

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ANTITRUST BUREAU

In the Matter of

Assurance No. 21-057

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Old Republic National Title Insurance Company,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) has commenced several investigations pursuant to Section 343 of the New York General Business Law, Section 63(12) of the New York Executive Law, the Donnelly Act, and Section 1 of the Sherman Act into the potential harm to competition caused by the use of restrictive provisions between competitors in various labor markets, including labor markets in the title insurance industry (“the OAG Investigation”). As part of its investigation in the title insurance industry, the OAG has specifically considered the potential harm to competition caused by agreements between Old Republic National Title Insurance Company (“Old Republic” or “ORT”) and its competitors, title insurance underwriters and title insurance agencies (“Competitors”). As part of its investigation, the OAG, among other things, reviewed documents and information produced by Old Republic, gathered and analyzed relevant market data, and obtained documents and information from other market participants.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Old Republic (collectively, the “Parties”).

OAG's FINDINGS

1. Old Republic is one of the four largest title insurance underwriters in the United States. It is a wholly-owned subsidiary of Old Republic Title Insurance Group, Inc. ("ORTIG"). ORTIG is based in Chicago, IL, and is a wholly-owned subsidiary of Old Republic International Corporation, based in Chicago, IL.

2. Old Republic issues title insurance policies in two ways. First, it appoints independent title insurance agencies ("Agencies" or "Agency"), to issue ORT policies. Second, it owns or controls title insurance agencies, called direct or affiliated operations ("Directs"), in various areas of the country, including New York. Directs are typically more profitable, as ORT does not have to split its premium with Agencies. In New York, Agencies' share of the premium is approximately 85%.

3. The labor market for employees of title insurance Agencies and Directs ("Employees"), who sell title insurance policies and services to customers, is a relevant antitrust market, and New York is a relevant geographic market.

4. Directs and Agencies are competitors in the labor market for Employees. They compete on the basis of salaries, benefits, and career opportunities. Directs and Agencies have business models that heavily rely on Employees' business relationships. Therefore, hiring and retaining top performing Employees is critical to the competitive significance of the Directs and Agencies.

5. "No-poach Agreements" are agreements among two or more companies not to solicit, recruit or hire each other's employees; these agreements can be written or verbal. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. No-poach Agreements reduce competition for employees and disrupt the normal

compensation-setting mechanisms that apply in labor markets, to the detriment of the affected employees who may be deprived of competitively important information and access to better job opportunities.

6. The OAG has determined that Old Republic has entered into No-poach Agreements with Agencies. These agreements have been both verbal and written, and some are intended to last even after the term of any business relationship has ended. These agreements effectively end competition for Employees between Old Republic and the Agency, including competition in New York.

7. OAG has not identified any procompetitive justifications for these agreements. There is no indication, for example, that Old Republic's business relationships with Agencies will be damaged in the absence of these agreements.

8. OAG finds that Old Republic's entry into No-poach Agreements with Agencies are likely in violation of the Donnelly Act, Section 1 of the Sherman Act, and Section 63(12) of the New York Executive Law.

9. Old Republic enters into this Assurance for the purpose of resolving the OAG Investigation only, and this Assurance does not create any rights for any third party. Old Republic neither admits nor denies the OAG's findings above.

10. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the Donnelly Act, Gen. Bus. Law § 340 et. seq., the Sherman Act, § 1 (15 U.S.C. § 1), and Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

11. Old Republic shall not engage, or attempt to engage, in agreements restricting competition in the labor market with their Competitors, including but not limited to attempting to enter into, entering into, maintaining or enforcing any No-poach Agreements with any Competitor. Old Republic shall also not agree with any Competitor to in any way refrain from, request that any Competitor in any way refrain from, or pressure any Competitor in any way to refrain from soliciting, recruiting, or otherwise competing for employees.

12. Old Republic will not enforce No-poach Agreements in any of its existing agreements with Competitors, and will terminate any ongoing No-poach Agreements with Competitors, whether written or verbal, within thirty (30) days of this Assurance.

13. Within fourteen (14) days of execution of this Assurance, Old Republic will as necessary update its standard forms for agreements with its Competitors, such as forms for agreements establishing Agency relationships (“Agency Agreements”) and for agreements contracting for services with Agencies (“Service Agreements”), to remove No-poach Agreements.

14. Old Republic will provide a copy of this Assurance to each of its officers, directors, human resources managers, and senior managers who supervise employee recruiting, solicitation, or hiring efforts, within seven (7) days.

15. Old Republic will notify its existing appointed Agencies of the entry of this Assurance and provide them with a copy within fourteen (14) days of executing this Assurance. For a period of two years from the date of this Assurance, Old Republic will notify any newly contracted Agency of the entry of this Assurance and provide it with a copy within fourteen (14) days of entering a new Agency Agreement or Service Agreement.

16. If any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts of Old Republic learns of any violation or potential violation of this Assurance, Old Republic will promptly take appropriate action to terminate or modify the activity so as to comply with this Assurance and maintain all documents related to any violation or potential violation of this Assurance.

17. Until the date when the OAG's Investigation is concluded, ORT agrees to continue to provide full, complete and prompt cooperation with the OAG in related proceedings and actions, against any other person, corporation or entity. ORT agrees to use their best efforts to secure the full and truthful cooperation of current officers, directors, employees and agents with the ongoing OAG Investigation and any related proceedings and actions. OAG will promptly inform ORT when the OAG's Investigation is concluded.

18. For ten (10) years following the date of this Assurance, Old Republic will promptly notify the OAG if it learns of any violation or potential violation of this Assurance known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. Descriptions of violations or potential violations of this Assurance shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication.

19. For ten (10) years following the date of this Assurance, Old Republic will promptly notify the OAG if it learns of any effort by a Competitor to enter or enforce a No-poach Agreement (unless explicitly permitted by Paragraph 11 of this Assurance).

20. Cooperation shall also include, but is not limited to: (a) voluntarily, and promptly, producing, without service of subpoena, to the extent permitted by law or regulation, all information, documents or other tangible evidence reasonably requested by the OAG that relates to the OAG's investigation of the title insurance industry; (b) promptly providing to the OAG or their designated representative(s), an oral proffer describing all facts that are known or subsequently learned by ORT related to any No-poach Agreements; (c) working, if requested by the OAG, to ensure that the ORT current officers, directors, employees and agents attend, on reasonable notice, any proceedings (including but not limited to meetings, interviews, hearings, depositions, grand jury proceedings and trials) and answer completely, candidly, and truthfully any and all inquiries relating to the subject matter of the OAG's Investigation that may be put to such persons by the OAG (or any deputies, assistants or agents), without the necessity of a subpoena.

21. The cooperation set forth herein is subject to the ORT's right to withhold documents or testimony on the grounds of privilege, work-product or other legal doctrine, and ORT does not waive any privilege, work-product or other legal doctrine applicable to disclosure of information by cooperating with the OAG Investigation.

22. Within forty-five (45) days of execution of this Assurance, ORT shall comply with all of the provisions of this Assurance.

23. Acceptance of this Assurance by the OAG is not an approval or endorsement by OAG of any of Old Republic's policies, practices or procedures, and Old Republic shall make no representation to the contrary.

24. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation in this Assurance, and therefore agree that Old Republic shall pay to the State of New York a stipulated penalty of \$50,000 per month (following the date of the default) for each and every such default in the performance of any obligation in this Assurance, occurring after the effective date of the Assurance.

25. For ten (10) years following the date of this Assurance, Old Republic shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, to be submitted to the OAG at the end of each year, starting on January 1, 2022. This certification shall be in writing and be signed by Old Republic. In any case where the circumstances warrant, the OAG may require Old Republic to file an interim certification of compliance upon thirty (30) days notice.

26. Within five (5) business days, ORT agrees that it will pay by wire transfer, payable to the State of New York, a monetary payment of \$1,000,000.

27. Any payments and all correspondence related to this Assurance must reference Assurance # 21-057

MISCELLANEOUS

Subsequent Proceedings:

28. Old Republic expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraph 34 and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

- b. the OAG may use statements, documents, or other materials produced or provided by Old Republic prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Old Republic irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

29. If a court of competent jurisdiction determines that Old Republic has violated the Assurance, Old Republic shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

Effects of Assurance:

30. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Old Republic. Old Republic shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. Old Republic may not assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

31. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

32. Any failure by the OAG to insist upon the strict performance by Old Republic of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Old Republic.

Communications:

33. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-057, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows: If to Old Republic, to: Elaine Layton. If to the OAG, to the person holding the title of Bureau Chief, Antitrust Bureau.

Representations and Warranties:

34. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Old Republic and their counsel and the OAG's own factual investigation as set forth in the Findings. Old Republic represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Old Republic or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

35. No representations, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Old Republic in agreeing to this Assurance.

36. Old Republic represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Old Republic further represents and warrants that Elaine Layton, as the signatory to this Assurance, is a duly authorized officer acting on behalf of Old Republic.

General Principles:

37. Unless a term limit for compliance is otherwise specified within this Assurance, Old Republic's obligations under this Assurance are enduring. Nothing in this Assurance shall relieve Old Republic of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

38. Old Republic shall not in any manner discriminate or retaliate against any of their employees, including but not limited to employees who cooperated or are perceived to have cooperated with the investigation of this matter or any future investigation related to enforcing this Assurance.

39. Old Republic agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without legal or factual basis. Nothing in this paragraph affects Old Republic's right to take legal or factual positions in litigation or other proceedings in which the OAG is not a party.

40. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Old Republic violates this Assurance after its effective date.

41. This Assurance may not be amended except by an instrument in writing signed on behalf of the OAG and Old Republic.

42. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

43. Old Republic acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

44. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

45. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

46. This Assurance may be executed in multiple counterparts by the OAG and Old Republic. All counterparts so executed shall constitute one agreement binding upon the OAG and Old Republic, notwithstanding that the OAG and Old Republic are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

47. The effective date of this Assurance shall be September 3, 2021.

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By: /s/ Bryan Bloom

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

By: /s/ Elaine Layton

Elaine Layton
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