

**NO. D-1-GV-08-001478**

<b>STATE OF TEXAS,</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>Guardian Fidelity Title Company, Ltd.,</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
<b>Guardian Fidelity Title Company CLR, LLP,</b>	§	
<b>Guardian Fidelity Title Company NWR, LLP,</b>	§	
<b>Guardian Fidelity Title Company KTB, Ltd.,</b>	§	
<b>Guardian Fidelity Title Company SB, Ltd.,</b>	§	<b>419th JUDICIAL DISTRICT</b>
<b>Guardian Fidelity Title Company DFT, Ltd.,</b>	§	
<b>Defendants</b>	§	

**SPECIAL DEPUTY RECEIVER’S APPLICATION FOR AUTHORITY TO  
ABANDON AGENCY LICENSES**

**TO THE HONORABLE JUDGE OF SAID COURT:**

CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, Guardian Fidelity Title Company NWR, LLP, Guardian Fidelity Title Company KTB, Ltd., Guardian Fidelity Title Company SB, Ltd., Guardian Fidelity Title Company DFT, Ltd. (collectively, “Guardian”), files its *Application for Authority to Abandon Agency Licenses* (the “Application”).

**I. INTRODUCTION**

1.1 The Texas Department of Insurance (“TDI”) has commenced an action to revoke the title agency licenses issued to Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP (collectively, the “Licenses”). As the Licenses have no value to the receivership estate, the SDR requests authority to abandon the Licenses.

## II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the subject matter of this Application and of the parties affected herein pursuant to Texas Insurance Code section 443.005.

2.2 The Court has exclusive jurisdiction over the estate pursuant to Texas Insurance Code section 443.005(c)(i), and personal jurisdiction over all parties affected herein because this is a civil proceeding arising under and related to a delinquency proceeding under Chapter 443 of the Code, the transactions and occurrences which form the basis for the Application occurred, in whole or in part, in this state, because some of the parties affected herein reside and/or conduct business in this state that is directly related to the subject matter of this proceeding, and because the parties affected herein fall under the Court's statutory personal jurisdiction set out in Texas Insurance Code section 443.005(d) and Texas Civil Practice and Remedies Code Chapter 17. The exercise of jurisdiction over any non-resident parties affected herein comport to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

2.3 Travis County is the mandatory, sole, and exclusive venue for this proceeding. TEX. INS. CODE § 443.005.

2.4 The Special Deputy Receiver is authorized to file this Application pursuant to TEX. INS. CODE §443.151, which provides that the SDR is to conduct the business of the estate. The Licenses are property of the respective Guardian entities, which are vested in the Liquidator pursuant to §443.151 of the Texas Insurance Code. The Liquidator may request approval to abandon or otherwise dispose of any property of Guardian under §443.154 (y).

2.5 The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Order of Reference to Master*.

### **III. CONDITIONS PRECEDENT**

3.1 All conditions precedent have occurred or been complied with; alternatively, conditions precedent have been waived.

### **IV. BACKGROUND**

4.1 Under Chapter 2651 of the Texas Insurance Code, Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP operated as title insurance agents, as that term is defined in § 2501.003 (13). TDI issued licenses to Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP which authorized them to act as escrow officer agents for title insurers that appointed Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP.

4.2 Guardian was placed in receivership in this proceeding on July 11, 2008. The Court entered an *Agreed Order Appointing Liquidator and Permanent Injunction* (“Receivership Order”) on July 11, 2008, appointing the Commissioner of Insurance for the State of Texas as Liquidator and Permanent Receiver (“Receiver”). The Receiver designated CANTILO & BENNETT, L.L.P., as SDR of Guardian through a *Notice of Designation of Special Deputy Receiver* filed on October 2, 2008, and made effective as of September 15, 2008.

4.3 Guardian, as defined herein, consists of six entities in receivership, all of which operated as title insurance agents, as that term is defined in Texas Insurance Code section

2501.003(13), with offices in Webster, Houston, Spring, Katy, Friendswood, and Sugar Land, Texas.

Guardian acted as an agent for several solvent title insurance companies; Southern Title Insurance Company wrote the predominant share of these policies. The relevant title insurance companies continue to process and pay claims on title insurance policies issued by Guardian.

4.4 On May 18, 2011, TDI issued Notices of Intention to Institute Disciplinary Action against Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP (collectively, the “Notices”) stating an intention to revoke the Licenses. The Notices are attached as Exhibits 1-3, and incorporated by reference. The Notices allege that Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP each committed numerous violations of the Texas Insurance Code and other applicable laws prior to receivership.

4.5 The automatic stay created by Texas Insurance Code section 443.008 expressly does not bar the initiation and/or continuance of regulatory matters. The SDR has determined that it is in the best interest of the estates to not oppose the relief sought by TDI in the Notices and, instead, to abandon the Licenses.

4.6 The SDR intends to not appear at any administrative or judicial proceeding relating to the Licenses and to not make any objection to the administrative action instituted by TDI upon the entry of an order granting this Application.

## **V. RELIEF REQUESTED**

5.1 Under §443.151(a), the Liquidator is vested by law with title to all property of

Guardian, including all rights related to Licenses held by the Guardian entities. The *Agreed Order Appointing Liquidator and Permanent Injunction* for this delinquency proceeding (the “Liquidation Order”) states:

The Commissioner of Insurance must be appointed as Liquidator of Defendants pursuant to TEX. INS. CODE § 443.151 and vested by operation of law with title to all of Defendant’s property as defined in TEX. INS. CODE § 443.004 (a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in share accounts or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendants, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, **and all licenses held by Defendants** (collectively, “Defendant's Property”). The Liquidator's title shall extend to Defendant's Property regardless of the name in which such items are held. (Emphasis added). Liquidation Order, ¶ 1.4.

5.2 The Licenses can no longer be used to conduct business, and none of the Guardian entities can be permitted to operate as a title agency. Thus, the Licenses have no value to the receivership estate, unless they can be sold.

5.3 The SDR has determined that a sale of the licenses is not feasible. Section 443.153 (b) provides that the Liquidator may transfer a license in conjunction with the sale of a charter. However, there does not appear to be any demand for a charter of a defunct title agency, and the SDR believes that attempts to market the charter would be futile and cause the estate to unnecessarily incur expenses. In the unlikely event that an offer was made for the charter that would justify the costs of the sale, the Licenses would be of dubious value to the buyer. The *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas*, Administrative Rule L-1,

V, B.2 provides that upon a change in ownership of a title insurance agency of fifty percent (50%) or more, the existing license must be cancelled, and the owners must apply for a new license.

5.4 Texas Insurance Code Section 2651.201 (a) allows a title insurance agent to surrender a license. If the revocation action is not resolved by surrendering the license, it will proceed to hearing. Even minimal participation in the proceeding would entail costs to the receivership, while providing no benefit. Spending money in order to preserve or maintain rights related to a worthless asset is not in the best interest of the receivership estate. This is a particular concern here, because there are insufficient assets to pay operating expenses, and amounts have been advanced by the Abandoned Property Fund to continue the administration of the receivership proceeding.

5.5 Surrendering the Licenses will not have any detrimental impact on the creditors of the receivership estate. It will not create additional liabilities for the receivership estate or diminish any rights of third parties. Surrender will not affect the obligations of title insurance companies under policies issued by Guardian.

5.6 Under Texas Insurance Code § 443.154 (y)(3), this Court may approve a request to transfer, abandon, or otherwise dispose of any property. For the reasons described above, the Licenses has no value to the receivership estate, and efforts to maintain or sell the License would further deplete the limited funds available. The SDR therefore submits that it is appropriate and reasonable to abandon the Licenses, and surrender them to TDI.

5.7 The Liquidation Order grants the SDR the sole authority over the Licenses in its Permanent Injunction barring former management and their agents from “[d]oing, operating, or conducting Defendants' business under any charter, certificate of authority, license, permit, power or

privilege belonging to or issued to Defendants, or exercising any direction, control, or influence over Defendants' business, except through the authority of the Liquidator or his designees. Liquidation Order, ¶ 3.1

5.8 The SDR requests that the Receivership Court confirm that it is authorized to not appear at any administrative or judicial proceeding relating to the Licenses and to not make any objection to the administrative action instituted by TDI upon the entry of an order granting this Application. The SDR further requests that the court discharge and release the Receiver, the SDR, and the receivership estate from any and all liability regarding the Abandoned Agency Licenses

#### **VI. NO WAIVER**

6.1 Nothing in this Application or any related proceeding or filing shall affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The relief sought herein shall not affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Liquidation Order remain in affect unless expressly modified herein.

#### **VII. NOTICE**

7.1 The SDR has served this application to parties at interest, on all persons served by TDI with its Notices, and to the Internal Revenue Service by regular mail, email, and/or overnight delivery.

#### **VIII. NOTICE OF ELECTRONIC SERVICE REQUIREMENT**

8.1 Pursuant to the *Order Granting SDR's Application to Use Electronic Service of*

*Pleadings and Notices* entered on November 24, 2008, all pleadings filed in response to this Application or in regards to this estate shall be served by email on the undersigned counsel and all parties shown in the attached Certificate of Service.

### **IX. OFFER OF PROOF AND VERIFICATION**

9.1 This Application has been verified as required by the Texas Rules of Civil Procedure by the affidavit and certification pursuant to TEX. INS. CODE §443.017(b) by Michael Marcin, Partner in CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, Guardian Fidelity Title Company NWR, LLP, Guardian Fidelity Title Company KTB, Ltd., Guardian Fidelity Title Company SB, Ltd., Guardian Fidelity Title Company DFT, Ltd.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, Guardian Fidelity Title Company NWR, LLP, Guardian Fidelity Title Company KTB, Ltd., Guardian Fidelity Title Company SB, Ltd., Guardian Fidelity Title Company DFT, Ltd. respectfully requests that this Court:

1. grant this Application;
2. authorize the SDR to abandon the title agency licenses for Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP;
3. confirm that the SDR is authorized to not appear and not object to any action by TDI

- regarding the licenses in any forum including but not limited to SOAH;
4. authorize the SDR to surrender the original licenses, if available, to TDI and, if not available, to notify TDI that the original licenses cannot be located among the records of the estate;
  5. Discharge and release the Receiver, the SDR, and the receivership estate from any and all liability regarding the Abandoned Agency Licenses and
  6. grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

By: Christopher Fuller  
Christopher Fuller  
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Attorney for Cantilo & Bennett, L.L.P.,  
Solely in its capacity as the  
Special Deputy Receiver of Guardian Fidelity Title  
Co., *et al.*

### **CERTIFICATE OF SERVICE**

I certify that on July 18, 2011, a true and correct copy of this Application was served pursuant to the Order of Reference, the Court's order on e-service, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by electronic mail , except as specifically noted.

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Christopher Fuller

Robert Denman Wilburn  
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Via Regular and Certified Mail

Jonathan Douglass McDonald  
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Guardian Fidelity  
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[mpmarcin@cb-firm.com](mailto:mpmarcin@cb-firm.com)



3. Notice of the Application was provided in accordance with Texas Insurance Code Annotated section 443.007(d) and the Order of Reference, and no objections to the Application were filed;

4. The Special Master has issued a recommendation that the Application should be granted pursuant to Rule 171 of the Texas Rules of Civil Procedure;

5. The Court has jurisdiction over the Application, and the parties affected hereunder;  
and

6. The Application should be GRANTED in all respects.

IT IS ORDERED, ADJUDGED, AND DECREED that the Application is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court, as follows:

1. authorizes the SDR to abandon the title agency licenses for Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title Company CLR, LLP, and Guardian Fidelity Title Company NWR, LLP;
2. confirms that the SDR is authorized to not appear and not object to any action by TDI regarding the licenses in any forum including but not limited to SOAH;
3. authorizes the SDR to surrender the original licenses, if available, to TDI and, if not available, to notify TDI that the original licenses cannot be located among the records of the estate;
4. Discharges and releases the Receiver, the SDR, and the receivership estate from any and all liability regarding the Abandoned Agency Licenses;

5. This Order constitutes a final judgment fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to Texas Insurance Code Annotated Chapter 443. This Order shall not affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Receivership Order remain in affect unless expressly modified herein. This Order does not amend, modify, or in any manner change or affect the terms and provisions of the Agreed Order Appointing Liquidator and Permanent Injunction.

Signed on \_\_\_\_\_.

By: \_\_\_\_\_  
JUDGE PRESIDING



Texas Department of Insurance  
Enforcement Division, Mail Code 110-1A  
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104  
512-475-1821 telephone • www.tdi.state.tx.us

**RECEIVED**

MAY 19 2011  
VIA CMM RRR  
**CANTILO**

May 18, 2011

Guardian Fidelity Title CLR, LLP  
By and through its Special Deputy  
Receiver, CANTILO & BENNETT,  
L.L.P.

**Attention:** Christopher Fuller  
11401 Century Oaks Terrace, Ste. 300  
Austin, TX 78758

VIA REGULAR AND CERTIFIED MAIL  
CERTIFIED MAIL NO. 7011 0470 0002 1557 0473  
RETURN RECEIPT REQUESTED

**RE: TDI FILE NO. 54745; NOTICE OF INTENTION TO INSTITUTE DISCIPLINARY ACTION**

This letter is to inform Guardian Fidelity Title CLR, LLP that the Texas Department of Insurance, ("TDI"/"Department") is considering initiating disciplinary action against Guardian Fidelity Title CLR, LLP ("CLR") because CLR appears to have violated an order of the Commissioner of Insurance.

The Department alleges as follows:

1. Guardian Fidelity Title Co., Ltd., Owner ID No. 11744243, owns one percent of CLR.
2. Guardian Fidelity Title CLR, LLC, Owner ID No. 11744243, owns ninety-nine percent of CLR.
3. Robert Denham Wilburn is President and Director of CLR.
4. Jonathan Douglass McDonald is Chief Operating Officer and Partner of CLR.
5. Heidi Casares Sohrt is Director and Secretary of CLR.
6. Between December 7, 2004 and January 1, 2009, CLR was an appointed agent for Southern Title Insurance Corporation.
7. Between February 5, 2008 and January 1, 2009, CLR was an appointed agent for United General Title Insurance Company.
8. On April 30, 2008, the Commissioner of Insurance entered Official Order No. 08-0399, which is attached as Exhibit A. In Official Order No. 08-0399, the Commissioner of Insurance ordered CLR to:

NOTICE OF INTENTION TO INSTITUTE DISCIPLINARY ACTION

Guardian Fidelity Title CLR, LLP

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- a. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of the entry date of the order; and,
  - b. Surrender its Title Insurance Agent's License to the Department by June 30, 2008.
9. The last paragraph of Order No. 08-0399 states: "IT IS FURTHER ORDERED by the Commissioner of Insurance that if, under the provisions of TEX. INS. CODE ANN. § 82.054 and after public hearing, it is found that Guardian Fidelity Title CLR, LLP has failed to pay the administrative penalty in the full amount within the time specified herein or otherwise comply with the terms of this Order, then the title insurance agent license held by Guardian Fidelity Title CLR, LLP shall be revoked."
10. CLR has failed to comply with the provisions of Official Order No. 08-0399. Specifically, CLR:
  - a. failed to pay the \$10,000.00 administrative penalty to the Department by June 30, 2008; and,
  - b. failed to surrender its Title Insurance Agent's License to the Department by June 30, 2008.
11. As of May 18, 2011, CLR has still not attempted to pay the \$10,000.00 administrative penalty or surrender its title insurance agent's license.

CLR has the right under TEX. GOV'T CODE ANN. § 2001.054(c) to show that it has not violated the above cited provisions of the Texas Insurance Code and Commissioner's Order No. 08-0399 and that the allegations set forth are not true. Should CLR fail to demonstrate compliance, a hearing may be set to consider appropriate disciplinary action.

Respectfully Submitted,



Elisabeth Ret  
Staff Attorney, Enforcement Division  
Texas Department of Insurance, MC110-1A  
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(512) 475-1825  
(512) 475-1772 (Fax)

cc: Catherine Reyer, Associate Commissioner, Enforcement Division, Mail Code  
110-1A

Michael Rigby, Team Leader, Enforcement Division, Mail Code 110-1A

Robert Carter, Deputy Director, Title Division, Mail Code 106-2T

Robert Denman Wilburn, President, Guardian Fidelity Title CLR, LLP  
6715 Tournament Drive, Houston, Texas, 77068  
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***Return Receipt Requested***

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***Return Receipt Requested***

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***Return Receipt Requested***

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1120 NASA Road One, Suite 505  
Houston, Texas 77058  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0510***  
***Return Receipt Requested***

NOTICE OF INTENTION TO INSTITUTE DISCIPLINARY ACTION  
Guardian Fidelity Title CLR, LLP  
Page 4 of 4

Guardian Fidelity Title CLR, LLC, Owner, Guardian Fidelity Title CLR, LLP  
Registered Agent: Jonathan Douglass McDonald  
1120 NASA Road One, Suite 505  
Houston, Texas 77058  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0527***  
***Return Receipt Requested***



Texas Department of Insurance  
Enforcement Division, Mail Code 110-1A  
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104  
512-475-1821 telephone • www.tdi.state.tx.us

**RECEIVED**

MAY 19 2011  
*Via mm rrr*  
**CANTILO**

May 18, 2011

Guardian Fidelity Title Company, Ltd  
By and through its Special Deputy  
Receiver, CANTILO & BENNETT,  
L.L.P.

**Attention:** Christopher Fuller  
11401 Century Oaks Terrace, Ste. 300  
Austin, TX 78758

VIA REGULAR AND CERTIFIED MAIL  
CERTIFIED MAIL NO. 7011 0470 0002 1557 0534  
RETURN RECEIPT REQUESTED

**RE: TDI FILE NO. 54746; NOTICE OF INTENTION TO INSTITUTE DISCIPLINARY ACTION**

This letter is to inform Guardian Fidelity Title Company, Ltd that the Texas Department of Insurance, ("TDI"/"Department") is considering initiating disciplinary action against Guardian Fidelity Title Company, Ltd ("Guardian Fidelity") because Guardian Fidelity appears to have violated an order of the Commissioner of Insurance.

The Department alleges as follows:

1. Guardian Fidelity Title, LLC, Owner ID No. 11474299, owns one percent of Guardian Fidelity.
2. Heidy Casares Sohrt, Owner ID No. 11474300, owns ninety-nine percent of Guardian Fidelity.
3. Robert Denman Wilburn is President of Guardian Fidelity.
4. Jonathan Douglass McDonald is Chief Operating Officer and Manager of Guardian Fidelity.
5. Heidy Casares Sohrt is Vice President and Secretary of Guardian Fidelity.
6. Between September 10, 2003 and October 1, 2005, Guardian Fidelity was an appointed agent for Columbian National Title Insurance Company.
7. Between November 6, 2007 and October 1, 2009, Guardian Fidelity was an appointed agent for Southern Title Insurance Corporation.
8. Between February 5, 2008 and May 20, 2008, Guardian Fidelity was an appointed agent for United General Title Insurance Company.

9. On August 16, 2007, the Commissioner of Insurance entered Official Order No. 07-0708, a copy of which is attached as Exhibit A. In Official Order No. 07-0708, the Commissioner of Insurance ordered Guardian Fidelity to:
  - a. Pay an administrative penalty of \$50,000.00 in twelve monthly installments, with the last installment due on August 15, 2008;
  - b. File annual trust fund account audit reports for the years 2004, 2005 and 2006 with the Department on or before September 17, 2007; and,
  - c. Pay an additional administrative penalty of \$500.00 for every day after September 17, 2007 that Guardian Fidelity failed to have all the annual trust fund account audit reports for the years 2004, 2005, and 2006 filed with the Department.
10. The last paragraph of Order No. 07-0708 states: "IT IS FURTHER ORDERED by the Commissioner of Insurance that if, under the provisions of TEX. INS. CODE ANN. § 82.054 and after public hearing, it is found that Guardian Fidelity has failed to pay the administrative penalty or otherwise failed to comply with the provisions of this Consent Order, the Title Insurance Agent License held by Guardian Fidelity Title Company, Ltd. of Webster, Texas shall be revoked."
11. Guardian Fidelity has failed to comply with the provisions of Official Order No. 07-0708. Specifically, Guardian Fidelity:
  - a. failed to pay the \$50,000.00 administrative penalty to the Department by August 15, 2008; and,
  - b. failed to file annual trust fund account audit reports for the years 2004, 2005 and 2006 with the Department on or before September 17, 2007; and,
  - c. failed to pay the additional \$500.00 administrative penalty for every day after September 17, 2007 that it failed to have all the annual trust fund account audit reports for the years 2004, 2005, and 2006 filed with the Department.
12. As of May 18, 2011, Guardian Fidelity has still not attempted to pay either the \$50,000.00 administrative penalty or the additional administrative penalty. Nor has it filed with the Department annual trust fund account audit reports for the years 2004, 2005, and 2006.

Guardian Fidelity has the right under TEX. GOV'T CODE ANN. § 2001.054(c) to show that it has not violated the above cited provisions of the Texas Insurance Code and Commissioner's Order No. 07-0708 and that the allegations set forth are not true.

Should Guardian Fidelity fail to demonstrate compliance, a hearing may be set to consider appropriate disciplinary action.

Respectfully Submitted,



Elisabeth Ret  
Staff Attorney, Enforcement Division  
Texas Department of Insurance, MC110-1A  
333 Guadalupe  
Austin, Texas 78701  
(512) 475-1825  
(512) 475-1772 (Fax)

cc: Catherine Reyer, Associate Commissioner, Enforcement

Michael Rigby, Team Leader, Enforcement Division, Mail Code 110-1A

Robert Carter, Deputy Director, Title Division, Mail Code 106-2T

Jonathan Douglass McDonald, CEO and Manager, Guardian Fidelity Title Company, Ltd.  
1415 Basilan Lane, Houston, Texas 77058  
**Via Regular and Certified Mail No. 7011 0470 0002 1557 0541**  
**Return Receipt Requested**

Guardian Fidelity Title, LLC, Owner, Guardian Fidelity Title Company, Ltd.  
Registered Agent: Jonathan Douglass McDonald  
1120 NASA Road One, Suite 505  
Houston, Texas 77058  
**Via Regular and Certified Mail No. 7011 0470 0002 1557 0558**  
**Return Receipt Requested**

Heidy Sohrt, Owner, Guardian Fidelity Title Company, Ltd.  
2883 Point Drive  
Dickinson, Texas 77539  
**Via Regular and Certified Mail No. 7011 0470 0002 1557 0565**  
**Return Receipt Requested**



Texas Department of Insurance  
Enforcement Division, Mail Code 110-1A  
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104  
512-475-1821 telephone • www.tdi.state.tx.us

**RECEIVED**

MAY 19 2011  
*Via email RRR*  
**CANTILO**

May 18, 2011

Guardian Fidelity Title NWR, LLP  
By and through its Special Deputy  
Receiver, CANTILO & BENNETT,  
L.L.P.

**Attention:** Christopher Fuller  
11401 Century Oaks Terrace, Ste. 300  
Austin, TX 78758

VIA REGULAR AND CERTIFIED MAIL  
CERTIFIED MAIL NO. 7011 0470 0002 1557 0572  
RETURN RECEIPT REQUESTED

**RE: TDI FILE NO. 54747; NOTICE OF INTENTION TO INSTITUTE DISCIPLINARY ACTION**

This letter is to inform Guardian Fidelity Title NWR, LLP that the Texas Department of Insurance, ("TDI"/"Department") is considering initiating disciplinary action against Guardian Fidelity Title NWR, LLP because Guardian Fidelity Title NWR, LLP appears to have violated an order of the Commissioner of Insurance.

The Department alleges as follows:

1. Guardian Fidelity Title NWR, LLP ("NWR") holds a title insurance agent's license, Agent Company Identification No. 11972447, with the Master Company Name "Guardian Fidelity Title NWR, LLP" and the identical d/b/a name. NWR's title insurance agent's license was issued by the Department pursuant to TEX. INS. CODE ANN. §§ 2651.001-2651.004. The license was originally issued to NWR on October 11, 2005.
2. Guardian Fidelity Title Company, Ltd, Owner ID No. 11989245, owns one percent of NWR.
3. Guardian Fidelity Title NWR, LLC, Owner ID No. 11989240, owns ninety-nine percent of NWR.
4. Jonathan Douglass McDonald is the Chief Executive Officer and Director of NWR.
5. Suzan Melissa Sutkowski is Manager of NWR.
6. Between October 11, 2005 and November 1, 2009, NWR was an appointed agent for Southern Title Insurance Corporation.
7. Between February 5, 2008 and May 20, 2008, NWR was an appointed agent for United General Title Insurance Company.

8. On April 30, 2008, the Commissioner of Insurance entered Official Order No. 08-0400, attached as Exhibit A. In Official Order No. 08-0400, the Commissioner of Insurance ordered NWR to:
  - a. Pay an administrative penalty in the amount of \$6,250.00 within 60 days of the entry date of the order; and,
  - b. Surrender its title insurance agent's license to the Department by June 30, 2008.
9. The last paragraph of Order No. 08-0400 states: "IT IS FURTHER ORDERED by the Commissioner of Insurance that if, under the provisions of TEX. INS. CODE ANN. § 82.054 and after public hearing, it is found that Guardian Fidelity Title NWR, LLP has failed to pay the administrative penalty in the full amount within the time specified herein or otherwise comply with the terms of this order, then the title insurance agent license held by Guardian Fidelity Title NWR, LLP shall be revoked."
10. NWR has failed to comply with the provisions of Official Order No. 08-0400. Specifically, NWR:
  - a. failed to pay the \$6,250.00 administrative penalty to the Department by June 30, 2008; and,
  - b. failed to surrender its Title Insurance Agent's License to the Department by June 30, 2008.
11. As of May 18, 2011, NWR has still not attempted to pay the \$6,250.00 administrative penalty or surrender its title insurance agent's license.

NWR has the right under TEX. GOV'T CODE ANN. § 2001.054(c) to show that it has not violated the above cited provisions of the Texas Insurance Code and Commissioner's Order No. 08-0400 and that the allegations set forth are not true. Should NWR fail to demonstrate compliance, a hearing may be set to consider appropriate disciplinary action.

Respectfully Submitted,



Elisabeth Ret  
Staff Attorney, Enforcement Division  
Texas Department of Insurance, MC110-1A  
333 Guadalupe  
Austin, Texas 78701  
(512) 475-1825  
(512) 475-1772 (Fax)

cc: Catherine Reyer, Associate Commissioner, Enforcement Division, Mail Code  
110-1A

Michael Rigby, Team Leader, Enforcement Division, Mail Code 110-1A

Robert Carter, Deputy Director, Title Division, Mail Code 106-2T

Jonathan Douglass McDonald, CEO, Guardian Fidelity Title, NWR, LLP  
1415 Basilan Lane, Houston, Texas 77058  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0589***  
***Return Receipt Requested***

Guardian Fidelity Title NWR, LLC, Owner, Guardian Fidelity Title, NWR, LLP  
Registered Agent: Jonathan Douglass McDonald  
1120 NASA Road One, Suite 505  
Houston, Texas 77058  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0596***  
***Return Receipt Requested***

Guardian Fidelity Title Co., Ltd, Owner, Guardian Fidelity Title, NWR, LLP  
1120 NASA Road One, Suite 505  
Houston, Texas 77058  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0602***  
***Return Receipt Requested***

Suzan Melissa Sutkowski, Manager, Guardian Fidelity Title, NWR, LLP  
7325 Loblolly Lane  
Plantersville, Texas 77363  
***Via Regular and Certified Mail No. 7011 0470 0002 1557 0619***  
***Return Receipt Requested***

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO  
TEXAS INSURANCE CODE ANNOTATED SECTION 443.017(b)  
AFFIDAVIT OF MICHAEL P. MARCIN**

State of Texas

County of Travis

BEFORE ME, the undersigned authority appeared Michael P. Marcin, who after being by me duly sworn, stated the following under oath:

1. My name is Michael P. Marcin. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

2. I am a partner in CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., *et al.*<sup>1</sup> (the "SDR" and "Guardian" respectively). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to Texas Insurance Code section 443.017(b), are true and correct copies of records of the insurer, and were either received from the custody of the insurer or found among its effects, or were created by or filed with the Special Deputy Receiver's office in connection with the receivership of this delinquent insurer, and are held by the Special Deputy Receiver in its official capacity.

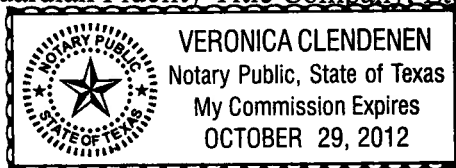
4. I further certify that I have read the *Application for Authority to Abandon Agency Licenses* and that the factual statements contained therein are true and correct based on my personal knowledge.

5. Further affiant sayeth not.

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

Michael P. Marcin

SUBSCRIBED AND SWORN TO BEFORE ME on July 15, 2011, by Michael P. Marcin, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Guardian Fidelity Title Company, Ltd., *et al.*, in receivership.



\_\_\_\_\_  
Veronica Clendenen  
Notary Public

<sup>1</sup> Guardian Fidelity Title Company, Ltd., Guardian Fidelity Title CLR, LLP, Guardian Fidelity Title NWR, LLP, Guardian Fidelity Title KTB, Ltd., Guardian Fidelity Title SB Ltd., and Guardian Fidelity Title DFT, Ltd., each and collectively in liquidation.

## APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the Special Deputy Receiver's *Application for Authority to Abandon Agency Licenses* (the "Application") is set for submission before the Special Master, Tom Collins, on August 1, 2011.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by email by such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at [Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us);
  - (b) The undersigned counsel, Christopher Fuller at [cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org); and
  - (c) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512)463-6450] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/Christopher Fuller  
Christopher Fuller