

1 CALIFORNIA DEPARTMENT OF INSURANCE
2 LEGAL DIVISION

3 Mary Ann Shulman, Esq. SBN 190164
4 45 Fremont Street, 21st Floor
5 San Francisco, California 94105
6 Telephone: 415/538-4113
7 Facsimile: 415/904-5490

8 Attorneys for
9 California Department of Insurance

10 **BEFORE THE INSURANCE COMMISSIONER**
11 **OF THE STATE OF CALIFORNIA**
12 **SAN FRANCISCO**

13 In the Matter of:

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16 TIMIOS, INC., a Delaware corporation,

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18 Respondent.

CDI File No. DISP-2012-00084

ORDER TO SHOW CAUSE TO CEASE AND
DESIST FROM THE UNAUTHORIZED
AND UNLAWFUL TRANSACTION OF THE
BUSINESS OF TITLE INSURANCE IN THE
STATE OF CALIFORNIA;
(Insurance Code §§ 700, 12921.8, 12389.5)

NOTICE OF RIGHT TO HEARING
(Insurance Code §§ 700, 12921.8, 12389.5);

1 The Insurance Commissioner of the State of California (“Commissioner”) in his official
2 capacity alleges that:

3 **JURISDICTION AND PARTIES**

4 1. Respondent, TIMIOS, INC. (“TIMIOS”), domiciled in Delaware, does not now
5 hold or ever has held a license from the California Insurance Commissioner to act in any capacity
6 regarding the transaction of the business of title insurance in the State of California. TIMIOS has
7 its principal offices located at 5716 Corsa Avenue in Westlake Village, California; and,

8 2. Respondent, TIMIOS, is a subsidiary of FIDUCIA REAL ESTATE SOLUTIONS,
9 INC., a Delaware holding company and subsidiary of TIMIOS NATIONAL CORPORATION
10 (formerly named Homeland Security Capital Corporation), based in Virginia. During all of the
11 times relevant to the charges brought herein, TIMIOS was an affiliate of DAL GROUP, LLC,
12 which was a subsidiary of DJSP ENTERPRISES, INC., with its principal place of business in
13 Florida; and,

14 3. On or about October 2010, the California Department of Insurance (“Department”)
15 began investigating the practices of TIMIOS, pursuant to California Insurance Code §§ 700, 730,
16 734, 12407 and 12924,¹ after the Department received written complaints alleging the
17 unauthorized transaction of the business of title insurance in California by TIMIOS. These
18 complaints raised the issue of whether certain arrangements with national lenders and work-
19 sharing and administrative services agreements with licensed title underwriters, from on or about
20 April 2010 through April 2011, constituted violations of California’s insurance laws. The
21 investigation included an examination of TIMIOS documents relating to the work-share and
22 administrative services agreements; and,

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¹ Unless otherwise stated, all references are to the California Insurance Code.

1 4. California Insurance Code § 700(a) prohibits a person from transacting insurance
2 business in this state without first being admitted for that class of insurance; and,

3 5. California Insurance Code § 700 (b) provides that “[T]he unlawful transaction of
4 insurance business in this state in willful violation of the requirements for a certificate of
5 authority is a public offense punishable by imprisonment, pursuant to subdivision (h) of Section
6 1170 of the Penal Code, or in a county jail not exceeding one year, or by fine not exceeding one
7 hundred thousand dollars (\$100,000), or by both that fine and imprisonment;” and,

8 6. California Insurance Code § 12340.3 defines the business of title insurance to
9 include, in pertinent part, “[I]ssuing or proposing to issue any title policy as insurer, guarantor, or
10 indemnitor; transacting or proposing to transact any phase of title insurance, including
11 solicitation, negotiation preliminary to execution of a title policy, insuring and transacting matters
12 subsequent to the execution of a title policy and arising out of such policy;” performing “any
13 service in conjunction with the issuance or contemplated issuance of a title policy, including but
14 not limited to the handling of any escrow, settlement or closing in connection therewith, or the
15 doing of or proposing to do any business which is in substance the equivalent of any of the
16 above;” and the “issuance, by a title insurer, of a letter of indemnity;” and,

17 7. California Insurance Code § 12389.5 provides that “Every person engaged in the
18 business of preparing title searches, title examinations, title reports, and certificates of abstracts of
19 title, upon which a title insurer writes title policies, is required to be licensed as an underwritten
20 title company in compliance with the licensing requirements of this article;” and,

21 8. California Civil Code § 1057 defines escrow as the conditional delivery to a
22 neutral third party of money, a grant deed or other written instrument to be held until the
23 happening of specified events or performance of described conditions set forth in the escrow
24 instructions given by the principals to the escrow; and,
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1 9. California Financial Code § 17003 defines escrow to mean “any transaction
2 wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real
3 or personal property to another person, delivers any written instrument, money, evidence of title
4 to real or personal property, or other thing of value to a third person to be held by such third
5 person until the happening of a specified event or the performance of a prescribed condition,
6 when it is then to be delivered by such third person to a grantee, grantor, promisee, promisor,
7 obligee, obligor, bailee, bailor, or any agent or employee of any of the latter;” and,
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9 10. California Insurance Code § 12921.8 authorizes the Insurance Commissioner to
10 issue a Cease and Desist order to a person who has acted in a capacity for which a license,
11 registration, or certificate of authority from the commissioner was required but not possessed and
12 to impose a monetary penalty, pursuant to an order to show cause; and,
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14 11. California Insurance Code §§ 730, 12407, and 12924, authorize the Commissioner
15 access to all records and the power to examine the affairs of every person engaged in the business
16 of insurance to determine if such person violated certain provisions of the Insurance Code. The
17 Commissioner may issue subpoenas and subpoenas duces tecum for witnesses to testify and
18 produce documents before him on any subject touching insurance business; and,
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20 12. California Insurance Code § 12976 provides that “All fines ... and penalties
21 provided for in this code shall be due and payable on the demand of the commissioner. If
22 payment is not made within ten days after such demand, then the commissioner shall institute an
23 action in the name of the people of the State of California for the purpose of recovering such
24 moneys due.”

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FACTUAL ALLEGATIONS

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2 13. Between April 2010 and April 2011, TIMIOS solicited and received orders from
3 various lenders for title insurance and escrow services on California properties in connection with
4 purchase, refinance, and default transactions; and,

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6 14. Between April 2010 and April 2011, TIMIOS transacted or proposed to transact
7 any phase of title insurance, including soliciting and receiving orders from various lenders to
8 prepare title documents for California properties in default, typically consisting of a deed, release,
9 and certain legal affidavits necessary to convey title from the delinquent borrower to the lender,
10 for payment to TIMIOS of \$125 for each order; and,

11 15. Between April 2010 and April 2011, TIMIOS transacted or proposed to transact
12 any phase of title insurance, including performing services in connection with the issuance or
13 contemplated issuance of a title policy, including the handling of escrow, settlement or closing in
14 connection therewith, or the doing of or proposing to do any business which is substantially
15 equivalent of the above; and,

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17 16. Between April 2010 and April 2011, TIMIOS held a grant deed or other written
18 instrument or evidence of title to real property until the happening of specified events or
19 performance of described conditions set forth in escrow instructions given by the principals to the
20 escrow and then delivered such instruments to a grantee, grantor, promisee, promisor, obligee or
21 obligor; and,

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23 17. On information and belief, TIMIOS issued closing protection letters in connection
24 with California properties between April 2010 and April 2011; and,

25 18. On December 3, 2008, TIMIOS entered into an Administrative Services
26 Agreement with FIDELITY NATIONAL TITLE INSURANCE COMPANY ("FIDELITY")
27 whereby TIMIOS agreed to perform the following services on behalf of FIDELITY: Order Entry
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1 and Legal Description, Customer Contact, Administrative Support to include Verify Borrower's
2 Identity, Notify Lender of Borrower Bankruptcy, Secure Affidavits Required for Closing,
3 Request Forms for Condo/HOA Approval of Transfer of Ownership, Obtain Copy of Executed
4 Contracts, Request Estoppel Letter for HOA/Condo Dues/Assessments, Request Payoff
5 Statements, Provide Lease/Lessor Notification, Verify Judgments/Liens, Confirm Property Status
6 with Lender, Provide Notice of Commencement to Parties, Obtain Certificates of Good Standing,
7 Obtain Corporate and Trust Documents from Parties, Contact Borrower for Survey or Survey
8 Affidavit, Verify Delinquent Taxes of Parties, Verify Water/Sewer Payments on Property, Obtain
9 Warranty Deed, Deliver Preliminary Title Report and Title Policy to Borrower and Lender,
10 Review Probate Documents, Calculate and Offer Allowable Title Rate Discounts to Consumer,
11 Furnish Lender's Closing Instructions and Closing Documents. In payment for said services, the
12 Administrative Services Agreement set forth fees for each such service, not to exceed one
13 hundred dollars (\$100.00) total payment to TIMIOS in any transaction. In addition, TIMIOS
14 agreed to track and record all title-related documents for each closed title order for a separate fee;
15 and,
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18 19. On April 16, 2010, TIMIOS entered into a Master Services Agreement with
19 STEWART LENDER SERVICES ("STEWART"), a wholly owned subsidiary of STEWART
20 TITLE COMPANY, with principal offices in Houston, Texas, whereby TIMIOS agreed to pay
21 STEWART to conduct a title search, issue a title policy, and prepare documents in accordance
22 with TIMIOS' instructions on behalf of various lenders from whom TIMIOS solicited and
23 received title orders in connection with foreclosed properties in California; and
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25 20. The number of title and escrow orders on California properties received from
26 various lenders and transacted by TIMIOS, between approximately April 2010 and April 2011,
27 will be determined at hearing.
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1 25. WHEREAS, the Insurance Commissioner has reason to believe that a proceeding
2 by the Insurance Commissioner would be in the public interest to determine whether TIMIOS is
3 engaging in the unlawful transaction of title insurance without a license and an Order to Cease
4 and Desist should be issued.

5 26. PLEASE TAKE NOTICE that the Insurance Commissioner may impose a
6 monetary penalty in accordance with California Insurance Code §§ 700 and 12921.8 for acting in
7 the capacity for which a license, registration, or certificate of authority was required but not
8 possessed.

9 27. THEREFORE, Respondent TIMIOS is HEREBY ORDERED TO SHOW CAUSE
10 why the Insurance Commissioner should not order TIMIOS to Cease and Desist from the
11 transaction of title insurance business in the State of California, including but not limited to the
12 following:
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- 15 a. Issuing, proposing to issue, or causing to be issued any policies of title
16 insurance covering real property located in the State of California;
 - 17 b. Transacting or proposing to transact any phase of title insurance in the
18 State of California, including solicitation, negotiation preliminary to
19 execution, insuring and transacting matters subsequent to the execution of a
20 title policy and arising out of such policy;
 - 21 c. Performing any service in conjunction with the issuance or contemplated
22 issuance of a title policy for California properties, including but not limited
23 to the handling of any escrow, settlement or closing in connection
24 therewith, or the doing of or proposing to do any business, which is in
25 substance the equivalent of any of the above;
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- 1 d. Issuing or proposing to issue any closing protection letters or letter of
2 indemnity on behalf of a title insurer for properties located within the State
3 of California;
- 4 e. Receiving any money, commission, fee, rebate, payment, remuneration, or
5 any other valuable consideration whatsoever, in connection with any title
6 search, title report, title examination, certificate or abstract of title, or title
7 policy issued on California properties or performance of any escrow,
8 settlement or closing service or its substantial equivalent for California
9 properties;
- 10 f. Advertising or holding TIMIOS out as a title agent for title and escrow
11 services in the State of California.
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14 28. THEREFORE, Respondent TIMIOS is FURTHER ORDERED TO SHOW
15 CAUSE why the Insurance Commissioner should not impose a monetary penalty in accordance
16 with California Insurance Code §§ 700 and 12921.8.

17 **NOTICE OF RIGHT TO HEARING**

18 California Insurance Code § 12921.8(c) provides in part, as follows:

19 "A person to whom a cease and desist order or order to show cause has been
20 issued, may, within seven days after service of the order, ... request a hearing by
21 filing a request for the hearing with the commissioner."

22 If you desire a hearing in this matter, your written request for a hearing must be received
23 within seven days after you are served with this Order to Show Cause. The seven days begins to
24 run on the day after the day you are served, and if the seventh day falls on a weekend, the period
25 in which your request must be filed is extended to Monday or the next business day if Monday is
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a holiday. Your written request for a hearing must be directed to the undersigned at 45 Fremont Street, 21st Floor, San Francisco, California 94105.

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Dated: April 3, 2013

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

By: 

Mary Ann Shulman
Senior Attorney

Attorneys for California Department of Insurance