondent or its agent failed to charge the correct rate as filed with the Department.
  - b) instances where the Respondent or its agent failed to provide documentation for regulatory review.
  - c) instances where Respondent provided inducements to obtain title insurance business.
  - d) failure to adhere to a corrective action plan as required under Docket MC 10-160 regarding inducements to obtain title insurance business.

4. The Commissioner alleges that the conduct described in paragraph three is in violation of Sections 38a-414, 38a-415, 38a-419, 38a-420 and 38a-423 of the Connecticut General Statutes, and constitutes cause for the imposition of a fine or other administrative penalty under Sections 38a-2 and 38a-41 of the Connecticut General Statutes.

II

1. WHEREAS, Respondent neither admits nor denies the allegations in paragraphs three and four of Article I of this Stipulation and Consent Order; and
2. WHEREAS, Respondent agrees to undertake a complete review of its practices and procedures, with respect to those areas of concern, as described in the Market Conduct Report and this Stipulation, so that those areas of concern are compliant with Connecticut Statutes; and
3. WHEREAS, Respondent agrees to provide the Insurance Commissioner with a full report of findings and a summary of actions taken to comply with the requirements of paragraph two of this Section within ninety (90) days of the date of this document; and
4. WHEREAS, Respondent agrees to pay a fine in the amount of \$ 40,000 for the alleged violations described herein; and
5. WHEREAS, Respondent, being desirous of terminating administrative action without the necessity of a formal hearing or further litigation, does consent to the making of this Consent Order and voluntarily waives:
  - a. any right to notice and a hearing; and
  - b. any requirements that the Insurance Commissioner's decision contain a statement of findings of fact and conclusions of law; and
  - c. any and all rights to object to or challenge before the Insurance Commissioner or in any judicial proceeding any aspect, provision or requirement of this Stipulation

NOW THEREFORE, upon the consent of the parties, it is hereby ordered and adjudged:

1. That the Insurance Commissioner has jurisdiction of the subject matter of this administrative proceeding.
2. That Respondent is fined the sum of Forty Thousand Dollars (\$ 40,000) for the violations herein above described.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_

(Representative of Insurance Company)

CERTIFICATION

The undersigned deposes and says that she/he has duly executed this Stipulation and Consent Order on this 6 day of July 2020, for and on behalf of First American Title Insurance Company; that she/he is the Deputy General Counsel of such company, and she/he has authority to execute and file such instrument.

By:   
James O. Nelson, Deputy General Counsel  
STATE OF California

SS

COUNTY OF Orange

On the \_\_\_\_\_ day of July 2020, before me personally appeared James O. Nelson, Deputy General Counsel, sealer of the foregoing Stipulation and Consent Order, acknowledged same to be her/his act and deed.

  
Notary Public/Commissioner of The Superior Court



*Section Below To Be Completed by State of Connecticut Insurance Department*

Dated at Hartford, Connecticut this 15 day of July 2020.

  
Andrew N. Mais  
Insurance Commissioner

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange

On July 6, 2020 before me, Kristine Ann Furman  
(insert name and title of the officer)

personally appeared James O. Nelson III  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

