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UTAH STATE  
INSURANCE DEPT

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

<p><b>COMPLAINANT:</b></p> <p>UTAH INSURANCE DEPARTMENT</p> <p><b>RESPONDENT:</b></p> <p>CAPITOL TITLE INSURANCE AGENCY 483 West 30 North American Fork, UT 84003</p> <p>License No. 91261</p>	<p><b>STIPULATION AND ORDER</b></p> <p>Docket No. 2010-112 PC</p> <p>Enf. Case No. 2651</p>
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**STIPULATION**

1. Respondent, Capitol Title Insurance Agency is a licensed title insurance agent in the State of Utah, holding License No. 2745.
2. Respondent stipulates with the Complainant, Utah Insurance Department, as follows:
  - a. If a hearing were held, witnesses called by the Complainant could offer and introduce evidence that would support the Findings of Fact herein;
  - b. Respondent admits the Findings of Fact and Conclusions made therefrom;

- c. Respondent stipulates to the summary entry of the Order herein which shall be in lieu of other administrative proceedings by Complainant in this matter; and
- d. Respondent and Complainant have negotiated the terms of the Order entered herein and Respondent agrees to its entry and further agrees to be bound by all its terms.

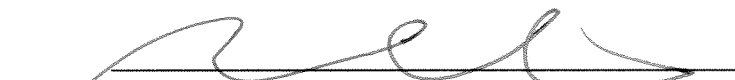
3. Respondent is aware of its right to a hearing at which it may be represented by counsel, present evidence and cross-examine witnesses. Respondent has irrevocably waived its right to such hearing and to any appeal related thereto.

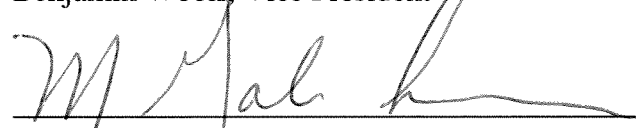
4. Respondent admits the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondent is acting herein free from any duress or coercion of any kind or nature, having been advised fully as to its rights set forth herein.

6. Respondent acknowledges that the issuance of this Order by the Commissioner is solely for purpose of disposition of the matter entitled herein.

DATED this 30 day of April, 2010.

  
CAPITOL TITLE INSURANCE AGENCY  
Benjamin Woolf, Vice President

  
UTAH INSURANCE DEPARTMENT  
M. Gale Lemmon  
Assistant Attorney General

Based upon the foregoing Stipulation and information in the file, the Presiding Officer makes the following Findings of Fact:

**FINDINGS OF FACT**

1. On or about June 16, 2006, Respondent Capitol Title Insurance Agency conducted an escrow closing through its agent Benjamin Woolf in a buy-sell real estate transaction for property located in the State of Utah.

2. The HUD 1 settlement statement showed a gift of equity from the seller to the buyer in the amount of \$23,000.00, and the closing instructions from the lender provided that “there must be no other liens against the property other than those shown on page 1 [which showed only the lender’s first mortgage], unless approved by us in writing”, and an addendum to those instructions that provided that the borrower needed to supply “a copy of gift letter to include: amount of gift, relationship of the donor to the borrower(s), and no repayment necessary.”

3. In connection with this real estate transaction, there existed a seller financing addendum to the purchase agreement for the same amount that was shown as a gift of equity on the HUD 1 settlement statement. The seller financing addendum was not disclosed to the lender by either the buyer or seller.

4. Despite the representation on the HUD 1 settlement statement showing a gift of equity and the instructions from the lender, Respondent’s agent, Benjamin Woolf, failed to disclose the existence of the seller financing agreement to the lender and prepared a trust deed from the buyer to the seller in the amount of \$31,972.29 which was not included on the HUD 1 settlement statement.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

**CONCLUSIONS OF LAW**

1. An agency is responsible for the acts of its agent in performance of that agent's duties under Utah Code Annotated § 31A-23a-302(7).

2. An escrow agent owes a fiduciary duty to all the participants in an escrow.

3. In failing to disclose the existence of seller financing to the lender when it knew the lender was not aware of that financing and especially where there existed specific lender instructions that no other liens were to exist, Respondent violated its fiduciary duty to the lender and participated in perpetrating a fraud on the lender.

4. Utah Code Ann. § 31A-23a-402 (West 2009) states in part:

(1)(a)(I) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the person listed in Subsection (1) (a)(i);

(ii) As used in Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a false report;

(II) making a false entry

(III) willfully refraining from making a proper entry in a record.

2. Respondent violated the above provision on June 16, 2006 when it provided incomplete, false, or misleading information in an escrow closing.

3. An administrative forfeiture in the amount of \$2500.00 and probation for a period of 12 months is appropriate under the circumstances of this case.

**RECOMMENDED ORDER**

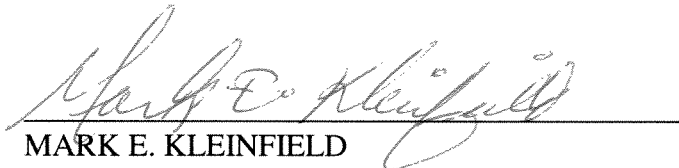
**IT IS RECOMMENDED THAT THE TITLE AND ESCROW COMMISSION IMPOSE THE FOLLOWING PENALTY:**

1. Respondent Capitol Title Insurance Agency be assessed an administrative forfeiture in the amount of \$2,500.00 to be paid to the department within 30 days of the date of the Order.

2. Respondent be placed on probation for a period of 12 months commencing with the date of this order. The terms of probation to be that Respondent shall have no further violations of the Utah Insurance Code, Department Rules, or any order of the commissioner.

DATED this 11<sup>th</sup> day of May, 2010.

NEAL T. GOOCH  
Acting Insurance Commissioner



MARK E. KLEINFELD  
Administrative Law Judge  
Utah Insurance Department  
State Office Building, Room 3110  
Salt Lake City, Utah 84114  
Telephone: (801) 538-3800

**ADOPTION OF RECOMMENDED ORDER AND IMPOSITION IF PENALTY**

By a vote of 4 to 0, taken in open meeting on this date, the Title and Escrow Commission hereby adopts the Recommended Order of the Presiding Officer and imposes the penalty recommended above.

DATED this 12<sup>th</sup> day of JULY, 2010.

  
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JERRY HOUGHTON, Chairman  
Title and Escrow Commission

**NOTIFICATION**

You are hereby notified that a failure to obey an Order of the commissioner may subject you to further penalties, including forfeitures of up to \$5,000.00 per violation and the suspension or revocation of your license and the filing of an action in District Court, which may impose forfeitures of up to \$10,000.00 per day for continued violation.

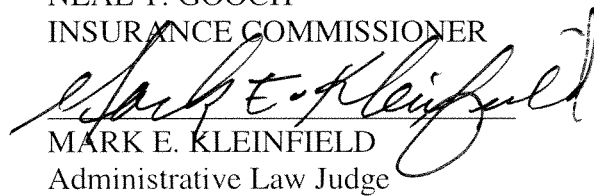
You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

**CONCURRENCE WITH COMMISSION IMPOSED PENALTY**

On behalf of the Commissioner of the Utah Insurance Department I hereby concur  
with the penalty imposed by the Utah Title and Escrow Commission in the above matter.

DATED this 12<sup>th</sup> day of JULY, 2010.

NEAL T. GOOCH  
INSURANCE COMMISSIONER

  
MARK E. KLEINFELD  
Administrative Law Judge