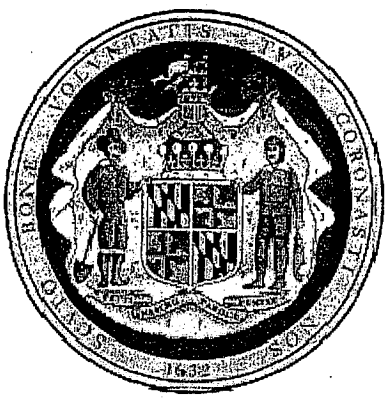

REPORT OF THE COMMISSION TO STUDY THE TITLE INSURANCE INDUSTRY IN MARYLAND

FEBRUARY 2010

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Executive Summary

In response to an April 2007 United States Government Accountability Office (GAO) Report to the United States House of Representatives Committee on Financial Services entitled "*Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*" and the heightened scrutiny of title insurance regulation and the title insurance industry, due in large part to a significant rise in property foreclosure rates in Maryland, the Maryland General Assembly passed and the Governor signed Senate Bill 61 and House Bill 600 (Chapters 356 and 357, Acts of 2008) creating the Commission to Study the Title Insurance Industry in Maryland (Commission).

The purpose of the Commission was to make recommendations for changes to State laws relating to the title insurance industry. In order to develop the recommendations, the Commission was required to:

(1) review State laws relating to the title insurance industry;
(2) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
(3) identify title insurance industry issues that affect consumers in Maryland;
(4) examine the rate-setting factors for title insurance premiums;
(5) examine how rates and services in a title plant state compare to those in Maryland
(6) identify ways to improve consumer education about the title insurance industry;
(7) study whether mechanics' liens on properties schedule for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
(8) review the time limits, subsequent to closing, for the issuance or title insurance policies;
(9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transactions to determine the impact of these arrangements on title insurance premium rates; and
(10) study any other issue with significant impact on the title insurance industry.

In addition, the Commission was required by Chapter 361, Acts of 2009, to

(1) examine the adequacy of the blanket surety bond or letter of credit required under §10-121(e) of the Insurance Article to protect consumers who suffer a loss from the conversion or misappropriation by a title insurance producer of money received or held in escrow or trust; and

(2) if the Commission finds that an increase in the amount of the blanket surety bond or letter of credit is warranted, determine the impact of the additional cost on title insurance producers.

The Commission held eight open meetings, including two public hearings, and solicited testimony and presentations in order to fully study each of its charges. As a result of its review and deliberations, the Commission makes the following recommendations:

1. Require the Maryland Insurance Commissioner (Commissioner) to study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer. This recommendation does not require a statutory change.

2. Provide that when a person who provides escrow, closing, or similar settlement services in any real estate settlement transaction in which a title insurance contract may be issued is a title insurance producer independent contractor (TIPIC), that person will be deemed the agent of the party that sends the person to the real estate settlement. The party that sends the person to the real estate settlement is thus the legal principal of the person and is liable for all actions, including non-intentional conduct, of the person. In this legal principal-agent relationship, the TIPIC shall be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond. In addition, require any recorded deed of trust executed in connection with a settlement conducted by a licensed title insurance producer to include the name, address, and license number of the licensed title insurance producer and the

name, address, and license number of the licensed title insurance producer's principal, if any. This recommendation requires a statutory change.[1]

3. Require the Commissioner to adopt regulations, specifying the manner in which a title insurer is to conduct the annual on-site review of each title insurance producer appointed by the title insurer. This recommendation does not require a statutory change.

4. Direct the MIA and the Department of Labor, Licensing, and Regulation (DLLR) to develop a document entitled a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The MIA and DLLR would require by regulation that the Title Insurance Consumer's Bill of Rights be provided to a consumer at the same time a good faith estimate is given to a consumer. The title insurance consumer's bill of rights should be available from the websites of DLLR and the MIA. This recommendation does not require a statutory change.

5. Direct the MIA to examine the current rate review and approval process for title insurance premiums. If the MIA finds that the current rate review process requires adjustment, the MIA should adopt new processes for rate review and approval, including regulations, if warranted, to ensure that consumers are protected. In its review, the MIA should examine the rate-setting practices in Pennsylvania which utilizes an all-inclusive rate in which the premium for title insurance includes settlement costs. This recommendation does not require a statutory change.

6. With respect to affiliated business arrangements (ABAs) and the disclosure of fees related to ABAs, provide that licensees must comply with the federal law (12 U.S.C. 2607(c)(4)) and federal regulations (24 CFR 3500.15 and Appendix D) regarding this disclosure.

[1] One member of the Commission did not agree with the recommendation that information regarding the TIPIC and licensed title insurance producer be included in a recorded deed of trust.

This will allow Maryland regulators the ability to enforce the ABA disclosure requirements in nearly all residential real estate closings conducted in the State. If a licensee did not comply, action could be taken against that person's license. This recommendation requires a statutory change.

7. Direct the MIA and DLLR to share information regarding complaints involving real estate closings in order to possibly track a pattern of problem transactions and licensees. This recommendation does not require a statutory change.

The Commission recommends that, in order to better protect consumers, the changes outlined in this report should be made and encourages the General Assembly to codify those recommendations that require statutory changes.

Commission to Study the Title Insurance Industry in Maryland

Introduction

In response to an April 2007 GAO Report to the United States House of Representatives Committee on Financial Services entitled "*Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*" and the heightened scrutiny of title insurance regulation and the title insurance industry, due in large part to a significant rise in property foreclosure rates in Maryland, the 2008 Maryland General Assembly through signature of the Governor passed Senate Bill 61 and House Bill 600 (Chapters 356 and 357, Acts of 2008) establishing the Commission to Study the Title Insurance Industry in Maryland.

The purpose of the Commission was to make recommendations for changes to State laws relating to the title insurance industry. In order to develop the recommendations, the Commission was required to:

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(7) study whether mechanics' liens on properties schedule for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
(8) review the time limits, subsequent to closing, for the issuance or title insurance policies;
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In addition, the Commission was required by Chapter 361, Acts of 2009, to

> (1) examine the adequacy of the blanket surety bond or letter of credit required under §10-121(e) of the Insurance Article to protect consumers who suffer a loss from the conversion or misappropriation by a title insurance producer of money received or held in escrow or trust; and
> (2) if the Commission finds that an increase in the amount of the blanket surety bond or letter of credit is warranted, determine the impact of the additional cost on title insurance producers.

The Commission held eight open meetings, including two public hearings, and solicited testimony and presentations in order to fully study each of its charges. Minutes from the open meetings and public hearings may be found in the Appendix of this report.[2]

At the Commission's first meeting, the Commission decided to group the Commission's charges into four different categories of study. Each of the categories would be the subject of discussion at separate Commission meetings. In addition, the Commission decided that public hearings would be held in order to solicit input from consumers, the title insurance industry, persons involved in real estate closing transactions, and any other members of the public wishing to provide information to the Commission in its work. During its work, the Commission also determined that establishing workgroups to focus on three specific areas of study would enable the Commission to more fully examine those areas of most concern to the Commission. The workgroups met to discuss issues, trends, and problems relating to: (A) Regulation of the Title Insurance Industry; (B) Consumer Protection; and (3) Affiliated Business Arrangements. Each workgroup proposed a set of recommendations to the Commission. These recommendations were the basis of the final recommendations adopted by the Commission.

[2] Minutes from each of the meetings of the Commission are included as appendices to this report along with copies of the handouts that were provided to the Commission members at each meeting. For the public hearings, written testimony submitted to the Commission is also included in the appendices. Written testimony of the Maryland Land Title Association submitted at the July 16, 2009 public hearing can be viewed at the Maryland Insurance Administration offices at 200 St. Paul Place, Suite 2700, Baltimore, Maryland.

Review of Laws Relating to the Title Insurance Industry and Enforcement Mechanisms

The MIA is the State agency responsible for regulation and oversight of the insurance industry in Maryland. The MIA, headed by the Commissioner, is responsible for insuring insurer solvency, insuring compliance with all applicable insurance laws and regulations, investigating consumer complaints, reviewing insurance rates and forms, licensing producers and insurance companies, and educating consumers across the State on a multitude of insurance issues.

Title insurance is an integral aspect of most mortgage loan and refinance transactions. It is defined under Maryland law as:

> "insurance of owners of property or other persons that have an interest in the property against loss by encumbrance, defective title, invalidity of title, or adverse claim to title."[3]

Title insurance provides a guarantee to the owner of the parcel, and/or a lender that the property is free and clear of all liens and encumbrances except for those specifically excluded from coverage in the title policy. There are two types of title insurance policies available: (1) an owner's policy and (2) a lender's policy. The owner's policy is generally purchased by the borrower/homeowner for the purpose of providing protection of the homeowner's property interest. The lender's policy, although typically paid for by the homeowner or the party refinancing, is purchased for the benefit of the lender providing protection of the lender's security interest in the property. Although a premium is only paid once at the time of closing, the owner's policy remains in effect as long as that particular homeowner owns the home; a lender's policy remains in effect until the associated mortgage loan has been satisfied.

Title insurers are licensed and regulated by the MIA. A title insurer must obtain a certificate of authority from the Commissioner prior to issuing title insurance policies.[4] A title

[3] Ann. Code of Maryland, Insurance Article § 1-101(qq) (Michie 2003 & 2009 Supp).

insurer is also subject to the laws regarding risk-based capital requirements and surplus requirements. All insurers who issue, sell, or deliver title insurance in the State must file all policy forms with the MIA and obtain the Commissioner's approval before those forms can be utilized by the insurer. Similarly, the rates to be used by title insurers are filed with the MIA for approval prior to use.[5] In addition to form and rate review and approval, the MIA works to protect Maryland insurance consumers through regulation and examination of the insurance companies.

Prior to the transfer of interest in real property, a title search is conducted to identify prior owners, outstanding liens, encumbrances, encroachments, rights of way, easements and the like associated with the real property. Title insurance is different from all other types of insurance coverage because it protects against events that occurred *before* the policy was purchased as long as the title defect was not discovered at the time of the title search. All other types of insurance policies, including property, casualty, life, and health insurance policies, protect against events that occur after the policy is purchased.

Each settlement in Maryland must involve a title insurance producer if title insurance may be issued in connection with the transaction.

> "Title insurance producer" means a person that for compensation, solicits, procures, or negotiates title insurance contracts.
> "Title insurance producer" includes a person that provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract.[6]

Before selling title insurance, a title insurance producer must obtain a license from the MIA and an appointment from the insurer for whom the producer will be selling the insurance.[7] A title

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[4] *Id.* at § 4-101. As of November 30, 2009, there are 25 title insurers authorized to issue policies in Maryland.
[5] *Id.* at § 11-404.
[6] *Id.* at § 10-101(i).

insurance producer is also subject to regulation and examination by the MIA. A title insurance producer underwrites the risk, collects the title insurance policy premiums, issues the title insurance policies, conducts the settlement or closing, and holds funds in escrow for mortgage payoffs, taxes, closing costs, commissions for real estate brokerage services, and other costs related to settlement or closing.

A sole proprietor, limited liability company, partnership, or corporate applicant for a license as a title insurance producer, other than an attorney or law firm, must file with the Commissioner a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and a blanket surety bond; or a letter of credit. Unless the Commissioner approves a lesser amount, each bond or letter of credit must be for $150,000.[8]

The prior approval of forms and rates serve as important enforcement mechanisms in protecting consumers and ensuring insurer solvency. In addition, title insurers are subject to market conduct examinations by the MIA at least once every five years, which is another important mechanism for ensuring insurer solvency. To further protect consumers, a title insurer domiciled in the State is required to participate in the Property and Casualty Insurance Guaranty Corporation to protect consumers in the event of the insurer's insolvency. Further, required annual on-site reviews by a title insurer of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer is intended to give notice to the insurer of any inconsistencies with or questionable practices of the title insurance producer.

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[7] *Id.* at § 10-103(c). As of November 30, 2009, there are over 7,000 producers licensed to sell title insurance in Maryland, including resident title insurance producer individuals, non-resident title insurance producer individuals, and resident and non-resident title insurance producer firms.

[8] *Id.* at § 10-121.

The Commissioner's authority over title insurers and title insurance producers includes the authority to deny, suspend, revoke, and refuse to renew or reinstate an insurer's certificate of authority or a producer's license.

At the June 25 public hearing, MIA staff testified regarding the number and nature of complaints received by the Compliance and Enforcement Unit (Unit) of the MIA pertaining to title insurance. In response to the increase in complaints regarding title insurance – from 90 complaints in 2005 to 512 complaints in 2008 – the Commissioner has restructured the Unit, increasing from one to five the number of full time staff dedicated to handling these kinds of complaints. Common complaints to the MIA include: failure to pay off a prior mortgage, other lien, or encumbrance; failure to record the deed, deed of trust, mortgage, or mortgage release; failure to charge and collect the appropriate premiums; failure to issue title insurance policies and provide legal documents to the buyer; misappropriation of escrow funds; and falsification or forgery of closing documents. Investigations conducted by the Unit have resulted in revocation orders and, in cases where a title insurance policy has been issued, the MIA requiring title insurers to cover losses associated with the misappropriation of escrow funds. Misappropriation of escrow funds continues to be a common complaint received by the Unit. In 2009 alone, over a dozen complaints alleging theft or misappropriation of escrow funds have been received by the Unit.

Rate-Setting Factors for Title Insurance Premiums and a Comparison of Rates with Title Plant States

Rates for title insurance premiums are subject to prior approval by the MIA. Factors to be considered in setting rates include: past and prospective loss experience within and outside the

State; conflagration and catastrophe hazards, if any; past and prospective expenses, both countrywide and those specifically applicable to the State; underwriting profits; contingencies; investment income from unearned premium reserve and reserve for losses; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders; and all other relevant factors within and outside the State. In addition, rates may not be excessive, inadequate, or unfairly discriminatory. An excessive rate would be one that leads to unreasonably high profits over a long and sustained period of time. An inadequate rate would be one that causes an insurer to operate at a loss for an extended period of time. Inadequate rates can lead to lower reserves. Low reserves can lead to insolvency, which obviously creates the inability to honor claims. A rate is unfairly discriminatory if like customers are treated dissimilarly.

A lender's title insurance policy is usually issued in an amount equal to the mortgage loan. An owner's title insurance policy is issued in an amount equal to the fair market value of the property. Fair market value is generally presumed to be the contract sales price unless the insurer is furnished with an appraisal indicating a different value.

Generally speaking, the premium for an owner's title insurance policy is calculated on the coverage amount and cost per thousand. Some insurers require a minimum policy coverage amount for an owner's policy.[9]

[9] The rate filings for two title insurers were examined and presented to the Commission at the May 28, 2009 meeting. Both insurers required a minimum policy coverage amount of $40,000 at a fixed cost of $155.60. The remaining premium calculation examples in this section and Tables 1 and 2 use the rate filings of the same two title insurers.

Table 1. Example of Basic Premium Rates for Owner's Policy		
Tier	**Policy limit**	**Cost per thousand dollars of coverage**
1	Up to $250,000	$3.89
2	Over $250,000 - $500,000	Add $3.31
3	Over $500,000 - $1,000,000	Add $2.78
4	Over $1,000,000 - $5,000,000	Add $2.21
5	Over $5,000,000 - $15,000,000	Add $1.84
6	Over $15,000,000	Add $1.58

In calculating the basic premium for an owner's title insurance policy, there is generally a cost per thousand dollars of coverage up to certain policy limits. The cost per thousand dollars of coverage tends to decrease as the policy limit increases. See Table 1.

In order to calculate an owner's title insurance premium for a home with a contract sales price of $657,650, first round up to the value of the next $1,000 or 658 thousands. Since the value is greater than the first tier, only the first $250,000 will be charged at the first tier rate, the next $250,000 will be charged at the second tier rate, and the remaining $158,000 will be charged at the third tier rate as follows:

- $250 thousand x $3.89 = $927.50 premium
- $250 thousand x $3.31 = $827.50 premium
- $158 thousand x $2.78 = $439.24 premium

= $2239.24 total basic premium.

Insurers offer various discounts to purchasers of owners' policies. Some of the discounts available include discounts for simultaneous issue, refinancing, and reissue. If the decision is

made to purchase an owner's policy and a lender's policy at the same time there may be considerable savings. This is known as a "simultaneous issue" and the premium rates charged for the owner's policy will be calculated on the difference between the amount of coverage provided to the lender (amount borrowed) and the amount of coverage provided to the owner (purchase price).

If a new owner's policy is to be issued on real property currently insured by an owner's policy issued by any title insurer licensed by the MIA, a reissue rate applies up to the face amount of the owner's policy currently in effect. If the amount of owner's title insurance then in effect is to be increased, the premium for insurance coverage for any amount in excess of the insured amount is calculated in accordance with the basic title insurance rates. See Table 2. There is no limit on the number of times the reissue rate may be applied to a particular property.

Table 2. Example of Reissue Rates for Standard Owner's Policy

Tier	Policy limit	Cost per thousand dollars of coverage
1	Up to $250,000	$2.33
2	Over $250,000 - $500,000	Add $1.99
3	Over $500,000 - $1,000,000	Add $1.67
4	Over $1,000,000 - $5,000,000	Add $1.33
5	Over $5,000,000 - $15,000,000	Add $1.10
6	Over $15,000,000	Add $.95

In order to calculate the premium using the reissue rate for a home with a contract sales price of $657,650 where the prior owner's policy is in the amount of $300,000, part of the

premium is calculated at reissue rates (the first $300,000) and the balance ($358,000) at the full basic rates.

- $250 thousand x $2.33 = $582.50 premium
- $50 thousand x $1.99 = $99.50 premium
- $200 thousand x $3.31 = $662.00 premium
- $158 thousand x $2.78 = $439.24 premium

= $1783.24 total reissue rate premium.

When comparing the reissue rate premium of $1783.24 with the premium on a new basic policy of $2239.34, there is a savings of 20% when prior coverage exists.

Other charges in Maryland that are included in real estate settlements but vary from producer to producer include settlement or closing fees, abstract or title search, title examination fees, title insurance binder fees, document preparation fees, notary fees, attorney's fees, survey charges, and pest inspection fees.[10] These charges are not regulated by the MIA.

Some states are "title plant" states where title insurers are required to establish and maintain a title plant covering a minimum specified period of time before a policy is written, usually 25 years. Title plants in these states consist of fully indexed records showing all instruments of record affecting lands within a jurisdiction. The title plant is used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with underwriting and issuance of title insurance policies. A title plant may include plat or map records, deeds, deeds of trust, mortgages, lis pendens, abstracts of judgment, federal tax liens, mechanic's liens, attachment liens, divorce actions wherein real

[10] As of January 1, 2010, new Housing and Urban Development regulations regarding costs associated with real estate closings require some of these charges to be included in one fee.

property is involved, probate records, chattel mortgages, and other legal documents relating to title to real property.

Average title insurance premiums in 2008 for title insurance in several title plant states versus rates in Maryland, based on a $200,000 loan were as follows: Alaska = $897.84; Idaho = $817.16; Iowa = $543.57; Missouri = $489.35; New Mexico = $1,208.83; Texas = $1,470.60; Maryland = $696.10.[11] These rates only include the premium for title insurance and do not include other settlement charges that may or may not be included in the title insurance rate. The rates also do not take into account what may be included in the rate. Texas is an all-inclusive state where the title insurance premium includes charges other than the premium, such as the title search and examination fees, and other closing and settlement costs. Two other states that require an all-inclusive rate are California and Pennsylvania. Maryland's rate includes only the title insurance premium. No recommendations were adopted by the Commission regarding title plants.

Identification of Consumer Issues

The Commission held two public hearings, one in Annapolis on June 25 and one in Baltimore on July 16. Press releases regarding the public hearings were published by the MIA inviting members of the public to testify before the Commission on issues or concerns relating to title insurance, title agents, the manner in which real estate settlement practices are conducted, the handling of real estate escrow accounts, and any difficulties that a person may have experienced with the title insurance industry.

At the Commission's June 25 meeting, the Commission received testimony from the Community Law Center and Civil Justice, two organizations that represent and advocate on

[11] Source: Bankrate.com

behalf of consumers. The representative from the Community Law Center believed that providing closing documents to a homebuyer at least three days prior to closing would give a consumer time to review and seek advice regarding the documents. The representative from Civil Justice briefed the Commission on the case involving the Metropolitan Money Store and the pitfalls confronting consumers when working with the Metropolitan Money Store. In order to prevent similar cases, Civil Justice's recommendations to the Commission for protecting consumers included stricter oversight by title insurers of their title insurance producers, stricter auditing guidelines by insurers of their title insurance producers, and the adoption of a mini Real Estate Settlement Practices Act (RESPA) establishing civil liability of persons who violate RESPA.

In addition to the testimony received from the Community Law Center and Civil Justice, the Commission received testimony from TIPICs. A TIPIC is defined under Maryland law as:

> "a person that:
> (1) is licensed to act as a title insurance producer;
> (2) provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contract for, or on behalf of, a licensed and appointed title insurance producer; and
> (3) is not an employee of, or associated with, the licensed and appointed title insurance producer."[12]

The Commission heard that while the TIPICs present were all licensed by the MIA, there are some notaries public who are not licensed title insurance producers but are conducting real estate closings in the State. The Commission also heard that TIPICs are sent to conduct real estate closings by licensed title insurance producers or lenders and are told not to answer questions regarding the mortgage loan that the borrower is entering into. The Commission also heard that consumers benefit from the convenience of TIPICs since a TIPIC usually works from home and

[12] Ann. Code of Maryland, Insurance Article § 10-101(j) (Michie 2003 & 2009 Supp).

can travel to the borrower's home, place of business, or other location for the signing of the loan closing documents.

The Commission's July public hearing included testimony from a large number of TIPICs, most of whom expressed concerns about the increased cost associated with the increase in the surety bond requirements for title insurance producers and the continued availability of such coverage in the State.[13]

Although the Commission's September 17 meeting was not scheduled to be a public hearing, the Commission accepted testimony from a consumer who was in the process of refinancing the mortgage on the consumer's home. The consumer testified that the closing was to be conducted by a notary signing agent at a FedEx Kinko's office close to the consumer's home. During the closing, the consumer had a number of questions regarding the title insurance charges that appeared on the closing documents. The notary signing agent could not answer the consumer's questions and called the title insurance producer who sent the notary signing agent to the closing to answer the consumer's questions. Since the consumer did not believe that the answers he was given were satisfactory, the consumer walked away from the closing without completing and signing the closing documents. The consumer then called the MIA to request further information regarding his rights with respect to title insurance and who may conduct the real estate closing. This testimony was the only testimony the Commission received from a consumer involved in a real estate settlement or closing.

At the Commission's October 22 meeting, the Commission was briefed on the new RESPA Rule. Under the new rule, a good faith estimate (GFE) must be provided to a consumer under certain circumstances when applying for a mortgage loan, and include estimated

[13] Senate Bill 86 (Chapter 361, Acts of 2009) increased the fidelity and surety bond requirements that a title insurance producer is required to file with the Commissioner from $100,000 to $150,000.

settlement charges and the terms of the mortgage loan being offered to the consumer. The actual charges for some settlement services included in the GFE may not exceed 10% of the estimated charges. Since some consumers may not be aware of this limit on actual charges at settlement, the duty of ensuring that the actual charges do not exceed the 10% threshold is on the person conducting the settlement. Since the party sending a person to a real estate settlement is in a better position to know the requirements of the new RESPA rule and the terms of the loan than is the consumer, the Commission believes that the person conducting the real estate settlement should be more knowledgeable about settlement charges and other title insurance requirements than was the person described in the transaction with the consumer who testified before the Commission.

The Commission received extensive testimony regarding the general practice in Maryland – that TIPICs are witnessing most real estate settlements in Maryland. Even though TIPICs are licensed title insurance producers, they do not underwrite the risk, issue the title insurance policy, hold funds in escrow for mortgage payoffs, taxes, closing costs, commissions for real estate brokerage services, and other costs related to settlement or closing. These main responsibilities are usually handled by the lender or licensed title insurance producer who sent the TIPIC to the real estate settlement. TIPICs collect a fee for witnessing the signing of the closing documents and are generally prohibited by the party who sent the TIPIC to the settlement from answering questions regarding the loan terms or other settlement charges. Since the TIPIC is more like an agent of the party who sent the TIPIC to the settlement or closing, the Commission recommends that this principal-agent relationship be deemed a legal relationship in which the principal is responsible for all actions, including non-intentional conduct, of the

TIPIC. The TIPIC should be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond.

Affiliated Business Arrangements

When several businesses that offer settlement services are owned or controlled by a common corporate parent those businesses are considered "affiliates." Similarly, family members, partners, contractors, or other relationships used to refer settlement services businesses in exchange for a potential financial benefit are considered to maintain an "affiliated business arrangement" or ABA. Under federal RESPA rules, real estate brokers, lenders, title insurers, or other settlement services providers must inform consumers of an existing ABA when making a referral during the real estate settlement process. Generally, consumers are not required to use an affiliate and can shop for other service providers. If, however, a consumer chooses to use an affiliate, the only thing of value that may be paid by the affiliate to the referring party, except for services actually rendered, is a return on an ownership interest. Although it is lawful to participate in an affiliated business arrangement that is in compliance with RESPA, such joint ventures must actually be providers of settlement services.

At the Commission's October 22 meeting, Laura Gipe, Consumer Protection Compliance Specialist with the U.S. Department of Housing and Urban Development gave a presentation to the Commission on the new RESPA Rule. Ms. Gipe provided copies of the new GFE and Settlement Statement forms that are required after January 1, 2010.

Workgroup C examined ABAs and developed a series of recommendations for consideration by the Commission. Some of the workgroup's recommendations were included in the final recommendations of the Commission.

Recommendations of the Commission

As a result of its review and deliberations, the Commission makes the following recommendations:

1. Require the Commissioner to study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer. This recommendation does not require a statutory change.

2. Provide that when a person who provides escrow, closing, or similar settlement services in any real estate settlement transaction in which a title insurance contract may be issued is a TIPIC, that person will be deemed the agent of the party that sends the person to the real estate settlement. The party that sends the person to the real estate settlement is thus the legal principal of the person and is liable for all actions, including non-intentional conduct, of the person. In this legal principal-agent relationship, the TIPIC shall be covered by the principal's fidelity bond, thus relieving the TIPIC from the requirement to hold a separate surety bond. In addition, require any recorded deed of trust executed in connection with a settlement conducted by a licensed title insurance producer to include the name, address, and license number of the licensed title insurance and the name, address, and license number of the licensed title insurance producer's principal, if any. This recommendation requires a statutory change.

3. Require the Commissioner to adopt regulations, specifying the manner in which a title insurer is to conduct the annual on-site review of each title insurance producer appointed by the title insurer. This recommendation does not require a statutory change.

4. Direct the MIA and DLLR to develop a document entitled a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The MIA and DLLR would require by regulation that the title insurance consumer's bill of rights be provided to a consumer at the same time a good faith estimate is given to the consumer. The title insurance consumer's bill of rights should be available from the websites of DLLR and the MIA. This recommendation does not require a statutory change.

5. Direct the MIA to examine the current rate review and approval process for title insurance premiums. If the MIA finds that the current rate review process requires adjustment, the MIA should adopt new processes for rate review and approval, including regulations, if warranted, to ensure that consumers are protected. In its review, the MIA should examine the rate-setting practices in Pennsylvania which utilizes an all-inclusive rate in which the premium for title insurance includes settlement costs. This recommendation does not require a statutory change.

6. With respect to ABAs and the disclosure of fees related to ABAs, provide that licensees must comply with the federal law (12 USC 2607(c)(4)) and federal regulations (24 CFR 3500.15 and Appendix D) regarding this disclosure . This will allow Maryland regulators the ability to enforce the disclosure requirements in all real estate closings conducted in the State. If a licensee did not comply, action could be taken against that person's State license. This recommendation requires a statutory change.

7. Direct the MIA and DLLR to share information regarding complaints involving real estate closings in order to possibly track a pattern of problem transactions and licensees. This recommendation does not require a statutory change.

Conclusion

The Commission recommends that, in order to better protect consumers, the changes outlined above should be made and encourages the General Assembly to codify those recommendations that require statutory changes.

APPENDICES

APPENDIX 1: MEETING MINUTES

Commission to Study the Title Insurance Industry in Maryland

Minutes
December 2, 2008

Members in Attendance:
Senator Delores Kelley, Co-Chair
Senator Douglas J.J. Peters
Deputy Insurance Commissioner Elizabeth Sammis
Joseph Blume, Jr.
James Clements
Gregory Cockerham
Thomas Drechsler
Nathan Finkelstein
Delegate David Rudolph, Co-Chair
Delegate Warren Miller
Delegate Doyle Niemann
Patrick Martyn
Paul Rieger
Theodore Rogers
Linda Rose
Elizabeth Trimble

Others in Attendance:
Kimberly Robinson, Staff, Maryland Insurance Administration
Darlene Arnold, Assistant Chief Enforcement Officer, Maryland Insurance Administration
Paige Watkins
Glen Jackson

I. Call to Order and Welcome

Senator Kelley opened the meeting and talked about the reasons she introduced legislation creating the Commission. Senator Kelley cited the April 2007 United States Government Accountability Office Report to the Ranking Member, Committee on Financial Services, House of Representatives, *Actions Needed to Improve Oversight of the Title Insurance Industry and Better Protect Consumers*, as part of the impetus for introducing the bill. Senator Kelley stated that the report revealed disturbing national trends.

Delegate Rudolph welcomed the members of the committee.

II. Introduction of Members

The members of the Commission introduced themselves and the entities they represent.

III. Presentations

A. Review of Charges. Commission staff reviewed the charges set forth in Senate Bill 61 (Chapter 356, Acts of 2008) which established the Commission. The purpose of the Commission is to make recommendations for changes to State

laws relating to the title insurance industry. In order to develop recommendations, the Commission is required to:

(1) review State laws relating to the title insurance industry;
(2) review the mechanisms available to enforce State laws relating to the title insurance industry and the effectiveness of those mechanisms;
(3) identify title insurance industry issues that affect consumers in Maryland;
(4) examine the rate-setting factors for title insurance premiums;
(5) examine how rates and services in a title plant state compare to those in Maryland;
(6) identify ways to improve consumer education about the title insurance industry;
(7) study whether mechanics' liens on properties scheduled for settlement have an impact on the timeliness of settlements or on title insurance premium rates;
(8) review the time limits, subsequent to closing, for the issuance of title insurance policies;
(9) study affiliated business arrangements among title insurance producers, builders, title insurance companies, realtors, lenders, and other businesses involved with the settlement of real estate transaction to determine the impact of these arrangements on title insurance premium rates; and
(10) study any other issue with significant impact on the title insurance industry.

The Commission is required to submit a report on its findings and recommendations to the Governor and the General Assembly on or before December 15, 2009.

B. Regulation of Title Insurance and Hot Topics. Commission staff and the Assistant Chief Enforcement Officer of the Maryland Insurance Administration provided a PowerPoint presentation to be considered part of these minutes. The presentation provided the Commission with an overview of the title insurance industry in Maryland, including: a description of the nature of title insurance; licensing requirements for title insurance producers; requirements of title insurers; an overview of complaints and trends; and perceived regulatory gaps with respect to the title insurance industry.

Delegate Rudolph inquired about enforcement activity at the Department of Labor, Licensing, and Regulation (DLLR) regarding title insurance defalcations that affect affiliated businesses/licensees regulated by DLLR. Elizabeth Trimble noted that DLLR and the MIA have been working cooperatively in the investigation and prosecution of licensees (DLLR and MIA).

Delegate Rudolph also inquired about steering between affiliated businesses, i.e., real estate agent, lender, and title company. Elizabeth Trimble noted that DLLR has been looking at these connections.

Ted Rogers suggested that before a decision is made on a recommendation to increase the bond amount for title insurance producers, the Commission should talk to industry regarding the availability of a bond in higher amount. Ted Rogers also noted that the tightening credit market may affect a title insurance producer's ability to secure a bond in a higher amount.

Ted Rogers also asserted that the Insurance Commission already has the authority to set guidelines for the on-site review by insurers of insurance producers.

Delegate Niemann inquired about the size of the enforcement staff at the MIA. Darlene Arnold noted that there are currently 8 investigators in the property and casualty enforcement unit.

Delegate Niemann also inquired about whether the package of foreclosure-related legislation of the 2008 Session applies to title insurers and title insurance producers. It does not.

Senator Kelley inquired about the reserve and surplus requirements for title insurers and whether they are part of any guaranty fund. Staff will research this question.

Senator Kelly also inquired about the anti-competitive effects, if any, of the affiliations between real estate agents/lenders/title companies. This will be addressed at a later meeting.

Ted Rogers noted that the American Land Title Association is developing standards for audits.

IV. Discussion of Work Plan

Staff recommended a work plan for the Commission, consisting of at least 4 meetings, each covering several topics. Meetings will include presentations and an opportunity for public comment. The goal is to have a draft report prepared by October 2009, a comment period to last through November, and submission of the final report on December 15, 2009. The Commission accepted staff's recommendation on bundling topics for the meetings.

V. Adjourn

Since the legislators will be quite busy during the legislative session, Senator Kelley noted that the legislator members of the Commission will not be able to meet during

session. However, since the Commission has a lot of work to do, Senator Kelley recommended that the Commission meet again in January. The next meeting of the Commission is January 15, 2009 at 2:00 p.m. Senator Kelley adjourned the meeting.

Commission to Study the Title Insurance Industry in Maryland

Minutes
January 15, 2009

Members in Attendance:
Senator Delores Kelly, Co-Chair
Senator Douglas J.J. Peters
Joseph Blume
James Clements
Gregory Cockerham
Stuart Cordish
Thomas Drechsler
Nathan Finkelstein
David Kochanski
Delegate Warren Miller
Delegate Doyle Niemann
Patrick Martyn
Commissioner Sarah Bloom Raskin
Paul Rieger
Theodore Rogers
Linda Rose
Commissioner Ralph Tyler
Elizabeth Trimble

Others in Attendance:
Tinna Damaso Quigley, Staff
Darlene Arnold
Ron Kalas

I. Call to Order

Senator Kelley opened the meeting and announced that Senate Bill 86, a departmental bill by the Maryland Insurance Administration (MIA), had been introduced. Senator Kelley asked Commissioner Tyler to describe the legislation.

Commissioner Tyler thanked Senator Kelley for the introduction and described Senate Bill 86 as a bill that contained 3 provisions: (1) to limit access to moneys held in trust to licensed title producers; (2) to increase from $100,000 to $250,000 the amount of the bond that a licensed title insurance producer must file with the Commissioner; and (3) to put an obligation on the MIA to adopt regulations to specify the manner in which insurers conduct audits of title insurance producers.

Nathan Finkelstein mentioned that the issues raised by Senate Bill 86 affect title insurance producers and that there would be a cost to smaller producers in obtaining a bond in the increased amount. Mr. Finkelstein thought the Commission should study the issue of bonding and asked if it was appropriate for the Commission to take a position on the bill and/or ask that the bill not move forward until the Commission examined the issues.

Senator Kelley stated that the Commission's scope of authority is clear and that there are a number of issues to be looked at. Senator Kelley further stated that that she did not want the members of the Commission to leave unaware of the existence of Senate Bill 86 and that if the Commission were further along in its work that the Commission could be more knowledgeable about the issues addressed by Senate Bill

86. Senate Kelley stated that there was other work that the Commission needed to accomplish and that interested parties could participate in the legislative process on this important piece of legislation. Senate Kelley also stated that there is no mechanism to stop legislation that has already been introduced.

Commissioner Tyler stated that he appreciated the concerns expressed and that the MIA is open to discussions about the bill. Commissioner Tyler further stated that the MIA was willing to accommodate all parties interested in the legislation. Commissioner Tyler stated further that the MIA's goal and mission is consumer protection.

Mr. Finkelstein stated that the Maryland Land Title Association has a liaison committee and welcomes the opportunity to work with the Commissioner.

II. Meeting Topics

Commission Staff and Darlene Arnold, Assistant Chief of Enforcement at the MIA, provided a PowerPoint presentation to be considered part of these minutes. The presentation provided the Commission with: (1) a review of Maryland laws relating to the title insurance industry, including insurer requirements and producer requirements; (2) a review of mechanisms available to enforce State laws relating to the title insurance industry; and (3) a review of the effectiveness of enforcement mechanisms.

Delegate Niemann stated that he was astounded by the increase in complaints and asked why it was happening. Ms. Arnold stated that she believed it was the downturn in the real estate market. Ms. Arnold further stated that the MIA is reviewing the on-site review requirements that insurers are required to conduct to determine why insurers did not discover the problems earlier.

Commissioner Raskin asked if insurers were required to report violations of the Insurance Article to the MIA. Ms. Arnold stated that insures are obligated to report violations.

Mr. Finkelstein asked if any complaints related to trust moneys missing or not returned. Ms. Arnold stated that those were some of the problems.

Mr. Finkelstein asked what other problems have been revealed by the complaints. Ms. Arnold stated that there were also complaints regarding documents not being recorded, releases not given, and complaints from lenders concerning final documents that were not received.

Commissioner Tyler asked what the MIA's investigations have revealed about who has access to trust moneys. Ms. Arnold stated that bookkeepers and others not licensed by the MIA had access to trust moneys. Ms. Arnold further stated that the

investigations also revealed that some bookkeepers were told by the principals to transfer trust moneys.

Senator Kelley stated that unauthorized persons need to be denied access to trust moneys or that title companies should track the money using specialized software. Senator Kelley further stated that some software programs include these protections. Senator Kelley also stated that the software would bring efficiencies and accuracies to the business.

Delegate Niemann asked who is employed in the industry and asked if it is too easy to enter the industry. Ms. Arnold stated that the MIA has increased the difficulty of questions and the number of questions on the licensing examination. As a result, the current passage rate is 40%, down from 70%. Ms. Arnold further stated that when there is boom in the industry, there is an increase in applications for licensure. The MIA has also seen an increase in "witness closer" or "independent contractor" licenses.

Mr. Clements asked who conducts a closing. Ms. Arnold stated that if title insurance may be sold, a licensed insurance producer must conduct the closing. Since title insurance is offered, a licensed insurance producer must offer it. Mr. Clements also asked about backdating and if there have been complaints on this issue. Ms. Arnold stated that backdating is illegal and prohibited and that the MIA has received complaints regarding this problem.

III. Commission Member Comments

Senator Kelley stated that she recognized several questions and issues that need to be studied by the Commission in their work. The questions and issues are:

(1) Who is employed in the title insurance industry?
(2) Do we have sufficient criteria in determining who ought to be in the industry?
(3) What is the process for making a Guaranty Fund claim? Are changes needed?
(4) How best to address complaints regarding: (a) control/management of escrow funds, (b) document filings, and (c) disparity between projected settlement costs and actual settlement costs, i.e. how are projections made?
(5) How best to educate the public regarding the opportunity for theft of funds? Should there be a public service announcement or information on a website? What is appropriate since most people only go to settlement once or twice in their lifetimes?
(6) Is steering to specific business in a real estate transaction, i.e., realtor, lender, title insurance agency, helpful or does it impede transparency?
(7) What are the ambiguities and gaps in Maryland law?
(8) What are the best emerging practices in other states? Look at legislation, laws, courts, etc.
(9) Who can/should conduct settlements?

A Commission member mentioned that most of those involved in a real estate transaction do not understand the requirements of the Real Estate Settlement Procedures Act (RESPA) and/or the settlement process. Fees for closing vary.

Mr. Finkelstein stated that the Commission should not limit its discussion to title insurance.

Delegate Niemann stated that focus should be on the title insurance industry, i.e., who conducts settlements. What do other states do with respect to closings? Who is involved? Delegate Niemann also stated that there should be a clear statement of duties and obligations of parties.

Ms. Trimble stated that regarding real estate licensees, an educational component could be tied to licensure in the form of continuing education on title insurance and settlements.

Senator Kelley also wants the Commission to look at affiliated business agreements (ABAs) – situations in which real estate or other professionals are part or full owners of title agencies, or arrangements where builders require purchasers to use specific lenders and/or title insurers – and the relevant disclosure requirements.

A Commission member stated that RESPA prohibits kickbacks in referrals but stated that many real estate professionals refer clients to title agencies because they are familiar with the title agency. The National Association of Realtors lists what may be a violation of RESPA on its website. ABAs must be disclosed but the Commission should examine and determine the federal disclosure requirements. Newly adopted federal regulations are supposed to take into account the ability to induce a buyer to use specific title companies or lenders.

Commissioner Raskin stated that the Commission should determine how, in ABAs, players are related, the duties and obligations of each, and regulatory gaps, if any. In addition, the Commission should look at the lack of a level playing field between national companies and local companies. Also, the Commission should look at entry into the industry – what are the criteria for entry, renewal, and continued operation. Federal regulations should also be examined.

Senator Kelley stated that if the Commission were to set up workgroups, the topics for examination and study could be divided amongst the groups and more progress could be made. Senator Kelley also asked that anyone interested in participating in the workgroups to sign a list with their name and contact information.

Senator Kelley also asked whether future meetings should include time for public comment. Commission members agreed that at a future meeting/meetings, the public would have time to give testimony.

IV. Adjourn

Since the legislators will be busy during the legislative session and the legislator members of the Commission will not be able to meet during the session, Senator Kelley proposed that the Commission reconvene on May 5, 2009. Senator Kelley then adjourned the meeting.

Commission to Study the Title Insurance Industry in Maryland

Minutes
May 28, 2009

Members in Attendance:
Senator Delores Kelley, Co-Chair
Senator Douglas J.J. Peters
Joseph Blume
James Clements
Gregory Cockerham
Thomas Drechsler
Nathan Finkelstein
David Kochanski
Delegate David Rudolph, Co-Chair
Paul Rieger
Theodore Rogers
Linda Rose
Vicki Shultz (for Commissioner Raskin)
Commissioner Ralph Tyler
Elizabeth Trimble

Others in Attendance:
Tinna Damaso Quigley, Staff
Darlene Arnold
Tami Burt
Mark Feinroth
Mindy Lehman
David Mason
William Pitcher
Robert K. Smith

V. Call to Order

Senator Kelley called the meeting to order at 5:05 p.m and welcomed everyone to the third meeting of the Commission to Study the Title Insurance Industry in Maryland. Senator Kelley delayed the approval of the minutes for the prior meeting until quorum could be achieved.

VI. Meeting Topics

Senator Kelley asked staff to brief the committee on Senate Bill 86 that passed during the 2009 General Assembly Session.

Staff to the Commission described Chapter 361 of the Acts of 2009 (Senate Bill 86) which is effective June 1, 2009. Chapter 361 limits control of funds held in trust to licensed title insurance producers. Chapter 361 also increases the amount of the fidelity bond and surety bond that a title insurer must maintain as a condition of licensure from $100,000 to $150,000, effective October 1, 2009. Finally Chapter 361 requires the Commission to review the adequacy of the bonding and letter of credit requirements and include its findings in its final report due December 15, 2009.

In response to questions that the Maryland Insurance Administration (MIA) received regarding Chapter 361, the MIA drafted a bulletin to answer the questions. Commissioner Tyler described the substance of the proposed bulletin dated June 1, 2009. Commissioner Tyler stated that persons who "may exercise control over trust money" would include, but is not limited to, all individuals with signature authority on a trust or escrow account, individuals who can initiate wire transfers from a trust or escrow account and individuals who have day-to-day control of disbursements from a trust or escrow account. The bond increase will be required of any title producer who is applying for a new license or holds an existing license due to renew on or after October 1, 2009. Further, Commission Tyler stated that licensees whose licenses expire on or after October 1, 2009, will not be permitted to renew prior to October 1, 2009, and thereby circumvent the intent of the General Assembly.

After Commissioner Tyler's remarks, several Commission members raised concerns regarding the definition of "exercising control over trust money". Several members stated that there is usually one person in an office who initiates a wire transfer and another who approves the wire transfer. Most agreed that the person approving the wire transfer was exercising control over trust money but that the person initiating a wire transfer was performing a clerical duty and should not have to be a licensed title insurance producer. Senator Kelley mentioned that anyone with concerns should be in dialogue with the Insurance Commissioner.

Mr. Finkelstein asked whether a check coming by mail to a title agency and being carried by hand to another person is exercising control over trust money. Mr. Rieger pointed out that the floor report for the bill states that passing physical custody of trust moneys is not exercising control over trust moneys.

At this point in the meeting, quorum has been achieved and Senator Kelley asked that the Commission pause to approve the minutes. Upon motion by Delegate Rudolph and a second by Commissioner Tyler, the minutes were approved.

Next, Commission staff presented 2 PowerPoint presentations to the Commission, to be considered part of these minutes: (1) Rate-setting Factors for Title Insurance Premiums in Maryland; and (2) How Rates and Services in a Title Plant State Compare with Rates and Services in Maryland.

Senator Kelley asked what percentage of the rate is given to real estate professionals as a referral fee. A Commission member stated that nothing is given as a referral fee due to the federal Real Estate Settlement Practices Act (RESPA).

A Commission member then raised the concern of steering and affiliated business arrangements (ABA) – if a consumer is buying from someone involved in an ABA, then the consumer is steered to others in the ABA. Another Commission member stated that the remedy to this may just be a matter of consumer education. Mr. Rogers noted that referrals in the title industry are common.

Delegate Rudolph asked if pricing for title insurance varies from company to company or are they the same as in the examples in the PowerPoint presentation. Mr. Dreschler stated that what you will find in the industry is that title insurance rates and title company fees will be very similar between insurers and title companies. Mr. Dreschler also stated that most realtors will refer consumers to specific title agents because of experience.

Delegate Rudolph then asked that if he were to buy a house, how would he know if someone was charging 30% more than what someone else would charge? Mr. Dreschler stated that he could obtain a HUD-1 estimate from the title agent and shop around.

Mr. Clements then asked if staff had a range of the commissions for title insurance and whether this impacted the consumer.

Mr. Kochanski stated that the MIA has a consumer guide for title insurance. Additionally, Mr. Kochanski stated that he wasn't sure how the commission affects the cost to the consumer and that commission rates are proprietary.

Senator Kelley stated that she believed the MIA should be looking at the rates for commissions and what percentage of the premiums went to commissions.

Mr. Finkelstein stated that a title agent does more than just sell insurance – they conduct closings, obtain surveys, conduct a records search, etc.

Delegate Rudolph asked for an estimate of fees at closing other than title insurance. A Commission member stated that it was anywhere between $500 and $1,000.

Mr. Kochanski asked whether staff looked at states where rates are not prior approval and whether there was a difference. Delegate Rudolph then asked not having to file rates would mean cheaper rates. Mr. Kochanski stated that there may be a lower rate. DC, which is not prior approval, has higher rates than in Maryland.

Senator Kelley then asked certain members to be conveners for their respective workgroups. Delegate Niemann for Workgroup A; Delegate Rudolph for Workgroup B; and Elizabeth Trimble for Workgroup C. Senator Kelley then asked the workgroups to meet and set up future meetings via teleconference, e-mail, or otherwise.

The meeting was adjourned at 6:30 p.m.

Commission to Study the Title Insurance Industry in Maryland

Minutes of the 1st Public Hearing
June 25, 2009

Members in Attendance:

Senator Delores Kelley, Senate Chair
Senator Douglas J.J. Peters
Delegate Warren Miller
Joseph Blume
James Clements
Gregory Cockerham
Thomas Drechsler
Nathan Finkelstein
Patrick Martyn
Commissioner Sarah Bloom Raskin
Linda Rose
Elizabeth Trimble
Commissioner Ralph Tyler

VII. Call to Order

Senator Kelley called the public hearing to order at 5:00 p.m. For the benefit of the members of the public present, all Commission members introduced themselves and the entities they represent.

VIII. Public Hearing

Testimony received from: Robert Strupp, Director of Research and Policy at the Community Law Center. Mr. Strupp's concerns are with the closing and settlement process. There seems to be a blurring of the lines between the title agent and the settlement agent. Mr. Strupp believes that licensees are well regulated by the MIA. Mr. Strupp is an advocate of attorney closings and testified that all closings should be conducted by attorneys because a notary conducting a closing cannot answer questions from the buyer. Closing packages should be available to the consumer at least 3 days prior to closing. If a consumer doesn't have the closing package reviewed prior to closing, the consumer at least has had full disclosure of all documents. The Metropolitan Money Store case is an example of where closing documents were at times filled out at or after closing – consumers did not have all information. Regulatory pieces of a settlement should be restructured – title insurance remains with the MIA, settlements with DLLR.

Senator Kelley asked Mr. Strupp about giving a good faith estimate to the consumer prior to closing. Mr. Strupp answered that at 3 days before closing there should no longer be any estimates.

Commissioner Tyler asked who decides if a notary conducts a closing. Mr. Strupp answered that it is the title agency that decides. It is not a consumer choice.

Senator Kelley asked if the person conducting the closing should be a fiduciary of the title agency. Mr. Strupp answered that they ought to be the fiduciary.

Testimony received from Darlene Arnold, Assistant Chief Enforcement Officer, Maryland Insurance Administration. (See Attachment 1)

Mr. Finkelstein asked whether the MIA assisted in coordination with the title insurer when there has been a misappropriation. Ms. Arnold answered that the MIA does assist.

Senator Kelley asked, with respect to the Maryland Affordable Housing Trust complaints, if a bank has a pattern of noncompliance, should the bank be reported to the Commissioner of Financial Regulation.

Commissioner Raskin noted that the Office of Financial Regulation only regulates state-chartered institutions.

Senator Kelley asked whether the FDIC or OCC accepts complaints. Ms. Arnold stated that federal regulators have been slow to take consumer complaints.

Testimony received from Ganiyu A. Raji, member of the Maryland Land Title Association (MLTA) and a Title Insurance Producer Independent Contractor (TIPIC). Mr. Raji stated that he completed training to become a TIPIC and to conduct closings. He testified that there are also notaries who are not licensed title producers who are also conducting closings. The problem is with the bank because the bank funds the transactions and tells the title agent what to do. TIPICs do not prepare documents. As to making Maryland an attorney-only closing state, Georgia is an attorney-only closing state and there is still real estate fraud in Georgia. Mr. Raji stated that there needs to be more enforcement. The TIPIC is the best person to detect fraud because they see all the documents at closing.

Senator Kelley stated that if an attorney is caught committing fraud it leads to disbarment, which should be the deterrent to committing fraud.

Testimony received from James Savitz, an attorney with Village Settlements. Mr. Savitz testified that he is an attorney who has practiced in Maryland since 1975. Firms that have title clerks conducting settlements are a problem. The title clerks are explaining documents that they don't understand. A lawyer knows which documents are missing at closing. With respect to the new changes in Senate Bill 86 of 2009, Mr. Savitz testified that there should be an exception for CPAs who exercise control over trust moneys.

Testimony received from Justin Ailes, American Land Title Association (ALTA). (See Attachment 2) The ALTA holds Title Insurance 101 presentations. The ALTA would support sending the closing documents to a consumer prior to closing.

Commissioner Raskin asked Mr. Ailes which states have the most robust regulation of the title industry. Mr. Ailes stated that Texas and New Mexico have promulgated

rates for title insurance by the respective insurance departments. There is also a lot of information that has to be reported in those 2 states.

Testimony received from Tom Gibbons, MLTA and an attorney. Mr. Gibbons stated that he is not authorized to testify on behalf of the MLTA and merely signed in on the witness sign-in sheet.

Senator Kelley asked how often defects in title are found during a title search and if there is a registry of defects. Mr. Gibbons did not know how often defects in title were found in MD and stated that there was no registry of defects.

Senator Kelley asked how often claims are made against title policies. Mr. Ailes joined Mr. Gibbons at the witness table and stated that the loss ratio on title insurance is between 3% and 10%. Mr. Ailes also stated that AM Best reports on loss ratios for all insurers and the reports can be found on the ALTA website.

Senator Kelley stated that the Commission should look at whether there should be a registry of title defects and the variables to be considered to determine appropriate rates for title insurance premiums.

Testimony received from Mike Tracy, Chesapeake Insurance. Mr. Tracy stated that there should be more information on the types of complaints received by the MIA, including the number of producers involved. Mr. Tracy would support a $500,000 bond requirement for title producers.

Testimony received from Phillip Robinson, Executive Director of Civil Justice, Inc. (See Attachment 3) Mr. Robinson stated that Civil Justice, Inc. is a non-profit legal services agency. Maryland is ranked 5th in the nation in mortgage fraud by the FBI. Mr. Robinson would not say that if an attorney conducts the closing that everything is perfect. Mr. Robinson talked briefly about the Metropolitan Money Store and Wilbur Ballesteros cases, also found in Attachment 3. Title insurers are paying for the defense whenever a consumer sues a title agent. Civil Justice, in preparing cases, often asks title insurers for the audits done on title agents with claims against them. The MIA can't audit all agencies; instead, title agencies should audit themselves and the audits should be given to the MIA. Mr. Robinson also briefly talked about the other cases in Attachment 3.

Testimony received from Barbara Taylor, President and CEO of a mobile notaries group. Ms. Taylor stated that the people in her profession should be called "notary witness closers" because that is what they do. Ms. Taylor stated that she obtains the thumb prints of everyone at the closing table when she conducts a closing. She stated that she gets called in by law firms when the attorneys don't want to conduct the closings.

Mr. Finkelstein asked Ms. Taylor what instructions she receives from lenders to answer questions from the buyers regarding the interest rate. Ms. Taylor stated that she is told not to answer any questions about the interest rate.

Testimony received from Kenneth Roseborough, TIPIC. Mr. Roseborough testified that consumers benefit from the convenience of TIPICS. However, if a consumer is entering into a bad loan, Mr. Roseborough stated that he cannot tell them that it is a bad loan.

III. On a voice vote, the minutes for the May 28 meeting were approved.

IV. The next public hearing will be on July 16, 2009. The public hearing was adjourned at 7:30 p.m.

Commission to Study the Title Insurance Industry in Maryland

Minutes of the 2nd Public Hearing
July 16, 2009

Members in Attendance:

Senator Delores Kelley, Senate Chair
Joseph Blume
Gregory Cockerham
Nathan Finkelstein
Delegate David Rudolph, House Chair
Nancy Grodin (for Commissioner Tyler)
J. Paul Rieger
Theodore Rogers

IX. Call to Order

Senator Kelley called the meeting to order at 5:00 p.m. and welcomed everyone to the second public hearing of the Commission to Study the Title Insurance Industry in Maryland. Senator Kelley stated that the reason they are all here is that the Commission is conducting fact-finding. The Commission is required to report to the Governor and the General Assembly in December regarding recommendations for changes to the law in the area of title insurance. Senator Kelley further stated that the Commission is interested in market conduct and the Commission wants to make sure that the people assisting buyers and sellers are qualified. Citizens should be well served. The Commission doesn't want to stifle competition. No final judgments have been made. The Commission welcomes input from the public. Following Senator Kelley's introduction, members of the Commission introduced themselves for the benefit of the members of the public present.

X. Public Hearing

Many witnesses submitted written testimony to the Commission. They are included as attachments to these minutes.

Testimony of Ilene Seidel – Attachment A

Testimony of Cynthia Young – Attachment B

Testimony of Florine Robinson. Ms. Robinson stated that she is a notary, realtor, and title insurance producer who complies with all licensing, continuing education, and bonding requirements. Title insurers with whom Ms. Robinson works require background checks and to see a copy of the notary and title producer license. Ms. Robinson mainly conducts closings for re-financings and doesn't see much fraud there. Ms. Robinson asked that the bond not be raised further.

Testimony of Celestine Shird – Attachment C

Testimony of Matthew Waylett and William Grossmiller – Attachment D

Testimony of Tom Chamness – Attachment E

Testimony of Stuart Resnick – Attachment F

Testimony of Mike Schleupner – Attachment G

Testimony of Jim Cosgrove – Attachment H. The Maryland Land Title Association (MLTA) also submitted written testimony in excess of 500 pages to the Commission which is not included as part of these minutes. Commission members who have not received this written testimony should request the testimony from the MLTA.

Testimony of Iris Brown, Title Insurance Producer Independent Contractor (TIPIC). Ms. Brown wanted to echo the testimony of other TIPICs who testified earlier.

Testimony of Mike Tracy – Attachment I

Testimony of Renardo Samis, TIPIC. Mr. Samis wanted to echo the testimony of other TIPICs who testified earlier. Mr. Samis testified that he is a TIPIC who conducts closings in the State and has never had a Maryland title agency call to request his services.

Testimony of Sheila Howard – Attachment J

Testimony of John Miccike, representing a title agency. Mr. Miccike testified that transactional proficiency is achieved through experience. Title agents make a lot of money through commissions.

Testimony of Josephine Wheeler – Attachment K

Testimony of Ginger Bigelow, TIPIC. Ms. Bigelow wanted to echo the testimony of other TIPICs who testified earlier. Ms. Bigelow asked that the bond not be raised further.

Testimony of Elaine Wright – Attachment L

Testimony of Carl Sisco, TIPIC. Mr. Cisco asked why the bond requirements for TIPICs were increased.

Testimony of Barbara Taylor, TIPIC. Ms. Taylor stated that she still conducts closings where closing documents are not properly completed.

Mr. Kenneth Roseborough, TIPIC. Mr. Roseborough testified that he has had difficulty obtaining payment from out-of-state title agencies for whom he conducts closings.

Other written testimony received from Mike Pryor – Attachment M

III. Adjourned

The meeting was adjourned at 7:10 p.m.

Commission to Study the Title Insurance Industry in Maryland

Minutes
September 17, 2009

Members in Attendance:
Senator Delores Kelley, Co-Chair
Senator Douglas J.J. Peters
Joseph Blume
James Clements
Gregory Cockerham
Thomas Drechsler
Nathan Finkelstein
Delegate David Rudolph, Co-Chair
David Kochanski
Patrick Martyn
Theodore Rogers
Commissioner Ralph Tyler
Calvin Wink (for Commissioner Raskin)

I. Call to Order

Senator Kelley called the meeting to order at 5:00 p.m. Senator Kelley stated that this meeting would reflect back on what the Commission has learned from the public hearings. Senator Kelley also asked the Commission members to think about what should be considered for further discussion by the Commission and the Workgroups.

Delegate Rudolph stated that it was a pleasure to be at the meeting and to get started on the Commission's work.

II. Discussions

Senator Kelley stated that with regard to affiliated business arrangements: the new Real Estate Settlement Practices Act (RESPA) Rule prohibits fees and kickbacks unless something of value is given and the new HUD-1 requires disclosures of any fee splits in Affiliated Business Arrangements (ABAs). Senator Kelley asked the Commission whether they might want to consider whether it makes sense to consider that if there is a fee paid, whether there should be disclosure of that information.

With regard to title insurance producer independent contractors (TIPICs) – they are currently licensed in Maryland as title insurance producers, but based on their testimony they are not producers but are notary-witness-closers. The Commission should consider whether the entity for whom they are providing the service should provide the bond because the TIPIC is really the agent of the title agency/lender that has sent the TIPIC to the closing. Senator Kelley further stated that TIPICs are worried about an attorney-only closing state but she is not sure that anyone has presented any real reasons as to why Maryland should be an attorney-only closing state. As of January 1, RESPA will require people at the closing table to know more about the closings. The Commission should look at the role of TIPICs – do they need to be bonded or does the agency that employs them have to cover them with a surety bond? TIPICs testified that if they are asked questions they are told not to answer questions. The Commission needs to determine what RESPA will require of the people at the closing table as of January 1.

Mr. Blume stated that kickbacks are not allowed under HUD with respect to ABAs. Referral fees are flagrant violations of RESPA.

Senator Kelley stated that in her experience, there was an attempt to steer business. In addition, RESPA does not apply to commercial transactions. Senator Kelley stated that she believed there needed to be a Consumer Bill of Rights in terms of what consumers are entitled to when at the closing table.

Mr. Blume stated that Maryland has an anti-kickback statute and that the new HUD-1 has evolved into a disclosure form. Burdens will be greatly intensified on the lender to give good faith estimates (GFEs). The new HUD-1 will show what the GFE is so there will be more transparency

Senator Kelley stated that with respect to rate-setting for title insurance, Maryland may not be doing all it can in regulating rates for title insurance or determining the basis for rate increases. The Maryland Insurance Administration (MIA) should look at all of the factors that go into title rates, including loss ratios and commissions legitimately paid.

Mr. Blume stated that the new HUD-1 will disclose what the split is between agent and title insurer.

III. Approval of Minutes

The Minutes for June 25 were approved without changes. The Minutes for July 16 were approved without changes.

IV. Public Comment

Senator Kelley stated that the Commission will be accepting written comments through October 1.

Mr. Carl McAdoo of Waldorf, Maryland testified before the Commission (see attachment 1).

Mr. Rogers stated that he wasn't sure why a new owner's policy was offered to Mr. McAdoo since he was refinancing his home and not purchasing a new home. Mr. Rogers also stated that there is greater risk on an owner's policy so that may be justification for the difference in the premiums.

Mr. Finkelstein asked how Mr. McAdoo found LSI. Mr. McAdoo stated that LSI was who his lender referred him to. Mr. Finkelstein asked whether Mr. McAdoo was given an opportunity to select the agency to do the closing and Mr. McAdoo answered in the negative. Mr. McAdoo stated that he subsequently contacted Bank of America and told them that the title agency that conducted his previous closing would be conducting the closing on the refinance.

Mr. Finkelstein stated that the only contact a person who is refinancing has contact with at a closing is with a TIPIC.

Senator Kelley stated that the TIPIC is acting as the agent of the title agency/lender.

Mr. Kochanski stated that if you want all your questions answered, you should probably have an attorney present at closing.

David Hillman, CEO of Southern Management Corporation, testified before the Commission (see Attachment 2).

Barbara Taylor testified before the Commission (see Attachment 3).

V. Adjourned

Senator Kelley then asked the Workgroups to meet to determine what issues would go forward and any additional research needed, and to keep in mind fiscal notes and the recession. The next meeting is on October 22 at 5:00 p.m. The meeting was adjourned at 6:30 p.m.

Commission to Study the Title Insurance Industry in Maryland

Minutes
October 22, 2009

Members in Attendance

Senator Delores Kelley, Co-Chair	Paul Rieger
Senator Douglas J.J. Peters	Linda Rose
James Clements	Commissioner Sarah Bloom Ruskin
Thomas Drechsler	Elizabeth Trimble
James Cosgrove (proxy for Nathan Finkelstein)	Commissioner Ralph Tyler
David Kochanski	

I. Call to Order

Senator Kelley called the meeting to order at 5:00 p.m.

II. Briefing

Laura Gipe, Consumer Protection Compliance Specialist with the U.S. Department of Housing and Urban Development gave a presentation to the Commission on the new Real Estate Settlement Practices Act Rule. Ms. Gipe provided copies of the new Good Faith Estimate and Settlement Statement forms that are required after January 1, 2010. A copy of Ms. Gipe's presentation and the new forms are incorporated as part of these minutes.

III. Workgroup Reports

Representatives of all three Workgroups of the Commission – Regulation of the Title Insurance Industry, Consumer Protection, and Affiliated Business Arrangements – presented their preliminary findings and recommendations to the Commission. A copy of each workgroup's report is incorporated as part of these minutes.

IV. Approval of Minutes

The Minutes for September 17 meeting were approved without changes.

V. Adjourned

Senator Kelley adjourned the meeting at 6:30 p.m. The next meeting of the Commission is scheduled for Thursday, November 19 at 4:00 p.m. in the Senate Finance Committee Hearing Room. Senator Kelley announced that this would be a work session and asked that all Commission members be prepared to discuss and decide upon the final recommendations to be included in the Commission's final report.

Commission to Study the Title Insurance Industry in Maryland

Minutes
November 19, 2009

Members in Attendance

Senator Delores Kelley, Co-Chair
Senator Douglas J.J. Peters
James Clements
Gregory Cockerham
Thomas Drechsler
Nathan Finkelstein
David Kochanski
Patrick Martyn
Delegate David Rudolph
Paul Rieger
Theodore Rogers
Ron Callison (proxy for Linda Rose)
Commissioner Sarah Bloom Raskin
Elizabeth Trimble
Commissioner Ralph Tyler

I. Call to Order

Senator Kelley called the meeting to order at 4:00 p.m.

II. Approval of Minutes

The minutes from the October 22 meeting were approved with changes.

III. Work Session

Staff briefed the Commission on the recommendations from each of the work groups. Work group members provided background information on the work group's rationale for each recommendation. The Commission discussed and deliberated each of the recommendations from the work group reports and voted on the final recommendations to be included in the report of the Commission.

The co-chairs of the Commission asked that after a draft of the Commission's final report was distributed to the Commission members, substantive changes should be submitted to staff.

V. Adjourned

The meeting was adjourned at 6:00 p.m.

To: Commission to Study the Title Insurance Industry

From: Workgroup A, "Regulation of the Title Insurance Industry"

Re: Conclusions of Workgroup meeting held October 12, 2009

Workgroup A Members: Delegate Doyle Niemann, Senator Douglas J.J. Peters, Joseph Blume, Thomas Drechsler, Commissioner Sarah Bloom Raskin/ Calvin Wink, Theodore C. Rogers and Gregory Cockerham

* * * * * * * * * * * *

Workgroup A consisting of the above-referenced members were assigned to analyze the adequacy of existing regulation of the title industry in Maryland. The Workgroup met on October 12, 2009. In attendance were the following Workgroup A members: Joseph Blume, Thomas Drechsler, Calvin Wink for Commissioner Sarah Bloom Raskin, and Theodore C. Rogers

Three issues were identified and discussed as follows:

Rate setting factors for title insurance premiums:

There appear to be five different methods of regulating title insurance rates in use in the United States:

a) Promulgation-3 States.
b) Prior Regulatory Approval-8 States (including Maryland).
c) File and Use-30 States.
d) Use and file-2 States.
e) No Direct Regulation-7 States.

In 6 of the 8 states that adopt "Prior Regulatory Approval"(including Maryland), rates proposed by an insurer are deemed approved if the regulatory body takes no action to disapprove within a specified time. Similarly, in a File and Use State, insurers set rates but they cannot be charged until the regulator has been notified and allowed time for review and action, if necessary. In a File and Use State, no action by the regulator within a specified time is deemed an approval. Thus, for all intents and purposes, there seems to be little difference in results between States that follow a "Prior Regulatory Approval" protocol and those that follow a "File and Use" protocol. It can be fairly said that 38 states (including Maryland) require some sort of regulatory approval of rates. The Workgroup believes that regulatory approval of title insurance rates is an effective element of consumer protection and Maryland's "Prior Regulatory Approval" protocol should be maintained.

The members of the Workgroup discussed the factors utilized by title insurers to set rates.

The Workgroup concluded that the current rate-setting methodologies combined with market competition and final regulatory approval by the Maryland Insurance Administration provide maximum protection for consumers while establishing fair compensation to the insurance company for the risks undertaken.

Adequacy of Title Insurance Producer Fidelity and Surety Bonds:

Title Insurance producers are required by law to maintain a blanket surety bond or letter of credit to protect any person that suffers a loss if the producer misappropriates funds held in escrow or trust. Producers also are required to maintain a blanket fidelity bond that protects the employer of the title insurance producer from misappropriation of funds held in escrow or trust. As a result of the recent passage of Senate Bill 86, the amount of each bond or letter of credit maintained by a producer has been increased from $100,000 to $150,000.

The Workgroup discussed concerns regarding the qualifications for and financial burden of maintaining bonds at various levels, as well as the fact that additional bonding costs will ultimately be passed on to consumers. Thus, the discussion focused in part on whether the pre-2009 bond levels were adequate.

The Fiscal and Policy Note to Senate Bill 86 mentions an increase in consumer complaints against title insurance producers as the impetus for the increase in the bond coverage. This document does not detail the costs, damages or substance of the consumer complaints identified. Without such data, it is difficult to make a conclusion concerning the adequacy of the bond amounts and whether all or any of the complaints would be covered by the bonds to begin with. Indeed, it may be that many of the complaints do not involve misappropriation of funds and would not be covered by either fidelity or surety bonds. Issues involving negligence, mistake, inexperience, etc. are covered by Errors & Omissions (E&O) insurance.

The Workgroup recommends further analysis of the nature and economic impact of the filed consumer complaints as well as losses suffered by title insurers and consumers due to agent defalcations in the State of Maryland with a view to determine the adequacy of the current levels of bonding and E&O coverage.

In the event that the bond amounts appear inadequate, the Workgroup is of the opinion that the qualifications for and cost to title producers of an increased level of bonding would put many title producers out of business, thereby significantly reducing the high degree of competition that currently exists in the industry which may ultimately result in increased costs to consumers. The Workgroup, therefore, discussed alternatives to maximize protection for consumers. One possible solution may be to establish an industry Guaranty Fund or Trust Fund. This Fund could either serve in place of the current bond requirements or to supplement the protections offered by the bonds. The Workgroup also discussed funding such funds through a charge for Insured Protection Letter/Insured Closing Letter and that such Guaranty/Trust funds be held and administered by title insurers.

Title Insurance Producer Independent Contractor (TIPIC)

The Workgroup discussed issues relating to closings performed by Title Insurance Producer Independent Contractors (TIPICs). The issues raised by TIPIC closings also were documented in the public testimony taken by the Commission at its public hearings. The concerns discussed were:

a) TIPICs, while licensed by the MIA, often have no affiliation with a title insurance producer who is licensed in Maryland and maintains a physical business address in Maryland.
b) TIPICs oftentimes do not maintain an office or physical business address, but instead work from their homes and out of their cars.
c) Without a physical business address in Maryland, TIPICs conduct a substantial portion of their closings in the borrower's homes (which in some instances violates current Maryland lending laws). While this may provide a convenience, borrowers are usually left with a cell phone number as the only contact information of the person who conducted their closing.
d) TIPICs oftentimes are unable and/or unwilling to explain loan documentation and/or answer the borrower's questions at closing.
e) In comparison to a Maryland licensed title producer that maintains a physical business address in Maryland, TIPICs enjoy reduced operational costs by avoiding the business costs of a physical operation. Thus they often are retained by out-of state lenders to perform "notary closings" as a cost saving alternative to a Maryland licensed title producer. While this cost savings may be passed on to the consumer, this potential benefit may be outweighed by the dangers posed by TIPIC closings described above. Moreover, Maryland mortgage lenders who utilize the services of a Maryland licensed title producer that maintains a physical business address in Maryland are at a competitive cost disadvantage to an out-of-state lender that utilizes a TIPIC to conduct a "notary closing."

The Workgroup suggests that the Commission consider adopting recommendations that will require TIPICs to be employed by or work through a title producer licensed in Maryland that maintains a viable office in Maryland.

Commission to Study the Title Industry
Report Workgroup B – Consumer Protection

Recommendation No. 1

Recommend that General Assembly make clear in statute that a title insurer is liable for a theft (defalcation) of funds by a title insurance producer of funds held by the producer in contemplation of or conjunction with a real estate closing.

Rationale for recommendation: Thefts by producers have been a major problem in the past couple of years. Literally millions of dollars have been stolen. The MIA has resisted strongly insurers' attempts to avoid their obligations to protect consumers from thefts by the insurer's agent. The public policy of the state on this issue should be made explicit in statute.

Recommendation No. 2

Recommend that MIA and DLLR collaborate on the development of a regulation mandating timely delivery of a "title insurance consumer's bill of rights" consistent with HUD-1 requirements. Examples of issues which might well be included in such a regulation and its implementing form would include notice to the consumer of the following rights:

1. You have the RIGHT to choose your title producer, agency and insurer.

2. You have the RIGHT to receive settlement cost information early in the process, allowing you to shop for the settlement services that best meet your needs.

3. You have the RIGHT to be informed about the total cost being paid by you to the title producer and/or agency.

4. You have the RIGHT to receive an itemized settlement statement from the title producer and/or agency detailing all fees paid to the title producer and/or agency before you agree to use said producer and/or agency.

5. You have the RIGHT, before you sign, to ask the title producer questions about charges and documents that you do not understand.

6. You have the RIGHT to receive copies from the title producer and/or agency of all documents you signed at the time of closing.

7. You have the RIGHT to have all funds disbursed timely and properly by the title producer and/or agency in accordance with the Settlement Statement (HUD-1) you signed at closing.

Rationale for recommendation: Consumers are simply unaware of their rights in this area because, for example, it is technical and it is an area with which consumers have only a few contacts throughout their lives. More and better information to consumers is needed.

Recommendation No. 3

Recommend that MIA scrutinize with greater care and diligence title insurance rates. The loss ratios on these policies are exceedingly low and the commission rates are high. Workgroup A is also making recommendations with respect to rates, including recommending some statutory changes. Those recommendations are consistent with the spirit of this recommendation.

Rationale for recommendation: The market has not worked to keep rates down, particularly given insurer's minimal risk of loss. "Prior approval" has meant, in practice, approval without much review.

Recommendation No. 4

Recommend that General Assembly define in statute the legal responsibility of what are commonly called "TIPICs" to make clear that they are not independent contractors, but agents of the party which sends them to a closing and that it is that party which must hold a bond and which is liable for the TIPICs' error and omissions (i.e., all non-intentional conduct). If such a provision were enacted, TIPICs could be relieved from the bonding requirement because the TIPIC's principal would be bonded.

Rationale for recommendation: The Commission heard ample and repeated testimony that the present system involves TIPICs conducting closings without guidance or supervision or the ability to answer basic questions regarding the transaction. The entities using TIPICs need to be incentivized to take more responsibility.

Report of Affiliated Business Arrangements Workgroup - 10/22/09

Workgroup Members
Senator Kelley
Jim Clements
Nate Finkelstein
Paul Rieger
Liz Trimble

Proposals

- Recommending a State law similar to the federal RESPA provisions which require disclosure of Affiliated Business Arrangements to consumers in real estate transactions
- Making examination of the Good Faith Estimate part of the market conduct study of a title insurance company to determine whether the federal rules on overage tolerance were violated
- Requiring the name of the individual who closed the transaction as well as that person's license number to be on one or more of the closing documents

Discussion

The federal RESPA law (12 USC § 2607) permits affiliated business arrangements where certain specific disclosure is provided, the consumer is not required to use any particular provider of settlement services, and the only thing of value received, other than payment for services provided, is a return on ownership interest. The required notice form is an appendix to the federal regulations related to this law. (24 CFR 3500, Appendix D). The workgroup feels that a similar provision in Maryland law would ensure that all transactions in the State, even those without federal connections, would be subject to these disclosure and payment restrictions. Having the provision in State law could also permit enforcement by State agencies.

The HUD regulations that go into effect on January 1st set tolerance limits for disparities between certain settlement costs listed on the Good Faith Estimate (GFE) and the HUD-1. The workgroup suggests that the Insurance Administration include a review of the GFE and the HUD-1 that includes the tolerance comparison when it performs market conduct studies of title insurance companies. This would be an additional means of encouraging compliance by settlement service providers.

There is a requirement in the Real Property Article that the name and Maryland mortgage originator license number be on a deed of trust when it is recorded, unless an affidavit establishing exemption from licensure is provided. (Section 3-104.1) The workgroup suggests adding the name of the individual who conducted the settlement and that person's MIA license number to the deed of trust requirement. This would assist in tracking a pattern of problem transactions, and would alert the licensee to the fact that their involvement could be identified in connection with a particular transaction.

Other Issues

- The issue of federal preemption, and the resulting position of the federal lending institutions that they are not covered by certain state laws, is a factor that must be considered. The regulations of the Office of the Comptroller of the Currency (OCC) state that state laws may apply, and are not preempted, in the areas of the acquisition and transfer of real property. (12 CFR §§ 34.4 and 7.4009) Should the State law require that the MIA license number be on the deed of trust before it can be recorded, as is the case with mortgage originators, federal lending institutions might need to use licensed individuals to perform settlements.

- The workgroup suggests that language be included in the final report to address the preemption issue, and the effect it has on the states' efforts to provide protection to consumers. (Pre-payment penalties are one example.)

- The workgroup is concerned about the education and training of some of the licensed individuals providing settlement services.

- An effort was made in the 2007 Session of the General Assembly to provide a means for title insurance professionals to record mortgage releases after payoff had been made, and notice and an opportunity for response given to the lender. Unreleased mortgages continue to be a source of post-settlement problems for consumers. Many states have provisions similar to that proposed in 2007. Perhaps legislation to that effect should be part of the taskforce's recommendations.

APPENDIX 2: TESTIMONY FROM PUBLIC HEARINGS

WRITTEN TESTIMONY SUBMITTED AT JUNE 25, 2009 PUBLIC HEARING

Attachment 1

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

MARYLAND
INSURANCE
ADMINISTRATION

RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

NANCY GRODIN
Associate Commissioner
Compliance and Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2354 Fax: 410-468-2245
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1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

PUBLIC HEARING 6/25/09 5 P.M.
FINANCE COMMITTEE ROOM (3 EAST)
MILLER SENATE OFFICE BUILDING
11 BLADEN STREET
ANNAPOLIS, MD 21401

My name is Darlene Arnold and I am an Assistant Chief in the Compliance and Enforcement Unit at the Maryland Insurance Administration ("Administration") primarily responsible for the oversight of cases involving title insurance, title agencies and producers. I've been asked to share with members of the Committee and those in attendance here today a breakdown concerning the complaints received by the Administration's Enforcement Unit thus far in 2009.

Complaints 2009

The following is a breakdown of the types of complaints the Enforcement Unit of the Maryland Insurance Administration opened investigations on in 2009:

Total Property and Casualty Cases: 392 cases
Title Cases: 245

A breakdown of the 245 is as follows:

92 relate to surety/fidelity bond issues or cancellations.
106 relate to alleged violations of the Maryland Affordable Housing Trust ("MAHT") requirement. (Title agencies are to possess a MAHT escrow account and are to deposit trust monies into this account based on days float and interest earned, if the interest earned is $50.00 or less. The agencies are also to file an annual report with MAHT concerning this account to include the interest remitted.)
12 allege fraud/theft of escrow or trust monies.
10 allege failure to pay property tax resulting in tax sale.
13 allege failure to record documents.
12 allege inappropriate disbursements from the escrow account.

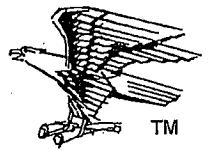
Given the increasing number of complaints, Commissioner Tyler has restructured the Enforcement section of the Compliance and Enforcement Unit and dedicated five (5) individuals to specifically address complaints involving title. Prior to this change, we had one individual exclusively responsible for title. We are also working with our IT department at the Administration to reprogram internal tracking mechanisms to better track the title cases we receive. Based on the improvements made at the Administration, we are confident that we will be able to address the increasing number of consumer complaints relating to the title industry.

I'd be happy to address any questions you may have.

Attachment 2

What is Title Insurance?

AMERICAN LAND TITLE ASSOCIATION



The land title transfer system in America works so well that most consumers never take the opportunity to learn how or why it works or the personal and societal benefits derived from this highly effective system of assurance.

However, when an individual sits at a closing table to sell one house and buy another, the main reason such a complex real estate transfer can be quickly accomplished is because an independent, third party title/settlement professional has already scoured the public record (property records, tax records, and court records) to establish legal ownership of the property being sold, cured any title or public record defects (one third of all transactions reveal a title or public record defect), accounted for and transferred all of the money intended to change hands, and insured the entire transaction against any mistake, fraud, risk or defect, whether it is known or unknown.

As a practical matter, this means that buyers are more willing to purchase property because they are insured against property fraud and defects in the public record. Lenders are more willing to make loans because ownership by the borrower of the collateral, or real estate, is guaranteed through title insurance. The secondary financial markets are willing to buy mortgage-backed securities because, in the event of a default, their right to the underlying collateral is assured.

Title companies and their agents are involved in completing all aspects of the closing process, from preparation of documents and recording instruments, to preparation of closing forms and collecting and disbursing funds. Before a transaction is completed, a title search of the records is made in an effort to locate potential problems so that they can be corrected and the transfer can proceed. While most problems can be located in a title search by skilled professionals, there can be hidden hazards that even the most thorough search will not reveal. Examples include forgeries in the chain of title, a claim by a previously undisclosed relative of a former owner, or a mistake in the public records, all of which can be covered by title insurance. Liens, easements, rights-of-way, life estates, air and subsurface rights, and future interests are also discovered in a title search and insured by a title insurance policy.

There are two types of title insurance: an Owner's Policy protects the buyer's interests while a Loan Policy protects the lender's interest. An Owner's Policy is typically issued in the amount of the real estate purchase price, and remains in effect for as long as the owner or their heirs retain an interest in the property. In addition to identifying risk before a transaction is completed, the Owner's Policy will pay valid claims and all defense costs against claims on the title. A Loan Policy assures the lender of the validity, priority and enforceability of its lien (mortgage) – serving as protection for the lender's security interest in the property. A Loan Policy is issued in the amount of the loan, and liability decreases as the mortgage is paid off by the borrower.

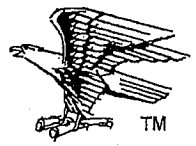
Since the sale, purchase and transfer of real estate is governed by local law and custom, practices of the title industry vary by locality and are regulated by state governments. Who pays for the title insurance is also a matter of local custom. In some parts of the country, the seller purchases the Owner's Policy for the buyer, in effect assuring them their title is clear while in other parts of the country, both the Loan Policy and Owner's Policy are issued simultaneously, and in still others, the buyer must ask for an Owner's Policy and pay for it separately.

Title insurance is substantially different than other types of insurance coverage for two reasons: 1) it is paid by a one-time premium that provides protection for as long as the owner or their heirs retain an interest in the property and, 2) title insurance procedures seek to eliminate risk rather than simply price risk. While the emphasis on risk prevention is a labor intensive and costly component of doing business, but the coverage offers the best possible opportunity for avoiding challenges to title and assuring consumers peace of mind.

Public Benefits of Title Insurance

The 3,000 member companies of the American Land Title Association (ALTA) include title insurance agents, underwriters, real estate settlement service providers, real estate attorneys and title abstractors. Working together as an industry these companies and their employees ensure that privately owned residential and commercial real estate is quickly and legally transferred, indemnifies owners from claims against their property and guarantees lenders recourse to collateral in the event of a default. Like a light switch that always delivers electricity, the land title transfer system in America works so well that most consumers never take the opportunity to learn how or why it works or the personal and societal benefits derived from this highly effective system of assurance.

AMERICAN LAND TITLE ASSOCIATION

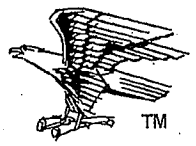


TM

- Because of the title insurance industry, Americans close their loans faster than any other country – 30 days on average --- and the speed of the transaction saves consumers tens of billions of dollars annually in additional interest costs.
- At no cost to taxpayers, the title industry collects $1.75 billion per year in back income taxes.
- At no cost to taxpayers, the title industry collects $3 billion per year in delinquent real estate taxes.
- At no cost to taxpayers, the title industry collects $325 million per year in delinquent child support payments.
- The title industry spends $225 million per year to correct errors in the public property records that otherwise would lead to serious impairment to the property rights of millions of Americans.
- The title industry is an important source of revenue for local governments, paying $170 million per year to purchase copies of recorded documents.
- Because of the title insurance industry, people can be confident about purchasing property anywhere in the country because they are insured against fraud and defects in the public record.
- Because of the title insurance industry, mortgage lenders are more willing to lend because ownership by the borrower of the collateral (the real estate) is guaranteed.
- Because of the title insurance industry, mortgage-backed securities (MBS/CMBS) can be created and traded, because in the event of a default, recourse to the underlying collateral is guaranteed.

Title Industry Regulation, Ethics and Standards

AMERICAN LAND TITLE ASSOCIATION



The title insurance industry is regulated by state departments of insurance. In some cases, a separate state agency regulates title insurance agents. Practices within the industry vary due to differences in state laws and local real estate customs. In addition, providers of closing or settlement services are governed by the federal Real Estate Settlement and Procedures Act (RESPA).

In addition to government regulation, the title insurance industry has industry-wide standards and best practices established by the American Land Title Association (ALTA). Standards include uniform accounting, internal auditing practices, financial reporting; and the promulgation of standard policy forms and endorsements.

ALTA has developed the Title Industry Consumer Initiative to educate and protect consumers by helping them make informed choices when purchasing title insurance and settlement services.

A major component of ALTA's Consumer Initiative are the Principles of Fair Conduct, which represent the association's commitment to promote behavior within the title industry that demonstrates a commitment to the ethical and fair treatment of consumers. Industry members that adopt the Principles of Fair Conduct pledge:

1. To engage only in business practices that are lawful and consistent with a high standard of ethical behavior.
2. To encourage a culture of compliance within their organizations for federal and state laws that govern the title insurance business and for these Principles.
3. To treat consumers in a fair and ethical manner.
4. To provide consumers with timely and comprehensive information regarding their policies, services, products, and prices so as to enable consumers to shop effectively among providers of title-related services.
5. To encourage and assist consumers to be educated purchasers of title insurance and title-related services.

ALTA conducts ongoing industry education to promote the fair and ethical treatment of consumers, including adherence to the laws and regulations that govern the business of title insurance and settlement services..

As part of the Title Industry Consumer Initiative, ALTA has created a consumer website www.homeclosing101.org which provides an overview of the closing process and explains the purpose of a title search and correcting errors in the public record. The site also describes how consumers can shop and compare prices for title insurance and settlement services.

ALTA continues to work with federal and state legislators and regulators to further better understanding of the title insurance and settlement services business and solicit feedback on how the industry can continue to meet the needs of consumers.

Mr. Chairman and Distinguished Committee Members:

My name is Frank Pellegrini, and I am President of Prairie Title in Oak Park, Illinois, with offices in the metropolitan Chicago area. I have been a practicing lawyer since 1976 and founded Prairie Title in 1983. I am a title agent, and a member of the Board of Governors of the American Land Title Association, which I am here today to represent. ALTA is the national association for the title industry, representing nearly 3,000 member companies, with more than 100,000 employees, including title insurers, title insurance agents, abstracters and attorneys that operate in every state and county throughout the country.

In my hometown of Chicago, as in many large urban areas, the proliferation of mortgage fraud activities is particularly disturbing. The profile of the typical Chicago gang leader has evolved into a picture of a graying, suburban, technology friendly convict overseeing operations as diverse as mortgage fraud and drug dealing. This form of criminal activity is spreading.

Fraud is the second leading cause of title claims, so we track it very closely. Our experience indicates that mortgage fraud schemes change with the economy. In a more robust economy we witnessed claims involving inflated values. As prices have fallen and equity has dried up, we now see loan slamming claims. Additionally, with the large numbers of mortgage defaults, short sale mortgage fraud claims are becoming more prevalent.

Title professionals enjoy a unique vantage point from which to observe, identify and thwart instances of fraud. We are the independent third party to the transaction whose only interest is to the integrity of the transaction and the protection of our customers. Through training and experience, we hone our ability to spot improper transactions every day.

We look for a number of mortgage fraud indicators that include:

- Earnest money deposit that comes from someone other than the borrower, or lack of information about the source of the deposit,
- Seller carry-back documents that are not being disclosed to the lender,
- Payments to third parties that will not appear on the HUD settlement statement,
- Wide swings in mortgage amount,
- Recent sales with increases in price and checks to others at closing which could be a sign of "flipping",
- Substitution of sales contract for a higher amount,

In many cases documentation is still being faxed to the closing agent while the borrower is seated at the closing table.

The opportunity to inspect documents before closing would help prevent mortgage fraud by providing the settlement service provider and borrower time to review the documents by which fraud is perpetrated.

Let me conclude by saying that the title industry is well positioned and eager to serve as a resource to combat mortgage fraud.

Thank you.

Attachment 3

Civil Justice Inc.

520 W. Fayette Street, Suite 410
Baltimore MD 21201
Phone (410) 706-0174
Fax (410) 706-3196
Web www.civiljusticenetwork.org
Email cjn@civiljusticenetwork.org

A Public Interest Legal Association for Solo & Small Firm Attorneys

Phillip R. Robinson
Attorney
Executive Director

Diane Cipollone
Attorney & Director
Sustainable Homeownership Project

Anthony DePastina
Litigation Attorney

Outline of Testimony Before the Commission to Study the Title Insurance Industry in Maryland June 25, 2009 Annapolis, Maryland

By Phillip Robinson

Members of the Commision to Study the Title Insurance Industry in Maryland, thank you for inviting me to speak to you today at this important hearing. My name is Phillip Robinson and I presently serve as Executive Director of Civil Justice Inc., a Maryland non-profit legal services agency that has provided services to Maryland homeowners who have fallen prey to predatory real estate practices and presently is co-leading Maryland's Foreclosure Prevention Pro Bono Project.

While you are specifically charged to consider only one specific aspect of the real estate process, I can say from my experience representing thousands of Maryland homeowners that there is no other issue more important to solving the current economic crisis and preventing it again that the work you are performing and will recommend to the Governor and General Assembly. We must and can prevent the current crisis again, but to do so we must make an honest assessment of

what abuses have brought us here to the present and what must be done to correct them from occurring again.

BACKGROUND ON CIVIL JUSTICE INC.

Founded over eleven years ago, Civil Justice Inc. (CJ) works to increase the delivery of legal services to clients of low and moderate income through a network of solo, small firm and community based lawyers who share a common commitment to increasing access to justice through traditional and non-traditional means. A core part of this access to justice program is carried out through direct representation to homeowners by direct and class representation in the broad area of homeownership. In this regard CJ has successfully worked to train, co-counsel, and coach its network attorneys and others to help homeowners in the area of predatory real estate practices so that the mission of the organization may be carried out exponentially.

As a result of its multi-pronged efforts to (i) support private, public interest attorneys do well and good at the same time and (ii) increase access to justice, CJ has established a track record of impact and recognition in the community. For example:

- CJ has co-counseled on several consumer class action lawsuits that have resulted in more that 100% of millions of dollars in illegal finance, broker fees, and/or illegal kickbacks being returned to the consumers as well

as prospective injunctive relief against the defendants to prevent them from continuing the same practices.[1]

- CJ's statewide membership exceeds more than 100 private, public interest attorneys committed to the overall mission of the organization in some key way.
- CJ is recognized by the Maryland community as the public interest "expert" in predatory relate practices and foreclosure defense issues in Maryland.[2]

CJ and its leadership are also award winners. For example, as the 2002 recipient of the Louis M. Brown Award for Legal Access, the American Bar Association's Standing Committee on the Delivery of Legal Services recognized CJ for filling in the gap of unmet legal needs of the middle class and those of moderate incomes with lawyers who provide affordable legal information, services and representation. Last year the Maryland Consumer Rights Coalition also recognized

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[1] *See, e.g., Greer v. Crown Title Corp.*, Cir. Ct. Balt. City, Case No. 24-C-02001227; *Naughten v. Millennium Escrow & Title*, Civil Action No. 02-cv-2078 (U.S. Dist. Ct. Md.); *Gray v. Fountainhead Title*, Civil Action No. 03-cv-01675 (U.S. Dist. Ct. Md.); *Keneipp v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-02813 (U.S. Dist. Ct. Md.); *Johnson v. Fountainhead Title Group Corp.*, Civil Action No. 03-cv-03106 (U.S. Dist. Ct. Md.); *Robinson v. Fountainhead Title Group Corp.*, 447 F. Supp. 2d 478 (D. Md. 2006); *Benway v. Res. Real Estate Servs.*, Civil Action No. 05-CV-3250 (U.S. Dist. Ct. Md.); *Capitol Mortgage Bankers, Inc. v. Cuomo*, 222 F.3d 151 (C.A.4 2000) (on behalf of *Amici Curiae*); and *Wells Fargo Home Mortgage Inc. v.* Neal, 398 Md. 705 Md., (2007) (on behalf of *Amici Curiae*); and *Atta Poku v. Friedman*, 403 Md. 47 (2008) (on behalf of *Amici Curiae*).

[2] *See* Surkiewicz, Joe, "Of Service: How can a lawyer help those facing foreclosure?" *Daily Record*, August 4, 2008; Kearney, Brendan, "Waldorf Retiree Gets Verdict on Subprime Loan," *The Daily Record*, July 21, 2008; Smith Hopkins, Jamie, "A Cry to help Save Homes in Maryland: Top Judge Seeks to Stop Foreclosures," *Baltimore Sun*, July 8, 2008 (Page D.1); Madigan, Nick, "8 Accused of Loan Scheme," *Baltimore Sun*, June 13, 2008 (Page A.1); Trejos, Nancy, "Mortgage Survivors; On the Brink of Foreclosure, They Got Their Loans Changed – but it Wasn't Easy," Washington Post, May 4, 2008 (Page F.1); Smith Hopkins, Jamie, "Waging the Fight for Homeowners," *Baltimore Sun*, Feb. 29, 2008 (Page D.1); Hancock, Jay, "Seizing of Homes Too easy in MD," *Baltimore Sun*, Jan. 11, 2008 (Page D.1); Wiggins, Ovetta, "Foreclosure Task Force Proposes Remedies: Strict Lending Laws Sought," *Washington Post*, Nov. 17, 2007 (Page B. 2).

me as the Denis J. Murphy Consumer Advocate of the Year for CJ's work and efforts to reform Maryland's foreclosure process.

MORTGAGE FRAUD & UNFAIR AND DECEPTIVE PRACTICES

For three years, CJ has been observing and actively representing homeowners involved in various mortgage and foreclosure rescue frauds as well as unfair and deceptive practices. While much of these cases and matters may appear beyond the direct scope of the commission's interests today, the discovery and evidence we have learned in these cases is important to understanding some of the problems you intend to address in your report and recommendations. As you may know Maryland is ranked by the FBI as the 5th highest state in the nation in terms of mortgage fraud. We are, unfortunately, home to the largest, mortgage schemes in the Country and in my experience and direct work in this area at the heart of the deceptive, illegal practice was a licensed title producer and/or title insurer that at a minimum negligently ignored the red flags and, as a result, a loan transaction was entered into and consummated which should never have occurred. If the professional involved had actually turned the under-the-table or predatory transaction away and not closed or settled it, no one had likely have been harmed. I have attached examples of the kinds of issues that need to be prevented in the future including:

- **Unindicted Co-Conspitator Attorney & Licensed Title Producer**: *USA v. Joy Jackson*
- **Licensed Title Producer Admission**: *USA v. Wilber Ballesteros Plea and Statement of Facts*
- **A State License is Not a License to Steal:** *Terry Massey v. E. Lewis*
- **Enforcement:** *Arthur v. Ticor Title*
- **ABAs:** *Benway v. Resource Real Estate Services, LLC*

RECOMMENDATIONS

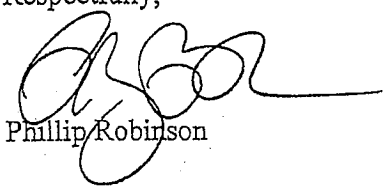
From my grassroots, frontline perspective, I can offer the panel the following recommendations which will improve the title insurance industry in Maryland, protect those companies doing things the right way, and help prevent the abuses of the recent past from ever occurring again:

1. Title Insurers Must Supervise Their Agents Activities.
2. Title Insurers Should be Required to Audit Each of Their Agents on a Yearly Basis.
3. Title insurers must have a mandatory duty to report all audits to the MIA and specifically report any substantive irregularities to the MIA within 14 days of notice.
4. Licensed Title Producers Who Do Not Report Lawsuits Against Them Related to the Scope of Their License Should be Denied the Privilege of a License to Operate.
5. MIA cannot be the only mechanism of enforcement.
6. Maryland Should Adopt a Mini RESPA Statute for Civil Liability.

CONCLUSION

Thank you for the opportunity to testify today and please do not hesitate to let me know if I can be of any further help to your efforts.

Respectfully,



Phillip Robinson

Exhibit : *USA v. Joy Jackson et al. Indictment*

JAC: USAO 2007R00629

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	CRIMINAL NO.
	*	
JOY JACKSON,	*	(Conspiracy, 18 U.S.C. § 1349; Mail
a/k/a Joy Fordham,	*	Fraud, 18 U.S.C. § 1341; Money
a/k/a Joy Simms,	*	Laundering, 18 U.S.C. § 1957; Aiding
a/k/a Joy Jones,	*	and Abetting, 18 U.S.C. § 2; Forfeiture,
JENNIFER MCCALL,	*	28 U.S.C. § 2461, 18 U.S.C. § 981,
a/k/a Jennifer Jones,	*	21 U.S.C. § 853)
KURT FORDHAM,	*	
CLIFFORD MCCALL,	*	
CHANDRA JONES,	*	
KATISHA FORDHAM,	*	
RONALD CHAPMAN, and	*	
WILBUR BALLESTEROS,	*	
	*	
Defendants	*	
	*	
	*******	

INDICTMENT

COUNT ONE
(Conspiracy)

The Grand Jury for the District of Maryland charges that:

Introduction

At all times relevant to this Indictment:

1. Beginning in or about September 2004, and continuing through in or about June 2007, in the District of Maryland and elsewhere, defendants **JOY JACKSON, JENNIFER MCCALL, KURT FORDHAM, CLIFFORD MCCALL, CHANDRA JONES, KATISHA FORDHAM, RONALD CHAPMAN, and WILBUR BALLESTEROS** ("the Defendants") conspired with each other and others known and unknown to the Grand Jury to target persons who owned and had substantial equity in homes but were facing foreclosure because of their inability to make monthly mortgage payments ("the homeowners"). As part of their "Foreclosure Reversal" scheme, the Defendants fraudulently promised to help the homeowners avoid foreclosure, keep their homes, and repair their damaged credit. The homeowners were directed to allow title to their homes to be put in the names of third-party purchasers ("the straw buyers") for a one-year period, during which the Defendants promised to improve the homeowners' credit ratings, help them obtain more favorable mortgages, and eventually return title to their homes to them. The Defendants told the homeowners that the equity withdrawn from their properties would be kept in escrow and used to pay the mortgages and expenses on their homes and to repair the homeowners' credit. Using the homeowners' properties, the Defendants applied for mortgages to extract the maximum available equity from the homes and prepared and submitted to mortgage lenders ("the lenders") fraudulent loan applications to obtain fraudulently inflated loans on the target properties in the straw buyers' names. At settlements, the Defendants imposed numerous fees and required "seller contributions" which were far in excess of industry standards; they imposed fees for services which were not performed, disclosed or explained to the homeowners; and they transferred the sale proceeds out of the escrow accounts into the Defendants' business and personal bank accounts.

2. As a part and result of the conspiracy, (a) the Defendants paid kickbacks to the straw buyers who were added to or replaced the homeowners on the titles to their properties; (b) the Defendants stripped away most of the homeowners' equity proceeds and converted those monies to their own personal use; and (c) when the Defendants stopped making mortgage payments, the properties were foreclosed upon, and the homeowners were left without homes, equity, or repaired

credit.

3. As a result of the conspiracy, the lenders provided at least $35,873,150 in funds for fraudulent loans on at least 100 homes, and the homeowners suffered losses of at least $10,270,387.19 in stripped equity.

Parties, Persons and Entities

4. Metropolitan Money Store ("MMS") was a Maryland corporation which did business in Maryland, Virginia, and the District of Columbia and offered to financially distressed homeowners foreclosure consultation and credit services, including its "Foreclosure Reversal Program." MMS was located in Lanham, Maryland, employed 35 individuals, and was not a licensed mortgage broker or credit repair business.

5. Fordham & Fordham Investment Group, Ltd. ("F&F") was a Maryland corporation that assisted MMS in its foreclosure consulting and credit servicing business. F&F was based in Lanham and Greenbelt, Maryland, employed three individuals, and was not a licensed credit repair business.

6. Burroughs & Smythe Financial Services, Inc. ("B&S") was a Maryland corporation that assisted MMS in its foreclosure consulting and credit servicing business. B&S was based in Lanham, Maryland, employed two individuals, and was not a licensed credit repair business.

7. JC and JC Investments LLC, RAC Investment Property LLC, and Prosper Investments LLC were Maryland corporations that provided real estate investment services.

8. Defendant JOY JACKSON ("JACKSON"), a Maryland resident, was the president of MMS and a director and the resident agent of MMS and F&F. JACKSON was a

Maryland licensed mortgage broker but was not licensed to provide credit repair services.

9. Defendant JENNIFER MCCALL ("J. MCCALL"), a Maryland resident, was the chief executive officer ("CEO") of MMS, a director and the resident agent of MMS and B&S, and owner of JC and JC Investments LLC. J. MCCALL was a Maryland licensed mortgage broker and notary but was not licensed to provide credit repair.

10. Defendant KURT FORDHAM ("FORDHAM"), a Maryland resident, was the president of F&F and a director of F&F and B&S. FORDHAM was married to JACKSON.

11. Defendant CLIFFORD MCCALL ("C. MCCALL"), a Maryland resident, was the president of B&S and a director of B&S and F&F. C. MCCALL was married to J. MCCALL.

12. Defendant CHANDRA JONES ("JONES"), MCCALL's daughter and a Maryland resident, was the vice-president of F&F and a director of B&S.

13. Defendant KATISHA MONIQUE FORDHAM ("KATISHA FORDHAM"), a Washington, D.C. resident, was a MMS loan officer and FORDHAM's sister.

14. Defendant RONALD CHAPMAN ("CHAPMAN"), a Maryland resident, was a MMS loan officer and owned and operated RAC Investment Property LLC.

15. Title Company One was a Maryland limited liability company and Maryland-licensed title insurance company, which operated in Rockville, Maryland and conducted real estate settlements, issued title insurance, and acted as an escrow agent for MMS and others.

16. Defendant **WILBUR BALLESTEROS ("BALLESTEROS")**, a Maryland resident and licensed real estate closing agent, worked for Title Company One and conducted real estate settlements for MMS.

17. Title Company Two was a Maryland limited liability company and Maryland-licensed title insurance company, which operated in Largo, Maryland and conducted real estate settlements, issued title insurance, and acted as an escrow agent for MMS and others.

18. **Co-Conspirator A** was a Maryland resident and attorney, owned and operated Title Company Two and conducted real estate settlements for MMS.

19. **Co-Conspirator B**, a Maryland resident, was an MMS loan officer and owned and operated Prosper Investment LLC.

20. Credit Company One was a Maryland-licensed credit counseling company, which operated in Takoma Park, Maryland and provided credit repair services for homeowners and straw buyers.

The Conspiracy

21. Beginning in or about September 2004, and continuing through in or about June 2007, in the District of Maryland and elsewhere, the defendants,

JOY JACKSON,
a/k/a Joy Fordham,
a/k/a Joy Simms,
a/k/a Joy Jones,
JENNIFER MCCALL,
a/k/a Jennifer Jones,
KURT FORDHAM,
CLIFFORD MCCALL,
CHANDRA JONES,
KATISHA FORDHAM,

RONALD CHAPMAN, and
WILBUR BALLESTEROS,

did unlawfully, knowingly and willfully conspire, combine, confederate and agree with each other and other persons known and unknown to the Grand Jury to knowingly devise a scheme and artifice to defraud the homeowners and the lenders, and to obtain money and property from the homeowners and the lenders, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions ("the scheme to defraud") and for the purpose of executing and attempting to execute the scheme to defraud would and did (1) cause a matter and thing to be delivered by mail and private and commercial interstate carrier according to the direction thereon, in violation of 18 U.S.C. § 1341; and (2) transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, in violation of 18 U.S.C. § 1343.

Manner and Means of the Conspiracy

A. The Fraudulent Solicitations

22. It was a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B** and others marketed MMS's services through solicitations and television, radio, and print advertisements.

23. It was further a part of the conspiracy that when the homeowners responded to MMS's solicitations and advertisements, **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B** and others met with the homeowners and offered them two options as part of the scheme. The homeowners were told that the first option was to refinance their existing mortgage, but that they did not meet MMS's requirements for this option. Consequently, the promoters recommended the second

option, MMS's "Foreclosure Reversal Program," telling the homeowners that this option would allow them to avoid foreclosure, keep their homes, and repair their damaged credit.

24. It was further a part of the conspiracy that in order to convince the homeowners to enroll in the "Foreclosure Reversal Program," JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others obtained the homeowners' credit reports and made material omissions and failed to disclose information to the homeowners, which included, but was not limited to: the ability of the homeowners to refinance their existing mortgages; the use of the homeowners' equity in their homes once enrolled in the Foreclosure Reversal Program; the fact that MMS, F&F, and B&S would not actively assist in the repair of the homeowners' credit; and the fact that the straw buyers were often the Defendants, their friends or relatives, or an employee of MMS, F&F, or B&S.

B. <u>The Straw Buyers</u>

25. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others identified persons to be straw buyers who fit a financial profile – specifically, a particular threshold credit rating, as measured by commercial credit rating agencies – that would enable them to obtain favorable mortgages from the lenders to purchase the homeowners' properties in the straw buyers' names.

26. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others represented to the straw buyers that the straw buyers would hold

title to the property for a one-year period, after which MMS would facilitate the "re-purchase" of the property from the straw buyers and return title of the property back to the homeowners.

27. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others would tell the homeowners and the straw buyers that MMS or F&F would make all the mortgage payments on the property during the one-year period even though the loans were in the straw buyers' names.

28. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others would arrange for the straw buyers to relinquish their interest in and control over the properties to MMS upon completion of the closing of the mortgage or loan.

29. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others provided the straw buyer with $10,000 in return for their participation once the property closing had occurred.

30. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirators A and B, MMS, F&F, B&S employees, and family members of JACKSON, J. MCCALL, C. MCCALL, and FORDHAM acted as straw buyers for the loans used to acquire the homeowners' properties and knowingly participated in the sham purchases of various properties with the proceeds of fraudulently obtained loans in return for money.

C. The Fraudulent Loan Applications

31. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others sought mortgages for the target properties at values that were in excess of the properties' actual market values. To support applications for loans in excess of the properties' market values, JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others procured artificially inflated appraisals of the market value of the target properties from others not named in the Indictment.

32. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others obtained false income verifications and fictitious lines of credit in the names of straw buyers from Credit Company One and through other businesses owned and/or affiliated with JACKSON, J. MCCALL, CHAPMAN, and Co-Conspirator B in order to enhance the credit worthiness of the straw buyers.

33. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others made and caused to be made, materially false statements on loan application documents, including the Uniform Residential Loan Application ("URLA") and the Housing and Urban Development Form 1 ("HUD-1"), which were submitted to the lenders by facsimile, email and other means, on behalf of the homeowners and the straw buyers purporting to accurately represent (a) their personal and financial information and (b) the distribution of the

equity proceeds from the sale of the homeowners' properties. The material false statements included, among others, the use of the property as a primary residence; occupancy agreements; monthly income; existing debts; ownership of other properties and mortgage payment obligations associated with those other properties; lines of credit with Credit Company One and other companies; employment history; source of down payments on mortgages; and distribution of proceeds.

34. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B, and others caused property settlements to occur for which they submitted documents that contained material false statements which were intended to deceive and did deceive the lenders.

35. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, and Co-Conspirator B, and others completed most of the loan paperwork for the homeowners and the straw buyers and then facilitated the loan originations in the straw buyers' names and in some cases forged the homeowners' and straw buyers' signatures on certain loan documents.

36. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others made and caused to be made, fictitious sales contracts in the names of national real estate companies and forged the homeowners' and straw buyers' signatures on certain real estate sales contracts in order to facilitate the loan closing process and

to make the fraudulent real estate transactions appear more legitimate to the lenders.

37. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others paid kickbacks to real estate brokers in return for their providing fictitious real estate sales contracts to MMS that falsely represented that the homeowners' properties had been listed for sale with the brokers' real estate companies and then sold to the straw buyers.

38. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others prepared and had some homeowners sign "Monthly Rental Agreements" which stated that the homeowners would not pay "rent" on their homes for a one-year period.

D. The Fraudulent Settlements

39. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B and others, in addition to the false URLAs and HUD-1 settlement statements submitted to the lenders, created and completed separate "Foreclosure Reversal Program" fee sheets, which were not disclosed to the lenders and which required the homeowners to pay numerous fees and "seller contributions" to MMS, F&F, and B&S, which were far in excess of industry standards.

40. It was further a part of the conspiracy that that after each settlement, JACKSON,

J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B, and others sent and caused to be sent the closing packages to the lenders which purportedly revealed what had occurred at closing. In fact, among others, the following loan documents included in the closing packages were materially false, fictitious and misleading: the HUD-1's, loan applications, good faith estimates, mortgage notes, deeds, disclosure statements, proof of the straw buyers' down payments and title insurance, real estate sales contracts, and the homeowners' and straw buyers' signatures.

41. It was further a part of the conspiracy that, in some instances, BALLESTEROS, at the direction of JACKSON, J. MCCALL and others, would not appear at the closings but would sign the loan documents falsely certifying that he had witnessed the homeowners and straw buyers complete and sign the loan documents and would then submit those false closing documents to the mortgage lenders.

42. It was further a part of the conspiracy that J. MCCALL would notarize documents with forged homeowner and straw buyer signatures in order to facilitate the loan process, including, among others, the "Foreclosure Reversal Program" fee sheets.

43. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B, and others concealed the payments of the proceeds of the equity-stripping scheme to MMS by causing Title Company One and Title Company Two to wire the money to MMS, F&F, B&S, JC and JC Investments LLC, RAC Investments LLC, and Prosper Investments LLC bank accounts instead of to the

homeowners as stated in the HUD-1s.

44. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B**, and others concealed payments to MMS, F&F, and B&S by causing Title Company One and Title Company Two to issue checks for the proceeds of the sale in the names of the homeowners.

45. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B** and others forged the homeowners' endorsement signatures on checks and deposited checks into the MMS, F&F, and B&S bank accounts.

46. It was further a part of the conspiracy that **BALLESTEROS** falsely inflated the amounts due from the straw buyers and to the homeowners under the HUD-1 and then issued checks and wire transfers for the difference to MMS, F&F, B&S, JC and JC Investments LLC, RAC Investments LLC, and Prosper Investments LLC bank accounts instead of to the homeowners as stated in the HUD-1s.

47. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B**, and others caused homeowners and straw buyers to sign over property settlements proceeds, which were deposited into the personal bank accounts of **JACKSON, FORDHAM**, and others.

48. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN,**

BALLESTEROS, Co-Conspirator A and Co-Conspirator B, and others obtained at least $35,873,150 in mortgages through the "Foreclosure Reversal Program."

49. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B**, and others obtained at least $10,270,387.19 from the mortgage proceeds of the scheme and funneled those funds through various MMS, F&F, B&S bank accounts.

E. Distribution of Proceeds

50. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B, BALLESTEROS**, others spent the money from the mortgage loan proceeds in the following manner: monthly mortgage payments on properties already purchased, their personal expenses, and cash diversions to themselves.

51. It was further a part of the conspiracy that **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, BALLESTEROS, Co-Conspirator A and Co-Conspirator B**, and others shuttled the loan proceeds through various bank accounts, including the personal bank accounts of **JACKSON, J. MCCALL, FORDHAM, C. MCCALL**, and **JONES**, in order to pay, in part, for the personal expenses of **JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, Co-Conspirator B** and others, including art, cars, clothing, credit card bills, homes, fur coats, furniture, domestic and international trips, gambling expenses, jewelry, limousine services, student tuition, and a luxury wedding for **JACKSON** and

FORDHAM.

52. It was further a part of the conspiracy that JACKSON, J. MCCALL, FORDHAM, C. MCCALL, JONES, KATISHA FORDHAM, CHAPMAN, and others stopped making the mortgage payments on the homeowners' homes and the straw buyers' loans with the equity proceeds and allowed the properties to go into foreclosure.

Overt Acts

In furtherance of the conspiracy and scheme to defraud, and to effect the objects thereof, the Defendants and others known and unknown to the Grand Jury committed the following overt acts in the District of Maryland and elsewhere:

The Fraudulent Mortgages

A. 9603 Huxley Drive, Lanham, Maryland ("9603 Huxley Drive")

A1. On or about February 18, 2005, C. MCCALL signed a contract to purchase 9603 Huxley Drive for $600,000 from homeowners P.H. and S.H.

A2. On or about March 25, 2005, C. MCCALL signed and submitted to a lender a URLA, prepared by JACKSON to enable C. MCCALL to obtain a mortgage to purchase 9603 Huxley Drive, which falsely and fraudulently stated, among other things, (a) that C. MCCALL had been employed by JC & JC Investment LLC for one year and three months as Financing Manager and by Liberty Medical Billing for five years as Billing Supervisor and (b) that C. MCCALL earned $14,548.17 per month.

A3. On or about March 25, 2005, BALLESTEROS prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in C. MCCALL's name for 9603 Huxley Drive, which falsely and fraudulently stated (a) that C. MCCALL would provide $29,828.73 and

homeowners P.H. and S.H. would receive $78,431.91 at settlement; and failed to disclose (b) that C. MCCALL did not supply any of the borrower's funds for settlement; (c) that C. MCCALL would not pay any of the mortgage payments due to be paid to the lender; and (d) that the bulk of the proceeds from the sale would be deposited into JC and JC Investment LLC's bank account.

A4. On or about March 25, 2005, BALLESTEROS caused a United Parcel Service ("UPS") package containing real estate settlement documents for the purchase of 9603 Huxley Drive, including the false and fraudulent HUD-1, to be delivered from Title Company One's office in Rockville, Maryland to the lender, Argent Mortgage Company in White Plains, New York.

A5. On or about March 25, 2005, at the direction of J. MCCALL, BALLESTEROS caused a $120,459.30 check payable to Title Company One to be drawn on the escrow account of Title Company One for the equity proceeds from the sale of 9603 Huxley Drive.

A6. On or about March 29, 2005, at the direction of J. MCCALL, BALLESTEROS caused $72,976.48 to be wired to JC and JC Investments LLC's bank account, drawn on the escrow account of Title Company One, for the equity proceeds from the sale of 9603 Huxley Drive.

A7. On or about June 10, 2006, FORDHAM wrote a $4,223.38 monthly mortgage payment check payable to a lender for C. MCCALL's mortgage on 9603 Huxley Drive drawn on the F&F's Chevy Chase Bank account.

B. 4801 Fable Street, Capitol Heights, Maryland ("4801 Fable Street")

B1. In or about August 2005, homeowner J.B. met with JACKSON at MMS to

refinance the existing mortgage for 4801 Fable Street.

B2. On or about August 18, 2005, **J. MCCALL** obtained a credit report for **FORDHAM**, which included a false line of credit with Credit Company One.

B3. On or about August 25, 2005, **Co-Conspirator B** requested an appraisal for the purchase of 4801 Fable Street.

B4. On or about August 30, 2005, **JACKSON** and **FORDHAM** signed and submitted to a lender a URLA, prepared by **JACKSON** to enable **FORDHAM** to obtain a mortgage to purchase 4801 Fable Street, which falsely and fraudulently stated, among other things, **FORDHAM**'s income and intent to occupy the home, including representations (a) that **FORDHAM** earned $7,300 per month as a fitness instructor and (b) that **FORDHAM** would occupy the property as his personal residence.

B5. On or about August 30, 2005, **FORDHAM** and **BALLESTEROS** signed a HUD-1 settlement statement to facilitate the closing of a mortgage in **FORDHAM**'s name for 4801 Fable Street that failed to disclose (a) that **FORDHAM** would not pay any of the mortgage payments due to be paid to the lender and (b) that the $54,267.08 in proceeds from the sale would be deposited into F&F's bank account instead of being provided to homeowners J.B., C.B., and C.B.B.

B6. On or about August 30, 2005, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 4801 Fable Street, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA.

B7. On or about August 31, 2005, **FORDHAM** signed a $3,472.96 check payable to

Title Company One drawn on **FORDHAM** and **JACKSON**'s bank account to facilitate the purchase of 4801 Fable Street.

B8. On or about August 31, 2005, **BALLESTEROS** caused $54,267.08 to be wired to F&F's bank account, drawn on Title Company One's escrow account, for the equity proceeds from the sale of 4801 Fable Street.

B9. On or about September 1, 2005, **FORDHAM** and homeowners J.B. and C.B. signed a MMS document titled "Contract for the Foreclosure Reversal Program."

C. <u>17111 Livingston Road, Accokeek, MD ("17111 Livingston Road")</u>

C1. In or about November 2005, **CHAPMAN** met with homeowner G.W.'s spouse and described the "Foreclosure Reversal Program."

C2. On or about November 14, 2005, J. MCCALL obtained a credit report for homeowner G.W.

C3. On or about November 30, 2005, **JACKSON** and **JONES** signed and submitted to a lender a URLA to enable **JONES** to obtain a mortgage for the purchase of 17111 Livingston Road, which falsely and fraudulently stated, among other things, that **JONES** (a) had been employed by F&F for two years and four months as Financing Manager and earned $13,600 per month and (b) would occupy the property as her personal residence.

C4. On or about November 30, 2005, **BALLESTEROS** prepared a HUD-1 to facilitate the closing of a mortgage in **JONES**'s name for 17111 Livingston Road, which (a) failed to disclose that **JONES** would not pay any of the mortgage payments due to be paid to the lender; (b) falsely stated that at settlement **JONES** would provide $8,726.84; and (c) failed to disclose that $169,658.43 in equity proceeds payable to homeowner G.W. would be deposited into F&F's bank account.

C5. On or about November 30, 2005, J. MCCALL notarized the signatures of JONES and homeowner G.W. on a MMS document titled "Contract for the Foreclosure Reversal Program P1."

C6. On or about November 30, 2005, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 17111 Livingston Road, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, American Home Loan in Santa Ana, CA.

C7. On or about February 23, 2006, JONES obtained a credit report for homeowner G.W.

D. 4209 56th Avenue, Bladensburg, MD ("4209 56th Avenue")

D1. On or about September 19, 2005, JONES and homeowners D.H. and D.M. signed a real estate sales contract for 4209 56th Avenue.

D2. On or about December 1, 2005, JACKSON prepared and submitted to a lender a URLA, signed by JONES, to enable JONES to obtain a mortgage for the purchase of 4209 56th Avenue, which falsely and fraudulently stated, among other things, that JONES (a) had been employed by F&F for two years and five months as Financing Manager and earned $13,500 per month; (b) would provide $57,539.17 in cash towards the purchase of 4209 56th Avenue; and (c) would occupy the property as her personal residence.

D3. On or about December 1, 2005, BALLESTEROS prepared a HUD-1 settlement statement, signed by JONES and BALLESTEROS, to facilitate the closing of a mortgage in JONES's name for 4209 56th Avenue, which failed to disclose that (a) JONES would not pay any of the mortgage payments due to be paid to the lender and (b) $135,139.18 in equity proceeds payable to homeowners D.H. and D.M. would be deposited into F&F's bank account.

D4. On or about December 1, 2005, JONES wrote a $5,338.22 check to Title Company One from her personal bank account with the memo line "56th Ave."

D5. On or about December 1, 2005, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 4209 56th Avenue, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, BNC Mortgage, Inc., in Irvine, CA.

D6. On or about December 1, 2005, BALLESTEROS caused to be prepared, among others, a $54,345.24 check payable to Title Company One and a $135,139.18 check payable to homeowners D.H. and D.M., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 4209 56th Avenue.

E. 7602 Alloway Lane, Beltsville, MD ("7602 Alloway Lane")

E1. On or about January 3, 2006, J. MCCALL signed a URLA, which was submitted to a lender, to enable J. MCCALL to obtain a mortgage loan to purchase 7602 Alloway Lane, which falsely and fraudulently stated, among other things, that J. MCCALL (a) had been employed by MMS for two years as Broker and earned $35,000 per month, (b) would provide $128,142.93 to facilitate settlement, and (c) would occupy the home as her primary residence.

E2. On or about January 3, 2006, J. MCCALL, BALLESTEROS, and homeowner T.M. signed a HUD-1 to facilitate the closing of a mortgage in J. MCCALL's name for 7602 Alloway Lane, which (a) failed to disclose that J. MCCALL would not pay any of the mortgage payments due to be paid to the lender and (b) failed to disclose that $47,105.06 in equity proceeds payable to homeowner T.M. would be deposited into F&F's bank account.

E3. On or about January 3, 2006, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 7602 Alloway Lane, including

the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA.

E4. On or about February 16, 2007, Co-Conspirator A prepared a false and fraudulent HUD-1 settlement statement, signed by J. MCCALL, FORDHAM and Co-Conspirator A, to facilitate the closing of a mortgage in FORDHAM's name loan for 7602 Alloway Lane, which falsely and fraudulently stated that FORDHAM would (a) pay the mortgage payments due to be paid to the lender and (b) provide $88,953.96 and J. MCCALL would receive $853.10 at settlement.

E5. On or about February 16, 2007, FORDHAM signed a $549,000 promissory note with Wells Fargo Bank, N.A. in Des Moines, IA for the purchase of 7602 Alloway Lane.

E6. On or about February 16, 2007, J. MCCALL sold 7602 Alloway Lane to FORDHAM for $610,000.

F. 1835 Knoll Drive, Oxon Hill, MD ("1835 Knoll Drive")

F1. In or about January, 2006, homeowner C.H., an employee of Title Company Two, went to MMS to refinance the mortgage on their home at 1835 Knoll Drive.

F2. On or about January 6, 2006, J. MCCALL obtained a credit report for homeowner C.H.

F3. On or about January 9, 2006, JACKSON and homeowner C.H. signed a real estate sales contract in which JACKSON agreed to purchase 1835 Knoll Drive from homeowner C.H. for $325,000.

F4. On or about February 2, 2006, JACKSON prepared, signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 1835 Knoll Drive, which falsely and fraudulently stated, among other things, JACKSON's employment history, income, assets,

debts, and intent to occupy the home, including representations that (a) JACKSON had been employed by MMS for 14 years as CEO and earned $15,000 per month, (b) JACKSON owned and had as her primary residence 508 Balboa Avenue in Capitol Heights, MD; (c) JACKSON had personal property valued at $1,000,000; (d) JACKSON had $95,000 in cash in a personal bank account at Harbor Bank of Maryland; (e) JACKSON had multiple credit lines with Credit Company One; and (f) JACKSON would occupy the property as her primary residence.

F5. On or about February 2, 2006, BALLESTEROS prepared a HUD-1, signed by JACKSON, BALLESTEROS, and homeowner C.H., for the sale of 1835 Knoll Drive which, among other things, (a) failed to disclose that JACKSON would not pay any of the mortgage payments due to be paid to the lender; (b) falsely stated that at settlement JACKSON would provide $3,610.29; and (c) failed to disclose that $60,093.15 in equity proceeds payable to homeowner C.H. would be deposited into F&F's bank account.

F6. On or about February 2, 2006, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 1835 Knoll Drive, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA.

F7. On or about February 2, 2006, BALLESTEROS caused to be prepared, among others, a $60,093.15 check payable to homeowner C.H., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 1835 Knoll Drive.

F8. On or about February 6, 2006, **FORDHAM** deposited the $60,093.15 check payable to homeowner C.H. into F&F's Harbor Bank of Maryland bank account.

G. 12203 McCullagh Court, Upper Marlboro, MD ("12203 McCullagh Court")

G1. In or about January 2006, **JACKSON** and **J. MCCALL** met with homeowner W.B. and described the MMS "Foreclosure Reversal Program."

G2. On or about January 10, 2006, homeowner W.B., **FORDHAM**, and **JONES** signed a credit repair contract in which F&F agreed to provide credit repair services to homeowner W.B. in exchange for $1,500 from the sale of 12203 McCullagh Court.

G3. On or about January 11, 2006, **J. MCCALL** obtained a credit report for straw buyer K.J.

G4. On or about January 20, 2006, **JACKSON** and straw buyer K.J. prepared, signed and submitted to a lender a URLA in order to enable straw buyer K.J. to obtain a mortgage to purchase 12203 McCullagh Court, which falsely and fraudulently stated, among other things, that straw buyer K.J. (a) had been employed by F&F for five years as Director and earned $12,433 per month; (b) owned real estate worth $260,000; (c) owned $1,000,000 in personal property; (d) would provide $82,662 in cash towards the purchase of 12203 McCullagh Court; and (e) would occupy the property as their personal residence.

G5. On or about January 24, 2006, homeowner W.B. and straw buyer K.J., signed a real estate sales contract for 12203 McCullagh Court.

G6. On or about January 24, 2006, **J. MCCALL** ordered a title abstract for the purchase of 12203 McCullagh Court in the name of straw buyer H.D.

G7. On or about February 6, 2006, **BALLESTEROS** prepared a HUD-1 settlement statement, signed by homeowner W.B., straw buyer K.J., and **BALLESTEROS**, to facilitate the

closing of a mortgage in straw buyer K.J.'s name for 12203 McCullagh Court, which (a) failed to disclose that straw buyer K.J. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing and (b) failed to disclose that $68,398.22 in equity proceeds payable to homeowner W.B. would be deposited into MMS's bank account.

G8. On or about February 6, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 12203 McCullagh Court, including a false HUD-1 and the URLAs, to be delivered from Title Company One's office in Rockville, MD to the lender, BNC Mortgage, Inc., in Irvine, CA.

G9. On or about February 6, 2006, **BALLESTEROS** caused to be prepared, among others, a $68,398.22 check payable to homeowner W.B., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 12203 McCullagh Court.

G10. On or about March 3, 2006, **FORDHAM** deposited the $68,398.22 check payable to homeowner W.B. into MMS's Harbor Bank of Maryland account.

H. 8104 Ashford Boulevard, Laurel, MD ("8104 Ashford Boulevard")

H1. In or about January 2006, homeowner D.P. went to MMS's office sought to refinance their existing mortgage on the home at 8104 Ashford Boulevard.

H2. On or about February 17, 2006, **JACKSON** and homeowner D.P. signed a real estate sales contract for 8104 Ashford Boulevard.

H3. On or about February 27, 2006, **JACKSON** signed a URLA, which was submitted to a lender, in order to obtain a mortgage to purchase 8104 Ashford Boulevard, which falsely and fraudulently stated, among other things, **JACKSON**'s employment history, income, assets, and debts, including representations that **JACKSON** had been employed by MMS for 14 years as CEO and earned $15,000 per month, (b) **JACKSON** owned personal property valued

at $1,000,000, (c) JACKSON earned $1,100 per month in rental income from 1835 Knoll Drive, and (d) JACKSON had multiple credit lines with Credit Company One.

H4. On or about February 27, 2006, BALLESTEROS prepared a HUD-1 settlement statement, signed by JACKSON, BALLESTEROS, and homeowner D.P., to facilitate the closing of a mortgage in JACKSON's name for 8104 Ashford Boulevard, which (a) failed to disclose that JACKSON would not pay any of the mortgage payments due to be paid to the lender; (b) falsely stated that at settlement JACKSON would provide $18,982.48; and (c) failed to disclose that $54,693.95 in equity proceeds payable to homeowner D.P. would be deposited into F&F's bank account.

H5. On or about February 27, 2006, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 8104 Ashford Boulevard, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage in Reston, VA.

H6. On or about February 27, 2006, at the direction of JACKSON, BALLESTEROS caused to be prepared, among others, a $54,693.95 check payable to homeowner D.P. drawn on the escrow account of Title Company One for the equity proceeds from the sale of 8104 Ashford Boulevard.

H7. On or about February 28, 2006, FORDHAM deposited the $54,693.95 check payable to homeowner D.P. into F&F's Chevy Chase Bank account.

H8. On or about June 10, 2006, FORDHAM wrote a $3,039 monthly mortgage payment check, drawn on F&F's bank account, payable to New Century Mortgage Corporation for the mortgage on 8104 Ashford Boulevard in the name of JACKSON.

I. 3717 Hill Park Drive, Temple Hills, MD ("3717 Hill Park Drive")

I1. On or about February 17, 2006, CHAPMAN met with homeowner D.F. at MMS and described the MMS "Foreclosure Reversal Program."

I2. On or about February 23, 2006, KATISHA FORDHAM obtained the credit report for straw buyer L.C.

I3. On or about March 2, 2006, straw buyer L.C. and homeowner D.F. signed a real estate sales contract for 3717 Hill Park Drive.

I4. On or about March 6, 2006, J. MCCALL notarized the signatures of straw buyer L.C. and homeowner D.F. on a document titled "Contract Addendum."

I5. On or about March 9, 2006, J. MCCALL notarized homeowner D.F.'s signature on a document titled "MMS Monthly Rental Agreement."

I6. On or about March 13, 2007, CHAPMAN obtained an appraisal for 3717 Hill Park Drive in the name of straw buyer L.C.

I7. On or about March 17, 2006, at the direction of CHAPMAN, straw buyer L.C. completed, signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 3717 Hill Park Drive, which both falsely and fraudulently stated, among other things, that straw buyer L.C. (a) had been employed by Entertainment With Class for two years as Entertainment Director and earned $12,493 per month; (b) would bring $5,750.56 in cash to settlement to facilitate the mortgage loan; and (c) would occupy the home as their primary residence.

I8. On or about March 17, 2006, **BALLESTEROS** prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in straw buyer L.C.'s name for 3717 Hill Park Drive, which (a) failed to disclose that straw buyer L.C. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing; (b) falsely stated that at settlement straw buyer L.C. would provide $2,469.41; and (c) failed to disclose that $102,782.90 in equity proceeds payable to homeowner D.F. would be deposited into F&F's bank account, $40,000 would be wired to RAC Investment Property LLC, and $20,000 would be wired to homeowner D.F.'s bank account.

I9. On or about March 17, 2006, **BALLESTEROS** and **CHAPMAN** went to 3717 Hill Park Drive and directed homeowner D.F. to sign various settlement documents.

I10. On or about March 17, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 3717 Park Hill Drive, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, Virginia.

I11. On or about March 17, 2006, **BALLESTEROS** caused to be prepared, among others, a $102,782.90 check payable to homeowner D.F., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 3717 Hill Park Drive.

I12. On or about March 17, 2006, **BALLESTEROS**, at the direction of **CHAPMAN**, caused $40,000 to be wired to RAC Investment Property LLC and $20,000 to be wired to homeowner D.F.'s bank account , drawn on the escrow account of Title Company One for the equity proceeds from the sale of 3717 Hill Park Drive.

I13. On or about March 21, 2006, **FORDHAM** deposited the $102,782.90 check payable to homeowner D.F. into F&F's Harbor Bank of Maryland account.

I14. On or about April 7, 2006, **FORDHAM** wrote a $10,000 check payable to Straw Buyer L.C. drawn on F&F's Harbor Bank of Maryland account.

I15. On or about May 4, 2006, JONES obtained the credit report of homeowner D.F.

J. <u>6108 Peggyanne Court, Suitland MD ("6108 Peggyanne Court")</u>

J1. On or about March 20, 2006, a MMS employee and straw buyer D.I. completed, signed, and submitted to a lender a URLA to enable straw buyer D.I. to obtain a mortgage to purchase 6108 Peggyanne Court, which falsely and fraudulently stated, among other things, that Straw Buyer D.I. (a) had been employed by F&F for three years as a Senior Financial Analyst and earned $17,233 per month; (b) would bring $71,735.80 in cash to settlement to facilitate the loan; and (c) would occupy the property as their primary residence.

J2. On or about March 20, 2006, **BALLESTEROS**, homeowner A.W., and Straw Buyer D.I. signed a HUD-1settlement statement to facilitate the closing of a mortgage in straw buyer D.I.'s name, which (a) failed to disclose that straw buyer A.W. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing and (b) failed to disclose that $68,996.75 in equity proceeds payable to homeowner A.W. would be deposited into F&F's bank account.

J3. On or about March 20, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 6108 Peggyanne Court, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA.

J4. On or about March 20, 2006, **BALLESTEROS** caused to be prepared, among others, a $68,996.75 check payable to homeowner A.W., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 6108 Peggyanne Court.

J5. On or about March 20, 2006, **BALLESTEROS** received a $2,123.97 cashier's check payable to Title Company One in the name of straw buyer D.I.

J6. On or about March 22, 2006, **FORDHAM** deposited the $68,996.75 check payable to homeowner A.W. into F&F's Harbor Bank of Maryland account.

J7. On or about May 10, 2006, **FORDHAM** wrote a $10,000 check payable to Straw Buyer D.I. drawn on F&F's Harbor Bank of Maryland account.

K. 9418 Midland Turn, Upper Marlboro, MD 20772 ("9418 Midland Turn")

K1. On or about February 24, 2006, straw buyer K.F. signed a real estate sales contract for the purchase 9418 Midland Turn.

K2. On or about March 29, 2006, **BALLESTEROS** faxed a letter from Title Company One's office in Rockville, MD to a title insurance company in Baltimore, MD which falsely and fraudulently stated that straw buyer K.F. had provided a $19,000 earnest money deposit to Title Company One for the purchase of 9418 Midland Turn.

K3. On or about March 31, 2006, **BALLESTEROS** prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in straw buyer K.F.'s name for 9418 Midland Turn, which (a) failed to disclose that straw buyer K.F. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing; (b) falsely stated that at settlement straw buyer K.F. would provide $3,995.05; and (c) failed to disclose that $141,645.35 in equity proceeds payable to homeowner D.W. would be deposited into F&F's bank account.

K4. On or about March 31, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 9418 Midland Turn, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, BNC Mortgage, Inc., in Irvine, CA.

K5. On or about March 31, 2006, **BALLESTEROS** caused to be prepared, among others, a $141,638.79 check payable to homeowner D.W., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 9418 Midland Turn.

K6. On or about April 4, 2006, **BALLESTEROS** received a $3,995.05 cashier's check payable to Title Company One in the name of straw buyer K.F.

K7. On or about April 6, 2006, **BALLESTEROS** received a $22,995.05 cashier's check payable to Title Company One in the name of straw buyer K.F.

K8. On or about April 6, 2006, the $141,638.79 check payable to homeowner D.W. was deposited into F&F's Harbor Bank of Maryland account.

L. 7340 Clyde Jones Road, Owings, MD ("7340 Clyde Jones Road")

L1. On or about April 5, 2006, homeowners R.B. and M.B. and straw buyer C.V. signed a real estate sales contract for the purchase of 7340 Clyde Jones Road.

L2. On or about May 4, 2006, straw buyer C.V. signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 7340 Clyde Jones Road, which falsely and fraudulently stated, among other things, that straw buyer C.V. (a) had been employed by Prosper Investments LLC for three years as Development Manager and earned $9,128.90 per month; (b) would provide $262,220.67 in cash towards the purchase of 7340 Clyde Jones Road; and (c) would occupy the property as their personal residence.

L3. On or about May 5, 2006, **BALLESTEROS** prepared and signed a HUD-1 settlement statement to facilitate the closing of a mortgage in straw buyer C.V.'s name for 7340 Clyde Jones Road, which (a) failed to disclose that straw buyer C.V. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing; (b) falsely stated that at settlement straw buyer C.V. would provide $3,616.77; and (c) failed to disclose that $180,939.68 in equity proceeds payable to homeowners R.B. would be deposited into F&F's bank account.

L4. On or about May 5, 2006, **BALLESTEROS**, homeowners R.B., and M.B., and others participated in a real estate settlement for 7340 Clyde Jones Road.

L5. On or about May 5, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 7340 Clyde Jones Road, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, BNC Mortgage, Inc., in Irvine, CA.

L6. On or about May 5, 2006, **BALLESTEROS** caused to be prepared, among others,

a $180,939.68 check payable to homeowners R.B. and M.B., drawn on the escrow account of Title Company One for the equity proceeds from the sale of 7340 Clyde Jones Road.

L7. On or about May 5, 2006, **BALLESTEROS** received a $3,616.77 cashiers check payable to Title Company One in the name of straw buyer C.V.

L8. On or about May 9, 2006, **FORDHAM** deposited the $180,939.68 check payable to homeowners R.B. and M.B. into F&F's Harbor Bank of Maryland account.

L9. On or about May 10, 2006, **FORDHAM** wrote a $10,000 check payable to Straw Buyer C.V. drawn on F&F's Harbor Bank of Maryland account.

M. <u>7209 Hastings Drive, Capitol Heights, MD ("7209 Hastings Drive")</u>

M1. On or about April 27, 2006, homeowner D.A., at the direction of **Co-Conspirator B**, signed a real estate sales contract for the sale of their home at 7209 Hastings Drive.

M2. On or about May 11, 2006, **FORDHAM** wrote a $10,000 check payable to **Co-Conspirator B** drawn on F&F's Harbor Bank account.

M3. On or about May 18, 2006, **Co-Conspirator B** signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 7209 Hastings Drive, which falsely and fraudulently stated, among other things, that **Co-Conspirator B** (a) had been employed by MMS for three years as Senior Loan Officer and earned $14,500 per month and (b) had several credit liabilities with Credit Company One.

M4. On or about May 18, 2006, **J. MCCALL** notarized **Co-Conspirator B's** signature on a MMS document titled "Investor's Addendum."

M5. On or about May 18, 2006, **J. MCCALL** notarized homeowner D.A.'s signature on a MMS "Monthly Rental Agreement."

M6. On or about May 18, 2006, **BALLESTEROS** prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in **Co-Conspirator B's** for 7209 Hastings Drive which (a) failed to disclose that **Co-Conspirator B** would not pay any of the mortgage payments due to be paid to the lender; (b) falsely stated that at settlement **Co-Conspirator B** would provide $16,851.02; and (c) failed to disclose that $181,598.21 in equity proceeds payable to homeowner D.A. would be deposited into F&F's bank account.

M7. On or about May 18, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 7209 Hastings Drive, including the false

HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation, in Reston, VA.

M8. On or about May 18, 2006, **BALLESTEROS** received a $16,851.02 cashier's check payable to Title Company One to facilitate **Co-Conspirator B's** purchase of 7209 Hastings Drive.

M9. On or about May 18, 2006, **BALLESTEROS** wrote a $181,598.21 check payable to homeowner D.A. drawn on Title Company One's escrow account for the settlement of 7209 Hastings Drive.

M10. On or about May 19, 2006, **FORDHAM** wrote a $15,000 check payable to homeowner D.A. drawn on F&F's bank account.

M11. On or about May 21, 2006, the $181,598.21 check was deposited into F&F's Harbor Bank of Maryland account.

M12. On or about August 2, 2006, **JONES** wrote a $2,739.17 monthly mortgage payment check, drawn on F&F's bank account, payable to New Century Mortgage Corporation for 7209 Hastings Drive in the name of **Co-Conspirator B**.

N. **2352 Woodberry Drive, Bryans Road, MD ("2352 Woodberry Drive")**

N1. On or about April 19, 2006, homeowners H.S. and D.S. signed a real estate sales contract for the sale of 2352 Woodberry Drive.

N2. On or about May 2, 2006, straw buyer D.J. signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 2352 Woodberry Drive, which falsely and fraudulently stated, among other things, that straw buyer D.J. (a) had been employed by F&F for three years as Director of Marketing and earned $9,823.75 per month; (b) would provide $72,876.84 in cash towards the purchase of 2352 Woodberry Drive; and (c) would occupy the

property as their personal residence.

N3. On or about May 22, 2006, **BALLESTEROS** prepared a HUD-1 settlement statement, signed by **BALLESTEROS**, straw buyer D.J., and homeowners H.S. and D.S., to facilitate the closing of a mortgage in straw buyer D.J.'s name for 2352 Woodberry Drive, which (a) failed to disclose that straw buyer D.J. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing and (b) falsely stated that at settlement straw buyer D.J. would provide $6,135.58 and homeowners H.S. and D.S. would receive $49,741.57.

N4. On or about May 22, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 2352 Woodberry Drive, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA.

N5. On or about May 22, 2006, **BALLESTEROS** caused to be prepared, among others, a $55,196.31 check payable to F&F, drawn on the escrow account of Title Company One for the equity proceeds from the sale of 2352 Woodberry Drive.

N6. On or about May 23, 2006, **BALLESTEROS** received a $6,135 cashier's check payable to Title Company One in the name of straw buyer D.J.

N7. On or about June 6, 2006, **FORDHAM** deposited the $55,196.31 check payable to F&F into F&F's Bank of America bank account.

N8. On or about June 15, 2006, **JONES** wrote a $10,000 check payable to straw buyer D.J. drawn on F&F's Chevy Chase Bank account.

O. 10700 Begonia Lane, Bowie, MD ("10700 Begonia Lane")

O1. On or about June 9, 2006, KATISHA FORDHAM and homeowners D.H. and R.H. signed a real estate sales contract in which KATISHA FORDHAM agreed to purchase 10700 Begonia Lane from homeowners D.H. and R.H. for $405,000.

O2. On or about June 12, 2006, KATISHA FORDHAM signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 10700 Begonia Lane, which falsely and fraudulently stated, among other things, that KATISHA FORDHAM (a) had been employed by CreatDC LLC for three years as Manager and earned $10,000 per month, (b) had $100,000 in personal property, and (c) would occupy the property as her personal residence.

O3. On or about July 6, 2006, BALLESTEROS prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in KATISHA FORDHAM's name for 10700 Begonia Lane, which (a) failed to disclose that KATISHA FORDHAM would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing and (b) falsely stated that at settlement stated that at settlement KATISHA FORDHAM would provide $11,495.62 and homeowners D.H. and R.H. would receive $99,699.66.

O4. On or about July 6, 2006, KATISHA FORDHAM signed and submitted to a lender another URLA in order to obtain a mortgage to purchase 10700 Begonia Lane, which falsely and fraudulently stated, among other things, KATISHA FORDHAM's employment history, income, assets, debts, and intent to occupy the home. Specifically, the URLA reflected (a) that KATISHA FORDHAM had been employed by CreatDC for three years as Manager and earned $8,500 per month and (b) that KATISHA FORDHAM would occupy the property as her personal residence.

O5. On or about July 6, 2006, J. MCCALL notarized the signatures of homeowners D.H. and R.H. on several documents, including a "Residential House Lease Agreement," and "Contract Addendum," and "Residential Real Estate Sale Contract by Owner."

O6. On or about July 6, 2006, homeowners D.H. and R.H. signed a "Fee Sheet For Foreclosure Reversal Program," which provided that the $99,699.66 disbursement from the sale of their home would be split as follows:

a. Escrow (12 months) - $40,358.16;

b. Investor - $10,000;

c. Processor - $2,000;

d. Closing Costs - $11,495.62;

e. F&F - $20,000;

f. WBC - $1,559.40; and

g. Total to homeowners D.H. and R.H. - $16,115.88.

O7. On or about July 6, 2006, BALLESTEROS caused a UPS package containing real estate settlement documents for the purchase of 10700 Begonia Lane, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, WestStar Mortgage, Inc., in Woodbridge, VA.

O8. On or about July 7, 2006, BALLESTEROS received an $11,495.62 official check payable to Title Company for KATISHA FORDHAM.

O9. On or about July 10, 2006, BALLESTEROS caused $80,583.78 to be wired to F&F's Chevy Chase bank account and $16,115.88 to be wired to homeowners D.H.'s bank account from the escrow account of Title Company One for the equity proceeds from the sale of 10700 Begonia Lane.

O10. On or about July 14, 2006, **KATISHA FORDHAM** received a $16,000 cashier's check paid for with funds from F&F's bank account.

P. 4150 Applegate Court, # 7, Suitland, MD ("4150 Applegate Court #7")

P1. On or about December 4, 2006, straw buyer A.S. signed and submitted to a lender a URLA in order to obtain a mortgage to purchase 4150 Applegate Court #7, which falsely and fraudulently stated, among other things, that straw buyer A.S. would provide $9,927.16 in cash towards the purchase of 4150 Applegate Court #7.

P2. On or about December 21, 2006, **KATISHA FORDHAM** obtained a credit report for homeowner T.Y.

P3. On or about January 17, 2007, **J. MCCALL** notarized the signature of homeowner T.Y. on documents titled "Assignment of Heirs" and "Fee for Foreclosure Reversal Program."

P4. On or about January 18, 2007, homeowner T.Y. signed a HUD-1 settlement statement to facilitate the closing of a mortgage for 4150 Applegate Court #7 for the sale of 4150 Applegate Court #7, which (a) failed to disclose that straw buyer A.S. would not pay any of the mortgage payments due to be paid to the lender and would not provide funds at closing and (b) falsely stated that at settlement straw buyer A.S. would provide $19,584.45 and homeowner T.Y. would receive $103,877.71.

P5. On or about January 18, 2007, at the direction of **JACKSON, Co-Conspirator A** caused $103,877.71 to be wired to F&F's Chevy Chase bank account from Title Company Two's escrow bank account for the proceeds of the sale of 4150 Applegate Court #7.

18 U.S.C. § 1349

COUNTS TWO THROUGH SIXTEEN

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 1 through 21 and 23 through 53 of Count One are incorporated here and constitute a scheme and artifice to defraud homeowners and lenders as described in paragraph 22 of Count One ("the scheme to defraud").

2. On or about the dates set forth below, in the District of Maryland and elsewhere, the defendants,

JOY JACKSON,
a/k/a Joy Fordham,
a/k/a Joy Simms,
a/k/a Joy Jones,
JENNIFER MCCALL,
a/k/a Jennifer Jones,
KURT FORDHAM,
CLIFFORD MCCALL,
CHANDRA JONES,
KATISHA FORDHAM,
RONALD CHAPMAN, and
WILBUR BALLESTEROS,

for the purpose of executing and attempting to execute the scheme to defraud, knowingly caused deliveries by private and commercial interstate carrier according to the directions thereon of a matter or thing, to wit, UPS packages containing real estate settlement documents:

COUNT	DATE	DESCRIPTION
2	March 25, 2005	Settlement documents for 9603 Huxley Drive from Title Company One in Rockville, MD to Argent Mortgage Company White Plains, NY
3	August 30, 2005	Settlement documents for 4801 Fable Street from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA

COUNT	DATE	DESCRIPTION
4	November 30, 2005	Settlement documents for 17111 Livingston Road from Title Company One in Rockville, MD to American Home Loan in Santa Ana, CA
5	December 1, 2005	Settlement documents for 4209 56th Avenue from Title Company One in Rockville, MD to BNC Mortgage, Inc., in Irvine, CA
6	January 3, 2006	Settlement documents for 7602 Alloway Lane from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
7	February 2, 2006	Settlement documents for 1835 Knoll Drive from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
8	February 6, 2006	Settlement documents for 12203 McCullagh Court from Title Company One in Rockville, MD to BNC Mortgage, Inc., in Irvine, CA
9	February 27, 2006	Settlement documents for 8104 Ashford Boulevard from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
10	March 17, 2006	Settlement documents for 3717 Hill Park Drive from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
11	March 20, 2006	Settlement documents for 6108 Peggyanne Court from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
12	March 31, 2006	Settlement documents for 9418 Midland Turn from Title Company One in Rockville, MD to BNC Mortgage, Inc., in Irvine, CA
13	May 5, 2006	Settlement documents for 7340 Clyde Jones Road from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
14	May 18, 2006	Settlement documents for 7209 Hastings Drive from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA

COUNT	DATE	DESCRIPTION
15	May 22, 2006	Settlement documents for 2352 Woodberry Drive from Title Company One in Rockville, MD to New Century Mortgage Corporation in Reston, VA
16	July 6, 2006	Settlement documents for 10700 Begonia Lane from Title Company One in Rockville, MD to WestStar Mortgage in Woodbridge, VA

18 U.S.C. § 1341
18 U.S.C. § 2

COUNT SEVENTEEN THROUGH TWENTY-FIVE

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 1 through 21 and 23 through 53 of Count One are incorporated here.

2. On or about the dates set forth below, in the District of Maryland and elsewhere, the defendants listed below knowingly engaged and attempted to engage in a monetary transaction in and affecting interstate commerce in criminally derived property that was of a value greater than $10,000 and was derived from specified unlawful activity (to wit, conspiracy to commit mail fraud and wire fraud, in violation of Title 18, United States Code, Section 1349, and mail fraud, in violation of Title 18, United States Code, Section 1341, as described in Counts One through Sixteen of the Indictment) at the financial institutions and involving the transactions as set forth for in each count:

COUNT	DEFENDANT	MONETARY TRANSACTION	DATE
17	JACKSON FORDHAM	$62,300 check deposited by JACKSON drawn on F&F's Chevy Chase Bank account 1981	September 13, 2005
18	J. MCCALL C. MCCALL	$49,100 debit transfer into J. MCCALL's bank account drawn on F&F's Harbor Bank account	February 13, 2006
19	JACKSON FORDHAM	$70,000 debit transfer to JACKSON's bank account from F&F's Harbor Bank account	March 16, 2006
20	JACKSON FORDHAM	$115,000 check payment from FORDHAM's Harbor Bank account to Mayflower Renaissance Hotel for benefit of JACKSON and FORDHAM	March 27, 2006
21	JACKSON FORDHAM	$96,500 debit transfer to FORDHAM's Harbor Bank account drawn on F&F's Harbor Bank account	March 28, 2006

COUNT	DEFENDANT	MONETARY TRANSACTION	DATE
22	JACKSON FORDHAM	Wire transfer in the amount of $37,500 from F&F's Harbor Bank account to an entertainment group's JP Morgan bank account for benefit of JACKSON and FORDHAM	April 17, 2006
23	JACKSON FORDHAM	Wire transfer in the amount of $37,500 from MMS's Chevy Chase Bank account to an entertainment group's JP Morgan bank account for benefit of JACKSON and FORDHAM	June 8, 2006
24	JACKSON FORDHAM JONES	$100,000 check deposited into JACKSON's bank account drawn on F&F's Chevy Chase Bank account 1981	August 10, 2006
25	JACKSON FORDHAM	Wire transfer in the amount of $113,739.87 in settlement proceeds from Title Company Two's M&T Bank account to JACKSON's bank account	October 13, 2006

18 U.S.C. § 1957(a)
18 U.S.C. § 2

FORFEITURE ALLEGATION (COUNTS ONE THROUGH SIXTEEN)
(Forfeiture of Mail and Wire Fraud Proceeds)

1. Pursuant to Rule 32.2, Fed. R. Crim. P., notice is hereby given to the defendant that the United States will seek forfeiture as part of any sentence in accordance with Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), in the event of the defendants' convictions under Counts One through Sixteen of this Indictment.

2. As a result of the offenses charged in Counts One through Sixteen, the defendants,

JOY JACKSON,
a/k/a Joy Fordham,
a/k/a Joy Simms,
a/k/a Joy Jones,
JENNIFER MCCALL,
a/k/a Jennifer Jones,
KURT FORDHAM,
CLIFFORD MCCALL,
CHANDRA JONES,
KATISHA FORDHAM,
RONALD CHAPMAN, and
WILBUR BALLESTEROS,

shall forfeit to the United States any and all property, real or personal, which constitutes or is derived from proceeds traceable to such violations, including $35,873,150 and all interest and proceeds traceable thereto, which forfeiture amount is based on at least $35,873,150 being the proceeds of loans that JOY JACKSON, JENNIFER MCCALL, KURT FORDHAM, CLIFFORD MCCALL, CHANDRA JONES, KATISHA FORDHAM, RONALD CHAPMAN, and WILBUR BALLESTEROS, fraudulently secured or caused to be secured for the purchase of the properties described in Counts One through Sixteen of the Indictment.

Substitute Assets

4. If, as a result of any act or omission of the defendants, any proceeds subject to forfeiture:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property that cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of said defendants up to but not exceeding $35,873,150.

5. The property of the defendants subject to forfeiture shall include but not be limited to the following as substitute assets:

a. 8228 Dellwood Court, Lanham, MD 20706;

b. 2401 Kent Village Place, Landover, MD;

c. 9603 Huxley Drive, Lanham, MD 20706;

d. 3935 Frisby Street, Baltimore, MD 21218;

e. 7602 Alloway Lane, Beltsville, MD 20705;

f. 1835 Knoll Drive, Oxon Hill, MD 20745;

g. 9800 Huxley Drive, Lanham, MD 20706;

h. 17111 Livingston Road, Accokeek, MD 20607;

i. 10700 Begonia Lane, Bowie, MD 20720;

j. 2007 Toyota Camry, VIN 4T1BE46K87U524232; and

k. 2006 Toyota Camry, VIN 4T1BF30K76U119090;

28 U.S.C. § 2461(c)
18 U.S.C. § 981(a)(1)(C)
21 U.S.C. § 853(p)

Rod J. Rosenstein
United States Attorney

A TRUE BILL:

Foreperson

Date: June ___, 2008

Exhibit : *USA v. Wilber Ballesteros Plea and Statement of Facts*

U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division

Rod J. Rosenstein
United States Attorney

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April 21, 2009

Jane Norman, Esq.
Bond & Norman
700 5th St. N.W. #200
Washington, DC 20001

Re: United States v. Wilbur Ballesteros
Crim. No. RWT-08-0288

Dear Ms. Norman:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by May 1, 2009, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to Count One of the Indictment now pending against him, which charges him with conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349. The Defendant admits that he is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

a. First, that two or more persons entered the unlawful agreement charged in the Indictment; and

b. Second, that the defendant knowingly and willfully became a member

of the conspiracy.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: 30 years imprisonment, $1,000,000 fine, and 5 years supervised release. In addition, the Defendant must pay $100 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which this Office would prove beyond a reasonable doubt and to the following applicable sentencing guidelines factors:

a. The base offense level is 7 under U.S.S.G. § 2B1.1(a)(1);

b. A 20-level specific offense characteristic increase applies under U.S.S.G. § 2B1.1(b)(1)(K), because the loss attributable to the Defendant was more than $7,000,000 but not more than $20,000,000;

c. A 4-level specific offense characteristic increase applies under U.S.S.G. § 2B1.1(b)(2)(B), because the offense involved 50 but less than 250 victims;

d. This Office does not oppose a 2-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional 1-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. The final offense level is 28.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute. If the Defendant intends to argue for any factor that could take the sentence outside of the advisory guidelines range, he will notify the Court, the United States Probation Officer and and government counsel at least ten days in advance of sentencing of the facts or issues he intends to raise.

Restitution

9. The Defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the offense conduct set forth in the factual stipulation. The Defendant further agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

Obligations of the United States Attorney's Office

10. At the time of sentencing, this Office will recommend a sentence within the advisory guidelines range, no fine, and $16,859,950 in restitution. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

11. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

12. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of 28, and this Office waives any right to appeal from any sentence within or above the advisory guidelines range resulting from an adjusted base offense level of 28. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35 (a), and appealing from any decision thereunder, should a sentence be imposed that is illegal or that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

13. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (I) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

14. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

15. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Addendum, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and addendum and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this letter, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By:_____
James A. Crowell IV
Christen Sproule
Assistant United States Attorneys

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

_____ _____
Date Wilbur Ballesteros

I am Wilbur Ballesteros's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

_____ _____
Date Jane Norman, Esq.

ATTACHMENT A
STATEMENT OF FACTS – Wilbur Ballesteros

The United States and Defendant Wilbur Ballesteros stipulate and agree that if this case proceeded to trial, the United States would prove the facts set forth below beyond a reasonable doubt. They further stipulate and agree that these are not all of the facts that the United States would prove if this case proceeded to trial.

Metropolitan Money Store ("MMS") was a Maryland corporation which did business in Maryland, Virginia, and the District of Columbia and offered financially distressed homeowners foreclosure consultation and credit services, including its "Foreclosure Reversal Program." MMS was located in Lanham, Maryland, employed 35 individuals, and was not a licensed mortgage broker or credit repair business.

Fordham & Fordham Investment Group, Ltd. ("F&F") was a Maryland corporation that assisted MMS in its foreclosure consulting and credit servicing business. F&F was based in Lanham and Greenbelt, Maryland, employed three individuals, and was not a licensed credit repair business.

Burroughs & Smythe Financial Services, Inc. ("B&S") was a Maryland corporation that assisted MMS in its foreclosure consulting and credit servicing business. B&S was based in Lanham, Maryland, employed two individuals, and was not a licensed credit repair business.

JC and JC Investments LLC, RAC Investment Property LLC, and Prosper Investments LLC were Maryland corporations that provided real estate investment services.

Joy Jackson ("Jackson"), a Maryland resident, was the president of MMS and a director and the resident agent of MMS and F&F. Jackson was a Maryland licensed mortgage broker but was not licensed to provide credit repair services.

Jennifer McCall ("J. McCall"), a Maryland resident, was the chief executive officer ("CEO") of MMS, a director and the resident agent of MMS and B&S, and owner of JC and JC Investments LLC. J. McCall was a Maryland licensed mortgage broker and notary but was not licensed to provide credit repair.

Kurt Fordham ("Kurt Fordham"), a Maryland resident, was the president of F&F and a director of F&F and B&S. Kurt Fordham was married to Jackson.

Clifford McCall ("C. McCall"), a Maryland resident, was the president of B&S and a director of B&S and F&F. C. McCall was married to J. McCall.

Katisha Monique Fordham ("Katisha Fordham"), a Washington, D.C. resident, was a MMS loan processor and Kurt Fordham's sister.

Chandra Jones ("Jones"), McCall's daughter and a Maryland resident, was the vice-president of F&F and a director of B&S.

Carlisha Dixon ("Dixon"), a Maryland resident, was the vice-president and a director of B&S.

Ronald Chapman ("Chapman"), a Maryland resident, was a MMS loan officer and owned and operated RAC Investment Property LLC.

Title Company One was a Maryland limited liability company and Maryland-licensed title insurance company, which operated in Rockville, Maryland and conducted real estate settlements, issued title insurance, and acted as an escrow agent for MMS and others.

Defendant **WILBUR BALLESTEROS** ("**BALLESTEROS**"), a Maryland resident and licensed real estate closing agent, worked for Title Company One and conducted real estate settlements for MMS.

Richard Allison ("Allison") was a resident of Maryland and a licensed attorney in Maryland and the District of Columbia. Allison provided legal services to C. Mccall, Jackson, J. McCall, Kurt Fordham, their companies MMS, F&F, B&S, and others.

Title Company Two was a Maryland limited liability company and Maryland-licensed title insurance company, which operated in Largo, Maryland and conducted real estate settlements, issued title insurance, and acted as an escrow agent for MMS and others.

Co-Conspirator A was a Maryland resident and attorney, owned and operated Title Company Two and conducted real estate settlements for MMS.

Co-Conspirator B was a Maryland resident, was an MMS loan officer and owned and operated Prosper Investment LLC.

Credit Company One was a Maryland-licensed credit counseling company, which operated in Takoma Park, Maryland and provided credit repair services for homeowners and straw buyers.

On or about February 18, 2004, J. McCall and C. McCall formed and incorporated JC and JC Investments LLC in Maryland.

On or about May 12, 2005, Jackson and J. McCall formed and incorporated MMS in Maryland.

On or about May 12, 2005, Kurt Fordham, J. McCall, C. McCall, and Jones, formed and incorporated B&S in Maryland.

On or about May 12, 2005, Kurt Fordham, Jackson, and C. McCall, formed and incorporated F&F in Maryland.

Beginning in or about September 2004, and continuing through in or about June 2007, in the District of Maryland and elsewhere, **BALLESTEROS**, Jackson, J. McCall, C. McCall, Kurt Fordham, Jones, Katisha Fordham, Chapman, Allison, Dixon, Co-Conspirator A, Co-Conspirator B, and others conspired to target persons who owned and had substantial equity in homes but were facing foreclosure because of their inability to make monthly mortgage payments ("the homeowners"). As part of the conspiracy, Jackson, J. McCall, C. McCall, Kurt Fordham, Jones, Katisha Fordham, Chapman, and others fraudulently promised to help the homeowners avoid foreclosure, keep their homes, and repair their damaged credit.

The homeowners were directed to allow title to their homes to be put in the names of third-party purchasers ("the straw buyers") for a one-year period, during which MMS promised to improve the homeowners' credit ratings, help them obtain more favorable mortgages, and eventually return title to their homes to them. The straw buyers were paid up to $10,000 to participate in the scheme and allow the properties to be put in their names. The homeowners were told that the equity withdrawn from their properties would be kept in escrow and used to pay the mortgages and expenses on their homes and to repair the homeowners' credit.

Using the homeowners' properties, the conspirators applied for mortgages to extract the maximum available equity from the homes and prepared and submitted to mortgage lenders ("the lenders") fraudulent loan applications to obtain fraudulently inflated loans on the target properties in the straw buyers' names. At settlements, the conspirators imposed numerous fees and required "seller contributions" which were far in excess of industry standards; they imposed fees for services which were not performed, disclosed or explained to the homeowners; and they transferred the sale proceeds out of the escrow accounts into the conspirators' business and personal bank accounts and converted a substantial portion of those funds to their personal use.

Throughout the conspiracy, **BALLESTEROS**, Jackson, J. McCall, C. McCall, Kurt Fordham, Jones, Chapman, Katisha Fordham, Allison, Dixon and others utilized the mails, and interstate commercial carriers and wires to conduct the scheme. Further, at the direction of Jackson and J. McCall, Kurt Fordham, C. McCall, Jones, Dixon, and others obtained voluminous cashier's checks in the names of straw buyers and MMS employees in order to facilitate the conspiracy and scheme to defraud. Also, Jackson, J. McCall, and other MMS employees misappropriated the license and bond numbers of other brokerage and credit repair companies and used them to broker loans, repair credit, and fraudulently improve homeowners' credit scores by adding fictitious lines of credit to their credit histories, in order to orchestrate the scheme, including Credit Company One.

As a part of the conspiracy and scheme to defraud, Kurt Fordham, C. McCall, Kurt Fordham, Jones, Chapman, Katisha Fordham, Allison, Dixon and other Straw Buyers agreed with J. McCall and Jackson to purchase properties, and secure mortgage loans to do so, in their own names because they had a good credit history, in return for Jackson, J. McCall, Kurt Fordham, and others providing them with $10,000. Jackson, J. McCall, and Kurt Fordham, however, understood that they and their

companies, MMS, F&F, and B&S were responsible for making any and all payments associated with the purchase of the properties, including the down payments, closing costs and mortgage payments.

In addition to directing straw buyers to participate in the scheme and facilitate the submission of false settlement documents, Jackson, J. McCall, C. McCall, Kurt Fordham, Dixon, Allison, Chapman, Katisha Fordham, Jones, and other MMS employees personally served as a straw buyer on several properties in Maryland.

In order to facilitate the fraudulent loans, **BALLESTEROS** and Co-Conspirator A served as the closing agents for these properties, securing title insurance, facilitating the real estate settlements, and submitting fraudulent closing documentation to the lenders.

In particular, throughout the conspiracy, at the direction of Jackson and J. McCall, **BALLESTEROS** submitted fraudulent HUD-1s to lenders knowing that the information on the documents was false in order to facilitate MMS closings. Going further, again at the direction of Jackson and J. McCall, **BALLESTEROS** often created multiple settlement statements or altered the settlement statements for certain properties to facilitate disbursements of homeowners proceeds directly to MMS employees and himself. In order to disguise some of the payments to himself, **BALLESTEROS** created a company called WB & Associates, LLC and crafted settlement statements which provided for payments to this company, which, once received from Title Company One, **BALLESTEROS** then disbursed to himself and other co-conspirator MMS employees.

During the conspiracy, at the direction of Kurt Fordham, Jackson, Jones, and J. McCall, **BALLESTEROS** and Co-Conspirator A transferred the equity proceeds of homeowners who participated in the foreclosure reversal program into the general checking accounts of MMS, F&F, B&S, and JC and JC, as well as the personal accounts of Jackson, J. McCall, and others. Kurt Fordham, Jackson, and Jones wrote voluminous checks drawn on F&F's bank accounts to pay straw buyers and other co-conspirators from fraudulently obtained equity proceeds that Kurt Fordham, Jackson, and Jones deposited into F&F's accounts. Kurt Fordham, Jackson and J. McCall withdrew funds and transferred funds from the bank accounts of MMS, F&F, B&S, and JC and JC, and converted those funds to their own personal use by purchasing goods and services for them, including art, cars, clothing, credit card bills, homes, fur coats, furniture, domestic and international trips, gambling expenses, jewelry, limousine services, student tuition, a luxury wedding for Kurt Fordham and Jackson, and other items of value. Further, Jackson and J. McCall used funds from these companies' accounts to pay for their and C. McCall's and Kurt Fordham's personal credit card debts.

In particular, **BALLESTEROS** served as the closing agent on more than 60 straw buyer properties and conducted those closings according to the instructions provided to him by Jackson, J. McCall, and other MMS personnel, including, for example, the following properties:

4801 Fable Street, Capitol Heights, Maryland ("4801 Fable Street")

On or about August 30, 2005, at the direction of Jackson, **BALLESTEROS** and Kurt Fordham signed a fraudulent HUD-1 settlement statement to facilitate the closing of a mortgage in Kurt Fordham's name for 4801 Fable Street, which (a) failed to disclose that Kurt Fordham would not pay any of the mortgage payments due to be paid to the lender and (b) failed to disclose that $54,267.08 in equity proceeds payable to homeowners J.B., C.B., and C.B.B. would be deposited into F&F's bank account.

On or about August 30, 2005, **BALLESTEROS** caused a United Parcel Service ("UPS") package containing real estate settlement documents for the purchase of 4801 Fable Street, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA. Thereafter, **BALLESTEROS** caused $54,267.08 in equity proceeds to be wired to F&F's bank account.

1835 Knoll Drive, Oxon Hill, Maryland ("1835 Knoll Drive")

On or about February 2, 2006, Jackson prepared, signed, and submitted a URLA to a lender to enable Jackson to purchase 1835 Knoll Drive, which falsely and fraudulently stated, among other things, that Jackson (a) had been employed by MMS for 14 years as CEO and earned $15,000 per month, (b) owned and had as her primary residence 508 Balboa Avenue, Capitol Heights, Maryland, (c) had personal property valued at $1,000,000; (d) had $95,000 in a personal bank account at Harbor Bank of Maryland; (e) had multiple credit lines with Credit Company One; and (f) would occupy the property as her primary residence.

On or about February 2, 2006, Jackson and **BALLESTEROS** signed a HUD-1 settlement statement to facilitate the closing of a mortgage in Jackson's name for 1835 Knoll Drive, which (a) failed to disclose that Jackson would not pay any of the mortgage payments due to be paid to the lender, (b) falsely stated that at settlement Jackson would provide $3,610.29; and (c) failed to disclose that $60,093.15 in equity proceeds payable to homeowner C.H. would be deposited into F&F's bank account.

On or about February 2, 2006, **BALLESTEROS** caused a UPS package containing real estate settlement documents for the purchase of 1835 Knoll Drive, including the false HUD-1, to be delivered from Title Company One's office in Rockville, MD to the lender, New Century Mortgage Corporation in Reston, VA. Thereafter, **BALLESTEROS** caused to be prepared a $60,093.15 check in equity proceeds payable to homeowner C.H., which Jackson deposited into F&F's bank account.

9603 Huxley Drive, Lanham, Maryland ("9603 Huxley Drive")

On or about March 25, 2005, at the direction of J. McCall, **BALLESTEROS** prepared a HUD-1 settlement statement to facilitate the closing of a mortgage in C. McCall's name for 9603 Huxley Drive, which falsely and fraudulently stated (a) that C. McCall would provide $29,828.73

and homeowners P.H. and S.H. would receive $78,431.91 at settlement; and failed to disclose (b) that C. McCall did not supply any of the borrower's funds for settlement; (c) that C. McCall would not pay any of the mortgage payments due to be paid to the lender; and (d) that the bulk of the proceeds from the sale would be deposited into JC and JC Investment LLC's bank account.

On or about March 25, 2005, **BALLESTEROS** caused a United Parcel Service ("UPS") package containing real estate settlement documents for the purchase of 9603 Huxley Drive, including the false and fraudulent HUD-1, to be delivered from Title Company One's office in Rockville, Maryland to the lender, Argent Mortgage Company in White Plains, New York.

On or about March 25, 2005, at the direction of J. McCall, **BALLESTEROS** caused a $120,459.30 check payable to Title Company One to be drawn on the escrow account of Title Company One for the equity proceeds from the sale of 9603 Huxley Drive.

On or about March 29, 2005, at the direction of J. McCall, **BALLESTEROS** caused $72,976.48 to be wired to JC and JC Investments LLC's bank account, drawn on the escrow account of Title Company One, for the equity proceeds from the sale of 9603 Huxley Drive.

The above-described mortgage applications and settlement documents, and the materially false statements within them, were materially relied upon by the mortgage lenders in deciding to issue the mortgage loans for 4801 Fable Street, 1835 Knoll Drive, and 9603 Huxley Drive.

In addition to causing the equity proceeds to be sent to Jackson, J.McCall, and companies under their control, **BALLESTEROS** also cause wire transfers and checks to be drawn from the equity of some program properties to be sent to him or to his company WB & Associates.

Further, during the conspiracy, Jackson and J. McCall provided **BALLESTEROS** with more than $100,000 in kickback payments to facilitate loan closings for Jackson, J. McCall and their companies. Initially, Jackson provided **BALLESTEROS** with up to $3,000 in cash for closing program loans and eventually paid him by check and cashier's check. Overtime, Jackson lowered the amount of kickbacks to **BALLESTEROS** to at least $1,000 for closing program loans. In return, **BALLESTEROS** processed real estate closings for MMS quickly and as requested by Jackson, J. McCall, Allison, or other MMS personnel. Moreover, when Jackson and J. McCall requested, **BALLESTEROS** permitted MMS employees to close at least 20 loans without him or any other closing agent being present. Thereafter, **BALLESTEROS** prepared the documents, including certifying the straw buyers and homeowners presence at the loan closings, and then submitted the completed loan paperwork to the lenders causing them to release the loan proceeds to Title Company One.

Similarly, Jackson directed J. McCall to notarize the signatures and permitted others to use her notary seal to notarize voluminous signatures on settlement documents for foreclosure reversal program loans. For example, following multiple closings by **BALLESTEROS** and Co-Conspirator A, a stack of settlement documents were often left on J. McCall's desk at MMS. The following day, J. McCall notarized the signatures on these documents. Thereafter,

BALLESTEROS and others would come to MMS to pick-up the documents or they were delivered by MMS personnel to **BALLESTEROS** and others at Title Company One. Then, **BALLESTEROS** submitted these fraudulently notarized documents to lenders to facilitate the closings of loans.

Following the closings of all of the foreclosure program loans, **BALLESTEROS** disbursed proceeds according to the instructions provided to him by Jackson, J. McCall, or other MMS personnel as opposed to complying with the HUD-1 disbursement schedule represented to be accurate and submitted by him to the lenders.

The following chart represents some of the equity proceeds **BALLESTEROS** caused to directed to him and his company, WB & Associates, as well as kickback payments from Jackson, J.McCall and their companies to **BALLESTEROS** in return for his assistance in the submission of fraudulent documents to lenders and facilitation of transferring equity proceeds to Jackson, J.McCall, and companies under their control:

Date	Financial Transaction	Payor Bank
September 9 2005	$5,625 Check to BALLESTEROS from Title Company One Drawn on Equity Proceeds from Title Company One's Escrow Account	CitiBank FSB
September 9, 2005	$1,000 Check to BALLESTEROS from Title Company One Drawn on Equity Proceeds from Title Company One's Escrow Account	CitiBank FSB
September 20, 2005	$5,000 Cashier's Check to BALLESTEROS from MMS	Harbor Bank of Maryland
October 11, 2005	$4,325 Check to BALLESTEROS from Title Company One Drawn on Equity Proceeds from Title Company One's Escrow Account	CitiBank FSB
October 17, 2005	$1,698 Check to BALLESTEROS from F&F	Harbor Bank of Maryland
October 17, 2005	$1,500 Check to BALLESTEROS from F&F	Harbor Bank of Maryland
October 17, 2005	$2,555.83 Check to BALLESTEROS from MMS	Harbor Bank of Maryland
October 31, 2005	$1,500 Check to BALLESTEROS from MMS	Harbor Bank of Maryland
December 7, 2005	$2,000 Cashier's Check to BALLESTEROS from F&F	Harbor Bank of Maryland
December 7, 2005	$5,425 Check to BALLESTEROS from Title Company One Drawn on Equity Proceeds from Title Company One's Escrow Account	CitiBank FSB
December 9, 2005	$1,500 Cashier's Check to BALLESTEROS from F&F	Harbor Bank of Maryland
January 17, 2006	$5,000 Cashier's Check to BALLESTEROS from F&F	Harbor Bank of Maryland
May 1, 2006	$5,000 Check to BALLESTEROS from F&F	Harbor Bank of Maryland
May 1, 2006	$2,000 Check to BALLESTEROS from F&F	Harbor Bank of Maryland
May 2, 2006	$5,000 Check to BALLESTEROS from F&F	Harbor Bank of Maryland

March 10, 2006	$10,400 to BALLESTEROS from F&F	Harbor Bank of Maryland
March 10, 2006	$5,378.88 to BALLESTEROS from F&F	Harbor Bank of Maryland
March 27, 2006	$27,650.74 Wire Transfer to BALLESTEROS from Jackson and Kurt Fordham	Harbor Bank of Maryland

In connection with the conspiracy and scheme to defraud, including the estimated losses to the mortgage lenders that resulted from **BALLESTEROS**'s conduct, the total loss attributable to **BALLESTEROS** is $16,859,950.

I have reviewed this statement of facts and agreed that it is correct.

_____
Wilbur Ballesteros

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	*	
	*	
v.	*	Criminal No. RWT-08-0288
	*	UNDER SEAL
WILBUR BALLESTEROS	*	
	*	

...ooOoo...

SEALED SUPPLEMENT TO PLEA AGREEMENT

This is not a cooperation agreement.

Exhibit : *Terry Massey v. E. Lewis Memo Opinion & Order*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TERRY MASSEY,
Plaintiff

v.

ERNEST LEWIS, et al.,
Defendants

CIV. NO. AMD 08-261

...o0o...

MEMORANDUM OPINION and ORDER

Plaintiff Terry Massey ("Massey") filed this action in the Circuit Court for Baltimore City seeking equitable relief and damages in asserting claims under federal and state law arising out of her efforts to avoid the foreclosure of the mortgage on her home. Certain defendants removed the action to this court. Plaintiff's claims are brought against the following defendants: Michael Lewis ("M. Lewis"), Ernest Lewis ("E. Lewis"), Cheryl Brooke ("Brooke"), In the House Technologies, Inc. ("In the House"), Sean Adetula ("Adetula"), Cornerstone Title and Escrow, Inc. ("Cornerstone"), and Carteret Mortgage Company ("Carteret"). Now before the court is plaintiff's motion for partial summary judgment as to her claims under the Maryland Protection of Homeowners in Foreclosure Act, Md. Code Ann., Real Prop. §7-301, et seq. (2005 & Supp. 2006) ("PHIFA"). Only defendants Adetula and Cornerstone have filed responses to the plaintiff's motion and a hearing has been held. For the reasons stated in this opinion, the motion for partial summary judgment shall be granted.

I.

When the events underlying the amended complaint occurred, M. Lewis ran the "MKL African-American Business Network" ("the Network"). The Network was an enterprise that purported to help Maryland consumers facing foreclosure. Using television and radio advertisements and flyers, M. Lewis and his wife Brooke marketed their foreclosure rescue business through their corporation, In the House.

On June 30, 2006, a foreclosure action was filed against Massey's home for an unpaid mortgage debt of $109,902.08. Massey learned about the Network and contacted M. Lewis. She met with him and enrolled in his "MKL Financial Diet," agreeing to pay a monthly membership fee, attend bi-weekly budget sessions, and apply to refinance her mortgage with Carteret.

M. Lewis and Brooke arranged for Massey to avoid the loss of her home by transferring the Property to M. Lewis' brother, E. Lewis. The plan required Massey to sell her home to E. Lewis who, with his good credit history, would secure a new, lower-rate mortgage on the Property in his name. Massey would remain in her home as a "tenant" and send "rent" checks to E. Lewis to cover the new mortgage payments. Through this scheme, E. Lewis effectively "loaned" his good credit to Massey.

Massey cooperated with the scheme, believing (or at least, hoping) that the title transfer was temporary and that she would eventually be able to repurchase her home. Defendants drew up contracts for the sale and lease-back of the Property with an option to repurchase, which Massey signed on July 13, 2006. Massey denies she ever received copies

of any of the signed contracts. Notably, the contracts also did not include language explaining the homeowner's right to rescind, nor were rescission notices attached.

M. Lewis suggested that Massey investigate filing for bankruptcy in order to stall the ongoing foreclosure action. Massey complied and defendants helped her file a Chapter 13 petition in the bankruptcy court on July 31, 2006. On September 13, 2006, with the bankruptcy case still open, Massey went to Cornerstone for settlement, which was conducted by Adetula. She signed the deed and other documents, including the HUD-1, to transfer the Property to E. Lewis for $159,900.00. E. Lewis obtained two mortgage loans to cover the purchase price of Massey's home.

After settlement, Adetula did not disburse the full amount of the proceeds from the sale. Specifically, the HUD-1 form indicated that Massey would receive $30,721.83 but the escrow check from Cornerstone, which was issued some time later (after the bankruptcy case had been dismissed) totaled only $29,356.33. Additionally, Massey never received the check at all; M. Lewis brought it to Massey at her place of employment and told her she could keep the check and move out of her house or she could endorse the check payable to his brother and stay in the house. Massey endorsed the check and, apparently, all of the proceeds were collected by defendants.

On October 11, 2006, Massey signed the paperwork cancelling the conveyance of her home to E. Lewis and timely filed the rescission notice in the Baltimore City land records.[1]

[1]Md. Code Ann., Real Prop. §7-306(e) states: "The time during which the homeowner may rescind the contract does not begin to run until the foreclosure consultant has complied with this section," which includes (1) providing the homeowner with signed and dated copies of contracts providing foreclosure consulting service or foreclosure reconveyance and (2) attaching a Notice of Rescission immediately upon execution of such contracts. Plaintiff received neither signed and dated copies of her contracts nor a notice of right to rescind.

The following month, Massey filed this action against E. Lewis, M. Lewis, Brooke and In the House. In December 2006, Massey learned that Cornerstone had recorded the deed to the Property in the Baltimore City land records and thereupon joined it and Adetula as defendants.

II.

Massey seeks judgment as a matter of law on two issues: (1) whether the deed granting E. Lewis title to her home should be voided; and (2) whether defendants are liable under PHIFA.

A.

No party in interest opposes the first issue presented by plaintiff's motion for summary judgment, i.e., the validity of the deed of conveyance from Massey to E. Lewis. For the reasons alleged and supported with admissible evidence by plaintiff in her motion, and as described briefly above and below, Massey's request to void the deed shall be granted and an appropriate order shall issue declaring that she retains title to the Property.

B.

Only Adetula and Cornerstone filed a response to the second issue presented by Massey's motion. They contend that PHIFA does not apply to them and that, even were PHIFA to apply, they cannot be held liable because they had no knowledge that they presided over a foreclosure reconveyance. For Adetula and Cornerstone to avoid summary judgment, they must generate a genuine dispute of material fact. Fed.R.Civ.P. 56(c). They have failed to do so.

1.

Cornerstone and Adetula argue that they are exempt from PHIFA because they are licensed settlement agents. Although PHIFA does have an exception for licensed settlement agents, it only applies to title insurance producers "acting in accordance with the person's license." Md. Code Ann., Real Prop. §7-302(a)(6). Thus, those performing services *not* in accordance with their license are not entitled to an exemption from PHIFA.

Cornerstone and Adetula performed services beyond the scope of their license when they misappropriated funds. The HUD-1 settlement sheet showed that Massey was owed $1,365.50 more than the amount for which the escrow check was ultimately issued. Massey received no notice or explanation regarding this discrepancy. Massey did not give defendants oral or written permission to withhold the $1,365.50. In fact, as was made clear at the hearing on the motion, after more than two years of litigation, defendants still cannot explain why Massey did not receive the full amount of the settlement proceeds.

In keeping with Judge Titus' previous observation, the PHIFA exemption for title and settlement companies does not extend to misappropriation of funds: defendants have a license to provide title insurance and settlement services, "not a license to steal."[2] In this case, Adetula and Cornerstone acted outside their license and therefore may not claim exemption from PHIFA.

2.

[2] *See* Tr. of Mot. Hr'g. 12/6/07, *Melvin Proctor, Jr. et al. v. Metropolitan Money Store, Inc. et al*, (No. RWT-07-1957 D.Md.) at 105.

Next, Cornerstone and Adetula argue that, even were PHIFA to apply to their activities in this case, they are not liable because their activity does not qualify as the type of "foreclosure consultant" service PHIFA regulates. Under PHIFA, foreclosure consultants must obey PHIFA's statutory requirements. A foreclosure consultant is anyone who arranges "for the homeowner to become a lessee or renter entitled to continue to reside in the homeowner's residence;" arranges "for the homeowner to have an option to repurchase the homeowner's residence;" or engages "in any documentation, grant, conveyance, sale, lease, trust, or gift by which the homeowner clogs the homeowner's equity of redemption in the homeowner's residence." Md. Code Ann., Real Prop. §7-301(b)(1). Foreclosure consultants may not induce, or attempt to induce, any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with the law. Md. Code Ann., Real Prop. §7-307. PHIFA gives homeowners the right to bring an action for damages "incurred as the result of a practice prohibited by this sub-title." Md. Code Ann., Real Prop. §7-320(a). "If the court finds that the defendant willfully or knowingly violated this subtitle, the court may award damages equal to three times the amount of actual damages." Md. Code Ann., Real Prop. §7-320(c).

As a matter of law in the light of this record, Adetula and Cornerstone are deemed "foreclosure consultants" because they provided the settlement services for a foreclosure reconveyance. They arranged for Massey to become a lessee residing in her home with an option to repurchase and they helped create documentation that "clogged" Massey's equity of redemption in her own home.

Adetula and Cornerstone argue that they cannot be deemed "foreclosure consultants" as a matter of law because, at a minimum, a reasonable juror might reasonably find that they had no knowledge that the property transfer was a "foreclosure reconveyance." This assertion is simply and fatally undermined by the evidence before the court in the summary judgment record. First, Adetula and Cornerstone ordered a title abstract search and provided a title examination. It can be and must be inferred that they looked at the title work because they admit they were aware of the open bankruptcy case. Even a cursory glance at title work would show the open foreclosure proceeding on the Property.

Second, Adetula's own affidavit shows he asked Massey to provide a new address for him to write onto the pre-prepared HUD-1 form, a strange request to make in the middle of a settlement. At the very least, Massey's failure to provide an address before settlement should have tipped off Adetula that he was presiding over a foreclosure lease-back arrangement. Far worse, there is the suggestion that Adetula made his request for an address in order to induce Massey into going forward with an illegal foreclosure reconveyance.

At bottom, a reasonable juror would necessarily find under the circumstances here that Adetula and Cornerstone violated PHIFA by inducing, or attempting to induce, Massey into an illegal foreclosure consulting contract that did not comply with Maryland law. Massey received no copies of the documents she signed and none of the documents contained the necessary notices.

Finally, even had Cornerstone and Adetula been unaware of their role in a foreclosure reconveyance, they still violated PHIFA when they recorded the rescinded deed and

accompanying mortgages.[3] Thus, by acting as foreclosure consultants in violation of PHIFA, Adetula and Cornerstone are jointly and severally liable for any damages Massey incurred as a result of the settlement services they provided.

III.

For the reasons set forth above, plaintiff's motion for partial summary judgment is GRANTED and appropriate Orders carrying into effect the above determinations shall be submitted by counsel for plaintiff.

February 24, 2009

/s/
André M. Davis
United States District Judge

[3] *See supra* note 1.

Exhibit : *Arthur v. Ticor Title Ins. Co.*, No. 08-1727

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

THOMAS A. ARTHUR, JR.; JENNIFER WHITEHEAD, Individually and on behalf of two classes of consumers similarly situated,

Plaintiffs-Appellants,

v.

TICOR TITLE INSURANCE COMPANY OF FLORIDA,

Defendant-Appellee.

No. 08-1727

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
Andre M. Davis, District Judge.
(1:07-cv-01737-AMD)

Argued: May 12, 2009

Decided: June 18, 2009

Before WILKINSON and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge King and Senior Judge Hamilton joined.

COUNSEL

ARGUED: Philip Scott Friedman, FRIEDMAN LAW OFFICES, PLLC, Washington, D.C., for Appellants. Darryl J. May, BALLARD, SPAHR, ANDREWS & INGERSOLL, LLP, Philadelphia, Pennsylvania, for Appellee. **ON BRIEF:** Martin E. Wolf, Richard S. Gordon, Benjamin H. Carney, QUINN, GORDON & WOLF, CHTD., Baltimore, Maryland, for Appellants. Robert A. Scott, Lisa M. Welsh, BALLARD, SPAHR, ANDREWS & INGERSOLL, LLP, Baltimore, Maryland, for Appellee.

OPINION

WILKINSON, Circuit Judge:

Plaintiffs are homeowners in Maryland who purchased title insurance from Ticor Title Insurance Company of Florida when they refinanced their mortgages. They allege that Ticor charged them rates that were higher than the applicable rates Ticor had on file with the Maryland Insurance Commissioner. And plaintiffs claim that Ticor, by splitting these excessive charges with its local agents, violated Section 8 of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607.

Because Ticor and its agents performed services in return for the charges that they collected, we conclude that plaintiffs' theory of liability conflicts with RESPA's statutory text and with our previous recognition that RESPA is not a price-control statute, *see Boulware v. Crossland Mortgage Corp.*, 291 F.3d 261, 265 (4th Cir. 2002). Thus, the district court properly dismissed plaintiffs' RESPA claims. We also conclude that plaintiffs' state-law claims warranted dismissal, primarily for want of exhaustion, and we therefore affirm the district court's judgment. While the law is not indifferent to

the abuses plaintiffs allege, plaintiffs have chosen the wrong statute and the wrong forum in which to press their case.

I.

Ticor is a Florida corporation that sells title insurance in Maryland. Pursuant to the Maryland Insurance Code, Ticor has filed the rates that Ticor charges for title insurance with the Maryland Insurance Commissioner, and the Commissioner has approved those rates. *See* Md. Code Ann., Ins. §§ 11-403, 11-404. In particular, Ticor has three filed, approved rates: (1) its "Original Issue Rate"; (2) its "Reissue Rate"; and (3) its "Extended Coverage Rate." Ticor's reissue rate is 40% less than its original issue rate, and its extended coverage rate is 20% more than its original issue rate—which means that the extended coverage rate is double the reissue rate. The Insurance Code requires Ticor to adhere to these rates when it sells title insurance in Maryland. *See id.* §§ 11-407, 27-216(b).

The plaintiffs in this case, Thomas Arthur and Jennifer Whitehead, claim that Ticor did not follow these filed rates when it sold title insurance policies to plaintiffs and others in Maryland. In particular, Arthur and Whitehead allege that Ticor charged the wrong rate when plaintiffs purchased title insurance policies in connection with refinancing the mortgages on their homes. Plaintiffs claim that when a title insurance policy already exists on a piece of property, as was the case when plaintiffs refinanced, Ticor must charge the reissue rate. But when plaintiffs refinanced their mortgages and purchased title insurance for the benefit of their lenders, Ticor charged plaintiffs the extended coverage rate. Plaintiffs therefore claim that Ticor charged them double the lawful rate.

Plaintiffs also claim that Ticor charged these excessive rates with the assistance of local title insurance companies that acted as Ticor's agents in Maryland and that received commissions from Ticor. Specifically, plaintiffs allege that

Ticor's agents performed "closing and settlement services" when plaintiffs refinanced their mortgages. Plaintiffs allege that the services performed by the agents included conducting title searches and issuing the title insurance policies on behalf of Ticor. And when Ticor allegedly charged plaintiffs an excessive rate for their title insurance policies, plaintiffs claim that Ticor split the excessive fees with its agents.

Based on these allegations, plaintiffs filed a class action complaint against Ticor in district court. Plaintiffs sought damages under four legal theories. First, plaintiffs stated a claim for money had and received under Maryland common law. Second, plaintiffs claimed that Ticor had violated Section 8 of the federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607. Third, plaintiffs brought a claim for negligent misrepresentation under Maryland law. Finally, plaintiffs filed a count of civil conspiracy, also under Maryland law. Plaintiffs asserted that the district court had both federal question and diversity jurisdiction over this action.

Ticor moved to dismiss before any issues of class certification were reached, and the district court granted the motion for all four of plaintiffs' claims. Only the first three counts are at issue in this appeal. On plaintiffs' claim for money had and received, the district court dismissed because plaintiffs had failed to exhaust the administrative remedies that were available to them under the Maryland Insurance Code—which authorized the Insurance Commissioner to order, among other things, restitution for a violation of the Insurance Code. *See* Md. Code Ann., Ins. § 4-113(d)(2). With respect to RESPA, the district court held that plaintiffs had failed to state a valid claim because Ticor and its agents had performed services in connection with plaintiffs' purchase of title insurance, and because RESPA did not prohibit charging excessive fees for those services. Finally, the district court dismissed plaintiffs' negligent misrepresentation count because plaintiffs had not alleged a false statement by Ticor.

Plaintiffs now appeal the district court's dismissal of their claims under RESPA, for money had and received, and for negligent misrepresentation. Our review is *de novo*.

II.

A.

We begin with plaintiffs' claims under RESPA. Section 8(b) of RESPA provides: "No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." 12 U.S.C. § 2607(b). As an initial matter, plaintiffs concede that Ticor and its agents did perform services in connection with plaintiffs' purchases of title insurance. Indeed, plaintiffs' complaint specifically states that Ticor provided "settlement services" and issued plaintiffs' title insurance policies. The complaint also declares that Ticor's agents provided "closing and settlement services," including title searches and the issuance of the policies on Ticor's behalf. Despite the fact that Ticor and its agents performed services, plaintiffs claim that Ticor can still be liable under Section 8(b) because the company charged rates for title insurance that were too high under Maryland law and because it gave a portion of the excessive charges to its agents.

Plaintiffs' claim cannot be squared with the plain language of the statute. Section 8(b) prohibits giving and accepting a portion of a charge "other than for services actually performed." Thus, the text of the statute makes clear that it bars splitting a charge with a party that has not actually performed services. The statute does not prohibit, as plaintiffs would have it, charging what plaintiffs claim is too much for services that have been performed, or splitting a fee with a party that has performed services. Indeed, to accommodate plaintiffs' theory of liability, we would have to delete the words

"other than" from the statute and add a new provision that bars giving and accepting "excessive fees" for services actually performed.

In *Boulware v. Crossland Mortgage Corp.*, 291 F.3d 261 (4th Cir. 2002), we held that Section 8(b) did not prohibit a mortgage company from imposing a "unilateral overcharge" on a consumer for obtaining the consumer's credit report. *Id.* at 264-265. We based that holding in large part on our recognition that Section 8(b) of RESPA "is not a broad price-control provision." *Id.* at 265. Rather than prohibiting alleged overpricing, we held in *Boulware* that Section 8(b) prohibits certain classes of arrangements in which fees are split with or kicked back to a third party. *See id.* We noted that "Congress 'directed § 8 against a particular kind of abuse that it believed interfered with the operation of free markets—the splitting and kicking back of fees to parties who did nothing in return for the portions they received.'" *Id.* at 268 (quoting *Mercado v. Calumet Fed. Sav. & Loan Ass'n*, 763 F.2d 269, 271 (7th Cir. 1985)); *see also id.* at 266 ("[Section 8(b)] prohibits 'splitting fees with anyone for anything other than services actually performed.'" (quoting *Willis v. Quality Mortgage USA, Inc.*, 5 F. Supp. 2d 1306, 1308 (M.D. Ala. 1998))).[1]

It is difficult to reconcile this interpretation of Section 8(b) with the theory of liability proposed by plaintiffs. Plaintiffs argue that Ticor violated RESPA by charging too much for title insurance, even though both Ticor and its agents performed services. But holding Ticor liable because it charged rates that were in plaintiffs' view too high would require us

[1] Plaintiffs argue that *Boulware* actually supports their RESPA claim. But in rejecting liability for a unilateral overcharge in that case, *Boulware* never suggested that there might be liability where a party gives or accepts a fee in exchange for services actually performed. *See id.* at 265 n.3 (in order for liability to attach, any fee split "must be one 'other than for services actually performed.'"). Here, both Ticor and its agents performed services, so there is no liability for charging what plaintiffs allege is too much for those services under Section 8(b) or under *Boulware*.

to treat RESPA as a price-control statute—a result that we rejected in *Boulware*. In effect, plaintiffs would require federal courts to engage in problematic efforts to set the value of insurance services, but plaintiffs point to nothing in RESPA that would suitably aid us in such a task. In order to avoid just this sort of inquiry, Congress directed Section 8 at the particular situation in which fees are split with parties who perform no services in return. That is not the situation we have here.

Our understanding of Section 8(b), both here and in *Boulware*, is further buttressed by Section 8(c) of RESPA. In fact, Section 8(c) is explicit in providing that there is no liability in the specific circumstances of this case. Section 8(c) states that "[n]othing in this section [Section 8 of RESPA] shall be construed as prohibiting (1) the payment of a fee . . . (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance." 12 U.S.C. § 2607(c). That is exactly the situation we have before us. Plaintiffs' own complaint alleges that Ticor paid a fee to its agents for services actually performed in issuing title insurance. In this circumstance, Section 8(c) makes clear that Ticor did not violate Section 8 of RESPA by paying its agents for their services. Thus, Section 8(c) underscores what is evident from *Boulware* and from the text of Section 8(b) itself: plaintiffs have not stated a valid Section 8(b) claim.

B.

Plaintiffs respond with an ingenious argument. They say that we should divide the amount that Ticor charged plaintiffs for title insurance into two parts: the portion of the charge that plaintiffs say was valid under the Maryland Insurance Code, and the portion of the charge that plaintiffs say was invalid. Plaintiffs argue that the invalid part of the charge was not "for services actually performed" and that Ticor therefore violated Section 8(b) when it split this invalid charge with its agents. To support this argument, plaintiffs rely on a regulation promulgated under RESPA by the Department of Housing and

Urban Development. That regulation provides: "If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided." 24 C.F.R. § 3500.14(g)(2).

Plaintiffs' argument is unpersuasive because it seeks to nullify the plain language of Sections 8(b) and 8(c). Section 8(b) prohibits giving and accepting a fee where the fee is not "for" services performed, and Section 8(c) provides that there is no liability when a title insurance company pays its agent "for" services performed. 12 U.S.C. § 2607(b), (c). Regardless of the size of the fee that Ticor charged plaintiffs and passed on to its agents, the fee was still "for" the services that Ticor and its agents performed. *See Hazewood v. Found. Fin. Group, LLC*, 551 F.3d 1223, 1226 (11th Cir. 2008); *Kruse v. Wells Fargo Home Mortgage, Inc.*, 383 F.3d 49, 56 (2d Cir. 2004). The statutory language does not authorize a court to divide charges into valid and invalid parts and to decide that the invalid part is not for services performed. *See Kruse*, 383 F.3d at 56. Indeed, we rejected in *Boulware* a similar attempt, also relying on regulations and policy statements issued by HUD, to impose liability beyond the plain scope of Section 8(b). *See* 291 F.3d at 266-67 (citing 24 C.F.R. § 3500.14(c); Real Estate Settlement Procedures Act Statement of Policy 2001-1, 66 Fed. Reg. 53,052, 53,057-59 (Oct. 18, 2001)). Here, as in *Boulware*, "the text of the statute controls." *Id.* at 267.

Other circuits addressing the scope of Section 8(b) have rejected similar requests to break up charges into multiple pieces based on HUD's regulations and policy statements. These courts have held that it would vitiate the plain language of Section 8(b) to divide fees into valid and invalid—or, in the language of 24 C.F.R. § 3500.14(g)(2), "reasonable" and "unreasonable"—parts. *See Friedman v. Market St. Mortgage Corp.*, 520 F.3d 1289, 1297 (11th Cir. 2008); *Santiago v. GMAC Mortgage Group, Inc.*, 417 F.3d 384, 386-87 (3d Cir. 2005); *Kruse*, 383 F.3d at 55-57 & n.4. These courts have also

held, as we have, that RESPA is not a price-control statute. *See Friedman*, 520 F.3d at 1296; *Santiago*, 417 F.3d at 387 n.3; *Kruse*, 383 F.3d at 56-57; *see also Haug v. Bank of Am., N.A.*, 317 F.3d 832, 837-38 (8th Cir. 2003); *Krzalic v. Republic Title Co.*, 314 F.3d 875, 880 (7th Cir. 2002). And these circuits have held that Section 8(b) does not prohibit charging "too much" for services actually performed; instead, they have held that an allegation that services were not performed is necessary for liability to attach under Section 8(b). *See Friedman*, 520 F.3d at 1296-98; *Santiago*, 417 F.3d at 387-89; *Kruse*, 383 F.3d at 56, 62.

In fact, the Eleventh Circuit recently decided a case just like this one—and held that there was no liability. In *Hazewood v. Foundation Financial Group, LLC*, 551 F.3d 1223 (11th Cir. 2008), the plaintiff claimed, as here, that the defendant had violated Section 8(b) by charging rates for title insurance that exceeded the rates filed with the state insurance commissioner and by splitting the charges with the defendant's agents. *Id.* at 1224-25. And the plaintiff argued that, even though the defendant and its agents had performed services, the invalid part of each charge for title insurance had not been for services actually performed. *Id.* at 1226. The Eleventh Circuit rejected the plaintiff's claim, holding that "for a settlement fee to be actionable, *no* services must be rendered in exchange for it." *Id.* The court reiterated that Section 8(b) is not a price-control provision and "does not provide a cause of action for excessive fees," and it held that the plaintiff could not divide up a fee into earned and unearned portions under the statute. *Id.* at 1225-27. The Eleventh Circuit concluded: "The notion that Congress intended RESPA § 8(b) to implicitly create a federal remedy for overcharges under state insurance laws . . . is simply too much to swallow." *Id.* at 1226.

We agree with the Eleventh Circuit—this sort of claim goes too far. Indeed, in arguing that we should divide Ticor's fees into valid and invalid parts based on state law, plaintiffs are

merely seeking to circumvent the recognition of this court and many others that RESPA is not a price-control provision. Applying plaintiffs' view, any charge that is too high would violate Section 8(b) because part of that charge would not be for services performed. It makes no difference to our analysis that plaintiffs claim that Ticor's charges are excessive as a matter of state insurance law. Regardless of the reason a charge may be too high, if we interpreted RESPA to prohibit charging too much for services actually performed, then the statute would be nothing more than a prohibition on inflated prices.

We therefore say again what we have said before: Section 8(b) of RESPA is "not a broad price-control provision." *Boulware*, 291 F.3d at 265. RESPA carries significant liability in the form of criminal penalties and treble damages. *See* 12 U.S.C. § 2607(d). Congress chose not to impose these weighty penalties on parties that split a fee for services performed based on the allegation that the amount charged to the consumer was too high. We will not extend RESPA's penalties beyond the scope of the statutory language to create liability for improper pricing. We therefore conclude that the district court properly dismissed plaintiffs' RESPA claims.[2]

III.

We turn next to plaintiffs' claim for money had and received. In Maryland, a cause of action for money had and received "lies whenever the defendant has obtained posses-

[2] Plaintiffs state in conclusory fashion that Ticor also violated Section 8(a) of RESPA, which prohibits kickbacks in exchange for business referrals. *See* 12 U.S.C. § 2607(a). At no point have plaintiffs explained why Ticor's commissions to its agents should be regarded as referral fees in the circumstance in which the agents have indisputably performed settlement services. Because Section 8(c) makes clear that Ticor has not violated any of the provisions of Section 8 in this circumstance, *see id.* § 2607(c) ("Nothing in this section shall be construed as prohibiting . . . ."), plaintiffs' Section 8(a) claim fails as well.

sion of money which, in equity and good conscience, he ought not to be allowed to retain." *Benson v. State*, 887 A.2d 525, 547 (Md. 2005) (quoting *State ex rel. Employment Sec. Bd. v. Rucker*, 126 A.2d 846, 849 (Md. 1956)). The district court did not reach the merits of plaintiffs' claim for money had and received. Instead, the court dismissed the claim because plaintiffs had failed to exhaust the administrative remedies that were available under the Maryland Insurance Code.

We agree with the district court that exhaustion was required. Under Maryland law, when the statutory text creating an administrative remedy is not dispositive, there is "a presumption that the administrative remedy is intended to be primary, and that a claimant cannot maintain the alternative judicial action without first invoking and exhausting the administrative remedy." *Zappone v. Liberty Life Ins. Co.*, 706 A.2d 1060, 1069 (Md. 1998) (citing additional cases). Moreover, where a judicial remedy is "wholly or partially dependent upon the statutory scheme which also contains the administrative remedy, or upon the expertise of the administrative agency," Maryland courts have "usually held" that exhaustion is required. *Zappone*, 706 A.2d at 1070 (citing cases); *see Muhl v. Magan*, 545 A.2d 1321, 1322, 1330-31 (Md. 1988); *see also Fosler v. Panoramic Design, Ltd.*, 829 A.2d 271, 280-82 (Md. 2003); *Bell Atl. of Md., Inc. v. Intercom Sys. Corp.*, 782 A.2d 791, 806-807 (Md. 2001).

Plaintiffs' claim in this case is dependent on the Insurance Code because that claim will succeed only if plaintiffs show that Ticor violated the Code. If the Insurance Code did not require Ticor to adhere to its filed rates, plaintiffs would have no right to recover from Ticor for charging an excessive fee. Indeed, plaintiffs have suggested no reason other than a violation of the Insurance Code that Ticor would be liable to them under a claim for money had and received. *Zappone*, on which plaintiffs rely to argue that exhaustion was not required, did not address a claim for exceeding filed insurance rates, but instead claims for fraud and negligence that were

"wholly independent" of the Insurance Code. 706 A.2d at 1071. Plaintiffs' claim, by contrast, explicitly depends on the statute that also makes administrative remedies available to plaintiffs.

Moreover, plaintiffs' claim for money had and received implicates the expertise of the Maryland Insurance Commissioner in multiple ways. First, the Commissioner's expertise may be important in deciding whether Ticor actually violated the Insurance Code—which Ticor does not concede. The Commissioner would be in a better position than a federal court to determine, for example, whether plaintiffs are correctly interpreting the rate structure that Ticor filed with the Commissioner. *See* Md. Code Ann., Ins. § 11-403. In addition, plaintiffs argue that Ticor violated the Insurance Code's prohibition on "willfully" charging excessive rates, *id.* § 27-216(b)(1)(i), so the Insurance Commissioner's experience in this area likely will be useful in determining whether Ticor had the necessary intent to violate the Code.

Second, the Commissioner's expertise also will be important in determining the proper remedy for any violation by Ticor. Plaintiffs' claim for money had and received is equivalent to an action for restitution, so plaintiffs' claim implicates the authority of the Commissioner to require restitution for a violation of the Insurance Code. *See* Md. Code Ann., Ins. § 4-113(d)(2). It therefore makes sense for the Insurance Commissioner to exercise his expertise in the first instance in determining whether full restitution to plaintiffs is warranted. Furthermore, the Insurance Code grants the Commissioner the authority to impose a wide variety of other remedial measures, such as cease and desist orders, revocation of certificates of authority to sell insurance, and monetary penalties. *See id.* §§ 4-113, 4-114, 27-103. The Maryland legislature surely intended for the Commissioner to exercise his expertise in choosing among these remedies for a violation of the Code.

In sum, plaintiffs' claim for money had and received is not only dependent on the Insurance Code, but plaintiffs will be able to seek the same remedy before the Commissioner that they seek here. And requiring administrative exhaustion will protect the Commissioner's role under the Insurance Code in exercising his expertise and carrying out his remedial powers. Because plaintiffs have not yet exhausted or even pursued their available administrative remedies, their claim for money had and received was properly dismissed.[3]

The judgment of the district court is therefore

AFFIRMED.

[3] We also affirm the district court's dismissal of plaintiffs' claim for negligent misrepresentation. A necessary element of that claim is the allegation of a false statement. *Lloyd v. Gen. Motors Corp.*, 916 A.2d 257, 273 (Md. 2007). Plaintiffs' complaint alleged only that each HUD-1 form that Ticor gave to plaintiffs contained a false statement because the charge listed on each form for title insurance was unlawfully high. But as the district court correctly held, plaintiffs "admit that the dollar amount listed on the HUD-1 statement under title insurance was the amount charged and collected by Ticor," so plaintiffs "do not [validly] assert that Ticor made any false statements."

Exhibit : *BENWAY v. RESOURCE REAL ESTATE SERVICES, LLC*

United States District Court,
D. Maryland.
Patricia M. BENWAY and Timothy J. Benway Individually and on behalf of a class of borrowers similarly situated,
v.
RESOURCE REAL ESTATE SERVICES, LLC et al.
No. CIV. WMN-05-3250.

Oct. 16, 2006.

Background: Mortgagors brought suit in state court against provider of mortgage loan closing services and mortgage brokerage, asserting claims of civil conspiracy and violation of the Real Estate Settlement Procedures Act (RESPA), based on allegation that defendants used an affiliated business arrangement (ABA) to charge excessive referral fees during refinancing of home mortgage loan. After removal, plaintiffs moved for class certification.

Holdings: The District Court, Nickerson, Senior District Judge, held that:
(1) typicality requirement for class certification was satisfied after limitation of class definition;
(2) numerosity requirement was satisfied;
(3) commonality requirement was satisfied;
(4) adequacy of representation requirement was satisfied;
(5) predominance requirement was satisfied; and
(6) superiority requirement was satisfied.

Motion granted.

West Headnotes

[1] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Typicality requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business arrangements (ABAs) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals, provided class was limited to those mortgagors who whose loan documents included a charge for or payment to particular ABA involved in named plaintiffs' loan transaction. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(a)(3), 28 U.S.C.A.

[2] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Numerosity requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business arrangement (ABA) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals, where defendants admitted that there would be in excess of five hundred class members. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(a)(3), 28 U.S.C.A.

[3] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Commonality requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business

arrangement (ABA) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals; class members shared the same legal theory, and common factual question existed as to whether ABA entered into and executed type of referral agreement which could violate RESPA. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(a)(2), 28 U.S.C.A.

[4] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Adequacy of representation requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business arrangement (ABA) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals, notwithstanding defendants' contention that named plaintiffs did not exhibit adequate knowledge regarding particularities of their loan transaction; named plaintiffs offered deposition testimony which supported their claim that they had a general understanding of the litigation, and that they were knowledgeable about their loan transaction. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(a)(4), 28 U.S.C.A.

[5] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Predominance requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business arrangement (ABA) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals; common questions whether ABA in question was an illegitimate entity and whether defendants have used ABA to execute a kickback scheme in violation of RESPA predominated over individual questions, and was susceptible to common proof. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.

[6] **Federal Civil Procedure 170A 182.5**

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak182.5 k. Consumers, Purchasers, Borrowers, and Debtors. Most Cited Cases
Superiority requirement for class certification was satisfied in suit by mortgagors alleging that provider of mortgage loan closing services and mortgage brokerage violated the Real Estate Settlement Procedures Act (RESPA) by using illegitimate affiliated business arrangement (ABA) to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals; certification would promote judicial economy, and class action certification was particularly appropriate where the amount of individual recovery might not sufficiently induce individual suit. Real Estate Settlement Procedures Act of 1974, § 2 et seq., 12 U.S.C.A. § 2601 et seq.; Fed.Rules Civ.Proc.Rule 23(b)(3), 28 U.S.C.A.

*421 Cory L. Zajdel, Kieron F. Quinn, Richard S. Gordon, Quinn Gordon and Wolf Chtd, Towson, MD, Nevett Steele, Jr., Phillip R. Robinson, Baltimore, MD, for Patricia M. Benway and Timothy J. Benway Individually and on behalf of a class of borrowers similarly situated.

Shirlie Norris Lake, Eccleston and Wolf PC, Baltimore, MD, David James Sensenig, Anthony B. Taddeo, Charles Michael Sims, Leclair Ryan PC, Richmond, VA, for Resource Real Estate Services, LLC et al.

MEMORANDUM

NICKERSON, Senior District Judge.

Before the Court is the motion of the Plaintiffs, Patricia and Timothy Benway ("the Benways"), for certification of the class in a class action suit. Paper No. 56.

Defendants have opposed the motion to certify the class and the Benways have replied. Upon review of the pleadings and the applicable case law, the Court has determined that no hearing is necessary, and that the motion of the Plaintiffs will be granted, consistent with the conditions set forth in this memorandum.

I. FACTS AND PROCEDURAL HISTORY

Defendant Resource Real Estate Services, LLC ("Resource") provides real estate title and mortgage loan closing services in Maryland. Defendant Millard S. Rubenstein ("Rubenstein") is the Managing Member and principle owner of Resource. Defendant Access One Mortgage Group, Inc. ("Access One") provides mortgage brokerage services. Plaintiffs allege that Resource and Access One established Clipper City Settlement Services, Inc. ("Clipper City") as an affiliated business arrangement ("ABA"), designed to appear on mortgage closing documents as an entity which had performed title work or settlement services. Plaintiffs allege that Rubenstein owns a 51% interest in Clipper City and has a monetary interest in at least eleven other ABAs.[FN1] Plaintiffs claim that Resource and Access One conducted a scheme to extract referral fees from borrowers using ABAs like Clipper City. Allegedly, Access One would refer borrowers to Resource for title work. Though Resource would perform the relevant work, the loan closing documents would attribute that work to Clipper City, and the fees charged for the work would exceed the customary fees charged by Resource. Resource would then channel a portion of the fees collected by Clipper City to Access One as a referral reward, without notifying the borrower.

> FN1. The other ABAs that Plaintiffs claim Resource and its principals created include: (1) Harvard Settlement Services, Inc.; (2) Allegiance Settlement Services, Inc.; (3) Assurance Title Agency, Inc.; (4) Creative Title Agency, Inc.; (5) Accurate Settlement Services, Inc.; (6) Integrity Settlement Services, Inc.; (7) Interstate Title Co., Inc.; (8) Quality Title Agency, Inc.; (9) Reliable Settlement Services, LLC; (10) Trust Settlement Services, Inc.; and (11) Travelers Settlement Services, Inc. Paper No. 56, p. 1.

The Benways claim to have been victimized by Defendants' scheme by paying excessive fees to Clipper City during the refinancing of their home mortgage loan. On October 25, 2005, they filed a class action suit in the Circuit Court for Baltimore County, Maryland, naming Resource, Access One, and Clipper City as defendants. Those defendants removed the case to this Court on December 2, 2005. The Benways amended their complaint on August 9, 2006, to include Rubenstein as a defendant. Paper *422 No. 63. In the instant motion for class certification, the Benways ask the Court to certify a class consisting of:

> All borrowers who entered into mortgage loan transactions using the services of Resource Real Estate where the HUD-1 Settlement Statement, or other documents in the loan file, included a charge for or payment to an affiliated business arrangement or entity.

Paper No. 56, p. 1. The Benways allege that Defendants' actions constituted civil conspiracy and violated the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601, *et seq.*[FN2]

> FN2. In their amended complaint, the Benways propose two plaintiff classes, "Class A," at issue here, and "Class B," consisting of: "All borrowers who are Maryland residents and who entered into mortgage loan transactions using the services of Resource Real Estate for their Maryland residence where a charge or payment was made to an affiliated business arrangement or entity." Paper No. 63, p. 13. In addition to the conspiracy and RESPA counts, the Benways allege that the plaintiffs in Class B have statutory claims for violations of the Maryland Consumer Protection Act, Md.Code Ann., Com. Law §§ 13-101*et seq.*, and the Maryland Finders Fee Act, Md.Code Ann., Com. Law §§ 12-801*et seq.*, and claims arising in common law fraud and negligent misrepresentation. The propriety of the certification of Class A with respect to the RESPA and civil conspiracy claims asserted by Plaintiffs is the only issue presently before the Court.

II. LEGAL STANDARDS

Rule 23 of the Federal Rules of Civil Procedure governs certification of class actions. For certification, a class must satisfy all of the conditions of Rule

23(a),[FN3] and at least one condition of Rule 23(b).[FN4] The proponent of certification carries the burden of showing that the requirements of Rule 23 have been satisfied. *Windham v. Am. Brands, Inc.*, 565 F.2d 59, 64 (4th Cir.1977). In determining class certification, the Court will avoid an evaluation of the merits of the underlying claim, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974), however, the Court may consider discovery directed to the certification issue. *Int'l Woodworkers of Am. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1267 (4th Cir.1981). The Court has discretion in determining whether to certify a class and such a determination will be reviewed only for an abuse of that discretion. *Boley v. Brown*, 10 F.3d 218, 223 (4th Cir.1993).

FN3. Rule 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a).

FN4. For a class action to be maintained, one of the following conditions of Rule 23(b) must be satisfied:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Fed.R.Civ.P. 23(b).

III. DISCUSSION

Defendants argue that the Court must deny Plaintiffs' motion for certification because the proposed class fails to satisfy the commonality, typicality and adequacy requirements of Rule 23(a), and fails to satisfy any of the requirements of Rule 23(b). The *423 Court finds that satisfaction of the typicality requirement of Rule 23(a) requires a limitation of the scope of the proposed class. Accordingly, the Court will begin with a typicality analysis before discussing the additional requirements of Rule 23(a).

Typicality

[1] Rule 23 requires the Plaintiff to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed.R.Civ.P. 23(a)(3). The claims of the named plaintiffs must be consistent with those of the class, however, the claims need not be identical. *See Twyman v. Rockville Hous. Auth.*, 99 F.R.D. 314, 321 (D.Md.1983). "Factual differences will not necessarily render a claim atypical if the representative's claim arises from the same event, practice or course of conduct that gives rise to the claims of the class, and is

based on the same legal theory." *Id.* (quoting *Smith v. Baltimore & Ohio R.R. Co.*, 473 F.Supp. 572, 581 (D.Md.1979)). The typicality requirement of Rule 23, however, may be used "to screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class even though common issues of law or fact are present." 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1764 (3d ed.2005).

The Benways allege that Defendants violated sections 8(a) and 8(b) of RESPA by using illegitimate ABAs to engage in a scheme to overcharge borrowers and to pay kickbacks in exchange for settlement service referrals.[FN5] An exception to RESPA's section 8(a) and 8(b) restrictions exists for ABAs which comply with the specific conditions listed in section 8(c).[FN6] 12 U.S.C. § 2607(c)(4)(A-C). To be eligible for the 8(c) exception, however, an ABA must be a "bona fide provider of settlement services." HUD Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements, 61 Fed.Reg. 29258, 29262 (June 7, 1996) ("HUD Policy Statement 1996-2").[FN7] If an ABA does not meet the definition of a bona fide service provider, its compliance with the conditions set forth in section 8(c) will not exclude it from RESPA liability. 12 U.S.C. § 2607(c)(4)(A-C); HUD Policy Statement 1996-2, 61 Fed.Reg. at 29262.

FN5. Section 8 of RESPA prohibits:

> (a) Business referrals
>
> No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.
>
> (b) Splitting charges
>
> No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

12 U.S.C. § 2607(a-b).

FN6. Section 8(c) of RESPA provides an exception for ABAs so long as:

> (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred ... (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship[.]

12 U.S.C. § 2607(c)(4)(A-C).

FN7. The Department of Housing and Urban Development ("HUD") has provided ten factors for determining whether an ABA is a "bona fide provider of settlement services." The factors have been summarized as follows:

> (1) does the entity have sufficient initial capital and net worth; (2) is the entity staffed with its own employees; (3) does the entity manage its own business affairs; (4) does the entity have a separate office; (5) are substantial services provided by the entity; (6) does the entity perform substantial services by itself; (7) if the entity contracts out services, are they from an independent company; (8) if the entity contracts out work to another party, is the party performing any contracted services receiving a payment for services of facilities provided that bears a reasonable relationship to the value of the services or goods received; (9) is the new entity actively competing in the marketplace for business; and (10) is the entity sending business exclusively to one of the settlement providers that created it.

Gardner v. First Am. Title Ins. Co., 2003 WL 221844, at *2 n. 2 (D.Minn. Jan. 27, 2003) (citing HUD Policy Statement 1996-2, 61 Fed.Reg. at 29262).

The Benways' claims rest on the factual determination that Clipper City failed to *424 meet the HUD standards for a "bona fide provider of settlement services." The HUD factors require that each allegedly illegitimate ABA be analyzed separately to determine whether they are eligible for RESPA's section 8(c) exception. The HUD factors address characteristics of each individual entity, including an analysis of each ABA's personnel, management structure, physical location, and the manner in which services are provided. HUD Policy Statement 1996-2, 61 Fed.Reg. at 29262. Here, Defendant's have submitted evidence that each ABA employs a different number of individuals, has operating licenses for different states, conducts business with a variety of different mortgage brokers, has separate managerial staff, and some of the ABAs differ in the physical location of their office space. Assuming the Benways could establish the illegitimacy of Clipper City and establish that Clipper City engaged in a consistent scheme to pay kickbacks in exchange for referrals, they would have done nothing to establish the claims of those plaintiffs whose HUD-1 settlement statements did not list Clipper City. *See Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir.1998) ("The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class."). Thus, because the validity of each individual ABA must be determined independently under the HUD factors, the claim that Clipper City operated as a "sham" entity is not typical of the claims of members of the prospective class whose HUD-1 settlement statement refers to an ABA other than Clipper City.

A finding of atypicality does not necessarily result in the dismissal of a class suit. Under the flexible powers granted in Rule 23, "[w]hen questions arise as to a named plaintiff's ability to represent the interests of some part of the putative class, it is proper for the court 'to limit the class to those persons who would be adequately protected by the named representative [,]' " *Dameron v. Sinai Hosp. Of Baltimore, Inc.*, 595 F.Supp. 1404, 1409 (D.Md.1984) (limiting the class due to the inadequacy of the representative plaintiff) (citing C. Wright & A. Miller, *Federal Practice and Procedure*, § 1765 at 624-25 (1972)). Pursuant to Rule 23, this Court finds that the Benways' claims are typical of those borrowers who entered into mortgage loan transactions using the services of Resource Real Estate where the HUD-1 Settlement Statement, or other documents in the loan file, included a charge for or payment to Clipper City. Such a definition of the class eliminates the Benways' need to prove the illegitimacy of each ABA, including those not affiliated with their loan transaction.

Numerosity

[2] Rule 23(a)(1) requires a showing that joinder of the purported class would be impracticable. *George v. Baltimore City Pub. Schs.*, 117 F.R.D. 368, 370 (D.Md.1987). Here, Defendants have not challenged satisfaction of the numerosity requirement. Defendants admit that, even if the class were limited to borrowers using the services of Clipper City, there would be in excess of five hundred class members. Paper No. 66, p. 12. Such an amount would make joinder impracticable. *See Twyman*, 99 F.R.D. at 320 ("many courts have found that approximately 150 members satisfies the numerosity requirement").

Commonality

[3] Rule 23(a)(2) requires that common questions of law or fact exist among the members of the class. A single common issue shared among class members is sufficient to satisfy commonality. *Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 498 (D.Md.1998). Where class members share the same legal theory, individual factual differences will not preclude certification, however, refusal of certification may be appropriate where "individual factual considerations predominate over common questions." *Id.* (citing *Zimmerman v. Bell*, 800 F.2d 386, 389-90 (4th Cir.1986)).

Defendants challenge commonality by arguing that the determination of an ABA's compliance with sections 8(a) and 8(b) of RESPA requires a loan specific, transaction-by-transaction analysis which would preclude a finding of commonality among the proposed class members. Determining whether an ABA complies with the standards of a "bona fide provider of settlement services" does not require consideration of the specifics of an *425 individual loan transaction. HUD Policy Statement 1996-2, 61 Fed.Reg. at 29262.

Rather, the HUD factors consider the general characteristics of an ABA, such as the services it offers, its personnel, and its management structure.[FN8] *Id.* at 29262-63. Because determining Clipper City's eligibility for RESPA's section 8(c) exception does not require a transaction-by-transaction analysis, that determination is not precluded from serving as an issue common to the members of the redefined plaintiff class.

> FN8. HUD provides the following example and finds, without analyzing the specifics of any loan transaction, that the entity described would not constitute a bona fide provider of settlement services:
>
> > An existing real estate broker and an existing title insurance company form a joint venture title agency. Each participant in the joint venture contributes $1000 towards the creation of the joint venture title agency, which will be an exclusive agent for the title insurance company. The title insurance company enters a service agreement with the joint venture to provide title search, examination and title commitment preparation work at a charge lower than its cost. It also provides the management for the joint venture. The joint venture is located in the title insurance company's office space. One employee of the title insurance company is 'leased' to the joint venture to handle closings and prepare policies. That employee continues to do the same work she did for the title insurance company. The real estate broker participant is the joint venture's sole source of business referrals. Profits of the joint venture are divided equally between the real estate broker and title insurance company.
>
> HUD Policy Statement 1996-2, 61 Fed.Reg. at 29263.

Defendants also challenge a finding of commonality by arguing that the establishment of a violation of RESPA requires a transaction-by-transaction determination of whether each borrower was affirmatively influenced to use an ABA and whether an actual overcharge for services occurred. Section 8(a)'s prohibition against the payment of formal kickbacks or fees for the referral of business, however, does not require establishment of an overcharge to the consumer.[FN9] *Robinson v. Fountainhead Title Group Corp.*, 447 F.Supp.2d 478, 488-89 (D.Md.2006). Section 8(a) simply prohibits the payment of fees pursuant to any agreement or understanding for the referral of settlement services. 12 U.S.C. § 2607(a). Thus, a factual issue common to the proposed class exists as to whether Clipper City entered into and executed the type of referral agreement which could violate section 8(a).

> FN9. As opposed to section 8(a), which contemplates the existence of a referral agreement, section 8(b) "prohibits conduct where money is moving in the same way as a kickback or referral fee even though there is no explicit referral agreement." *Boulware v. Crossland Mortgage Corp.*, 291 F.3d 261, 266 (4th Cir.2002) (discussing the requirement of showing an overcharge to establish a violation of section 8(b)).

While violation of section 8(b) does require the establishment of an overcharge to the borrower, the Benways allege that the ABAs were engaged in a common scheme to overcharge consumers and, because the ABAs performed little or no work in providing settlement services, such an overcharge occurred as a matter of course in every settlement transaction. Whether Clipper City engaged in such a scheme constitutes an additional question of fact common to the plaintiff class.

D. Adequacy

[4] Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This rule ensures that class counsel is competent and willing to prosecute the action and that no conflict of interest exists between the named parties and the class they represent. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997).

Here, Defendants do not suggest that the Benways' claims are in conflict with the claims of the members of the proposed class, nor are they in conflict with the members of the redefined class. Rather, Defendants contend that the Benways have not exhibited adequate

knowledge regarding the particularities of their loan transaction, and, therefore, fail as adequate class representatives. Rule 23 does not require the representative plaintiffs to have extensive knowledge of the intricacies of litigation, rather, the named plaintiffs must have a general knowledge of what the action involves and a desire to prosecute the action vigorously. 7A Wright, Miller & Kane, *Federal Practice and Procedure* § 1766 (3d ed.2005). Here, the Benways*426 have offered deposition testimony which supports their contention that they have a general understanding of the litigation, that they are knowledgeable about their loan transaction, and that they have a desire to pursue the litigation vigorously. Thus, the Benways satisfy Rule 23's test for adequacy.

Further, Defendants do not challenge the competency of class counsel, and no evidence suggests that counsel would fail to adequately represent the class. *Twyman*, 99 F.R.D. at 322 (Plaintiff's attorney must be qualified to conduct the proposed litigation). Plaintiffs have presented evidence that class counsel is experienced and capable of handling class action litigation. [FN10]

FN10. Defe ndants also challenge the adequacy of the Benways as class representatives, claiming that they have not sought a class which coincides with RESPA's statute of limitations. It seems clear, however, that the Benways' transaction falls within the one year statute of limitations provided by RESPA. The Benways allege, and Defendants do not challenge, that they completed their loan transaction on November 3, 2004, and filed the instant lawsuit on October 25, 2005. The Benways further allege that Defendants can electronically determine the date on which each borrower completed their loan transaction. Thus, the Benways adequately represent those class members whose claims are not barred by RESPA's statute of limitations. 12 U.S.C. § 2614; *see also Dameron*, 595 F.Supp. at 1409 (noting that motions for certification are generally not precluded by the assertion of a statute of limitations defense).

Rule 23(b)

Once the requirements of Rule 23(a) have been satisfied, the party seeking class certification must show that the action is maintainable under one of the three conditions listed in Rule 23(b). *Amchem Prods., Inc.*, 521 U.S. at 614, 117 S.Ct. 2231. Plaintiffs propose certification under each prong of the Rule 23(b) analysis. Rule 23(b)(3), however, provides the most appropriate category for certification in the instant case. *See Peoples*, 179 F.R.D. at 500 (finding that in actions where monetary damages constitute the primary relief requested, even though injunctive relief is also sought, Rule 23(b)(3) certification is appropriate).

Rule 23(b)(3) requires that common issues "predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed.R.Civ.P. 23(b)(3).[FN11] Rule 23(b)(3) actions are particularly well-suited for cases in which small individual recoveries would not provide plaintiffs with enough incentive to prosecute separate actions. *Amchem Prods., Inc.*, 521 U.S. at 617, 117 S.Ct. 2231 (citing *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir.1997)).

FN11. To determine whether a class satisfies Rule 23(b)(3), the Court should also consider: "(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action." Fed.R.Civ.P. 23(b)(3).

[5] The questions of law and fact that are common to the redefined class predominate over any individualized concerns. The central question of this action is whether Clipper City is an illegitimate entity and whether the defendants have used Clipper City to execute a kickback scheme in violation of section 8 of RESPA. 12 U.S.C. § 2607. As stated above, determination of whether Clipper City operated as a legitimate settlement service provider is a common question which does not require analysis of the individual loan transactions of each class member. *See* HUD Policy Statement 1996-2, 61 Fed.Reg. at 29262. With regard to Defendants' violation of RESPA, the Ben-

ways allege that Defendants operated in the same manner with regard to all customers, that they paid referral fees in connection with each settlement transaction, and that they used identical, standardized documents for each borrower. *Compare Arrington v. Colleen, Inc.*, No. Civ. AMD-00-191, 2001 WL 34117734, at *7 (D.Md. Apr.2, 2001) (certification is appropriate where defendant's use of identical documents indicates that the showing of proof to establish liability will be similar for all class members) *with Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 339-40 (4th Cir.1998) (district court improperly certified a class of franchisees whose members had entered into significantly different *427 contracts). These issues, common to the redefined class, satisfy Rule 23(b)(3)'s predominance requirement.

[6] In addition to finding that common issues predominate over questions affecting individual members of the class, the Court also finds that treating this action as a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Certification will promote judicial economy and, in consumer actions such as this, where the amount of individual recovery may not sufficiently induce individual suit, class action certification is particularly appropriate. *Amchem Prods., Inc.*, 521 U.S. at 617, 117 S.Ct. 2231 (noting that class action litigation is particularly effective in creating an incentive to sue in actions in which individual recovery would be relatively small).

The redefined class is narrow in scope and the identity of the class members can be ascertained easily from Defendants' records. Thus, the delivery of notice, as required by Rule 23(c)(2) will not be unduly difficult. *See*Fed.R.Civ.P. 23(b)(3)(D) (the court should consider issues of class management in determining whether certification is appropriate). Additionally, Defendants have presented no indication that there is a pending case presenting similar claims concerning the content of this litigation. *See*Fed.R.Civ.P. 23(b)(3)(B) (the court should consider the extent of any litigation concerning the controversy already commenced by members of the class).

IV. CONCLUSION

For the above stated reasons, Plaintiffs' Motion for Certification of the Class, as redefined by the Court, will be GRANTED. Plaintiffs shall submit, within 14 days of the date of this Memorandum, a proposed order, consistent with this Court's limitation of the class, addressing issues of notice, opt-out provisions, and the other requirements of Rule 23(c).

ORDER

In accordance with the foregoing Memorandum and for the reasons stated therein, IT IS this 16th day of October 2006, by the United States District Court for the District of Maryland, hereby ORDERED:

1. That the Plaintiffs' Motion for Certification of the Class, Paper No. 56, as amended by the Court, is GRANTED;

2. That the Clerk of the Court shall certify a class consisting of:

All borrowers who entered into mortgage loan transactions using the services of Resource Real Estate where the HUD-1 Settlement Statement, or other documents in the loan file, included a charge for or payment to Clipper City Settlement Services, Inc.;

and

3. That the Clerk of the Court shall transmit copies of the accompanying Memorandum and this Order to all counsel of record.

D.Md.,2006.
Benway v. Resource Real Estate Services, LLC
239 F.R.D. 419

END OF DOCUMENT

WRITTEN TESTIMONY SUBMITTED AT JULY 15, 2009 PUBLIC HEARING

Attachment A

ILENE C. SEIDEL
LICENSED SETTLEMENT AGENT

24 Greenshire Lane
Owings Mills, Maryland 21117
Cell: 410-299-1003
Fax: 410-363-3293
ileneseidel299@yahoo.com

July 15, 2009

I have been a commissioned notary public for the last 16 years and a Licensed Title Insurance Producer for 9 years. To maintain my license I complete 16 hours of continuing education courses every two years and maintain a surety bond as required by MIA. My professional background includes 9 years owning a retail business, 5 years management for a large retailer, 10 years as a National Account Manager for a worldwide company and 12 years managing an accounting office and I have an accounting degree. I'm not the only professional Closing Agent in this state.

The title company hires me to complete the closing process. It is the responsibility of the loan officer or broker to review the loan package with the consumer before I meet with them so they know what to expect.

It is not my responsibility to interpret the loan package I do however go over the loan documents with the consumer so they know what they are signing. I'm an administrative person nothing more. Our job in this industry is one of customer service making it as comfortable, stress free and inexpensive for the consumer as possible as the final process of the loan closing.

Should questions arise while reviewing and signing the loan package the loan officer or title company are contacted so they can discuss their concerns. At no time do I make decisions on behalf of the mortgage or title company.

Should this become an attorney state it would not be the responsibility of the attorney to make a decision on behalf of the mortgage or title company because they are not a licensed loan officer. The attorney would have no more authority than a licensed title insurance producer (Closing Agent).

Should this become an attorney state the borrower would lose the convenience of closing their loan in the comfort of their home. I am thanked for this convenience daily.

We as closing agents are equipped to turn on a dime. The Title Company will call us just hours before the closing is to take place. The consumer is leaving town and needs to close or the rate lock will expire. Will an attorney be willing to accommodate the consumer for a last minute closing?

There are many consumers that do not have transportation to the closing site or are financially unable to own a vehicle, or are wheel chair bound, how would they get to an attorney 's office? This would surely be a burden on the consumer.

An attorney's office is a 9-5 business the borrowers would have to either take vacation or sick day or even take time without pay in order to close their loan. And what is the caretaker of the children supposed to do they will need to find a babysitter or bring them to the closing. Where's the customer service in this instance? Most closing agents work as early as 7am with our day ending at 9pm in order to accommodate the consumer's needs.

Maryland is an expensive state to refinance or purchase a home with regard to closing costs. Using an attorney will increase those costs three fold and the consumer would have to absorb that expense.

There are many notary public's closing mortgage loans in this state without title insurance producer licenses and one of the big problems is the out of state title companies never ask for a copy of my producers license or surety bond. How could that be since they use the same underwriter as the Maryland licensed Title Company? I have asked the out of state title company when they call to schedule a closing if they want a copy of my license and they state "no as long as I have one" or " no we don't need a copy". I've suggested they keep a copy on file should they be audited but they still decline. Why aren't the out of state title companies and underwriters complying with Maryland Law? And how can we control the use of non-licensed notary public's in this state from closing loans? The non licensed notary publics are wrongfully collecting fees that belong to licensed title insurance producers (closing agents).

Stiff penalties should apply, they should lose their commission and monetary fines should be levied the very first time they are found breaking the law.

I was told a title insurance producer at the last meeting suggested writing our license number and expiration date on the acknowledgement of the deed of trust. That is a great idea but would mean the recording office would have to add another procedure to the recording process by going to the MIA Website to verify the license number.

I would like to recommend a copy of our licenses accompany every deed and deed of trust submitted for recording. That way the recording office need only to verify the license with the notary on the acknowledgement. This should be a statewide regulation.

Letters should be sent to every title company licensed to conduct business in this state stating that should they use a non licensed notary public they will be fined and the loan would need to reclose at the title companies expense as well as the notary losing their commission. If we don't make the penalty for misconduct tough no one will pay attention and will continue to ignore MIA regulations.

I would also like to recommend there be two types of Title Insurance Producers Licenses and "A" and "B". The "A" would be for the Title Company and anyone who works in a title office who has access to escrow funds and "B" license for those of us who are strictly field settlement agents and have no access to escrow accounts. Why should field settlement agents be required to carry the same bond amount as the Title Company when we are not a liability?

There are many licensed title insurance producers acting as closing agents in this state that will lose their livelihood should this become an attorney state, which would be an addition to the already depressed employment market.

We as licensed title insurance producers take great pride in the service we provide the consumer, title and mortgage industry and feel making this an attorney state would be a great mistake.

Thank you,

Ilene C. Seidel

Young
Attachment B

COMMENTS for July 16, 2009 MEETING

Commission to Study the Title Insurance Industry in Maryland

Good evening. Thank you for allowing us to participate in this meeting.

I represent a small group of TIPICs (Title Insurance Producers Independent Contractors), Professional Notary Network, located in the Bowie/Lanham area of Prince George's County, in Senator Peters' district.

We're here to voice our concern and add to the discussion regarding the possibility of requiring all mortgage loan closings to be performed by attorneys and to protect our 'small piece of the pie'. We also want to understand what problems the commission hopes to remedy by making MD an attorney-only state and raising the surety bond.

AS TIPICS, WE:

- Receive loan document packages from our clients (lenders, title companies, and signing companies) usually via email
- Meet with borrowers at a time/place convenient for the borrowers to present, notarize, and facilitate the signing of those loan documents by the borrowers
- On rare occasions, we may collect a certified check payable to the title company and forward it with the loan documents. TIPICs simply are "passing physical custody of trust moneys [which] is not exercising control over trust moneys" (*May 28, 2009 committee minutes, page 2, paragraph 3*)
- Ship the documents/check back to our clients via FedEx/UPS for final processing
- Are licensed (2 yrs, $69) and bonded ($100k surety bond, $520 for 2-yr premium)
- Carry errors & omissions insurance as is generally required by our clients ($100k errors & omissions policy, $104 annual premium)
- Are independent, professional, small business owners (very small) providing an inexpensive convenience service to Maryland homeowners
- Are ***NOTARIES***...trusted officers of the state & mortgage loan document specialists
- As a group, we DO NOT contribute to mortgage fraud. According to info we have regarding MIA's 2009 breakdown of complaints & claims reported at the last meeting, it appears that none of them are related to services provided by TIPICs

ATTORNEY –VS- TIPIC CLOSINGS...we offer the following comments for the commission's consideration:

- Borrowers love the service provided by TIPICs. Many of them comment about how the arrangement is less stressful, more convenient, more private, and time saving
- Attorneys would charge higher fees which could add almost $500 to the borrower's closing costs. Average TIPIC fee is $125 per closing. Average closing time excluding travel (print, sign, review) 2 hours/closing. Average attorney fees $250-300/hour or $500-600/closing
- TIPICs add to the pool of available mortgage loan service professionals and provide a lower cost alternative to borrowers
- An attorney may require the added assistance (cost) of a Notary. In addition, would probably relegate such a mundane task to a paralegal who is likely to be less knowledgeable about the documents than a TIPIC. Borrowers will potentially pay more and get less

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Eunice Johnson, LTP (TIPIC) 301-704-7829
Vanessa Davis, LTP (TIPIC) 301-509-0724

- Attorneys are unwilling to travel to borrowers and unwilling to conduct closings outside normal business hours. Which means the borrower would have to take time off from work to travel to the attorney's or title company's office. Additional costs (loss wages & gas) to the borrower

- TIPICs are required to complete 30 hours of approved training to get a license and 16 hours of approved continuous education every 2 years to renew their license. We are mortgage loan document specialists. Attorneys practice law and are NOT required to fulfill any of the exam or educational requirements for Title Insurance Producers

- An attorney would conduct a closing in the same manner as a TIPIC. There is NO additional level of protection for the borrower. We BOTH would simply facilitate the signing of the loan documents as directed by the lender and/or the title company. The TIPIC could also notarize the documents

- Attorney-only for MD would require the development of a new process & network of closing attorneys for lenders & title companies who already rely extensively on the established NSA network and its processes

- TIPICs have no problem drawing the line between descriptive information (purpose of document) and legal advice (what the borrower can/can't do)

WE PROPOSE:

- DO NOT require loan closings be conducted by attorneys only. Not only is this our livelihood BUT we provide a cost effective service that benefits and is appreciated by Maryland homeowners. We're not asking that attorneys be excluded. We just want to make sure we continue to be included in the process

- Establish separate requirements for Title Insurance Producers and TIPICs
  - The training, license, and bond requirements help to ensure some level of commitment and professionalism. But the requirements should be based on the level of risks and the provisioning of tools needed to help the TIPICs do a better job.
    - We have no real need for the intimate details of property title and title insurance that we are not selling. Real Estate Agents & Loan Officers are much more entrenched in the homeownership process than TIPICs and their training includes very little (if any) info on title & title insurance
  - Training (pre-licensing & continuing education) courses should include adequate & relevant info to the description of loan documents and conducting a loan closing. TIPICs need training that aligns with the functions we perform and services we provide. MLTA has a single CE class on 'performing the closing'
  - Surety bonds for TIPICs should remain at $100k but we can live with the $150k. However, any higher and many of us could not afford the premium. Hundreds of small businesses would probably have to shut down. We believe claims and/or complaints due to the signing/notarizing of loan documents are few or non-existent and the bond requirement should be reflective of that
  - Having a separate 'track' for TIPICs would allow MIA to actually track TIPICs. The current system makes no distinction

- At least one TIPIC be added to the commission and/or a workgroup. Per the membership list posted on the MIA website, there is a vacancy that requires an appointment by the governor. We'd like to be considered for that vacancy

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Shird
Attachment C

July 16, 2009

Dear Commission to Study the Title Insurance Industry in the State of Maryland:

My name is Celestine Shird and I reside in Gaithersburg, MD. I have been a Licensed Title Insurance Producer-Individual Contactor since March 2, 2004. I had a previous career as a Health Care Provider/Scientist before becoming a LTP in Maryland. I would like to speak briefly about my experiences and observations in this field. I'd like to start on a positive note with suggestions to the Commission from a person who has actually been working in the field and trying to become well educated in this field while adhering to the rules of the law.

The Commission should strive to figure out ways to help the consumer understand what they're getting when they purchase Title Insurance. When a person buys Owner's Title Insurance at the time that they purchase the home, in many cases they are entitled to a reissue rate when they refinance the home for the upcoming Lender's Policy. I don't think that borrowers are told this information when they buy the home or refinance. I would say that over 90% of the people that I meet have never heard of this benefit and are happy that I told them about it so that they can get back some money. I think that consumers should at least get what they pay for at the settlement table. I think that the MIA should make this point by formulating a letter to go with every loan so that people would know about this rebate. I think that most of Title companies in and out of MD are not giving this information to the consumer

There has been some suggestion of changing the educational requirements of a Title Insurance Producer that include becoming a paralegal. A basic course in law may be helpful, but I don't see where a 2 year paralegal program would be helpful. Normally, a person would start with a general course in law as a prerequisite and then move on to other courses to become a paralegal. But over the course of 2 years , a person may only have 1-2 courses in Real Estate while trying to complete the program. If anything should be required, I feel that a course in Title Abstracting would be very helpful. I'm taking this course now and it has been more helpful and informative than any of the courses that I've had over the past 5-7 years. This industry started with the Abstractors. They create the Title report which is a template for the Title insurance. In addition to that course, a course in creating the Title Insurance Binder should be taught to all licensees. It's not fair for a select few to have this information. If we are Insurance agents, supposedly able to sell Title insurance than we should be taught this information. I don't think that Title insurance agents, in general ,should be treated all that differently that any other insurance agents.

I think that the MIA needs more power and staff to perform their duties. I don't feel that there's been enough staff over the years to handle this problem. Maryland is one of the leading states in the U.S. in Mortgage Fraud. The damage has already been done. If we are to insure that these problems don't continue and even happen again we must have stronger enforcement of the laws. Also, I think that the MIA should be given the authority to levy larger fines on some of these Title companies. The penalty has to be higher to deter people from breaking the law. Otherwise, title companies and individuals will continue on believing that they'll never get caught and if so, the penalty will be just a part of doing business

I don't think that Maryland should become an Attorney only state.. Most of the work is done by the staff at the Title company. I don't think that attorneys are the only people that can understand a Title policy or the paperwork that goes along with the process from beginning to end.. I don't think that only an attorney can perform a real estate settlement. This can be done by a LTP as long as they're properly educated in the forms and the process. An attorney at the settlement table who owns the Title company does not represent the borrower. If a borrower wants representation by an attorney, they must get a separate attorney to

represent their interests. Also, this has been tried by a few states and it has not deterred Mortgage Fraud in those states.

Those are my suggestions to make sure that everyone is well educated in the process, from consumers to Title agents.

In reference to the raising of the surety bond to 150,000.00 for a TIPIC, I feel that this amount is too high and should be waived . In general, TIPICS are conducting the settlements. They don't control the money, write checks and aren't in charge of the escrow account. This is done by the parent Title Company. I believe that the bond of 100,000 is too high and that it should not be raised. It is very hard for TIPICS in general to get MD Title companies to hire us in the first place. For some reason, they have shut us out. This a common story as I'm sure you've heard at these meetings. I believe that if anybody has gotten the short end of the stick, it is us. We must prove that we have followed the letter of the law to get a license, while others can go out and hire unlicensed workers directly and indirectly, left almost unchecked by the MIA. I agree that the signing companies should be licensed and bonded in the State of Maryland. I have complained about these people for years to the MIA. They are out of town companies that have no regard for the laws in this State. They don't care if the people they hire are competent or licensed. Some of them are owned by Title companies. Also, Maryland title companies contract work out to these people and obviously don't care if they hire licensed people. I don't understand why a Title company in MD would contact someone in Arizona, Georgia, Florida or other states to find a Settlement Agent around the corner. I think that this is done to skirt the law and ignore TIPICS. We go through all of this trouble to get licensed and bonded and are looked over for work in the State where we live and pay taxes It is not fair to us. We are probably the only Title Insurance Producers who pay for classes. Bonds, fees, etc. out of our own pockets and this is how we're treated by fellow Marylanders. We're sole proprietors but can't seem to get the business or experience that the license affords us. This is unfair, it has gone on too long and has to stop!

I have over the years sent several letters to the MIA about illegal activities, individuals and even reported a Bank I have also written the Secretary of the State about these matters. I gave up writing letters about 2 years ago because I felt that there wasn't much being done at that time. Now finally, things must change because of this Mortgage Mess in America and the high number of Foreclosures in MD. I hope that the fingers will be pointed at the real culprits and finally TIPICS will not be used as scapegoats for what has gone wrong in the Title Industry. All we're asking for is a fair chance. I hope that the Commission will implement changes that make things fairer for the consumer and all members of this industry. Thank you for your time.

Sincerely,

Celestine Shird

Notes: Chase Letter, GAO Report 2007

WAYLETT
Attachment D

Good Afternnon

Madam Commissioner and other committee members.

My name is Matthew Waylett and my wife and I are independent title agents of eleven years in this state we would like to thank you for your time.

Let me start by saying I have very little to loose speaking here today since I will almost certainly loose my business anyways if the current state of affairs is not addressed.

If something is not done to bring back the transparency of the real estate transaction.

If something is not done to right an industry that has gone terribly wrong.

Finally! Someone is seeing that there is a problem. Now! whether or not you start focusing on the real problem at hand or continue to dance around the edges is entirely up to you and whether or not you are willing to get your hands dirty and stop listening to the very people/organizations that perpetuate the problem is up to you. You have engaged in a very daunting task that frankly is long overdue,

With that being said:

The horse is down the road, the fox is in the hen house, and the crooks are running the store.

The state has sat on the side lines, ("little to no enforcement of laws that may already be on the books, self dealing, unfair business practices, anti-competitive practices, conspiracy to defraud, unjust enrichment and interference with a fiduciary relationship to name just a few"), the Underwriters have provided the bullets that loaded the gun, and the bad (both attorney's and Title Agents) have exploited the system.

I would like someone to answer this question "why for so long in this state and many others for that matter has the law been to break the law?"

Why is it possible to steer the very business that is illegal to steer,

Why is it that Loan Officers of Mortgage Company's are forced to steer the client to the Mortgage owned Title Company simply because the marketing dept. of that company provided the lead for the loan.

Why is it that Loan Officers of Mortgage Company's are paid higher commissions if they steer their clients to the Mortgage owned title company.

Why is it that if ABA's, CBA's, JV are supposed to make it cheaper for the borrower that the two mortgage companies that wanted to partner with our firm or else, today and even back then have been charging considerably more then the fees we were charging then and even today.

Why is it that if you want to do business with a lender/mortgage broker they feel it to be perfectly acceptable to require you to set up a ABA, CBA JV for as few as 10 closings per month?

Why is it that certain Real Estate firms provide incentives to their agent's to steer the transaction to the corporately owned title company, with even sometimes fear of retribution if the status quoe is not followed?

Why is it that builders can get away with forcing the buyers of their homes to use their lender and title company **or** forego upgrades, can you really constitute $40 - $50 - $60,000 worth of upgrades for a little title work and a loan?

Why is that Attorney's that own Title Company's provide free legal services to Real Estate Agents and lenders/Mortgage Brokers in exchange for title referral's.

Why is it that a good product, excellent service and highly competitive fees cannot get you in the door of any of these previous scenarios?

Why is it my responsibility to call these organizations out! and not the state and the underwriters? The underwriter community has the greatest direct control over their agent's. The agent is not an agent without the underwriter. Lets be frank, I'm sorry but Baltimore is too small of a town for anyone in this industry to say that they haven't heard about some of the practices I speak of

The issues I am referring to are no secret but it just goes on and on, it's slaps us in the face every day and nobody does anything about it. The special interest groups do nothing about it because it has been going on for so long without consequences. Why change the way you do business if it makes you money regardless of its legality, it's kind of like the "Three Monkey's", isn't it.

Don't be fooled by even some of the representatives on this commission. If they really wanted to do something about this problem they would have, they could have. They sit here today saying they want to do something, but why now. Not last year, the year before or before that, **why now?** Maybe because the jig is up, maybe because now that so many home owners have been hurt, they are scared that if they don't appear to look like they care the truth **the real truth** will come out that in fact they don't care about anything but their own bottom line. That is evidenced by the fact that again they have the tools to stop a lot of these practices.

These practices hurt the everyday consumer in this state. According to the U.S. Census Bureau of the just over 2.3 million Maryland homes in 2007 the average median value of owner-occupied housing units as of 2000 was $146,000.00 probably not much changed today. The median household income in 2007 was just under $68,000.00. These home owners are hard working tax payers of this state. They may not be the most sophisticated contributors to the states economy but shouldn't they expect the protections afforded to them under the laws of this state, or should they continue to be lead to slaughter by the wolf in sheep's clothing it's the Trojan horse of the industry.

We pay taxes to the state for the state to enforce the laws which govern the state. We pay taxes to the state for the state to assure that business have an environment that promotes a free market unrestricted by anti-competitive practices, as a business owner in this state this is my right, up to this point the state has failed me, and others in my position.

The idea of a lender/mortgage broker or real estate agent having ownership (**or**) better yet control of a title company via the operating agreement thus avoiding licensing requirements all together(hence the bonding requirements, etc.) is at best **SCARY**.

The conflict of interest and the damage that can be done far out way the supposed benefits.

Madam Commissioner during the Dec 2, 2008 meeting you "inquired about the anti-competitive effects, if any," of these "affiliations between real estate agents/lenders/title companies", based upon the minutes of the January 15th, 2009 meeting and the public hearing held in Annapolis June 25th very little has been discussed about this dirty little secret.

The special interests want nothing to be mentioned about this. **They will at all cost avoid the topic.** Why? Because they are making huge secret profits at the expense of the borrower, buyer and the free enterprise environment of this state all under the gize that it benefits the borrower or the buyer in the transaction.

Madam Commissioner you questioned "anti-competitive effects" **let me just say** there is little to no competition,

Competition does not exist when the Real Estate Agent owns the title company! Who do they have to compete with? Nobody!

Why is that? Because the Real Estate Agent controls every aspect of the transaction and there is such a unspoken trust, it's almost hypnotic. **We all know this?** that is why it is even more important that they maintain their fiduciary responsibility to the buyer or seller only. How can we expect a Real Estate Agent to act in the best interest of the client when they steer business for higher commissions, free advertising, business cards, special internet listing's and the list goes on, I'm sorry it just doesn't happen, especially when times get tough.

When the Mortgage broker/Lender owns their own title company who do they compete with? Nobody.

Why is that? Because the owners of these company's put such pressure on the associates to use the "in house title company" that they push it on the public like a mattress salesmen.

How do they exert this pressure?

I've heard things like:

"if the lead for the loan is provided by our company then I have to use our title company"

I've heard:

"I get a better commission split on any deal I send over to our title company"

I've heard things as simple as:

"You know how it is over here"

These organizations steer enough title work to their ABA's, CBA's, JV that the few borrowers that are savvy enough to truly understand what is going on and fight to use their personally chosen title company do not effect the bottom line.

Its funny that a commission member who remains unnamed in the minutes of the Jan 15th 2009 meeting tries to satisfy the commission's desire for information with sighting that "RESPA prohibits kickbacks" and that the "National Association of Realtors lists what may be a violation of RESPA on its website" Frankly if this commission member feels

that suffices the need to address the issues of the practices of ABA's, CBA's, JV, I would go out on a limb and suggest they have their own or represent someone who does.

In closing, What is the solution?

Make ABA's, CBA's and JV or what ever they are calling them this week illegal then

there will be no question of the integrity and transparency of the transaction, kind of like the old days.

"In my opinion, there is no practical difference between an AfBA "sharing profits" and an "illegal inducement." Except, of course... the powerful lobby groups have convinced our regulators that the former should be exempt from those *inconvenient* laws that the rest of us must abide by."(1)

BUT if you must continue to endorse them, I would suggest you at least do this:

These organizations have always contended that they lower the cost of settlements for the benefit of the buyer or borrower, even though unfortunately in practice that is rarely the case.

If in fact that is true **that** is they lower the cost. I am almost certain that these organizations would have no problem putting their money where their mouth is, mandate a ceiling on the total fees an ABA, CBA or JV can charge.

If my firm can squeak by charging on average in today's market $835.00 plus title ins, then you would think ABA's, CBA's and JV's would have no problem with the state mandating fees in the $535.00 to $635.00 range since they have little to no marketing expenses, they have captive markets to take advantage of economies of scale and all the other cost cutting excuses they have to merritt their existence. I would hazard a guess as to what type of resistance one might receive if that were proposed, if passed I would love to see how many of those so called consumer friendly organizations would still exist in a years time.

When I am finished you will hear all sorts of things from the supporters of these organizations. It comes with no surprise; they have a lot to defend. They do not want their dirty little secret of hidden profits revealed. They will go to no ends to legitimize these affiliations by hiding behind the "client –signed Affiliated Business Arrangement Disclosure forms" **the I told you so form,** the form they argue tells the client EVERYTHING about the relationships that exist between the settlement providers in the transaction except of course POINTING out the "fiduciary infidelity" (2), that more times then not the public has the privilege of paying more for.

(1) Robert A. Franco "Source of Title" 2008/09/12
(2) Steve Squeo Blog response to "source of title" article 2008/09/12

In closing I want to say again that I have very little to loose speaking here today since I will almost certainly loose my business of eleven years if the current state of affairs is not addressed.

If something is not done to bring back the transparency of the real estate transaction.

If something is not done to right an industry that has gone terribly wrong.

Thank You

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CHAMNESS

Attachment E

Good evening and thank you for the opportunity to speak with you. My name is Tom Chamness and I'm a resident of Baltimore City and am here representing myself, as a concerned Maryland consumer and title insurance policy holder. When I purchased my first home 12 years ago I was like most people, I believe, that are first time home buyers. The first step you take is to locate a realtor. I turned to Long and Foster. Realtors are the experts in home buying and guide you through the process, handling all of the details – that had to be the right place to start. They are seen as an advisor, a confidant, really a trusted source. I thought, as I believe everyone does, that the realtor was representing me and my best interests, and only me and my best interests.

The realtor assisted me in locating mortgage financing and also referred me to a title insurance agent for settlement...helped make it all easy. Of course, I assumed that the agencies to which I was referred were friends or long-time associates of the realtor and that they were referring me to people that would take good care of me and give me a fair deal. I figured realtors had a kind of a "you scratch my back I'll scratch yours" type of referral network with mortgage lenders and title insurance agents. They find someone that they like, does a good job, treats their customer well...they refer them business. Makes sense to me. Over the years, and through a few other home purchases and sales, I have learned that my naivetee was taken advantage of and that my trust was violated.

I now understand that I was steered to a mortgage company that had some sort of relationship with Long and Foster from which Long and Foster, and my agent, profited. I was also steered to a title insurance agent that had a similar relationship from which Long and Foster, and again my agent, benefited financially. I had no idea during this process that the realtor and the agency in which I placed my trust, were actually "partners" with the mortgage lender and insurance agent in this transaction. I got swept into the Bermuda triangle with these three parties. My realtor guided me to these "partners" not because they were representing me and my best interests, but because they had something to gain. It was a way that they could make more money from the transaction on top of the enormous commission they were already going to earn from me. These facts were recently confirmed to me, which is why I'm here today. I'm sure I didn't get the best deal on my title insurance since, as a first time home buyer, I had no idea what title insurance was and no clue what prices should be. I made the mistake of trusting my agent.

A few months ago I attended a business lunch with, among other people, a Long and Foster agent who said frankly that if he did not refer customers to the "in-house" mortgage and title insurance agencies that it would cost him. He further elaborated that his commission and other perks would be reduced if the majority of his transactions did not involve the Long and Foster preferred agencies. As you can imagine, I was shocked that he was so blunt about it. He said that he "had to" use these in-house agencies or he would make less money...plain and simple. Realtors are profiting from customers in every facet of the transaction. They're not referring me to a mortgage lender or title insurance agent as a trusted advisor, they're doing it because they get paid to. It's not as if they reduce their commission when customers use the in-house agencies. They're getting paid by them too. Where are my best interests being represented here?

I understand that the Commission here today is studying the title insurance industry, not realtors. It seems to me that if realtors and title insurance agents were not "partners" and were independent, if realtors were not getting paid, directly or indirectly, to refer unsuspecting customers to mortgage and insurance agents with whom they have a "deal", consumers would benefit from better service, cheaper prices, etc. from the insurance agents, since fair competition would foster what's in the best interest of the consumer. I visited the Maryland Insurance Administration website today and it reads that, "It is NOT the role of the Maryland Insurance Administration to provide recommendations regarding insurance companies or advise consumers about their particular insurance needs." Shouldn't this same independence and transparency apply to the realtors? Perhaps making a recommendation is ok, but to get paid for steering business to a particular insurance agent for their own personal profit is just wrong....and from what I understand it's illegal. Didn't we see a similar type scandal uncovered a couple of years ago with student loan companies where Financial Aid Departments, the trusted advisors, were steering consumers to "preferred lenders" for a kick back? The Financial Aid Director at Johns Hopkins University resigned as a result of an investigation, remember? The same thing is going on here, under your nose, on your watch.

I'm here tonight to ~~demand~~ ask that this Commission stop ignoring this issue enforce the laws that already exist and are intended to protect us from these predatory, unscrupulous, and illegal practices. I believe that this Commission should be investigating these partnerships; reprimanding, fining, or prosecuting these insurance agents that have been perpetrating this racket for years. Make an example out of somebody! Conversely, the Commission should make the public aware of and even highlight the agents that are operating within the law...independently, and not paying "bag money" to the realtors that refer them business. It's commendable that this Commission has been assembled. I urge you not to waste the opportunity to actually do something about this and help to protect Marylanders like me. With the housing market looking to improve, and Federal programs and incentives in place for first-time home buyers, a high number of properties will change hands in the next few months and years, all requiring title insurance, now is the time to act – not later. These practices have persisted for far too long. Let's end them today!

Thank you for your time and attention.

Resnick
Attachment F

TALKING POINTS FOR COMMISSION ON TITLE INSURANCE – 7/16/2009

Good afternoon Madam Chairperson and committee members. My name is Stuart Resnick. I have been a member of the Maryland Bar since 1982. I began my career in the title insurance and settlement services business in 1980. In 1988 I opened my own title agency and ran it very successfully until January 1, 2002 at which time I folded my business into another title agency due to my reluctance to form ABAs. I am currently employed by an independent title agency located in Baltimore County. I started in this business as a gopher/check writer during my second year of law school. As the owner of a small title agency one must know every aspect of the title/settlement business. I required all of my employees to be cross-trained so each knew how to process files from start to finish. Because I have never been able to easily delegate tasks I have always worked long hours and been intimately involved with my files from start to finish. My message to you this evening is simply this: This study should not be labeled the study of the Title Insurance Industry because title insurance is just one small part of the services we provide. To fully understand the various issues regarding title insurance you must understand the Settlement Service business and all that it involves.

Title insurance is but one of the three aspects of the settlement service. From the consumer's perspective title insurance is just another expense incurred in their settlement process. The biggest concerns of Buyers/Borrowers are (i) How much money must I bring to closing, and (ii) How much is my monthly payment. Generally speaking, Buyers/Borrowers know very little about title insurance other than it is a requirement of their lender. Both purchase and refinance transactions are grueling endeavors and by the time closings actually happen the Borrowers are mentally worn out by the process. Buyers/Borrowers have little or no idea about the amount of work that is required to fully process a settlement transaction, the amount of pressure we face every day because of how last minute settlements usually come together, or the amount of risk title agents and underwriters face because of the nature of this business. What problems or risks are there?

1. Obtaining all pertinent information from the property owner

2. The demands of a transaction settling within a few days (or less) from the date of order
3. title resolution
4. Last minute packages from Lenders
5. Lender's checks that are not good – Borrowers/Buyers checks that bounce – wires from Lenders that do not arrive until minutes, hours or days after settlement was completed
6. the difficulty achieving recordation of the documents
7. the enormous amount of unreleased mortgages of record
8. Short sales – Foreclosures
9. Payroll issues based upon work flow – ie end of month closings

The settlement process can be broken down into three distinct phases: **Title Abstract/Examination; Title Commitment/Title Policy; Closing.** I once monitored the time spent performing the various tasks necessary to process a settlement and determined that the average length of time my firm took to settle a transaction start to finish was between 10.5 and 11 hours. I'm sure the time spent has increased in light of the problems now permeating the Real Estate industry.

I. Title Abstract/Title Examination

A. Title Abstract – the compilation of all information regarding the title to a specific property for a certain period of time (generally 60 years) by searching the Land Records, Circuit Courts, District Court, Orphans Court, Tax Records and other Municipal Liens records.

B. Title Examination – The review of the Title Abstract to determine the applicable and/or pertinent records in order to derive ownership of the property searched, determine if there are unreleased or open mortgages secured by the property, whether there are judgments against the current or past owners that are attached to the property, determine which easements, rights of way, declarations or restrictions encumber title, determine status of property taxes and other public or municipal charges.

II. Title Commitment/Title Policy

A. Title Commitment

B. Title Policy

III. Settlement Service

A. Pre-Settlement

1. Pull ownership information from SDAT
2. Pull copy of title deed from MDLANDREC
3. Order title search
4. Order location survey
5. Obtain pertinent information from Property Owner
   a. Mortgage information
   b. HOA/Condo information
   c. Private Sewer/Water contact information
6. Obtain Lender information
   a. Name of loan officer and processor
   b. Exact name of lender as it must appear on the title policy
   c. Amount of the loan & type of loan
7. Verify payoff information and order payoff
8. Obtain Property Tax information, Water information
9. Examine title abstract
   a. Verify ownership
   b. Justify description of property – compare to contract – plat description if metes & bounds
   c. Compare open mortgage info to info of same from Owner
   d. Review all listed title exceptions to determine if they actually affect title to subject Property
   e. Review judgment reports – determine if judgments are attached to subject property – clear judgments
10. Title Insurance Commitment prepared and sent to Lender with ICL and wire information
11. Schedule closing with Agents, Buyer, Seller, Lender
12. Prepare documents and basic HUD

13. Receive Lender's package
    a. Review Package to insure that all documents listed are received
    b. Look for special requirements
    c. Finish HUD and send to Lender for approval
    d. Copy package for Buyer (Owner, if refi)
14. Email or fax HUD to agents, Buyer & Seller
15. Settlement – Meet parties and have all documents executed – disburse Seller's proceeds & commissions
16. Post-Closing
    a. Disburse balance of monies
    b. Closing package to Lender with title policy
    c. Record Deed and Deed of Trust
    d. Record Release or determine that paid off Lender has recorded Release

MIKE SCHLEUPNER
Attachment #G

MNSJR TESTIMONY – COPPIN STATE COLLEGE – July 16, 2009

Madam chairperson and committee members, Good evening. My name is Mike Schleupner. I have been a member of the Maryland Bar engaged in real estate practice for over 36 years. I am now a part owner of an independent title agency located in Howard County. What is relevant here is that I am a member of the Maryland Land Title Assn and chair its Abstractors and Title Agents section. In that capacity, I represent the interests of 267 title agents, both attorneys and lay agents alike, and some TIPICS, who handle transfers and financings of real property for Maryland citizens and businesses and their lenders from the ocean to Deep Creek Lake. I am here to tell you that these agents play a vital role in the economy of this state, both a small businesspersons and in what they do. I am also proud to say that many of these agents are also active in the political, charitable, cultural, religious and social life of their communities. Many of our agents and their employees are volunteer firemen and EMTs, members of the Maryland National Guard and officers in service organizations from Rotary to Little League. You will find our agents on the boards of community banks and local charities and serving as lay leaders in their churches and synagogues.

Much of the testimony you have heard here and in Annapolis has focused on the role of title agents as sellers of title insurance and closers. Actually, this is a very small part of a complex process. As Mr. Resnick has explained, this process involves contract analysis, title search, tax search, examination of title, preparation of Commitment for Title Insurance, lien clearance, preparation of Deeds, releases and other documents needed to insure title, preparation of HUD-1, closing, disbursement, recording of instruments to include releases of any liens satisfied out of the closing proceeds and issuance of title insurance policies. To do all of this correctly involves several skill sets and EXPERIENCE. Some of you may have reached the erroneous conclusion that title agents like myself are little more than hucksters and are overcompensated for what we actually do. I hope that Mr. Resnick and I can convince you that nothing could be farther from the truth. Allow me to provide just two examples of the roles title agents play behind the scenes and outside the limelight.

First and foremost, they help buyers to decide whether to consummate their purchase. All real estate contracts call for the seller's title to the land to be "good and merchantable, free and clear of liens and encumbrances" or, at the very least "insurable." The agent's search of the public records and title exam is the cheapest and most effective way of helping the buyers to make this critical decision. If the agent discovers defects which render the title unmarketable or uninsurable without onerous exceptions to coverage, it is the agent who so advises the buyers (usually through their realtor).

Second, if title defects are discovered (and statistically they are in 1/3 of all cases) the agent is in the best position to assist the seller in clearing his title. The agent can direct the seller to his title insurer and if the insurer is unwilling (due to an exception in his policy, etc.) to cure the defect, it is often the title agent who corrects garden-variety defects by obtaining and recording releases and confirmatory Deeds.

All this takes time and, as I said, expertise. It also costs money. Title agents, attorneys and lay agents alike, don't learn how to do these things by merely graduating law school or reading a book. It requires the experience gained from years of DOING under the supervision of experienced mentors. This kind of experience achieves results and folks who get results deserve to be compensated. This, if you must know, is paid to the agents by the title insurers in the form of commissions on the sale of owner's and loan title insurance policies. That way, the agent does not have to bill the customer directly for many of the services they perform.

What you need to take away from this hearing is that it is the agent who PREEMPTS future problems by doing their job and that they protect the buyer and lender as well as the title insurer against future title problems and claims. If you cut commissions to title agents you risk a decrease in professionalism because the cost is fixed and to do it cheaper requires cutting corners.

Attachment H

To: Commission to Study the Title Insurance Industry in Maryland

From: James F. X. Cosgrove, Legislative Chair
Maryland Land Title Association

RE: Bonding alternatives for Title Insurance Producers in Maryland

In order to do business in Maryland, title insurance producers (TIP's) need to have "errors and omissions" insurance in order to comply with their agency agreements with their underwriters (insurers) and they must procure fidelity and surety bonds in order to be licensed by the Maryland Insurance Agency (MIA). Such coverages protect consumers who do business with TIP's. Consumers are further protected by insured closing letters, title insurance commitments and title insurance policies issued by or on behalf of the title insurers.

The MIA has provided the Commission with statistics detailing the number of "complaints" it has received involving the title industry over the last four years. Yet the MIA has not provided a breakdown of the nature/substance/dollar value of these claims. Without such information, it is difficult to determine the magnitude of the problem at hand, let alone the proper remedy. Experience tells us that most title "inquiries" are not title "complaints" (actual problems with the title to the property), but, rather, issues with the settlement and/or post settlement procedures employed by lenders and TIP's. The vast majority of such "inquiries" are resolved by accessing files and providing information to the insured. When there is a problem with the title to a property, a claim is filed with the insurer who then undertakes the resolution of same.

Before there is a call for any further increases in the bonding requirements for TIP's, the Commission should consider the following:

1. Require the MIA to report on all title insurance "claims" filed over the last four years detailing the nature, status and monetary payouts on each.
2. Consider creating a title industry "trust fund" to act as a source of recovery for claimants. There are five industry trust funds operating in Maryland: Realtors – Real Estate Guaranty Fund; Lawyers – Client Protection Fund; Homebuilders – Home Builder Guaranty Fund; Home Improvement Contractors – Home Improvement Guaranty Fund; Morticians – Family Security Trust Fund. Information on each fund is attached hereto). While each fund has different funding/claims criteria, any one could serve as a model for the title industry.
3. An industrywide "master bond" for TIP's. This would provide a readily available source for a second tier of bonding for TIP's that could help procure statutorily required bonding limits. While this product may not be on the market today, it was researched by DEMOTECH, Inc. several years ago and they thought that is was a viable concept.
4. Multi-tiered licensing for TIP's – similar to the broker/agent licensing used in the real estate industry and the lender/originator licensing used in the mortgage industry. Such a system could vary the amount of insurance/bonding required for each level of licensure (i.e. – a TIPIC would not have to have the same coverage as a full service TIP).

In addition to the information on the trust funds, there are two articles by DEMOTECH, Inc. attached that may be of interest to the Commission.

If I can answer any questions or assist the Commission in any way, please do not hesitate to contact me – my cell number is 443-465-8965 and e-mail is jcosgrove@comcast.net,

Thank you for your consideration.

Article - Business Occupations and Professions

[Previous][Next][Another Article]

§17–402.

(a) The Commission shall:

(1) establish a Real Estate Guaranty Fund; and

(2) maintain the Guaranty Fund at a level of at least $250,000.

(b) (1) The Commission shall deposit all money collected to the credit of the Guaranty Fund with the State Treasurer for placement into a special account.

(2) (i) The State Treasurer may invest or reinvest money in the Guaranty Fund in the same manner as money in the State Retirement and Pension System.

(ii) The investment earnings shall be:

1. credited to the Guaranty Fund; and

2. available for the same purposes as the money deposited into the Guaranty Fund.

(c) The Commission may adopt regulations for the administration of a Guaranty Fund.

[Previous][Next][Another Article]

Article - Business Occupations and Professions

[Previous][Next][Another Article]

§17–403.

(a) (1) Subject to paragraph (2) of this subsection, before the Commission issues a real estate broker license, an associate real estate broker license, or a real estate salesperson license to any individual, the individual shall pay a fee of $20 to be credited to the Guaranty Fund.

(2) Regardless of how many times an individual applies to the Commission for a license under this title, the Commission only may charge the individual once for the fee required under this subsection.

(b) If the amount in the Guaranty Fund falls below $250,000, the Commission shall assess each real estate broker, each associate real estate broker, and each real estate salesperson a fee in an amount that will return the Guaranty Fund to a level of at least $250,000.

[Previous][Next][Another Article]

Article - Business Occupations and Professions

[Previous][Next][Another Article]

§17–404.

(a) (1) Subject to the provisions of this subtitle, a person may recover compensation from the Guaranty Fund for an actual loss.

(2) A claim shall:

(i) be based on an act or omission that occurs in the provision of real estate brokerage services by:

1. a licensed real estate broker;

2. a licensed associate real estate broker;

3. a licensed real estate salesperson; or

4. an unlicensed employee of a licensed real estate broker;

(ii) involve a transaction that relates to real estate that is located in the State; and

(iii) be based on an act or omission:

1. in which money or property is obtained from a person by theft, embezzlement, false pretenses, or forgery; or

2. that constitutes fraud or misrepresentation.

(b) The amount recovered for any claim against the Guaranty Fund may not exceed $25,000 for each claim.

(c) (1) A person may not recover from the Guaranty Fund for any loss that relates to:

(i) the purchase of any interest in a limited partnership that is formed for the purpose of investment in real estate;

(ii) a joint venture that is promoted by a licensed real estate broker, a licensed associate real estate broker, or licensed real estate salesperson for the purpose of investment in real estate by 2 or more individuals; or

(iii) the purchase of commercial paper that is secured by real estate.

(2) A claim under the Guaranty Fund may not be made by:

(i) the spouse of the licensee or the unlicensed employee alleged to be responsible for the act or omission giving rise to the claim; or

(ii) the personal representative of the spouse of the licensee or the unlicensed employee alleged to be responsible for the act or omission giving rise to the claim.

(d) A claim under this subtitle shall be submitted to the Commission within 3 years after the claimant discovers or, by the exercise of ordinary diligence, should have discovered the loss or damage.

[Previous][Next][Another Article]

Client Protection Fund of the Bar of Maryland

Mission
About the Fund
Regulations
Forms
Attorney Listing
Contact
HOME
CPF Intranet
(internal use only)

About the Client Protection Fund

How is the Client Protection Fund linked to the Maryland Judiciary?

The Client Protection Fund of the Bar of Maryland, formerly known as the Client's Security Trust Fund, was created by an order of the Court of Appeals on July 6, 1966. The main purpose of the Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorized by the rule and deemed proper and reasonable by the Trustees, losses caused by theft of money by members of the Bar of the State of Maryland when acting either as attorneys or fiduciaries.

Where does the money for the Fund come from?

The Client Protection Fund is supported entirely by attorneys in the State of Maryland who are required by law to pay an annual assessment for the right to practice law.

Is this the same Fund as the Clients' Security Trust Fund?

Yes. The name was officially changed on July 1, 2002 so it would better convey the purpose of the Fund and better inform the public about what the Fund does.

How do I know if my situation is appropriate to file a claim?

The Fund is generally set up to reimburse people whose attorney has wrongfully taken money from them. The Fund does not handle malpractice claims. With regards to fee disputes, however, please note that there is a fine line between fee disputes and theft. If you feel that your attorney may have wrongfully taken money from you, then you should file a claim with the Client Protection Fund.

What is the process to file a claim? Where do I start?

Filing a claim is quite simple. You can either telephone the Fund office (410-260-3635) and request a claim form, write to the Fund at 2011 Commerce Park Drive, Annapolis, Maryland 21401, **or** download the form **here.** The form is relatively easy to fill out and self-explanatory. If you have any questions, you can call the Fund at the number above for assistance.

How long does the process take?

It is hard to estimate the time frame, but each case is handled as soon as possible. An investigator speaks with almost all claimants in reference to their claim and explains what needs to be done before the Trustees can consider the claim. The Trustees usually meet four times a year, and consider all claims where the investigation has been completed. Typically, the average time for a decision to be made on a claim is 3-4 months.

Is there a cost for filing a claim?

There is no charge made by the Client Protection Fund for filing a claim. If an attorney assists you with filing the claim, he or she is not allowed to take a fee for assisting you.

How much can I file the claim for?

In most cases, you can claim the full amount that was wrongfully taken. The amount reimbursed, however, cannot exceed 10 percent of the value of the Fund as of the close of the prior fiscal year. The Fund does not pay interest.

If my claim is upheld, what happens to the lawyer?

In all cases, before the claim is decided by the Trustees, a complaint must be filed with the Attorney Grievance Commission, which considers attorney discipline. Oftentimes, an attorney is disciplined before the claim is approved by the Trustees.

If my claim is denied, can I appeal?

Yes. All claimants have the right to have their claim reconsidered by the Trustees if they are not satisfied with the Trustees' initial decision. If they are still not satisfied with the decision after reconsideration, all claimants have the right to seek judicial review in the circuit court for the county where the claimant resides or has a principle place of business.

Can I file a claim against more than one lawyer?

You may file a claim against any attorney that you can prove, based on substantiated evidence, has wrongfully taken money from you.

Is there a statute of limitations, or a time limit, for when I can file a claim?

Claims for losses must be presented to the Trustees of the Client Protection Fund of the Bar of Maryland within six months after the discovery by the claimant of the defalcation, or at a later date at the discretion of the Trustees.

For Immediate Release

Media Contact:
Raquel Guillory, 410-576-6357
rguillory@oag.state.md.us

Attorney General Gansler Unveils Home Builder Guaranty Fund

New Fund Will Provide New Home Buyers with Additional Security

BALTIMORE, MD (January 9, 2009) - Attorney General Douglas F. Gansler announced today that new homebuyers in Maryland now have the added protection of a Home Builder Guaranty Fund when confronted with construction defects or structural problems. The Home Builder Guaranty Fund will allow consumers to be compensated up to $50,000 for problems with a new home built by a registered builder, such as uncorrected construction defects or failing to finish the structure. Funded through a $50 fee paid with each application for a new home permit, the Guaranty Fund only applies to contracts made with a registered homebuilder after January 1, 2009.

"I am pleased that my office is able to provide additional protections for Maryland consumers who are making a huge investment with a new home purchase," said Attorney General Gansler. "In the midst of an unstable economy, consumers now have additional security when they contract to buy a new home."

A consumer must take certain steps before applying for compensation from the Guaranty Fund. First, the consumer must send the builder written notice describing the alleged defect and permit the builder access onto the property during regular business hours to inspect and remedy the alleged defect within a reasonable period of time. If the consumer has a new home warranty security plan, the consumer must first file a claim with the warranty plan and exhaust that process before seeking recovery from the Guaranty Fund. Once the consumer has complied with those requirements, a claim may be filed for recovery from the Guaranty Fund. To file a claim for recovery from the Guaranty Fund, the consumer must submit a written complaint to the Consumer Protection Division's Mediation Unit, which will first attempt to resolve the matter through mediation.

The law requires that a claim against the Guaranty Fund must be filed within two years after the consumer discovered or should have discovered the loss or damage, or within two years after the expiration of the implied warranty, whichever occurs first. Consumers can obtain additional information about the Guaranty Fund by contacting the Home Builder Registration Unit at 410-576-6573 in Baltimore or toll-free at 1-877-259-4525.

Home Builder Guaranty Fund
Information for Permit Offices

1. **What is the Home Builder Guaranty Fund?**

   During the 2008 session, the General Assembly enacted legislation that creates a Guaranty Fund in the Consumer Protection Division to protect consumers who purchase new homes in Maryland. The Guaranty Fund is similar to the existing fund operated by the Maryland Home Improvement Commission. Consumers who have problems with their new homes that are not addressed by the builder will be able to file claims against the Guaranty Fund.

2. **When does the Guaranty Fund law take effect?**

   The Guaranty Fund applies only to contracts entered into between consumers and home builders after January 1, 2009.

3. **What does the law require of Permit Offices?**

   Permit Offices are required to collect from home builders a Guaranty Fund fee of $50 with each application for a permit for construction of a new home, including new homes, custom homes, mobile homes, modular homes, and condominiums. The Permit Office is required to remit the Guaranty Fund fees collected to the Consumer Protection Division on a monthly basis. The Division will deposit the fees to the Guaranty Fund. Checks should be made payable to the "Office of the Attorney General" and sent to the Administrator, Home Builder Guaranty Fund, Consumer Protection Division, 200 St. Paul Place, 16th floor, Baltimore, MD 21202.

4. **Are other Permit Office requirements affected?**

   No. Permit Offices are still required to check whether a home builder is registered with the Division's Home Builder Registration Unit before issuing a permit for construction of a new home. The builder must include the registration number on the permit application, which will begin with "MHBR". You may check whether a builder is registered on our website, www.oag.state.md.us/homebuilder, or by calling (410) 576-6573 in the Baltimore area or toll-free at (877) 259-4525 elsewhere in Maryland.

   Additionally, Permit Offices are still required to notify the Home Builder Registration Unit if a builder fails to correct a violation of applicable State and local building codes within a reasonable time.

5. **What about landowners who are building their own homes?**

   Landowners who are performing construction of a home they intend to live in on their own land and who submit a Landowner Affidavit to the Permit Office are not required to pay the $50 Guaranty Fund fee. Please contact the Home Builder Registration Unit if you have questions as to whether the landowner may be submitting the Affidavit at the urging of an unlicensed builder instead of truly intending to perform his or her own construction.

For more information, please contact the Home Builder Registration Unit at (410) 576-6573 in the Baltimore area or toll-free at (877) 259-4525 elsewhere in Maryland, or by e-mail to homebuilder@oag.state.md.us

Division of Occupational and Professional Licensing

Maryland Home Improvement Commission - The Commission

Apply for License	Renew Your License	Address Change	File a Complaint	Find Who Is Licensed
License Requirements	License Fees	Disciplinary Actions	Online Forms	Contact Us

The Commission
News and Information
Consumer Advice

Taking the Exam
Online Law & Regulations
National, State & Local Links

500 North Calvert Street
Baltimore, Maryland 21202-3651
410-230-6309
1-888-218-5925

The Maryland Home Improvement Commission licenses and regulates home improvement contractors, subcontractors and salespersons.

Home improvement work includes alteration, remodeling, repair or replacement of a building or part of a building used as a residence. Home improvement also includes work done on individual condominium units. Home improvement does not include work done on apartment buildings that contain four or more single family units or work done on the commonly owned areas of condominiums. The Commission investigates complaints by homeowners, and prosecutes violators of the home improvement law and regulations.

The Commission has a Guaranty Fund established by assessments to licensed contractors. This fund compensates homeowners for actual losses due to poor workmanship or failure to perform a home improvement contract by licensed contractors. Each licensed contractor is covered by the Fund for up to $100,000 for all claims by homeowners. Homeowners who entered into contracts with licensed contractors can recover up to $15,000 for their losses. There is no recovery from the Fund for losses due to work done by unlicensed contractors.

PUBLIC MEETINGS: Regular business meetings of the Home Improvement Commission are usually held on the first Thursday of each month at 10:00 a.m. at 500 North Calvert Street, Baltimore, Maryland. Notice of meetings are published in the Maryland Register.

Minutes of the Commission meetings are posted online.

Return to the Maryland Home Improvement Commission home page
Return to the Division of Occupational and Professional Licensing home page

Please direct any questions about the Maryland Home Improvement Commission to mhic@dllr.state.md.us.
Please direct any questions about Occupational and Professional Licensing to op@dllr.state.md.us.
Questions or comments regarding the DLLR website may be directed to webmaster@dllr.state.md.us.

Updated September 13, 2006

FAMILY SECURITY TRUST FUND – A NEW LAW

Along with the renewal fee, all funeral establishment owners must submit another check for $375.00 for every funeral establishment, restricted establishment and funeral service business. The $375.00 will be deposited into a special, interest- bearing account which will be called the Family Security Trust Fund. The fee of $375.00 will be assessed yearly until The Family Security Trust Fund has accumulated a balance of $1,000,000.00. Beginning January 1, 2010, money from this Fund will be used to help victims of preneed theft.

This new law (see HB1090) was enacted in July, 2008. As per the law, a funeral establishments' license will not be renewed unless they pay the additional $375.00 fee. For more information, please see the synopsis of the Law provided in your packet.

If you have any questions, don't hesitate to call the Board Office at 4310-764-4792. Thank you.

ANNOTATED CODE OF MARYLAND
HEALTH OCCUPATIONS ARTICLE
TITLE 7
MARYLAND MORTICIANS AND FUNERAL DIRECTORS ACT

§ 7-4A-01. Definitions.

(a) In general.- In this subtitle the following words have the meanings indicated.

(b) Advisory Committee.- "Advisory Committee" means the Family Security Trust Fund Advisory Committee.

(c) Fund.- "Fund" means the Family Security Trust Fund.

§ 7-4A-02. Authority.

This subtitle does not limit the authority of the Board to:

(1) Take any action against a licensee under the disciplinary provisions of §§ 7-316 through 7-320 of this title; or

(2) Take any other disciplinary or other action authorized under this title.

§ 7-4A-03. Family Security Trust Fund.

(a) Established.- There is a Family Security Trust Fund.

(b) Administration.- The Board shall:

(1) Administer the Fund; and

(2) Over a reasonable period of time, build the Fund to a level of at least $1,000,000 and thereafter maintain the Fund at that level.

(c) Status.- The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(d) Deposit and investment of money collected.-

(1) The Board shall deposit all money collected to the credit of the Fund with the State Treasurer for placement into a special account.

(2) (i) The State Treasurer may invest or reinvest money in the Fund in the same manner as money in the State Retirement and Pension System.

(ii) The investment earnings shall be:

1. Credited to the Fund; and

2. Available for the same purposes as the money deposited into the Fund.

(e) Liability for expenses or obligations.- The Fund is not liable for any other expenses or obligations of the Board.

(f) Accounting and financial reports; audit.-

(1) Accounting and financial reports related to the Fund shall be publicly available in a timely manner.

(2) The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2-1220 of the State Government Article.

(g) Services of experts.-

(1) The Board may retain the services of appropriate experts or service providers to advise about, or administer, the Fund.

(2) The costs of the services described in paragraph (1) of this subsection shall be paid out of the Fund.

(h) Regulations.- The Board shall adopt regulations for the administration and claims procedures of the Fund.

§ 7-4A-04. Family Security Trust Fund Advisory Committee.

(a) Established.- There is a Family Security Trust Fund Advisory Committee.

(b) Composition.- The Advisory Committee consists of the following five members:

(1) Three members of the Board, including one consumer member, appointed by the Board;

(2) One member designated by the Maryland State Funeral Directors Association; and

(3) One member designated by the Funeral Directors and Morticians Association of Maryland, Inc.

(c) Membership requirements.- The Advisory Committee members may be, but are not required to be, licensees of the Board.

(d) Term.-

(1) Except for the initial terms of the Advisory Committee, the term of a member is 4 years.

(2) A member continues to serve until a successor is appointed and qualifies.

(3) The terms of the initial members shall be staggered evenly between 3 years and 4 years as the Advisory Committee shall determine at the Advisory Committee's first meeting.

(4) A member may not serve for more than two 4-year terms.

(e) Chair.- The Advisory Committee shall elect annually a chair, vice chair, and secretary from among its members.

(f) Meetings.-

(1) The Advisory Committee shall meet at the call of the chair or the vice chair.

(2) The Advisory Committee shall meet at least twice each year at the times and places that it determines.

(g) Purpose.- The purpose of the Advisory Committee is to provide nonbinding counsel and advice to the Board on any Fund matters other than pending individual claim matters.

(h) Duties.- The Board shall:

(1) Work with the Advisory Committee in a cooperative manner; and

(2) Provide to the Advisory Committee, in a timely manner:

(i) All appropriate Fund information, other than information involving pending claim matters; and

(ii) Summary information about the outcome of all closed claims, including actual amounts of individual and total claim payments.

(i) Compensation and reimbursement.- A member of the Advisory Committee:

(1) May not receive compensation as a member of the Advisory Committee; but

(2) May receive reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§ 7-4A-05. Payments by funeral establishment.

(a) Fee.- Before the Board issues an initial funeral establishment license, the funeral establishment shall pay, in addition to all other applicable fees, a fee of $375 to be credited to the Fund.

(b) Payment into Fund.-

(1) Each funeral establishment shall pay $375 per year into the Fund, until the Fund has accumulated a balance of $1,000,000.

(2) If, after the Fund has accumulated a balance of $1,000,000, the amount in the Fund falls below $1,000,000, the Board shall assess each funeral establishment an additional fee in an amount that will, over a reasonable period, return the Fund to a level of at least $1,000,000.

(3) The Board may not issue a renewal funeral establishment license if the funeral establishment has not paid the fee required under this subsection.

§ 7-4A-06. Claim for loss.

(a) In general.- Subject to the provisions of this subtitle, a person may recover compensation from the Fund for an actual pre-need trust fund loss that occurred on or after January 1, 2010, and is based on an act or omission as described in subsection (b) of this section.

(b) Basis.- A claim for the loss shall:

(1) Be based on an act or omission that occurs in the provision of funeral pre-need services by:

(i) A licensed mortician;

(ii) A licensed funeral director;

(iii) A licensed apprentice mortician;

(iv) A licensed apprentice funeral director; or

(v) An unlicensed employee of a licensed funeral establishment;

(2) Involve a transaction that relates to pre-need funeral planning that occurred in the State; and

(3) Be based on an act or omission:

(i) In which pre-need money is obtained from a person by theft, embezzlement, false pretenses, or forgery; or

(ii) That constitutes fraud or misrepresentation.

(c) Amount of recovery.- The amount recovered for any claim against the Fund:

(1) May not exceed the actual monetary loss suffered; and

(2) May not include noneconomic, consequential, or punitive damages.

(d) Contract provision.- A funeral establishment shall include in each sales contract that is provided by the funeral establishment a written notice to the buyer that the buyer may file a claim with the Fund.

§ 7-4A-07. Claim for loss - Form and content.

(a) In general.- Each claim against the Fund shall be made in accordance with this section.

(b) Form and content.- Each claim shall:

(1) Be in writing;

(2) Be made under oath;

(3) State the amount of loss claimed;

(4) State the facts on which the claim is based; and

(5) Be accompanied by any documentation or other evidence that supports the claim.

WHY OBTAIN TITLE INSURANCE?

An evaluation of the alternatives to Title Insurance and an enumeration of indirect benefits associated with Title Insurance provide a response to this question.

Alternatives to Title Insurance

Alternative 1 - Abstracts

An Abstract is the summarization of the title to land consisting of a synopsis of all recorded deeds, mortgages, liens, encumbrances and court proceedings, which have affected the title to real estate. The abstract includes all liens, charges or liabilities to which the real estate may be subject. The abstract consists of the historical information contained in public records. The abstract does not provide a financial guarantee. The abstract does not ascertain the accuracy of the public records nor does it enumerate, eliminate or insure against defects in the title.

Alternative 2 - Title Opinions

A Title Opinion, also called Opinion of Title, is a document prepared by an attorney, which sets forth conclusions as to the condition of the title as based on data in the public records. The opinion may also be based on an abstract of title.

In event of a loss related to an undiscovered defect on the public records, the insured would need to seek restitution from the attorney. Proof of negligence would be required, as would the expenditure of out-of-pocket legal expenses and related fees. Further, the insured would not be protected against defects. The title opinion would have not ascertained the accuracy of the public records upon which it was based.

Alternative 3 - Title Guaranties

A Title Guaranty, Guaranty Policy, insures against defects of title appearing in the public records. The insured must be able to prove that the loss sustained was due to the omission of information, which appeared in the public record as of the effective date of coverage. Defects that are not shown in public records are excluded.

The alternatives are lacking in several areas:

1. Financial Certainty – only Title Guaranty and Title Insurance policies and the insurers that issue them are regulated by insurance departments. Most states have funds created for the express purpose of assuring the payment of title claims should a Title underwriter become unable to meet its contractual obligations.
2. Time-Frames – state funds assure the Title Guaranty and Title Insurance coverage provided will be available if a loss occurs. Coverage is virtually guaranteed and coverage is provided for errors made or found in the examination of public records.

Coverage against hidden defects is a valuable additional impetus to secure Title Insurance rather than an alternative. Examples of hidden defects are:

- forged will or deed
- fraudulent representations
- undisclosed heirs
- invalid divorces
- undiscovered wills
- non-delivery of deeds
- inadequate surveys
- improperly probated wills
- clerical errors
- deeds executed under expired or false powers of attorneys
- birth of an heir subsequent to date of a will

Indirect Benefits of Title Insurance

Enhanced Borrowing Ability of Potential Real Property Owners

Financial institutions underwrite loans. The existence of a mortgagees' Title Insurance policy protects the lender from the cost of defense and the potential losses associated with claims against the mortgaged real property. Title Insurance permits a lender to make certain assumptions in the evaluation of its risk. Lenders provide instructions outlining the lender's particular requirements for Title Insurance policy standards.

The financial institutions standards include:

Schedule A items:

1. wording for name of the insured (lender)
2. minimum amount of protection.

Schedule B items:

1. enumeration of acceptable exceptions. All other exceptions require the express approval of the financial institutions
2. Specific requirements on building setback lines, encroachments, easements, etc.

Benefits to the United States Secondary Mortgage Market

By providing an insured title to real property that is marketable in the event of foreclosure and guaranteed against all defects not enumerated in Schedule B, lenders' Title Insurance has facilitated the development of the secondary mortgage market. Lenders are able to allocate resources to the purchase of mortgages on real estate located in areas of the country that are outside the lender's geographical operating area.

Benefits to the Seller

The assurance of a marketable title is a dormant asset until the real property is conveyed to another. The owner/seller is protected from unexpected problems.

Benefits to the Real Estate Professional

The transfer of title is the culmination of the sales effort. Client satisfaction is enhanced with the transfer of a marketable title guaranteed clear of undiscovered defects.

Where can Title Insurance be Purchased?

Fewer than 100 underwriters service the Title Insurance market. Several of the larger United States' Title underwriters will write Title Insurance in foreign countries. The larger national Title underwriters with an international presence, or developing an international presence, include:

- Chicago Title Insurance Company
- Commonwealth Land Title Insurance Company
- Fidelity National Title Insurance Company of New York
- First American Title Insurance Company
- Lawyers Title Insurance Corporation
- National Title Insurance of New York, Inc.
- Old Republic National Title Insurance Company
- Stewart Title Guaranty Company
- Ticor Title Insurance Company

Information on these Title underwriters can be found on their respective websites.

Demotech, Inc.

November 2006

What We've Got Here Is a Failure to Communicate

How Traditional Financial Reporting Contributes to Misunderstanding of Title Insurance Loss Activity

by Joseph L. Petrelli, ACAS, MAAA, FCA
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In 1967, Paul Newman starred in the movie *Cool Hand Luke*; however, it was veteran role actor Strother Martin, as the Captain of Road Prison 36, who uttered the comment, "What we've got here is a failure to communicate." Nearly forty years later, the comment is applicable to the Title insurance industry. It pertains because there is a breakdown in communication as the Title industry attempts to explain itself to a constituency that is appreciably more familiar with the practices and procedures associated with Property and Casualty (P&C) insurance.

This article focuses on a specific financial reporting practice that has contributed to the Title insurance industry's failure to communicate the unique characteristics associated with its loss containment activities. The author believes that communication can be enhanced if both parties, the Title industry and its regulators, address and acknowledge the impact of the rote application of certain financial reporting requirements and how Title underwriters do not fit the mold established for P&C companies.

THE PERCEPTION

Property and Casualty insurance loss and loss adjustment expense (L&LAE) ratios are traditionally at a level of 50%-60% or higher. This implies that 50% or more of the premium charged for insurance is ultimately utilized for settlement and payment of claims. In contrast, the Title insurance industry reports L&LAE ratios in the vicinity of 4%-6%. Based upon this simplistic comparison of the L&LAE ratios, there have been misperceptions that Title insurance rates are excessive. Similarly, comparisons of operating expenses between P&C and Title insurers can lead to inaccurate conclusions that Title underwriters have an excessive expense component. The comparisons of dissimilar coverages impedes communication between the Title insurance industry and regulators.

THE REALITY

A Title insurance policy involves protection against historical events that were undiscovered and occurred *prior to* policy issuance. Typical language in a Title insurance policy states that:

> Subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B and the conditions and stipulations, the Title insurance company, insures, as of the *Date of Policy* shown in Schedule A, against loss or damage...

In contrast, a P&C insurance policy insures against undiscoverable future events that occur *during* the ensuing policy period. Typical language in a P&C insurance policy states that:

> In Consideration of the Provisions and Stipulations herein, this Property and Casualty Insurance Company, for the term of *this date* at 12:01 a.m. to *one year later* at 12:01 a.m. at the location of the property involved does insure ...

While Title insurance coverage looks *backward* from a certain date, P&C insurance coverage looks *forward*, utilizing a finite future period, to evaluate liability. The timeframe of coverage and cost containment activities is a fundamental difference between Title and P&C coverages. This distinction for Title underwriters has not been properly reflected in at least one aspect of the financial reporting requirements. To explore this, one must understand that loss adjustment expense (LAE) is assigned to two broad categories:

1. **Adjusting and Other (A&O):** A&O is a component of loss adjustment expense (LAE) that includes all claims adjusting expenses, whether internal or external to the Company. This component includes fees and salaries of those involved in a claim adjusting function, and other related expenses incurred in the determination of coverage. A&O expense is similar to what was previously known as unallocated loss adjustment expense (ULAE).

2. **Defense and Cost Containment (DCC):** DCC includes defense, litigation and medical cost containment, whether internal or external to the Company. These expenses include, but are not limited to, accident investigation, surveillance, litigation management and fees of attorneys and others if working in defense of a claim. DCC expense is similar to what was previously known as allocated loss adjustment expense (ALAE).

These LAE categories, and the predecessor categories, ULAE and ALAE, have served the P&C insurance industry well. However, these definitions are implicitly designed to address traditional P&C policy characteristics, such as claims and cost containment expenses arising and manifesting *after* policy issuance and during a policy period. However, the Title industry has been required to report financial information utilizing these same categories, even though the characteristics of its claims and cost containment activities are fundamentally different. For instance, Title insurance coverage is designed to respond to undiscovered claims that existed *prior to* policy issuance. Similarly, the majority of the Title industry's cost containment expense activities occurs *prior to* policy issuance and is associated with activities to discover and preemptively identify potential policy liabilities. The current LAE categories do not allow the Title industry to report these commensurate costs and activities. When information is assumed to be comparable even though it is not, the failure to communicate begins.

The Title underwriter's determination of coverage, elimination of ambiguity and other litigation management efforts are summarized in Schedule B of the Title policy, and memorialized when the policy is issued. Schedule B - Exceptions From Coverage notes that "This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of ..." These efforts by Title underwriters to eliminate ambiguity and manage future litigation should be viewed in the same light as P&C cost containment activities. The distinction rests solely with the characteristics of the coverage timeframe.

By way of analogy, assume that a P&C insurer expends time, effort and expense to evaluate facts related to a covered incident on the behalf of an insured. Further, assume the P&C insurer mitigated the potential claim costs by ultimately determining that no liability existed. Would anyone consider allocating this time, effort and cost to the P&C insurer's operating expense? Of course not. This type of activity would be loss adjustment expense. However, comparable activities by a Title underwriter, working on behalf of an insured to preemptively resolve potential coverage exposure related to a policy continues to be allocated to operating expense even though commensurate cost containment activities occurred. Until the difference between the coverage timeframe and ensuing cost containment activities for Title insurance (retrospective) and P&C insurance (prospective) has been addressed through revised financial reporting requirements, a comparison of P&C and Title L&LAE ratios is not appropriate.

FAILURE TO COMMUNICATE

The current industry-standard financial reports and LAE categories presume cost containment activities based on traditional P&C insurance coverage characteristics, specifically, the cost containment activities occurring *after* policy issuance. However, in the case of Title insurance, it should not be surprising that since a covered claim must exist *prior to* the date of policy issuance, the effort and expenses to contain these costs also occur *prior to* policy issuance. However, because of the timing of these activities, they are not included in the LAE calculations, even though they serve the commensurate purpose of P&C cost containment activities.

The failure to communicate further manifests itself in the comparison of P&C and Title insurer operating results. In addition to underreporting the Title industry's LAE, the current financial reporting practices and procedures have a corresponding impact on the industry's operating expenses. Due to the fact that the financial reporting requirements applied to Title underwriters were developed for P&C insurance companies, a significant cost containment component for Title underwriters is reported as operating expense, not as DCC or A&O expense. This inequity lowers the Title industry's reported losses and similarly increases the industry's operating expenses. Once again, this anomaly is a result of the financial reporting requirements promulgated by regulators not reflecting the fundamental differences in the respective policy coverages.

However, comparable financial detail can be achieved without adjusting the existing application of these categories by expanding the A&O and DCC definitions to include considerations unique to Title underwriters. By revisiting the allocation of the Title industry's currently reported operating expense and identifying and allocating appropriate activity to loss adjustment expense, as either A&O or DCC, comparable results can be produced.

BETTER UNDERSTANDING THROUGH BETTER COMMUNICATION

Due to the predominant familiarity with P&C insurance reporting, a head-to-head comparison of Title versus P&C L&LAE ratios is inevitably part of the communication and dialogue between the industry and its regulators. However the current financial reporting standards do not properly consider characteristics unique to Title insurance. This understates Title underwriters' true L&LAE ratios. There exists a material component of Title LAE that must be accounted for and properly allocated in order to compare Title and P&C L&LAE ratios. Adjusted financial reporting procedures would transfer loss containment activities from the expense ratio to the L&LAE ratio for Title underwriters.

The Title industry's L&LAE ratio of 4%-6% does not provide an accurate reflection of the expenses associated with coverage, investigation, litigation management and cost containment. A P&C L&LAE ratio reflects all such expense elements. The result for Title underwriters understates L&LAE ratios, overstates operating activities and expense ratios, and also hinders analysis of the appropriateness of the Title insurance rates. The fact that the Title insurance industry's combined ratio will not change might be one of the reasons that these adjustments have not yet received the attention they are due.

Utilizing the current financial reporting guidelines, a typical P&C insurance company with a 60% L&LAE ratio and a 35% operating expense ratio would report a 95% combined ratio. A typical Title underwriter might report a 5% L&LAE ratio with a 90% operating expense ratio, for a 95% combined ratio.

Financial reporting procedures that broaden the P&C definitions of DCC and A&O with consideration of Title insurance characteristics might result in a Title underwriter reporting a 45% L&LAE ratio, a 50% operating expense ratio, and the same 95% combined ratio. These steps to properly categorize cost containment activities mitigate, perhaps even eliminate, the differences in P&C and Title coverage characteristics as it relates to financial reporting of L&LAE.

Conclusion

The author respectfully submits that the fundamental difference between Title and P&C coverage characteristics can create financial reporting anomalies. Current financial reporting requirements have DCC and A&O expense definitions focused on and designed for P&C coverage characteristics, yet these same definitions are imposed on Title insurance coverage, which has fundamentally different timeframe and loss containment considerations.

If Title and P&C L&LAE ratios are to be directly compared, which is inevitable, the Title insurance industry and regulators should work to develop financial reporting rules that prepare similarly categorized costs and activities. This could be accomplished without impacting P&C financial reporting by appropriately broadening the definition of A&O and DCC expenses to consider Title insurance characteristics and industry activities.

Until the coverage timeframe and subsequent cost containment activities for the respective insurance contracts are appropriately reflected in financial reporting requirements, industry-to-industry comparisons will continue to result in misperceptions and misunderstanding. Proper contextual understanding or revised reporting definitions are required for accurate Title and P&C comparisons. Until then, what we've got here is a failure to communicate.

Title industry data reporting needs corrected, expert says

With regulators taking a closer look at the industry and calling for uniform financial reporting, it may be time for the title insurance industry to speak the same language as their property and actuary counterparts and embrace these changes. The topic was touched upon by one expert June 16-17 at the National Settlement Services Summit held in downtown Cleveland. Read on for more.
(7/8/2009)

During the National Settlement Services Summit, held on June 16-17 at the Cleveland Marriott Downtown in Cleveland, **Joseph Petrelli**, president of Demotech Inc., discussed the reasons he felt the title insurance industry needs to think more like the property and casualty insurance industry.

At the beginning of the session, Petrelli predicted that in five years, the Form 9 will be eliminated because title underwriters will have to conduct their financial reporting like property and casualty companies do.

To prove that point, he noted that the property and casualty annual statement got amended three years ago to include a line that requires them to include title plants in the assets they own.

"There is only one reason they added that in there, because the Blanks Committee of the NAIC and various departments of insurance said 'Let's get that in there now, because that is where we are going'," Petrelli said. He also noted that when he started in the title industry, the Form 9 was only 25 pages long, and now it is 125 pages long and looks just like the property and casualty form.

He also noted that many regulators do not understand what the title industry does and the only way to do that is to speak their language.

"You are going to get dragged into the property and casualty business, he said. He said that if the title industry did not change its financial reporting to be more like the property and casualty industry, it would continue to provide misinformation to the regulators about what it does.

How to speak their language

He urged title agents to think differently about what they do, pointing out that what is different about the title insurance industry is not the service and the acts that are different, it the coverage documents.

Based on the way the title insurance industry reports its financials on the Form 9, the industry shows a 10 percent loss ration. The property and casualty's loss ratio is typically around 75-80 percent.

"You do the very same thing that property and casualty claims adjusters do," Petrelli said. "Your problems is that because your coverage document is different, you have to do [everything] at the front end."

To make his point, Petrelli defined both allocated loss adjustment expense and unallocated loss adjustment expense. An allocated loss adjustment expense is directly allocated to a particular claim. An unallocated loss adjustment expense pertains to handling claims that cannot be specifically attributable to a specific claim. Petrelli considers anything a title agent does while looking for problems that need cured should be considered an unallocated loss adjustment expense. Everything an agent does to fix problems with title should be considered an allocated adjustment, he said.

He then said title agents spend their allocated and unallocated adjustment expenses before they issue the policy, therefore the coverage trigger is different than a property and casualty policy.

In the property and casualty insurance industry, claims adjusters classify the different types of claims as case reserves, development on known claims, reopened claims, claims in transit and claims incurred but not reported. Petrelli argued that the title insurance industry has the same components, but the only claims reported as loss are those identified subsequent to issuing the policy and the rest of an agent's loss adjustment efforts are buried in the loss retention portion of the Form 9.

To emphasize the fact that title insurers should include unallocated loss adjustment expenses in the loss ratio they report on the Form 9, Petrelli pointed out several title matters that are identified and cured prior

to issuing a policy, including instrument filings, grantor-mortgagor matters, tax reconciliations, multiple indebtedness mortgage matters, and tax and lien matters.

The need for a change

He said that the preliminary analysis of 114 Louisiana HUD-1s indicated that 70 percent of the expenses associated with title insurance charges, section 1100 on a HUD-1, would have been classified as loss adjustment expense if expanded during the investigation of a property or casualty claim. If they had added that to their allocated or unallocated loss adjustment expense, their claims would be 75 percent.

"The problem is that the title insurance financial reporting has to be revised," Petrelli said. "I'm talking about the Form 9, I'm talking about any statistical work that they ask you to do. ... You are going to want to set yourselves free because you don't want them to talk about a 5 percent loss ratio, its 75 percent. It's 70 percent that is miscalculated plus the five that is [calculated correctly]."

He said that what the industry needs to do from an accounting perspective is move the risk mitigation efforts (unallocated loss expenses) from loss retention portion to the loss ratio portion of its financial reports. Petrelli said that the regulators wouldn't be so concerned about the industry's loss ratio if the financial reporting actually reflected the work the title industry does.

"We are there. The problem is the financial reporting doesn't help us get there," Petrelli said. "...We are getting no credit ... for eliminating all these things that could have happened."

Petrelli pointed out that the regulators oversee 5,200 insurance companies that look forward when creating their policies and only 85 that issue policies after they have been cured.

"I don't think that the people who regulate 5,200 companies are really going to turn around and learn about the 85," Petrelli said. "The only thing they are picking up in that 5 percent is the problems we didn't know about. That's all that's in there."

CIG
Chesapeake Insurance Group
A Sandy Spring Bank Company

TRACY
Attachment I

Senator Delores Kelley
Chairman Senate Finance Committee/
Co-Chairman Title Insurance Study Commission

Re: Title Insurance Study Commission/ Surety Bond Requirement

Dear Senator/ Study Commission Members....

I spoke very briefly at the recent Commission hearing in Annapolis. Based on a number of observations shared by various interested parties, I feel the need to formalize my stated insights and add a couple other pertinent observations.

By way of background, I helped re-write the existing Maryland title bonding legislation 15+ years ago. Prior to coming "home" to Maryland, I served as National Surety Bond Underwriting Manager for a major surety underwriter.

My primary concern with Senate Bill #86 was the **increase in the surety bond requirement - not** the fidelity bond. I am firmly opposed to any further increase [to $250,000] as proposed under the original legislation – SB 86.

Such an increase would not only negatively affect the title industry but also impact the inter-related/inter-dependent real estate and mortgage industries. In today's real estate world, the geographical scope of the "transactional business" of real estate [which includes Title as a critical component] transcends any one town, city or state. Other states have title surety bond requirements.....it is not unusual for a Maryland Title agent/law firm to have licenses in MD, VA, PA, and FLA [and elsewhere]. The total surety bonding required in the foregoing scenario would aggregate close to $500,000 -. Sureties **struggle** with that level of exposure – for **any** title agent or law firm. The ultimate problematic question is: will a title agent/law firm **qualify** for the total bonds needed – **not** whether they can afford it... as has been suggested. The general public and even those somewhat closer to the surety world, forget that, unlike homeowners, auto and fidelity coverage, surety bonds are **not** intended to be loss recovery vehicles – their primary function is **prequalification** for the risk at hand. The bonding process essentially is the attestation by the surety of the integrity, experience and financial capacity for the legislated risk. The surety absorbs the bond principal's default by payment to the obligee/bond beneficiary [the State].

The hearing held in Annapolis gave greater definition to the perceived MIA problem by generally outlining the sources/causes of loss. While giving a somewhat deeper focus to the problem, I am still not at all convinced it is adequate to justify any further increase in the **surety** bond requirement. I ask the question: are the 367 purported complaints [still unclear as to whether they are surety, fidelity, E&O, lender or a combination of the foregoing] are generated by 367 different entities/persons ....or are they result of malfeasance by a **handful** of "culprits" handling multiple related situations..... Based on my day-to-day involvement in the title marketplace, the latter by far seems to be the case. If that proves to be the so, than a further surety bond increase would patently seem to be unfair to the other 1,500 licensed law firms/title agencies in the State of Maryland....not to mention the impact on TIPIC's/Witness Closers....

MIA has expressed concern over the number of title/real estate complaints is has received....not doubt the number has increased substantially in recent years...**but** so has the volume and value

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of real estate transactions. A review of the MD Realtor.Org website reflects that in '08 the value of MD residential real estate transactions totaled $14,899,000,000 and involved 46,910 residential units....those numbers **trivialize** the impact of 367 complaints approximating $5,000,000 in value....What has **not** been commented upon by MIA, is how many of the complaints have **been resolved** or are in the process by recovery mechanisms already in place....particularly, Insured Closing Letters [ICL's] from title insurance Companies....I suspect that most of the actual losses [not complaints] have been covered by the ICL's...Is it possible that the protection/recovery devices in place are working?.....

TIPIC's/ Notary Witness Closers have become an integral part of the real estate process. They handle what is otherwise an administrative function of the process. The evolution of this phenomenon appears to be two-fold:
1)the **substantial** increase in the number of transactions and 2) the **pressure** to reduce consumer closing costs.
Title agents utilizing TIPICs are not straddled by the typical title agent/law firm "employee costs" of FICA, Social Security and other fringe benefit costs – a savings passed on to the consumer. I have found these TIPICs to be honest, credit worthy and conscientious **but** most have limited financial capacity – a essential ingredient of surety bond underwriting. Increasing the surety bond to $250,000 would render most TIPICs **unbondable**.....and create turmoil in the real estate process. Like it or not, the TIPIC phenomenon seems to be here to stay.

If that is the case, then the State must do **much** more to protect them. I continually hear stories of out of state lenders/realtors giving closings to local notaries who are **unlicensed** and **unbonded**.....totally non-compliant with Maryland Law. We (the State and the industry) must take meaningful steps to stop this practice if we are to establish/maintain the expected competence level of the Maryland TIPIC. Very often, I report these violators to MIA as I view them as stealing legitimate income from my legitimate clients.

I recognize that SB #86 addressed issues other than bonding. **However**, surety bonding is the lifeblood of title agents, many law firms and TIPIC's. Without the bond, they are effectively out of the title business. A further increase in bond penalty will effectively have **no** social redeeming value - it will **not** help the consumer – it can only hurt the consumer in the "long run".....

I thank you for your time and attention.....

MICHAEL M. TRACY

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HOWARD
Attachment J

The Title Commission Testimony at Coppin State University

By: Sheila R. Howard of Baltimore, MD

July 16, 2009

I would like to start with my experience with this industry. I became aware of this work and interested in growing a small business in July 2003. I was currently a MD notary public, and a member of the National Notary Association (NNA). The NNA was offering a one day course in Baltimore, MD on completing a settlement; this class would explain the documents in detail. NNA was offering insight and encouragement to those who were not familiar with the settlement process. The day before the course I received a surprising telephone call from the NNA stating I would receive a full refund for the cancelled course. The Maryland Insurance Administration (MIA) had been made aware of the training and informed the NNA to do this type of work in MD one must be licensed as a title insurance producer (TIP).

The next several weeks were spent gathering the correct information for becoming licensed. I called the Secretary of State in Annapolis, MD to ask questions due to the fact I knew the office issued the notary public commission. I called the MIA and was given the name of the MD Land Title Association (MDLTA) as an approved training provider for the pre-licensing. I called in November 2003 to register for the next available pre-licensing course. I immediately became a member of MDLTA and enrolled in the class for January 2004. I completed the coursework, passed the third party exam, obtained a fidelity bond waiver and secured a one hundred thousand dollar ($100,000.00) surety bond by April 2004. I obtained a list of companies from the MIA that were title companies registered to do work in MD. For the next six (6) months I marketed myself to the firms on the list. I had been studying and was mentored by a seasoned licensed settlement professional. It is October 2004 and the country in at the height of the real estate transactions, purchases, re-finances and home equity lines of credit (HELOC).

I was not seeing the fruits of my labor and my continuous efforts. I soon realized that several individuals completing the settlements throughout Maryland were not licensed as title insurance producers (TIP), only notary publics.

By January 2005 I started informing the MIA in writing about unlicensed individuals doing settlements. In February 2005 I informed the MIA in writing of companies that used unlicensed individuals for settlements. It was apparent at this time until this present day that properly licensed and bonded professionals are not utilized to do the work. The lenders were not requiring licensed people and neither were the title companies. It was clear I was locked out and blocked from receiving any Maryland business. The employees I communicate with in reference to various complaints were William Uncle, Darlene Arnold, Todd Cioni and Jean Bienanmann.

Letters of Appointment started coming in the mail from title insurers between the years 2005 to 2006. I received a letter from Land America, First American, Chicago Title, Ticor and Old Republic. All of the letters read very similar. There was one statement at the bottom of each one that was identical, the letters ended with receiving this letter is no guarantee you will receive any work. I never approached any of these firms for letters of appointment. The entire time I have been working in this industry I have had to face dealing with out of state signing services acting as middle men. The company may or may not pay for the services provided or will not pay the entire fee that was negotiated when the assignment was accepted. Often the assignment was for a Maryland based company.

I have invested and continue to invest in pre-licensing, licenses fees, surety bonds and continuous education since the year 2004. This is an enormous undertaking of resources and time. The intension is to grow a small business that offers professional service. The use of unlicensed people have crippled my growth as a small business professional and cheated me out of the ability needed to grow, develop and earn a livable annual salary. As a MD taxpaying citizen I have been sidelined for years. The title industry does not have to be overflowing with business for the properly licensed to have work.

I believe my personal experience along with other licensed, bonded title insurance producers independent contractors (TIPIC) are factors that have been major contributors to the large number of MD consumers being in foreclosure. One of the other factors is recent creative loan programming that was not explained by lenders or in the best interest of a family being able to stay in their home. If lenders require all parties be licensed that state law require be licensed the consumer would be better protected. The unmonitored banks, title companies, appraisers and notary publics are all factors that lead to this current state of affairs. This has lead to abandoned properties, vandalism and breeding grounds for loitering. These groups of citizens are not contributing to the tax base and once again citizens such as me will be expected to be over burdened.

Going forward:

1.) The surety bond increase be waived for TIPIC
2.) The HUD-1 settlement statement list the name of the individual and fee for the transaction.
3.) All loan signing services be registered with MD
4.) All written complaints submitted to the MIA be responded to within (thirty) 30 days.
5.) The notary public licensed to do closing have their license number on the notary seal.
6.) The MIA offer classes on title insurance.
7.) The MIA closely monitors all parties involved to ensure this does not repeat happen again in Maryland.

I would like to close by stating as you look around the room at some of the others that testify and fellow TIPIC it is clear we have more in common than being properly licensed and bonded. Thank you.

WHEELER

Attachment K

My name is Josephine Wheeler, ~~611 Biddle St.,~~ In From Chesapeake City, in Cecil County, MD I am a Notary Public, a Certified Signing Agent and a MD Licensed Title Producer. I have been closing mortgages for 15 years and I have easily closed over 5000 loans. ~~I close in [illegible] [illegible]~~ loans ~~[illegible]~~

~~Because I am backed up to DC I~~

I submit to the commission the following issues: FOR your consideration

One: The complete lack of communication with the individual title producers in Maryland. It is only by luck and a good website that any of the individual title producers closing loans were alerted to either Senate Bill 86 ~~and~~ or this Study Commission. While the major Title associations ~~including MLT~~A and title insurance agencies were notified and invited to attend, none of the ~~over~~ 150 or more independent closing agents were notified. This goes back to when the title producer law was passed and updated in the Notary Handbook. Not one notary that I have questioned received an update to the handbook and at this time many notaries still do not know the law exists. How do you enforce a law that has failed to notify the individuals directly impacted by its directives and, can do you seriously consider our position, if we are not informed and able to submit our views. ALL Title Producers + Notaries should recieve updates that pertain To their business.

Two: The law is ambiguous ~~and~~ as written, if a closing "will or may result in the issuance of title insurance a licensed insurance producer must conduct the closing. Does this mean that if a UNLICENSED notary closes a loan today and next month title insurance is issued VS that the notary ~~is~~ now in violation of the law? Is the entire loan thrown out and redrawn so that a licensed title producer can close the loan or is the law just not enforced? We do not need more legislation, we need clarification and enforcement of current legislation.

Three: I have read the minutes from previous meetings and when mentioning complaints the following issues were raised: documents not being recorded, releases not given, complaints from lenders concerning final documents that were not received and access to trust money. These are all title issues not closer issues. When a closing agent settles a loan all documents and funds collected are immediately sent overnight to the title company. It is then titles responsibility to record, release, escrow and send appropriate documents to the mortgage company. The main purpose of issuing surety bonds is to give a guaranteed performance of contract. Closing Agents do not have an escrow account and do not hold any funds. We do not sell, broker, collect commission or underwrite any insurance premiums. We do not calculate the figures on the Hud Settlement Statement or the Truth in Lending.

It was
~~As Mr Rieger~~ pointed out at the May 28th meeting the passing of physical custody of trust moneys is not exercising control over trust moneys. With the limited participation of a closing agent in the process, and since we do not write the contracts nor do we broker the contract the current $150,000 bond is excessive.

Four: As to the mention that MD should consider a law whereby only attorneys or title agents operating under the directive of an attorney should conduct closings the U.S. District court of MA has issued a summary judgment dismissing a suit brought by that states Real Estate Bar Association that accused a title firm and its notaries of the unauthorized practice of law. A federal court agreed with the U.S. District Court who cited numerous cases that implied "certain steps that the Real Estate Bar Association asserted are related to a real estate conveyance do not, by themselves, constitute the practice of law.... Such steps include completing forms ...for a closing." the Executive Director ~~Timothy Reiniger~~ of the National Notary Association has stated that Real Estate Lawyers in MA and several other states have been determined to create attorney-only closing monopolies in recent years and the court sent a very clear message: Stop." While this issue is being appealed it would not appear be in the best interest of attorneys in MD to entertain a law excluding closing agents.

In closing, I favor education. I think all notaries should be required to take a class before they are commissioned and I think all closing agents must be educated on how to properly conduct a mortgage closing. I strongly feel that closing agents should be a separate entity and not lumped in with those who write contracts, establish closing costs and broker insurance policies. I feel all closing agents have the right to know of pending legislation and studies being done that directly impact their career. I am opposed to any ~~mention of~~ increased bonding as I feel the current bonding for closing agents is only putting money in the hands of the insurance underwriters.

I thank the Commission for your time and careful consideration of the regulations that directly impact independent closing agents in MD

WRIGHT

Attachment L

Maryland Title Insurance Producers Independent Contractor (TIPIC)

c/o Elaine M. Wright, TIPIC
1511 Golf Course Drive
Mitchellville, Maryland 20721
240-353-0316
thedeskofelainewright@comcast.net

Final Public Hearing ON COMMISSION TO STUDY TITLE INSURANCE July 16, 2009

Written Testimony before

By

Elaine M. Wright, TIPIC
On behalf of all
Maryland Title Insurance Producers Independent Contractors

July 16, 2009

Maryland TIPIC Briefing Paper
Final Public Hearing
Commission to Study Title Insurance Industry
July 16, 2009

Introduction:

My Name is Elaine Wright, a MD TIPIC residing in Prince Georges County, Maryland. I am a MD TIPIC, National Notary Association (NNA) Certified and Background Screened Notary Signing Agent, NNA Trusted Enrollment Agent, National Notary Ambassador, and 2009 NNA Notary of the Year. Recently, I learned that discussions are being held that could negatively impact MD TIPICs. In support of TIPICs, I decided to prepare this brief paper to shed some light on who we are, our professional credentials, and the services we provide to the title industry and Maryland consumers. Thank you for letting me share this information with you.

I. Purpose

The purpose of this briefing paper is to:

A. Share information on MD TIPIC
- Professional Qualifications and Requirements
- Services and benefits provided to national Mortgage lenders and title industry entities
- Services and benefits provided to Maryland consumers; and

B. Request that no adverse actions be taken that would critically hinder TIPICs performing their functions or eliminate TIPIC entirely.

C. Offer suggestions that may assist in evaluating whether TIPICs are properly accountable to the State and Maryland consumers.

II. Professional Qualifications and Requirements

Maryland TIPICs are commissioned/appointed, certified, insured, bonded, background-screened, educated and trusted professionals hired to peform certain loan closing administrative functions for mortgage lenders and title industry entities.

Most TIPICs operate as sole-proprietor, home-based businesses working to provide extra income for their families or to supplement retirement incomes.

The steps to become a Maryland TIPIC are numerous, costly and can take a significant amount of time to accomplish. Attachment (A) is a comprehensive flowchart of activities required to meet qualification requirements in Maryland, Washington, D.C. and Virginia. Once these requirements are met, TIPICs must also meet additional stringent

maintenance requirements to legally continue to perform their functions (see Attachment B.).

In addition to meeting mandated requirements, MD TIPICs as well as Notary Signing Agents across the United States regularly and voluntarily educate themselves to stay abreast of new developments and requirements needed to competently perform their functions. MD TIPICs attend MLTA training classes and annual conferences, National Notary Association National Conferences and online classes. I teach 13 notary public classes at Prince George's Community College that strengthens the title producer's knowledge of deterring fraud through proper notarization. My classes are well attended averaging 20-30 students per class 2 to 3 times monthly.

Maryland TIPICs also maintain professional memberships in the National Notary Association, MLTA and other notary republic/notary signing agent organizations.

III. Services Provided to Mortgage Lenders and Title Industry Entities

MD TIPICs are hired by mortgage lenders and title industry entities from across the United States to perform notarizations of documents and administrative tasks that facilitate the loan closing process. As a matter of fact the majority of TIPIC assignments come from clients outside of the state of Maryland. Many of these organizations specifically require (verbally and in printed lender instructions) that TIPICs have met state requirements to perform their functions. Following is a list of services requested by these organizations:

- Accept Assignment (contract to perform)
- Contact borrower and confirm Appointment (appointments are setup at a convenient time and place for the borrower)
- Remind borrower to have Unexpired, Government-Issued Identification documents available e.g. driver's license, passport, green cards. Borrowers have to appear in person with valid identification for notarizations.
- Remind borrower about other requirements per lender instructions included in the assignment or document package.
- Receive documents via overnight delivery or electronically
- Arrive at appointment on time and dressed professionally.
- TIPICs are specifically instructed to act as a witness for signatures and peform notarizations properly.
- TIPICs are specifically instructed to contact the lender or title agent if the borrower has questions about the documents. This contact is made at the closing table by telephone. Questions are usually resolved in a few minutes or, on occasion, documents may need to be redrawn and a new appointment setup at the borrowers convenience.

- TIPICs review the document package to ensure that all documents have been signed (according to lender requirements) and notarized properly. These reviews occur at the table and before the documents are returned to the lender or Title Company.
- Document Package is returned to the lender or Title Company within 24 hours of the signing.

Utilization of TIPICs provide lenders and title agents with a large extended workforce of qualified, skilled and professional business partners at reasonable costs and without the usual employee management/benefit program requirements.

The important aspects of notarization that provide trust, security, and the deterrence of fraud are:

- Properly screening the signer;
- Document details of each transaction in a journal;
- Understanding and handling the document to be notarized; and
- Notaries properly executing the final steps before placing the seal on the document.

IV. Services and benefits provided to Maryland consumers

The ultimate consideration in this whole process is to ensure that Maryland consumers receive competent, convenient, and professional services at reasonable costs.

Utilization of TIPICs provides:

- The ability for borrowers to choose a closing time and place that is convenient for them. The closing is conducted in the comfort of their own home or other desired location.
- If necessary, borrowers can request bilingual TIPICS
- They don't have to be concerned with taking off work and or having to re-arrange other activities.
- The cost to the borrower is less expensive than if they were required to use attorneys for the closing.
- Assurance of trustworthy, competent, and professional services because of mandatory requirements placed on TIPICS as well as the personal initiative of TIPCS to ensure they are well-educated and trained to perform their duties accurately, efficiently, and ethically.

V. Conclusion

As you review the information included in this brief paper, I hope that you are sufficiently convinced that TIPICs are competent, skilled professionals that can be trusted to perform a valuable service to Maryland consumers and that costly increased or additional qualification and maintenance requirements are not necessary at this time.

If there is a need for a mechanism to implement more identity management security for the title insurance producer, the following suggestions may be considered:

- Require TIPIC to stamp or write their RPI number on notarized documents.
- TIPICs can design a certificate (readily recognizable for auditing purposes) for inclusion in loan packages that indicates they are in good standing and includes their RPI number.
- Coordinate and work with Office Secretary of State to require recording of thumbprints in Notary Public Journals.

Thanks again for allowing me to share this information with you. If you desire, I am available for additional discussion on this topic.

Attachment A

You Can Eat An Elephant One Bite At A Time!

Bites ✓		Tasks *[Please note: these tasks do not have to be performed in this order. The order depends on where you are in process.]*
	1.	Apply to become a Notary • http://www.sos.state.md.us/Notary/NotaryAppInfo.htm (Maryland) • http://www.commonwealth.virginia.gov/OfficialDocuments/Notary/notary.cfm (Virginia) • http://os.dc.gov/os/cwp/view,a,1207,q,522462.asp (Washington, DC) [Another way to find the websites: go to www.google.com and search on "Maryland Notary application" or "Virginia" or "Washington, DC" notary application.]
	2.	Washington, DC notaries must apply for a $2,000 bond. The requirement for becoming a Notary Signing Agent in Washington DC is simply to become a Notary. Washington DC does not require Notary Signing Agents to obtain a title producer's license like Maryland. Listed below are two sources that offer the $2000 bond required for Washington, DC Notaries: • Pilzer-Gullickson Group, LLC - (202-628-3480 Superior Court, Building A in Washington, DC. • National Notary Association [NNA] (1-800-US-NOTARY)
	3.	• The National Notary Association is the nation's professional/Notary organization. NNA is dedicated to furthering the role of the Notary as public officials, by instilling in us the highest ethical standards of conduct and notarial practice. • Sign up to become a member at www.nationalnotary.org or call 1-800-USNOTARY. • If your choice is to become a Notary Signing Agent, you may want to inquire about becoming a member of the Notary Signing Agent (NSA) section or you may wait and sign up once you qualify as a Notary Signing Agent/Licensed Title Insurance Producer Independent Contractor.
	4.	Sign up for the "Notary Public Procedures" class (basic Notary procedures) at Prince George's Community College (Gen307) 301-322-0797. This class is not mandatory; however, it

		teaches you the basics of notarization.
	5.	Sign up for the "Applied Notary Practices and Procedures" class (advanced Notary procedures and detailed information on becoming a licensed Title Insurance Producer Independent Contractor) at Prince George's Community College (GEN339) – 301-322-0797.
	6.	Order basic notarial supplies from the National Notary Association, 1-800-US-NOTARY, (recommended) [Inquire about the starter kit which includes one year free membership to the NNA as well as 1 year of errors and omissions insurance). If you are rushed obtain supplies, there is a local store, from Metro Stamp and Seal Co. (301) 294-2151. The website address is www.metrostampandseal.com.
	7.	Order "Errors and Omissions Insurance" from the National Notary Association. Errors and Omissions Insurance covers your notarizations. Please note: if you ordered your "basic notarial supplies from National Notary Association, you may already have Errors & Omission Insurance. [It does not cover your title insurance producer duties [bonding].]
	8.	Sign up for Title Producer Training. Two sources are listed below. For training sponsored by Maryland Land Title, see #'s 9 & 10 below; for training sponsored by Montgomery College, see #11 below.
	9.	*Sign up to become a member of the Maryland Land and Title Association ($150) and at the same time, follow the next step. [http://www.mdlta.org/Education/PreLicensing/tabid/60/Default.aspx]
	10.	Register for the Title Insurance Producer course ($325) [www.mdlta.com, click on Licensing] You can sign up to become a member of MDLTA and for the course at the same time. The charge for nonmembers is $545.00.
	11.	One of our students highly recommended Carol McClain for Title Producer classes. These classes are offered at Montgomery College for approximately $200. For more information, check with Montgomery County Community College or visit Carol's website at www.modasystems.com.
	12.	Get your mind right for studying title insurance producer terms and concepts. You will not find information on notary signing agent procedures in this class. The focus is on title producer duties.
	13.	Prepare for the Title Insurance Producer exam (www.psiexams.com) – 800-733-9267 • If you fail the exam, study more, pay another $70.00 and take it again. • If you fail the exam again, study more, pay another $70.00 and take it again.
	14.	Once you pass the test, then prepare to spend $525 - $625.00 + (with some companies, you cannot use a charge card) for a $100,000 bond (covers a 2-year period). Below is a list of insurance companies: 1. Chesapeake Insurance Agency, 151 West Street, Suite 300, Annapolis, MD, contact: Mike Tracy or Brad Swanson - 301-261-8120. 2. Hess, Egan, Hagerty & L'Hommedieu – Bethesda, Maryland contact: Michele Blanco – 301-634-3981. 3. Ganiyu Raji – Baltimore, Maryland Equatorial Group, Inc. Phone: 410-788-0090 Fax: 410-788-0009 Cell: 202-257-1329 4. The Pilzer-Gullickson Group, LLC – Washington, DC - 202-628-3763 5. The following information was referred to me from a Notary who had difficulty getting bonded with the first two companies. She had some challenges with her credit history. Go on the following site: www.fms.treas.gov (under Reference and Guidance)

		1. Click on **Surety Bonds** 2. Click on **Listing of Approved Sureties** 3. You should see a list of certified Insurance companies, their address, phone numbers, and the states that they cover. Most of these companies have websites and their applications can be transmitted electronically. In some cases one may need to call the company directly to get their website or request an application be faxed.
	15.	Once bonded, you apply for your Title Insurance Producers license with the state of Maryland - $54.00. You can inquire with the bonding company about licensing with the state or do a search on the web for the information.
		*Information on licensing in Virginia visit http://www.vsb.org/site/regulation/crespa/ .
	14.	It takes approximately 2 – 3 weeks for the state to process your license.
	15.	**CONGRATULATIONS!** You are a licensed Title Insurance Producer Independent Contractor!
	16.	Begin to market yourself: • The telephone is your best friend • Get a web presence • Use marketing brochures • Business cards • Inquire about the "Smooth Signing," "Marketing," and "Loan Documents" classes. A description of these classes can be found at: www.wrightnotarypublicnews.com , click on CALENDAR.

Phew!!! A lot of bites, but it works.

I'd like to share these inspirational quotes with you:

"Courage is not the lack of fear; it is acting in spite of it."

"The future belongs to those who see possibilities BEFORE THEY BECOME OBVIOUS."

"IMAGINATION is more important than knowledge."

"DO NOT GO WHERE THE PATH MAY LEAD, GO INSTEAD WHERE THERE IS NO PATH AND LEAVE A TRAIL."

Please note: The above is a guideline for getting started and obtaining your title producer's license. There are also maintenance requirements that must be fulfilled for relicensing in every two years.

Attachment B

Click here to read Requirement Descriptions for
Notary Signing Agent/Title Producer/Title Insurance Producer Independent Contractors.

NSA/Title Producer Maintenance Requirements for Maryland, Washington, DC, and Virginia
Prepared by Elaine Wright and Wanda Moore
January 2007

MARYLAND REQUIREMENTS	REQ'MT TYPE	ESTIMATED FEE	PAYMENT SCHEDULE	WRITE IN YOUR COST FOR 2007
Commission	Direct	$20.00	Every 4 years	
License	Direct	$54.00	Biennial	
Surety Bond (Covers up to $100,000)	Direct	$550.00	Biennial	
~~Fidelity Bond (Covers up to $100,000)~~ No longer required. However, if you initially purchased a Fidelity Bond based on the 10/01/06 mandate, please note the following: 1. You are entitled to your refund. 2. Download the form (AFFIDAVIT FOR WAIVER OF FIDELITY BOND), have it notarized, and send it to the address on the letterhead of the Bulletin 06-18. 3. Click here for the waiver bulletin (BULLETIN 06-18)	Direct	$443.00	Biennial	
Appointment with Underwriter	Indirect	$0	None	
Continuing Education/Renewal Credits	Direct	$240.00	Periodic	
VIRGINIA REQUIREMENTS				
Commission	Direct	$35	Every 4 years	
License	Direct	Click below to learn more about Virginia's requirements.		
Surety Bond	Direct	Consumer Real Estate Protection Act (CRESPA)		
Fidelity Bond	Direct			
Appointment with Underwriter	Direct	Click here for an overview of VA req'mts.		
Continuing Education/Renewal Credits	Direct	Click here for details of VA req'mts.		
WASHINGTON, DC				
Commission	Direct	$50.00	Every 5 years	
District of Columbia Bond (Covers up to $2,000)	Direct	$50.00	Every 5 years	
FEDERAL REQUIREMENT				
Gramm-Leach-Bliley Act	Indirect	See NNA Certification/Background Screening under "Professional Essentials"	Biennial	
PROFESSIONAL ESSENTIALS				
NNA Certification/Background Screening	Indirect	$162.00	Biennial	
Errors & Omissions Insurance - Notary Public	Indirect	$17.00	Annual	
Errors & Omissions Insurance - Title Producers Professional Liability Insurance	Indirect	$675.00	Annual	
NNA Membership	Indirect	$52	Annual	
NNA NSA Section Membership	Indirect	$39	Annual	
MLTA Membership	Indirect	$150	Annual	
Marketing - Metro Notary Directory	Indirect	$52.50	Annual	
NNA Annual Conference	Indirect	$1,500.00	Annual	
Notary Forum	Indirect	None	None.	
Educational classes schedule (*CALENDAR*)	Indirect	Up to $100	Annual	
TOTAL ESTIMATED MAINTENANCE COST for 2008				

Direct - NSA/TIPIC required to incur this expense. Affects legal operation of the profession/business.
Indirect - NSA/TIPIC not required to incur this expense. By having these credentials in place, you become more marketable to the industry.
Please note: Some fees are lower when purchasing multiple years.
Fees are estimated.

Attachment B

PRYOR

Attachment M

I SELL TITLE INSURANCE

I sell title insurance.

Some people don't like to say they "sell" for a living, much less that their product is title insurance.

I sell title insurance.

I "sell" it because I believe in it.

I do not hang my head and apologize for selling title insurance. I provide a thorough and accurate search of the title, resolve ownership issues, provide lien records, keep the courthouse records accurate, collect unpaid child support, facilitate collection of government taxes and assessments, and require proper conveyances and acknowledgments. My work keeps the housing market and the overall economy from being bogged down by inaccuracy, uncertainty and fraud. My vocation protects my neighbors from falling into disruptive disputes over their property rights. My community is better for the work I do.

I sell title insurance.

I cannot imagine allowing a family member, friend or acquaintance to purchase real estate without insisting on title insurance. And not just ANY title insurance. I want them to have a well searched title policy, because I know how disruptive and unsettling a claim can be. I want my family and friends to pay for a policy that they NEVER have to use. I hope the same thing for them regarding their fire insurance.

Our industry is constantly being criticized for our low claims payout. I salute every title insurance agent who has made that happen! Our GOOD work keeps our customers... our friends and neighbors... from experiencing claims. We have done our job. WELL DONE.

Benjamin Franklin is often quoted as saying "an ounce of prevention is worth a pound of cure". Those wishing for a change to the metric system might wish to parse words with Franklin, but the fact remains, title agents are the "ounce of prevention" that enable one of our country's greatest privileges... Home Ownership.

Yes, our industry has its critics. Yes, our industry has those whose bad practices should be eliminated. Yes, our industry needs to be pro-active in demanding ethical market practices. But our industry should NEVER allow ANYONE to characterize the overwhelming super majority of our work as anything other than the PROTECTION OF THE AMERICAN DREAM.

I know my product. I know its value. I know the importance of the process.

I sell title insurance.

Written by Mike Pryor

WRITTEN TESTIMONY SUBMITTED AT SEPTEMBER 17, 2009 MEETING

Attachment 1

Carl E. McAdoo

A Disabled American Veteran
U.S. Army Retired

6701 Rabbit Ct.
Waldorf, Maryland 20603
Tel. (301) 870-7628

Senator Delores Kelley, Senate Chair
Delegate David Rudolph, House Chair

House Office Building
House Economic Matters, Room 230
6 Bladen Street
Annapolis, Maryland

Public Hearing September 17, 2009 5:00 p.m. EST.

Re: Commission to Study the Title Industry in Maryland

Issue: Titling and Settlement Irregularities

I would like to thank each and every one of you for the opportunity to present my personal issues and concerns regarding titling and settlement.

I am Carl McAdoo of Waldorf, Maryland, a Military Retiree, and Gulf War Veteran. I am approved for refinancing of my 30 year fixed rate to a 15 year fixed rate with Bank of America on a Veterans Affairs Loan Guarantee.

Upon presenting myself for closing yesterday, September 16, 2009 I discovered the lender's policy in which I am required to pay was **$247.80**; $345.00 title examination; and $195 title search fee.

For my owner's title policy I would be charged an additional title examination fee, title search fee, and a policy premium of **$900** in which in my opinion is excessive.

Further, Bank of America and LSI Title Company only provided a Notary Signing Agent that could not explain any documents presented for my signature. Therefore, I elected not to close yesterday.

Thank you,

Public Testimony by Carl E. McAdoo

CC: Maryland Insurance Administration
Ms. Tinna Damaso Quigley
Director, Government Relations and Policy Development
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202
Tel: 410-468-2202
Fax: 410-468-2020
Email: tquigley@mdinsurance.state.md.us

Maryland Insurance Administration
Ms. Darlene A. Arnold
Assistant Chief, Compliance and Enforcement
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202
Tel: 410-464-2354
Fax: 410-468-2245
Email: darnold@mdinsurance.state.md.us

Attachment 2

SOUTHERN
MANAGEMENT CORPORATION

Leaders In Quality Apartment Home Living And Service Since 1965.

September 17, 2009

Madam Chairman and Members of the Commission,

My name is David Hillman and I am the CEO of Southern Management Corporation, the largest provider of market rate rental housing in Maryland.

Since 2005 our corporation's retirement pension trust, benefiting about 1,200 employees, has been victimized by unscrupulous loan originators who committed a series of mortgage fraud schemes, in excess of $10 million dollars, resulting in the impairment of our pension funds invested in phony mortgage loans. Each of these schemes devised by the loan originators was aided and facilitated by the negligence, malfeasance and incompetency of the title insurance agents selling the title insurance and handling the escrows of the loan closings. Maryland is well behind the curve in its' regulation and enforcement of this issue compared to most other states.

I am now personally involved in the numerous lawsuits presently being litigated against the title insurance companies, title agents and mortgage brokers to recover the lost funds directly caused by the negligence of the title insurance agents in facilitating and concealing the recordation of forged deeds, in failing to record loan documents or assignments of loan documents or switching or attaching wrong legal descriptions to the loan instruments, or falsifying loan closing statements (HUD-1s) and, otherwise, creating errors in preparing proper title insurance policies created by problems associated with the incompetent handling of loan settlements which, in some instances, have essentially voided the title policies.

Indeed, if a title insurance claim is made, in most instances, the title insurance companies will not pay these claims. All title insurers rely on an identical form policy developed by the American Land Title Association, (ALTA), and approved by the Insurance Commissioners of all 50 states of the United States for the sole purpose of limiting the title insurers from most monetary exposure. This practice is damaging to the entire economy as it makes it all but impossible to sell or finance impaired property.

In my ever-growing experience, even if a title insurer does provide legal representation, the counsel chosen by the title insurer does not provide independent representation of the insured but rather only takes instructions from the title insurer and acts solely on behalf of the title insurer in litigation. If the claimant should have their own lawyer and dispute the insurers (or their appointed lawyers) conduct, the policy coverage is deemed terminated and the insured is responsible to reimburse for the costs expended.

Moreover, almost all of the state insurance commissioners in setting insurance premium fees have endorsed an industry standard that a title insurance policy must be issued for the face amount of the loan, for instance, if the secured loan is $1 million the premium is based on that loan amount. Thereafter if a

1950 Old Gallows Road, Suite 600 • Vienna, Virginia 22182-3933
Phone 703-902-2000 • Fax 703-902-9490 • www.southernmanagement.com

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title claim is made years later, the insurer is permitted according to their interpretation of the terms of the policy to appraise the present (downward) value of the property to determine the full extent of the insurer's liability. In other words, in recessionary times as we are now experiencing with devalued real estate, the title insurer is only required to pay the current appraised value of the real property rather than the face value of the title insurance policy upon which the premium is based. There is no requirement by any state for the title insurer to appraise the property at the time of issuing the policy and collecting the premium. It is my experience that almost every title insurer is employing every kind of delay tactic imaginable to avoid paying any claim or making it so expensive for the insured to pursue a claim. In the prosecution of our claims it is clear there is no effective regulation of the agents writing the policies, no uniform requirement for training by either the government or the title insurance companies, and essentially no competition in the marketplace as a result of the national standardization of policies and rates. In my opinion there is no benefit in purchasing title insurance and the only true beneficiary of the issued policies are the title insurance agents who earns a fee equal to sixty to eighty percent of the premium. It is the right time for Maryland to step up and set an example.

Title insurance should be regulated, licensed and policed to a greater extent than ordinary casualty coverage. Agents should not only be required to pass a test for licensing and post a bond with the commission, but the test should be comprehensive as to escrow/legal procedures and the bond should be equal to the largest policy limit they are authorized to write. Carriers should meet a standard for claims settlement enforced by the commission and a forum for arbitrating policy related disputes should be established under auspices of the insurance department in order to avoid the delay and cost of litigation. Fees could be charged, which would also be a source of revenue to pay for the program. The title insurers use the legal system to run up claimant's costs and time with a goal of forcing unfair settlements. A regulation with teeth would bring justice to the system.

It is a standing joke among real estate developers and lawyers that disbarred attorneys, simply open title agencies. It is not a joke to those of us who have been victimized by these people.

Thank you for the opportunity to testify.

Sincerely,

David H. Hillman
Chairman and CEO

Attachment 3

TESTIMONY OF BARBARA J TAYLOR, LEGAL ASSISTANT / TIPIC

TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTORS
VS. SURETY BOND INCREASE / RESPA and HUD-1

The boilerplate in regards to this matter is the use of licensed notary public's as scapegoats to hide the unethical practices of the mortgage lenders and title companies errors, misappropriation of escrow funds and controlling the disbursements when due. I am basically stressing the fact that the HUD-1 and RESPA is both out dated and needs to be revised, and with this in mind, it should clear up some matters when it comes to the consumer and the notary (licensed Witness Closer/Title Insurance Producer Independent Contractors) TIPIC.

The HUD form abrogation is to appear as though everything is in compliance but in reality line item 1106 has not changed and the notary is still being ignored. This area has been overlooked since the Notary (Regular Notary Public) title has been changed to a Licensed Notary (Signing Agent)/Title Producer Independent Contractor. RESPA enforces an out of date method of the HUD and can not justify why and when to utilize and/or explain the services of the licensed TIPIC and do not include it with other services of the title companies.

Since, 2003 the licensed notary is classified not only in Maryland but are changing nationally. The key word is licensed, licensed like a surveyor, abstractor, title company, recorder, lending institution, etc., since there is now a licensed notary, a notary all together different than the regular notary, a regular notary do not handle real estate closings or documents and are not educated. A licensed notary/title producer must go through 30 hours pre-license course and 16 hour continued education to maintain their license bond and etc., the notaries are now considered to be professionals. A licensed notary, however do not handle Escrow.

The RESPA needs to catch up to the new century. Until this matter is revised then RESPA when it comes to the notary is supporting the biggest fraud in the industry of title, it is a common scheme and a reason some title companies who do not pay hide behind the out dated RESPA Act. We notaries pay for our license and more. This matter is a fraud, a fraud which continues to allow escrow, mortgage and title companies to continue to hide this. In the real world the companies who contract licensed notaries/witness closers who contact the consumer to verify appointment date, location and time, print out the documents, which utilizes their electricity, toner, paper and time, drive to the appointment, utilizes gas, oil and mileage and meeting at the table with the consumer can take from thirty five minutes to an hour, fax over documents requested of the title company and then drive to either FEDEX, UPS or etc., to drop off the documents. This process can takes up to three hours of the licensed notaries time. I believe time spent on each closing handled by a licensed notary, equals to a loan officer, closer and attorney. Again, until this matter is cleared this is considered to be one of the biggest labor violations ever.

This matter must be addressed. It is a matter as stating until the notary is paid on time the case file for loan closing documents handled for a closing is not officially closed it leaves room for a right to action where a notary may be able to file a claim based on these facts and others may and can cause a great upset in the title industry. With basically some notaries know that some loan documents are not complete until records are filed with tax and land records and that could take at least a month or two.

Line item 1106 Notary – (for Sell) have been changed to Line item 1106 Owner' title policy limits – it is considered to be a contract of adhesion, it should be amended to include a notary who acts and handle documents in closing loans must hold commission, errors and omission insurance, license and a surety bond and is able to set out on its own on the HUD and should be compensated at disbursement of funds, no matter if it is a sales, purchase, refinance, equity, HELOC, etc., and since this area of the HUD/RESPA has not yet been amended for revision to be enforced it is a great cause for concern and a matter which fraud in the title industry can

continue to withhold funds from basically clearing the consumer's loan. However, its been revised to state Line item 1106 Notary and Owner's title policy limit again hiding the services performed by the notary and can still leave it to appear that the notary have and/or have not been paid for their services. Even though, it's been changed to now read that Line item1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns. The services of a notary is not disclosed and are caught up in the title charges of the mortgage lender, title companies and the contracted signing companies which are owned by some title companies to control payment to license notaries who are independent contractors for their services. (See below the revised section of the HUD from the [**Federal Register**/Vol. 73, No. 222/Monday, November 17, 2008/Rules and Regulations].

1100. Title Charges		
1101. Title services and lender's title insurance	(from GFE #4)	
1102. Settlement or closing fee	$	
1103. Owner's title insurance	(from GFE #5)	
1104. Lender's title insurance	$	
1105. Lender's title policy limit $		
1106. Owner's title policy limit: $		
1107. Agent's portion of the total title insurance premium	$	
1108. Underwriter's portion of the total title insurance premium	$	

Third-Party Service Firms:
Direct Title Insurance Carriers (524127); Title Abstract and Settlement Offices (541191); Offices of Lawyers (541110); Other Activities Related to Real Estate (531390); Offices of Real Estate Appraisers (531320); Surveying and Mapping (except geophysical) Services (541370); Credit Bureaus (561450); Exterminating and Pest Control Services (561710); Offices of Real Estate Agents and Brokers (531210).

Third-Party Service Firms are labeled with an assigned number and are professional licensed firms and so are TIPICS, so why then are the TIPICS not listed in this process. RESPA/HUD #1106 holds one of the biggest loopholes ever and in itself is a liability, where the legal ethics in this matter is violated. In the section of the Third-Party Service Firms where do we license notaries fit in. Where do the TIPICS (license notaries) fit in, in the Final Rule, since the title companies are now controlling this line, basically placing all title producers under the line items 1100-1108 (see Exhibit – 1 and Exhibit – 1a) under their umbrella giving control over both:

1. TIPICs are educated have a surety bond, trade name, federal identification number, are sole proprietors, S-Corporations, C-Corporations, LLC, LLP and are alieni juris (basically under legal control of another) in the line items 1100-1108, placed under the same umbrella. Why do the TIPICS even need a bond? (See attached Exhibits). Exhibit – 2 Trade Name; Exhibit – 3 IRS – FEIN and Exhibit – 3a W-9; Exhibit – 4 HB 1460.

2. Title Producers who are educated do not have a surety bond are hired as in-house title producers under title company surety bond, under their umbrella. (see Exhibit – 5)*

**[This leaves margin for unethical practices where unlicensed Title Producers are bonded under the title company surety bond, perform closings for signing companies out-of-state and the signing companies then are placed as the notary on line 1106 who unofficially closed the loan (See Exhibit – 5)]. But, in this particular case in Exhibit – 5, the signing company on this exhibit utilized the service of a Maryland TIPIC not knowing that TIPIC is an independent contractor, the TIPIC officially closed the loan. This raised a red flag with the TIPIC.*

Why in the RESPA was the line item1106 Notary singled out and merged into the title company control? Again the RESPA/HUD has not been revised to accept the change that's been made for Notary Witness Closers who hold license. RESPA have not justified why this change have not been made. RESPA do not justify or explain why we notaries must have a bond greater than the income we received; do not justify why we don't sell title or get paid for selling title; do not justify why we are to be gagged at the closing table because of the fears of the lender [**Federal Register** /Vol. 73, No. 222/Monday, November 17, 2008/Rules and Regulations **68229**]; do not justify why we aren't paid at disbursement (after the 3-day Recession); can not justify why we

cannot hold escrow, yet MAHT want a percentage of the escrow funds, because they are confused as to who we are and what our title represents; you cannot tell why nor justify the difference of knowing that notaries are witness closers licensed notary public; you cannot justify why we were labeled TIPICS – Title Producers. Therefore you cannot explain why the Affiliated Business Arrangement Disclosure Statement discloses the fees for Title Insurance and Closing Services, where the fee ranges from $150-$10,000 (varies by state, property, value and loan amount). Higher amounts may apply for high cost properties, large loan amounts of optional coverage. Why the notary isn't paid their worth, starting with the $150.00 instead of the $100.00 or less, we are license businesses, since when does these title companies are allowed to dictate our fee.

So, explain why, are licensed notaries being used as the scapegoats in this matter – when the case is between In and Out of state lenders, title companies and the consumer. So why are we notaries being caught up in an increase in the surety bond, an increase that have no justification or an explanation in this process – or should notaries hold bonding of this magnitude. How can the state of Maryland Insurance Administration benefit from this increase an increase where the funds again go to whomever, it appears to be a fast scam a way for the investors to gain control over the state system. This is one of the biggest scams ever not only against the consumer but state and the licensed notary. An act put into place during the Ehrlich Administration in the very beginning when we licensed notaries were born and did not know or had a say as what to call or label us notaries and why these tactics were adopted by the O'Malley Administration to use the notaries as to blame and a scam put in place by lawyers who own title companies who go out of state to create signing companies hiding behind the RESPA to contract notaries whether they are licensed or not to close loans and to then not pay or create a 30, 60, 90 day policy to which is unethical where their actions are double and triple dipping and/or covering up as to working both or three sides of the fence this action may be cause for legal action. (See attached Exhibits). Exhibit – 6 MIA Title Producer dbase; Exhibit – 7; HUD; Exhibit – 8 Background Clearance and other miscellaneous supporting documents Exhibit – 9.

I believe if the research is performed to connect the dots to some political appointees (law firms, title companies) who are listed on the MIA Producer firm, residential/nonresidential database, to research further you will find that some politicians are caught up into this title industry which keeps the fraud active. See Exhibit – 6 MIA Title Producer Firm dbase. Not only are the licensed notaries in the state of Maryland feeling this unjustified act but other notaries who are performing the same service in other states too. I feel that this matter should be heard not just on state level but on the Federal level as well. In stating that Senate Bill 86, Chapter 361 has no barring and does not apply to TIPICS who are Notary Witness Closers who do not handle "TRUST FUND" as stated in Chapter 361-SB-86 Section 10-121 (see attachments) and in stating a Notary Witness Closer is mislabeled as Title Insurer and do not handle any funds.

It doesn't matter if I am black balled in this industry or if I ever get to close another loan as a licensed mobile notary, for in a couple of years I may not be able to see, walk or drive, but I am standing and will continue to lobby/fight for what is right in this process. I will continue to contest this matter, even if it is just one voice. Deeply, I feel this matter holds ground for a class action process in the support of the license notaries public who are considered to be independent contractors who do not handle trust fund and where these matters can indemnify and deeply affect their livelihood. In conclusion the above subject matter the HUD/RESPA should be revised in support of the Notary Witness Closer (disbursement) and the bond should stay the same $100,000 for the TIPICS only, to not be increased or be dropped.

Barbara J. Taylor
2006 National Notary of the Year
Special Honoree with Highest Honors
MOBILE NOTARIES GROUP, INC.
September 17, 2009

APPENDIX 3: PRESENTATIONS TO THE COMMISSION

MARYLAND
INSURANCE
ADMINISTRATION

Regulation of Title Insurance

Presented to the Commission to Study the Title Insurance Industry in Maryland

Commission Meeting
December 2, 2008

1

Maryland Insurance Administration

- Independent State agency
- Regulates Maryland's $26 Billion insurance industry by:
  - Monitoring insurer solvency and compliance
  - Investigating consumer complaints
  - Reviewing insurance rates
  - Educating consumers statewide
  - Licensing producers and insurance companies
    - 1,500 insurance companies
    - 110,000 insurance producers

2

Overview

- Title insurance
- Title insurance producers
  - Definition
  - Licensure requirements
  - Bond requirement
  - Role of the title insurance producer
- Title insurers
- Complaints and Trends
- Regulatory Gaps

3

Title Insurance

- Title insurance protects real estate purchasers and/or lenders from losses that arise after a real estate settlement, but result from unknown liens, encumbrances or other defects upon the title that existed prior to settlement.
- Examples:
  - outstanding property taxes not paid by a previous owner
  - fraud or forgery of a prior deed or transfer
  - a spouse or unknown heir who steps forward to make a claim against the title
- A title insurance policy provides
  - coverage for legal defense, and
  - the coverage amount listed in the policy, which usually equals the purchase price of the real property.

4

Title Insurance

Title Search

- The purpose is to identify all prior owners, outstanding liens, encumbrances, encroachments, rights of way, easements and the like associated with the real property, so that the buyer is aware of them prior to settling on the property.
- Done before real property is transferred from the seller to the buyer
- Different from all other types of insurance coverage because it protects you against events that occurred before the policy was purchased as long as the title defect was not discovered at the time of the title search.
- Property, casualty, life and health insurance policies protect you against events that occur after you purchase the policy.

5

Title insurance producers

Each settlement in Maryland must involve a title insurance producer

Definition

- "Title insurance producer" means a person that, for compensation, solicits, procures, or negotiates title insurance contracts.
- "Title insurance producer" includes a person that provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract.

6

Title insurance producers

Must be licensed by the MIA

Licensure requirements

- Be 18 years of age
- Be of good character and trustworthy based on the standards of § 10-126 of the Insurance Article
- Not have violated § 10-126 of the Insurance Article

7

Title insurance producers

Licensure requirements

- Complete the pre-licensing education or experience required
- Satisfactory completion of an approved 30-hour course of study offered by an approved school of course provider, or
- During the three years prior, been regularly employed for a total of one year by an insurer, agent, or broker documented by a Affidavit of Employer and pre-approved by the Maryland Insurance Administration, or
- Licensed in a companion jurisdiction for at least a year, and in possession of a letter of clearance from that jurisdiction.
- Pass the required examination

8

Bond requirement

- A sole proprietor, a limited liability company, a partnership, or a corporate applicant for a license as a title insurance producer shall file with the Commissioner:
  - a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and
  - a blanket surety bond; or
  - a letter of credit.
- Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for $100,000.

9

Role of title insurance producer

- Underwrite the risks
- collect the premiums
- issue the title insurance policies.
- conduct the settlements or closings, and
- escrow funds for mortgage payoffs, taxes, closing costs, realtor commissions, etc.

10

Title insurer

- Must possess a certificate of authority from the MIA to conduct insurance business lawfully in the state.
- Subject to all capital and surplus requirements
- Required to submit their policy forms and rates for approval by the MIA prior to issuing a policy in the state.
- Subject to market conduct examinations

11

Complaints and trends

The MIA handles complaints against title insurers and title insurance producers. Common complaints include

- Failure to
  - payoff a prior mortgage, other lien or encumbrance;
  - record the deed, deed of trust, mortgage or mortgage release;
  - charge and collect the appropriate premiums;
  - issue the title insurance policies; and provide copies of legal documents to the buyer.
- Misappropriation of escrow funds
- Falsification, or forgery of closing documents

12

Complaints and trends

- Stats on complaints

2005: 90 title complaints out of 255 total complaints in the Enforcement Unit
2006:100 title complaints out of 268 total complaints
2007: 201 title complaints out of 364 total complaints
As of November 30, 2008: 496 title complaints out of 697 total complaints

13

Complaints and trends

Day Title

- Located in Severna Park, Maryland
- Terminated by Title Insurer after an on-site review revealed:
  - funds received by Day Title for closing were utilized to pay off mortgages that had closed in prior months,
  - funds were inappropriately transferred from escrow to operating
  - continuous misappropriation on the part of and transfers to accounts held by the owner.

Only after the business began to slow and the escrow account began to dry up did these shortages reveal themselves. The total amount of the misappropriation was in excess of $3,000,000.00.

14

Complaints and Trends

Day Title

- Title Insurer petitioned the Circuit Court for the appointment of a receiver
- Title Insurer has had to cover all losses associated with this defalcation or misappropriation of the escrow account.
  - claims made under the title policies
  - paying off all mortgages, deeds of trust and debts associated with the closings where the escrow or trust money had been misappropriated.
- This greatly limited the consumer harm that could have resulted had the Maryland Insurance Administration not acted.

15

Complaints and trends

Day Title

- The Title Insurer acknowledged that the auditors missed the misappropriation in the last annual on-site review or audit allowing continued misappropriation of escrow or trust monies.
- The MIA issued a Revocation Order against the owner and Day Title on May 29, 2008.

16

Complaints and trends

Executive Real Estate Settlements

- Located in Highland, Maryland
- Terminated by the Title Insurer after its on-site review revealed:
  - improper transfers were made from the escrow into the operating account resulting in a shortage in the escrow account prevented the proper payment of mortgage payoffs, property taxes, transfer taxes and other recording charges.
  - wire transfers from the escrow account to the owner's personal account.

The total amount of the misappropriation was in excess of $2,000,000.00.

17

Complaints and trends

Executive Real Estate Settlements

- The Title Insurer petitioned the Circuit Court for the appointment of a receiver
- The Title Insurer has had to cover all losses associated with this defalcation or misappropriation of the escrow account.
  - claims made under the title policies
  - paying off all mortgages, deeds of trust and debts associated with the closings where the escrow or trust money had been misappropriated.
- This greatly limited the consumer harm that could have resulted had the Maryland Insurance Administration not acted.

18

Complaints and trends

Executive Real Estate Services

- The MIA issued a Revocation Order against the owner and Executive on July 21, 2008.

19

Regulatory gaps

- Access to escrow funds
  - Who within the title insurance producer's office should have access to escrow funds and the authority to make draws against the escrow account?
- Bond amount
  - Is the current amount required under statute sufficient to protect consumers when a defalcation or misappropriation of funds occurs?
- On-site review
  - Is there sufficient guidance and requirements for how title insurers conduct their on-site reviews on title insurance producers?

20

- Questions?
- Contacts

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Commissioner
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Assistant Chief Enforcement Officer
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21

MARYLAND
INSURANCE
ADMINISTRATION

Commission to Study the Title Insurance Industry in Maryland

January 15, 2009

Room 230
House Office Building
Annapolis, MD

1

Meeting Topics

- Review of Maryland laws relating to the title insurance industry
  - Insurer requirements
  - Producer requirements
- Review mechanisms available to enforce State laws relating to the title insurance industry
- Review effectiveness of enforcement mechanisms

2

Review of Maryland Laws Relating to the Title Insurance Industry

- Insurer Requirements
  - Certificate of Authority Issued by the Insurance Commissioner
  - Capital and Surplus Requirements
  - Not Subject to Risk Based Capital Requirements
  - Subject to Statutory Reserve Requirements
  - Rates and Forms Require Prior Approval

3

Review of Maryland Laws Relating to the Title Insurance Industry (cont.)

- Insurer Requirements (cont.)
  - Taxes
  - Property and Casualty Insurance Guaranty Corporation
  - Subject to Market Conduct Examination

4

Review of Maryland Laws Relating to the Title Insurance Industry (cont.)

- Producer Requirements
  - License Required
  - $100,000 Bond Requirement

5

Enforcement Mechanisms

- Prior approval rate making
- Prior approval of forms
- Market conduct examinations
- Annual on-site review by insurer of underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer

6

Enforcement Mechanisms (cont.)

- Bond
- Commissioner's authority to:
  - Deny, suspend, revoke, refuse to renew or reinstate a producer license

7

Effectiveness of Enforcement Mechanisms

- To date:
  - 165 title insurance complaint cases closed
  - Approximately 60 revocation/consent orders issued for property and casualty insurance

8

Complaints

- Stats on complaints

2005: 90 title complaints out of 255 total complaints in the Enforcement Unit
2006:100 title complaints out of 268 total complaints
2007: 201 title complaints out of 364 total complaints
2008: 512 title complaints out of 713 total complaints

9

- Questions?
- Contacts

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Assistant Chief Enforcement Officer
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10

MARYLAND
INSURANCE
ADMINISTRATION

Commission to Study the Title Insurance Industry in Maryland

May 28, 2009

3 East
Senate Office Building
Annapolis, MD

1

Meeting Topics

- Part 1. Rate-Setting Factors for Title Insurance Premiums in Maryland
- Part 2. How Rates and Services in a Title Plant State Compare with Rates and Services in Maryland

2

Part 1. Rate-Setting Factors for Title Insurance Premiums in Maryland

3

Rate-Setting Factors for Title Insurance Premiums in Maryland

- Rates for title insurance premiums are subject to prior approval by the MIA.
- Factors to be considered:
  - Past and prospective loss experience within and outside the State; conflagration and catastrophe hazards, if any; past and prospective expenses, both countrywide and those specially applicable to the State; underwriting profits; contingencies; investment income from unearned premium reserve and reserve for losses; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders; and all other relevant factors within and outside the State.

4

Rate-Setting Factors for Title Insurance Premiums in Maryland

- Rates may not be excessive, inadequate, or unfairly discriminatory. (IN Sec. 11-205(d))

5

Rate-Setting Factors for Title Insurance Premiums in Maryland

- Lender's policy issued in an amount equal to the mortgage of the loan.
- Owner's policy issued in an amount equal to the fair market value (FMV) of the property.
  - FMV presumed to be contract sales price
  - Current appraisal

6

Rate-Setting Factors for Title Insurance Premiums in Maryland

- Basic premium for owner's policy calculated on coverage amount and cost per thousand.
- Minimum premium for owner's policy required by some insurers, ex. $40,000 or less at a fixed cost ($155.60 in the case of two insurers that issue policies in MD).

7

Example 1. Basic Premium Rates for Owner's Policy

Policy limit	Cost per thousand
Up to $250,000	$3.89
Over $250K - $500K	Add $3.31
Over $500K - $1 million	Add $2.78
Over $1 million – $5 million	Add $2.21
Over $5 million – $15 million	Add $1.84
Over 15 million	Add $1.58

8

Example 1. Calculating Rate for Standard Owner's Policy

Contract sales price = $657,650

- Round up the value to the next $1,000 or $658 thousands.
- Since value is greater than the first tier, only the first $250,000 will be charged at the first tier rate:
  - $250 thousand x $3.89 = $927.50 premium
  - $250 thousand x $3.31 = $827.50 premium
  - $158 thousand x $2.78 = $439.24 premium

  $2239.24 total premium

9

Rating Discounts that May Be Available to Purchasers of Owners' Policies

- Simultaneous issue
- First-time homebuyer
- Senior citizen
- Certain professions
- Sub-division bulk rate
- Refinance
- Reissue

10

Example 2. Reissue Rates for Standard Owners' Policy

Policy limit	Cost per thousand
Up to $250,000	$2.33
Over $250K - $500K	Add $1.99
Over $500K - $1 million	Add $1.67
Over $1 million – $5 million	Add $1.33
Over $5 million – $15 million	Add $1.10
Over 15 million	Add $.95

11

Example 2. Calculating Reissue Rate for Standard Owner's Policy

Contract sales price = $657,650 where the prior owner's policy is in the amount of $300,000.

- Part of the premium is calculated at reissue rates (the first $300,000) and the balance ($358,000) at full issue rates.
  - $250 thousand x $2.33 = $582.50 premium
  - $ 50 thousand x $1.99 = $ 99.50 premium
  - $200 thousand x $3.31 = $662.00 premium
  - $158 thousand x $2.78 = $439.24 premium

  $1783.24 total premium

12

Other Title Charges in Maryland That Vary from Title Agent to Title Agent

- Not regulated by MIA
  - Settlement or closing fee
  - Abstract or title search
  - Title examination
  - Title insurance binder
  - Document preparation
  - Notary fees
  - Attorney's fees (generally would include costs for all of the above)

13

Additional Settlement Charges in Maryland

- Not Regulated by MIA
  - Survey charge
  - Pest inspection

14

Part 2. How Rates and Services in a Title Plant State Compare with Rates and Services in Maryland

15

Title Plant Services

- Used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with underwriting and issuance of title insurance policies and for other purposes.
- Consists of fully indexed records showing all instruments of record affecting lands within a jurisdiction.

16

Title Plant Services (cont.)

- Include plat or map records, deeds, deeds of trust, mortgages, lis pendens, abstracts of judgment, federal tax liens, mechanic's liens, attachment liens, divorce actions, wherein real property is involved; probate records; chattel mortgages, attached to realty and financing statements relating to items which are, or are to become, attached to realty, if available for indexing from the appropriate court which is covered by the plant.

17

Title Plant States

- Alaska, Idaho, Iowa, Missouri, New Mexico, Texas
- These states require title insurers to establish and maintain title plants for a specified period of time before a policy is written (usually 25 years).

18

Average Rates in 2008 for Title Insurance in Title Plant States/MD

- Based on $200,000 Loan
  - Alaska = $897.84
  - Idaho = $817.16
  - Iowa = $543.57
  - Missouri = $489.35
  - New Mexico = $1,208.83
  - Texas = $1,470.60 (all inclusive)
  - Maryland = $696.10

* Source: Bankrate.com

19

- Questions?
- Contact

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Director of Government Relations and Policy Development
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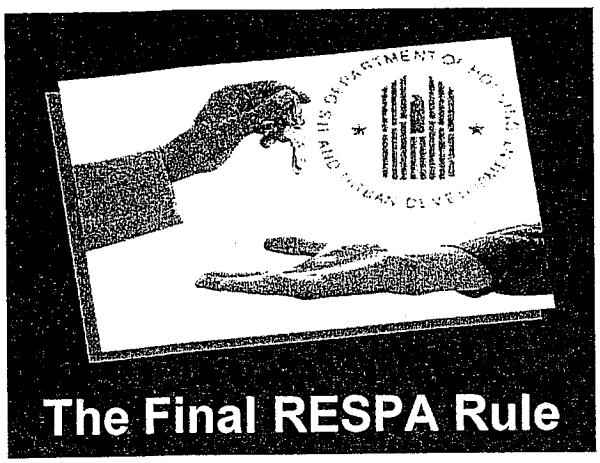
20



The Final RESPA Rule

Principles of RESPA Reform

- Help consumers shop for the best loan
- Shopping leads to greater competition & lower prices

Principles of RESPA Reform

- Key final terms of the loan disclosed to the borrower at closing
- Preserve a competitive market for all settlement service providers

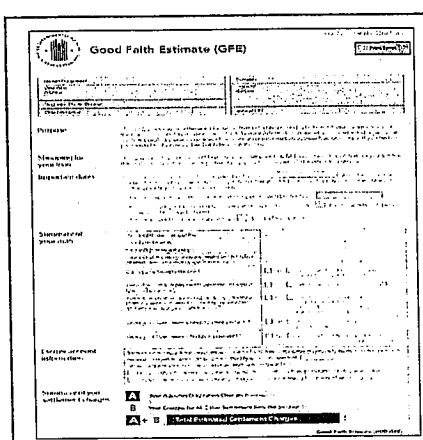
Effective Dates

January 16, 2009

- Servicing Disclosure Statement (Section 6)
- average charge
- technical changes

January 1, 2010

- new GFE
- new HUD-1/1A
- 1% cap on FHA origination fees (2.5% - new construction)
- everything else



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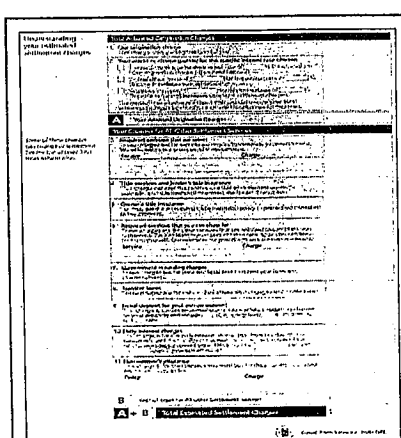
Page 1



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Page 2

Example

Your Adjusted Origination Charges

1. Our origination charge This charge is for getting this loan for you.	$6,250.00
2. Your credit or charge (points) for the specific interest rate chosen ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $[3,000.00] for this interest rate of [6.0] %. This credit **reduces** your settlement charges. ☐ You pay a charge of $[ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$3,000.00
A Your Adjusted Origination Charges	$3,250.00

All Other Settlement Services

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* — *Charge* Appraisal/Credit Report — $250/$40 Tax Service/Flood Certification — $75/$12 Upfront Mortgage Insurance Premium — $4,600.00	$4,878.00
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	$925.00
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property	$725.00
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* — *Charge* Survey — $225.00 Pest Inspection — $45.00	$270.00

8

Written List

If a loan originator permits a borrower to shop for services (Block 4, 5 & 6), the loan originator must provide a written list of providers the estimates were based on.

9

Written List

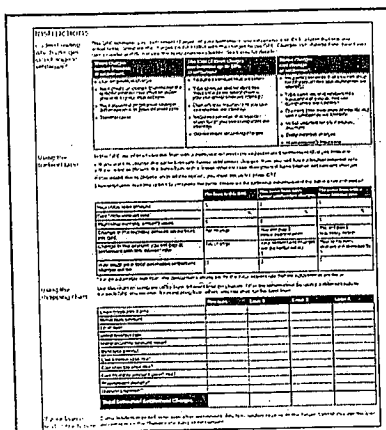
- Must be provided with GFE on a separate piece of paper
- May include more than one provider of each shoppable service.
- If an affiliate is listed, other providers should also be included.

1

All Other Settlement Services

7. Government recording charges These charges are for state and local fees to record your loan and title documents.	$50.00
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.	$1,368.00
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes [X] all property taxes, [X] all insurance, and [ ] other ____	$306.60
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $[50.00] per day for [2] days (if your settlement is [12/30/08]).	$100.00
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* — *Charge* Insure-U — $600.00	$600.00

11



GFE

Page 3

Instructions

12

New Home Purchases

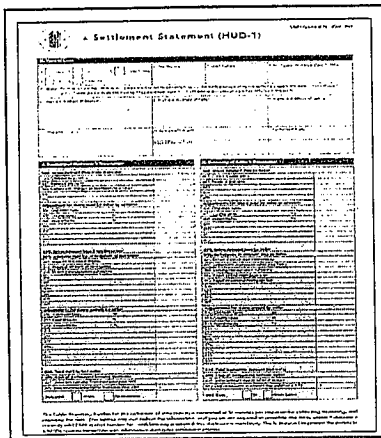
If settlement is anticipated to be more than 60 days after GFE would be provided, the originator may disclose on a separate piece of paper that the originator may issue a revised GFE at any time up to 60 days before settlement.

13

Right-to-cure

Charges exceeding tolerance not a violation of RESPA Section 5 IF borrower is reimbursed within 30 calendar days after settlement

14



HUD-1 Settlement Statement

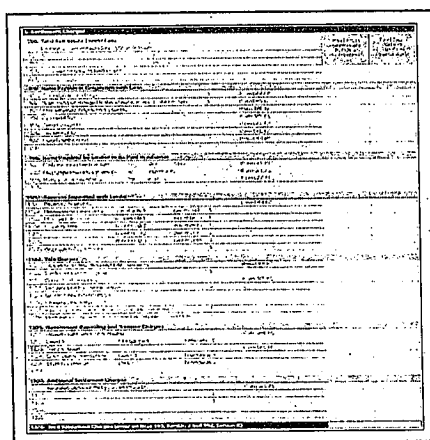
15

200. Amounts Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204. Second mortgage principal amount	$40,000.00
205. Second mortgage proceeds	$38,600.00
206.	

Lines 204 – 209: principal amount of additional loans

May also show 2nd loan proceeds

16



HUD-1 Page 2

17

800. Items Payable in Connection with Loan			
801. Our origination charge		$6,250.00 (from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen		-$3,000.00 (from GFE #2)	
803. Your adjusted origination charges		(from GFE #A)	$3,250.00
804. Appraisal fee to	Appraisal Company	(from GFE #3)	$250.00
805. Credit report to	Credit Report Company	(from GFE #3)	$40.00
806. Tax service to	Tax Service Company	(from GFE #3)	$76.00
807. Flood certification to	Flood Certification Company	(from GFE #3)	$12.00

Line 801 & 802: listed outside column
Line 803: listed inside column

18

800. Items Payable in Connection with Loan			
801. Our origination charge	$ 6,250.00	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	- $ 3,000.00	(from GFE #2)	
803. Your adjusted origination charges		(from GFE #4)	$3,250.00
804. Appraisal fee to Appraisal Company		(from GFE #3)	$250.00
805. Credit report to Credit Report Company		(from GFE #3)	$40.00
806. Tax service to Tax Service Company		(from GFE #3)	$76.00
807. Flood certification to Flood Certification Company		(from GFE #3)	$12.00

Lines 804 thru 807: charges in borrower's column

IRS: Origination Point Disclosure

May be disclosed in Line 801...

800. Items Payable in Connection with Loan			
801. Our origination charge	Includes Origination Point (1% or $3,000)	$ 6,250.00	(from GFE #1)

or...

Place asterisk in Line 801 &

800. Items Payable in Connection with Loan		
801. Our origination charge **	$ 6,250.00	(from GFE #1)

reference on bottom of page 2 on the HUD-1.

1400. Total Settlement Charges (enter on lines 103, Section J
**Includes Origination Point (1% or $3,000)

Fee Categories – 1100s

"Title services"

Means any service involved in the provision of title insurance

"Title Service"

Includes, but is not limited to...

- title examination & evaluation
- preparation & issuance of commitment
- preparation & issuance of policies

...AND

"Title Service"

...AND

- all administrative services & processing services required to perform these functions

(e.g. document delivery, preparation & copying, wiring, endorsements, & notary)

1100s Example

1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	$925.00
1102. Settlement or closing fee	$		
1103. Owner's title insurance Title Town USA/Underwriter ABC		(from GFE #5)	$725.00
1104. Lender's title insurance Title Town USA/Underwriter ABC	$ 175.00		
1105. Lender's title policy limit $ 300,000.00			
1106. Owner's title policy limit $ 300,000.00			
1107. Agent's portion of the total title insurance premium to Title Town USA	$ 720.00		
1108. Underwriter's portion of the total title insurance premium to Underwriter ABC	$ 180.00		

25

1100s with Itemized 3rd Party Fees

1100. Title Charges			
1101. Title services and lender's title insurance		(from GFE #4)	$925.00
1102. Settlement or closing fee 3rd Party Closing Company	$ 100.00		$75.00
1103. Owner's title insurance Title Town USA/Underwriter ABC		(from GFE #5)	$725.00
1104. Lender's title insurance Title Town USA/Underwriter ABC	$ 175.00		
1105. Lender's title policy limit $ 300,000.00			
1106. Owner's title policy limit $ 300,000.00			
1107. Agent's portion of the total title insurance premium to Title Town USA	$ 720.00		
1108. Underwriter's portion of the total title insurance premium to Underwriter ABC	$ 180.00		

Borrower charge outside column; separate seller charge in seller's column

26

Seller (or other) Paid Items

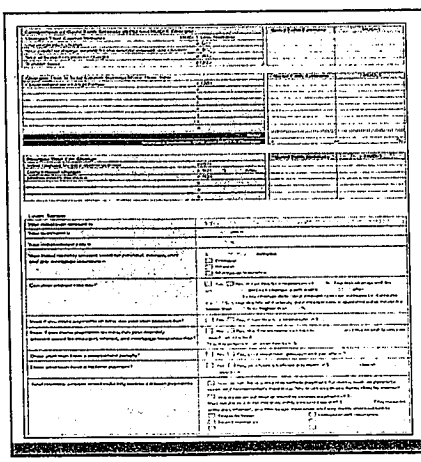
- all charges that were in borrower's column on the GFE; put in borrower's column on the HUD-1
- credit to borrower from seller; put on page 1 to offset charges in borrower's column

27

Seller credit example

200. Amounts Paid by or in Behalf of Borrower		500. Reductions In Amount Due to Seller	
201. Deposit or earnest money	$2,000.00	501. Excess deposit (see instructions)	$2,000.00
202. Principal amount of new loan(s)	$300,000.00	502. Settlement charges to seller (line 1400)	$16,735.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204		504. Payoff of first mortgage loan	$225,000.00
205		505. Payoff of second mortgage loan	
206. Seller paid credit	$2,000.00	506. Seller paid credit	$2,000.00
207.		507.	
208.		508.	
209.		509.	

28



HUD-1, page 3

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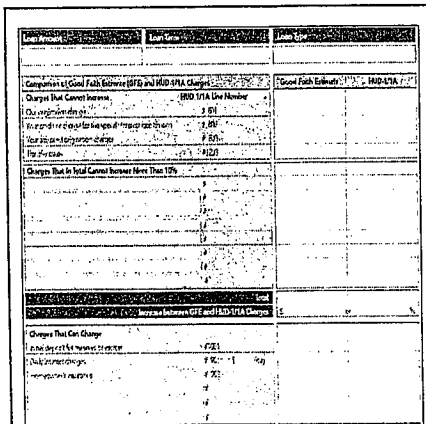


Comparison Chart

30

Charges That Cannot Increase

Comparison of Good Faith Estimate (GFE) and HUD-1/1A Charges		Good Faith Estimate	HUD-1/1A
Charges That Cannot Increase	HUD 1/1A Line Number		
Our origination charge	# 801	$6,250.00	$6,500.00
Your credit or charge for the specific interest rate chosen	# 802	$3,000.00	$3,000.00
Your adjusted origination charges	# 803	$3,250.00	$3,500.00
Transfer taxes	#1203	$1,388.00	$1,388.00

31

10% Tolerance

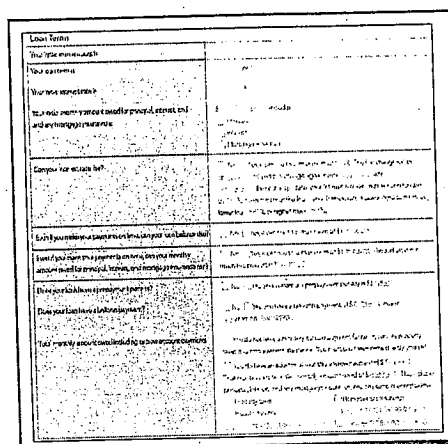
Charges That in Total Cannot Increase More Than 10%			
Appraisal	#804	$250.00	$295.00
Credit Report	#805	$40.00	$40.00
Tax Service	#806	$76.00	$76.00
Flood Certification	#807	$12.00	$12.00
	#		
	#		
	#		
	#		
Total		$378.00	$423.00
Increase between GFE and HUD-1/1A Charges		$45.00	or 12 %

32

Charges That Can Change

Charges That Can Change			
Initial deposit for reserves or escrow	#1001	$306.60	$306.60
Daily interest charges	# 901 $50 /day	$100.00	$150.00
Homeowner's insurance	# 903	$600.00	$645.00
	#		

33



Loan Terms

34

Right-to-cure

Inadvertent or technical errors not a violation of RESPA Section 4 IF revised HUD-1 is provided within 30 calendar days after settlement

35

Average Charge

36

Average Charge

- calculations based on specific class of transactions
- during a specific time period
  - not less than 30 days
  - not more than 6 months
- for a specific geographical area

37

Average Charge

- charge may not exceed average calculation
- charge may not exceed TOTAL price paid to 3rd party provider
- settlement service providers must retain all documentation determining accuracy of pricing method for at least 3 years

38

Average Charge

- may not average on charges based on loan amount or property value

(e.g. transfer taxes, interest charges, escrow reserves & all insurances including title insurance)

39

Miscellaneous

- updated reserve/escrow account language
- allowed for ESIGN applicability

40

From the FAQs...

41

FAQs

Q: If a charge was calculated using average charge, may the charge be waived or discounted?

A: Yes. Discounting or waiving a charge calculated using average charge is permitted.

42

FAQs

Q: Which lines of page 2 of the HUD-1 is a person *not* required to be identified?

A: General rule = ALL must be identified except...

Lines 801, 802, 803, 901, the 1000 series, 1101, 1105, 1106, 1201, 1202, 1203, 1204, 1205 and 1301.

43

FAQs

Q: If state law requires further itemization of title service, title insurance related fees, or title policy endorsements, how should these fees be listed on the HUD-1?

44

FAQs

A: Those fees may be itemized on blank lines in the 1100 series – charge outside the borrower's column.

Endorsements may be listed in Lines 1103 & 1104 – charge outside the borrower's column.

45

FAQs

Q: If borrower purchases a Lender's & Owner's title insurance policy & receives a simultaneous issue discount, is the discounted amount for the Lender's policy listed in Line 1104 on the HUD-1?

46

FAQs

A: The amount for the Lender's policy will vary according to state law & what is customary in an area.

The settlement agent must record the actual charge of the lender's title insurance premium & related endorsements in Line 1104.

47

FAQs

Q: How is the charge for conducting the settlement disclosed on the HUD-1?

48

FAQs

A: The charge to the borrower for conducting the settlement must be included in the total stated in the borrower's column on Line 1101 of the HUD-1.

AND...

49

FAQs

The total in borrower's column in Line 1101 must include amounts paid by another person on behalf of borrower & an offsetting credit must be shown on page 1 of the HUD-1.

AND...

50

FAQs

If seller paid, credit to borrower listed in Lines 204-209, & charge to seller listed in Lines 506-509.

If another person pays, a credit is listed in Lines 204-209 with the name of the person paying the charge.

AND...

51

FAQs

Any separate charge to a seller for conducting the settlement is listed in the seller's column in Line 1102.

The borrower's charge for conducting the settlement should be itemized outside the borrower's column in Line 1102 if performed by a third party.

52

FAQs

Q: If a borrower selects an attorney to represent the borrower's personal interests at settlement, where is this attorney's fee disclosed on the HUD-1?

53

FAQs

A: May be separately listed on a blank line in the 1100 series in borrower's column with the name of the attorney & the type of service provided.

54

FAQs

Q: Should the loan originator quote the charge for a basic owner's title insurance policy or an enhanced owner's title insurance policy on the GFE?

55

FAQs

A: Loan originator should quote rate for the basic owner's title insurance policy.

If borrower chooses an enhanced owner's policy before GFE is issued, loan originator should quote the rate for an enhanced policy.

56

Department of Housing and
Urban Development
Office of RESPA & Interstate Land Sales
451 7th Street SW, Room 9154
Washington DC 20410
(202) 708-0502
hsg-respa@hud.gov
www.hud.gov/respa

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OMB Approval No. 2502-0265

Good Faith Estimate (GFE)

Name of Originator	ABC Broker
Originator Address	456 Main Street Somewhere, USA 00000
Originator Phone Number	111-222-3333
Originator Email	originator@ABCLender.com

Borrower	Bob Borrower
Property Address	123 Main Street Anywhere, USA 00000
Date of GFE	April 1, 2009

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through 4/1/09 @ 4:00 pm. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through 4/17/09.
3. After you lock your interest rate, you must go to settlement within 30 days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least 15 days before settlement.

Summary of your loan

Your initial loan amount is	$ 294,566.00
Your loan term is	30 years
Your initial interest rate is	5.0 %
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ 1,713.98 per month
Can your interest rate rise?	☒ No ☐ Yes, it can rise to a maximum of %. The first change will be in
Even if you make payments on time, can your loan balance rise?	☒ No ☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☒ No ☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $
Does your loan have a prepayment penalty?	☐ No ☒ Yes, your maximum prepayment penalty is $ 1,227.29
Does your loan have a balloon payment?	☒ No ☐ Yes, you have a balloon payment of $ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ 1,713.98.

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges *(See page 2.)*	$ 3,750.00
B	Your Charges for All Other Settlement Services *(See page 2.)*	$ 9,751.44
A + B	Total Estimated Settlement Charges	$ 13,501.44

Understanding your estimated settlement charges

Some of these charges can change at settlement. See the top of page 3 for more information.

Your Adjusted Origination Charges

1. Our origination charge This charge is for getting this loan for you.	$6,750.00
2. Your credit or charge (points) for the specific interest rate chosen ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☒ You receive a credit of $ [3,000.00] for this interest rate of [5.0] %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	-$3,000.00
A Your Adjusted Origination Charges	$ $3,750.00

Your Charges for All Other Settlement Services

3. Required services that we select These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* — *Charge* Appraisal/Credit Report — $220/$40 Tax Service/Flood Certification — $54/$12 Upfront Mortgage Insurance Premium — $5,066.25	$5,392.25
4. Title services and lender's title insurance This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	$925.00
5. Owner's title insurance You may purchase an owner's title insurance policy to protect your interest in the property.	$725.00
6. Required services that you can shop for These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* — *Charge* Survey — $250.00 Pest Inspection — $45.00	$295.00
7. Government recording charges These charges are for state and local fees to record your loan and title documents.	$50.00
8. Transfer taxes These charges are for state and local fees on mortgages and home sales.	$1,368.00
9. Initial deposit for your escrow account This charge is held in an escrow account to pay future recurring charges on your property and includes ☒ all property taxes, ☒ all insurance, and ☐ other [ ].	$306.60
10. Daily interest charges This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $[39.59] per day for [1] days (if your settlement is [5/31/09]).	$39.59
11. Homeowner's insurance This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* — *Charge* Insure-U — $650.00	$650.00
B Your Charges for All Other Settlement Services	$ $9,751.44
A + B Total Estimated Settlement Charges	$ 13,501.44

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges **cannot increase** at settlement:	The total of these charges **can increase up to 10%** at settlement:	These charges **can change** at settlement:
▪ Our origination charge ▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* ▪ Your adjusted origination charges *(after you lock in your interest rate)* ▪ Transfer taxes	▪ Required services that we select ▪ Title services and lender's title insurance *(if we select them or you use companies we identify)* ▪ Owner's title insurance *(if you use companies we identify)* ▪ Required services that you can shop for *(if you use companies we identify)* ▪ Government recording charges	▪ Required services that you can shop for *(if you do not use companies we identify)* ▪ Title services and lender's title insurance *(if you do not use companies we identify)* ▪ Owner's title insurance *(if you do not use companies we identify)* ▪ Initial deposit for your escrow account ▪ Daily interest charges ▪ Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges**, then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate**, then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	$ 294,566.00	$ 294,566.00	$ 294,566.00
Your initial interest rate[1]	5.0 %	6.0 %	4.5 %
Your initial monthly amount owed	$ 1,713.98	$ 1,898.66	$ 1,652.11
Change in the monthly amount owed from this GFE	No change	You will pay $ 184.78 **more** every month	You will pay $ 88.77 **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $ 1,500.00	Your settlement charges will **increase** by $ 1,500.00
How much your total estimated settlement charges will be	$ 13,501.44	$ 12,051.44	$ 15,051.44

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	ABCBroker			
Initial loan amount	294,566.00			
Loan term	30 years			
Initial interest rate	5.0			
Initial monthly amount owed	$1,713.98			
Rate lock period	30 days			
Can interest rate rise?	no			
Can loan balance rise?	no			
Can monthly amount owed rise?	no			
Prepayment penalty?	no			
Balloon payment?	no			
Total Estimated Settlement Charges	$13,501.44			

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

OMB Approval No. 2502-0265

A. Settlement Statement (HUD-1)

B. Type of Loan

1. X FHA	2.	RHS	3.	4. Conv. Unins.	6. File Number	7. Loan Number	8. Mortgage Insurance Case Number
4.	VA	5.	Conv. Ins.		11111	22222222	249-00000000

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked (p.o.c.) were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower	E. Name & Address of Seller	F. Name & Address of Lender
Bob Borrower 123 Main Street Anywhere, USA 00000	Samantha Seller 456 Home Place Anywhere, USA 00000	XYZ Lender 456 Main Street Somewhere, USA 00000

G. Property Location:	H. Settlement Agent:	I. Settlement Date:
456 Home Place Anywhere, USA 00000	Title Town USA	May 8, 2009
Lot 12, Blk 2, Great View Subdivision	Place of Settlement: 222 Your Corner, Any Town, USA 00000	

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	$300,000.00
102. Personal property	
103. Settlement charges to borrower (line 1400)	$14,358.85
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	$314,358.75
200. Amounts Paid by or in Behalf of Borrower	
201. Deposit or earnest money	$2,000.00
202. Principal amount of new loan(s)	$294,566.00
203. Existing loan(s) taken subject to	
204.	
205.	
206. Seller credit for transfer taxes	$1,368.00
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	$314,358.85
302. Less amounts paid by/for borrower (line 220)	($297,934.00)
303. Cash [X] From [ ] To Borrower	$16,424.85

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	$300,000.00
402. Personal property	
403.	
404.	
405.	
Adjustments for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	$300,000.00
500. Reductions In Amount Due to Seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	$18,228.00
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	$247,000.00
505. Payoff of second mortgage loan	
506. Earnest money deposit	$2,000.00
507. Seller credit for transfer taxes	$1,368.00
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	$300,000.00
602. Less reductions in amount due seller (line 520)	($266,596.00)
603. Cash [X] To [ ] From Seller	$31,404.00

L. Settlement Charges

			Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Real Estate Broker Fees				
Division of commission (line 700) as follows:				
701. $ 9,360.00	to RE #1			
702. $ 9,360.00	to RE #2			
703. Commission paid at settlement				$16,720.00
704. Earnest money deposit held by RE #2	$2,000 P.O.C.			
800. Items Payable in Connection with Loan				
801. Our origination charge		$6,250 (from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen		$ 3,000 (from GFE #2)		
803. Your adjusted origination charges ABC Broker/XYZ Lender		(from GFE A)	$3,250.00	
804. Appraisal fee to Appraisal Company		(from GFE #3)	$250.00	
805. Credit report to Credit Report Company		(from GFE #3)	$40.00	
806. Tax service to Tax Service Company		(from GFE #3)	$76.00	
807. Flood certification Flood Certification Company		(from GFE #3)	$12.00	
808.				
900. Items Required by Lender to Be Paid in Advance				
901. Daily interest charges from 5/8	to 5/31 @ $39.59 /day	(from GFE #10)	$910.57	
902. Mortgage insurance premium	for 12 months to FHA	(from GFE #3)	$5,066.25	
903. Homeowner's insurance	for 1 years to Insure-It	(from GFE #11)	$600.00	
904.				
1000. Reserves Deposited with Lender				
1001. Initial deposit for your escrow account		(from GFE #9)	$516.03	
1002. Homeowner's insurance 1	months @ $50.00 per month	$ 50.00		
1003. Mortgage insurance 1	months @ $132.69 per month	$ 132.69		
1004. Property taxes 3	months @ $ 166.67 per month	$ 500.01		
1005.	months @ $ per month	$		
1006.	months @ $ per month	$		
1007. Aggregate Adjustment		-$ -166.67		
1100. Title Charges				
1101. Title services and lender's title insurance		(from GFE #4)	$925.00	
1102. Settlement or closing fee Title Town USA		$		$125.00
1103. Owner's title insurance Title Town USA/Title Underwriter		(from GFE #5)	$725.00	
1104. Lender's title insurance Title Town USA/Title Underwriter		$175.00		
1105. Lender's title policy limit $ 294,566				
1106. Owner's title policy limit $ 300,000				
1107. Agent's portion of the total title insurance premium		$ 720.00 to Title Town USA		
1108. Underwriter's portion of the total title insurance premium		$ 180.00 to Title Underwriter		
1200. Government Recording and Transfer Charges				
1201. Government recording charges		(from GFE #7)	$50.00	
1202. Deed $ 25.00	Mortgage $ 25.00	Releases $ 15.00		15.00
1203. Transfer taxes		(from GFE #8)	$1,368.00	$1,368.00
1204. City/County tax/stamps	Deed $ 684.00	Mortgage $ 684.00		
1205. State tax/stamps	Deed $ 684.00	Mortgage $ 684.00		
1206.				
1300. Additional Settlement Charges				
1301. Required services that you can shop for		(from GFE #6)	$270.00	
1302. Survey to Measure-It		$225.00		
1303. Pest inspection to Rid-A-Bug		$45.00		
1304. Home warranty to Home Warranty Company			$300.00	
1305.				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			$14,358.85	$18,228.00

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801	$6750.00	$6,250.00
Your credit or charge (points) for the specific interest rate chosen	# 802	-$3,000.00	-$3,000.00
Your adjusted origination charges	# 803	$3,750.00	$3,250.00
Transfer taxes	#1203	$1,368.00	$1,368.00

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201	$50.00	$50.00
Appraisal	# 804	$220.00	$250.00
Credit Report	# 805	$40.00	$40.00
Tax Service Fee	# 806	$54.00	$76.00
Flood Certification	# 807	$12.00	$12.00
Up-front Mortgage Insurance Premium	# 902	$5,066.25	$5,066.25
Title services & lender's title insurance	# 1101	$925.00	$925.00
Owner's title insurance	# 1103	$725.00	$725.00
	Total	$7,092.25	$7,144.25
	Increase between GFE and HUD-1 Charges	$ 52.00 or	.8 %

Charges That Can Change			Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		$306.60	$516.03
Daily interest charges	# 901	$39.59 /day	$39.59	$910.57
Homeowner's insurance	# 903		$650.00	$600.00
Survey	# 1302		$250.00	$225.00
Pest inspection	# 1303		$45.00	$45.00
	#			

Loan Terms

Your initial loan amount is	$ 294,566
Your loan term is	30 years
Your initial interest rate is	5 %
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ 1,713.98 includes ☑ Principal ☑ Interest ☑ Mortgage Insurance
Can your interest rate rise?	☑ No. ☐ Yes, it can rise to a maximum of [illegible] %. The first change will be on [illegible] and can change again every [illegible] after [illegible]. Every change date, your interest rate can increase or decrease by [illegible] %. Over the life of the loan, your interest rate is guaranteed to never be lower than [illegible] % or higher than [illegible] %.
Even if you make payments on time, can your loan balance rise?	☑ No. ☐ Yes, it can rise to a maximum of $ [illegible].
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☑ No. ☐ Yes, the first increase can be on [illegible] and the monthly amount owed can rise to $ The maximum it can ever rise to is $ [illegible].
Does your loan have a prepayment penalty?	☐ No. ☑ Yes, your maximum prepayment penalty is $ 1,227.29 .
Does your loan have a balloon payment?	☑ No. ☐ Yes, you have a balloon payment of $ [illegible] due in [illegible] years on [illegible]
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself ☑ You have an additional monthly escrow payment of $ 216.67 that results in a total initial monthly amount owed of $ 1,930.65 . This includes principal, interest, any mortgage insurance and any items checked below: ☑ Property taxes ☑ Homeowner's insurance ☐ Flood insurance ☐ [illegible] ☐ [illegible] ☐ [illegible]

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

APPENDIX 4: DRAFT LEGISLATION IMPLEMENTING COMMISSION RECOMMENDATIONS

A BILL ENTITLED

AN ACT concerning

Title Insurance Producers and Real Estate Settlements – Bonding and Disclosures

FOR the purpose of providing that a title insurance producer independent contractor who is the agent of a title insurance producer is not required to file a certain fidelity bond, blanket surety bond, or a letter of credit with the Maryland Insurance Commissioner under certain circumstances; prohibiting a title insurance producer from using or accepting the services of a title insurance producer independent contractor unless the title insurance producer independent contractor is covered under the title insurance producer's surety and fidelity bonds; providing that a title insurance producer using the services of a title insurance producer independent contractor is the legal principal of the title insurance producer independent contractor; requiring any deed of trust executed by a title insurance producer independent contractor to include certain information; requiring a person who has a connection with the settlement of certain real estate transactions to comply with certain federal disclosure requirements; requiring the Maryland Insurance Administration and Department of Labor, Licensing, and Regulation to conduct a certain study, adopt certain regulations, examine certain processes, develop a certain document; share certain information, and submit certain reports; defining certain terms; and generally relating to title insurance producers and real estate settlements.

BY repealing and reenacting, without amendments,
Article – Insurance
Section 10-121 (e) and (g)
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY renumbering,
Article – Insurance
Section 10-121 (n)
to be Section 10-121(m)
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY adding to
Article – Insurance
Section 10-121 (n)
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,
Article – Insurance
Section 10-121.1
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,
Article – Real Property
Section 14-127
Annotated Code of Maryland
(2003 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the laws of Maryland read as follows:

Article – Insurance

10-121.

(e) (1) In addition to meeting any of the applicable requirements for a license to act as an insurance producer under this subtitle, a sole proprietor, a limited liability company, a partnership, or a corporate applicant for a license as a title insurance producer shall file with the Commissioner:

(i) a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and

(ii) 1. a blanket surety bond; or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for $150,000.

(3) The Commissioner may adopt regulations that specify when it is appropriate for a bond or letter of credit to be less than $150,000.

(4) Notwithstanding paragraph (2) of this subsection, the Commissioner may waive the requirement for a bond or letter of credit if the Commissioner finds that bonds are not generally available or reasonably affordable.

(5) The Commissioner shall make a specific finding that states the reason for accepting a bond or letter of credit for less than $150,000.

(g) The title insurance producer shall file the bond or letter of credit with the Commissioner:

(1) after the Commissioner notifies the title insurance producer of the approval of the application for a license; and

(2) before the Commissioner issues the license.

(N) NOTWITHSTANDING SUBSECTIONS (E) AND (G) OF THIS SECTION, A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR WHO IS THE AGENT OF A TITLE INSURANCE PRODUCER IS NOT REQUIRED TO FILE A BLANKET FIDELITY BOND, A BLANKET SURETY BOND, OR A LETTER OF CREDIT WITH THE COMMISSIONER.

[(n)] (M) In addition to any requirements under Title 10, Subtitle 1 of this article, title insurance producers shall comply with this section.

10–121.1.

(A) A title insurance producer may not use or accept the services of a title insurance producer independent contractor unless the title insurance producer independent contractor:

(1) holds an appointment with the title insurer with which the contract of title insurance may be placed; AND

(2) IS COVERED UNDER THE TITLE INSURANCE PRODUCER'S SURETY AND FIDELITY BONDS.

(B) (1) A TITLE INSURANCE PRODUCER USING THE SERVICES OF A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS THE LEGAL PRINCIPAL OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR AND IS LIABLE FOR ALL ACTIONS, INCLUDING NON-INTENTIONAL CONDUCT, OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR.

(2) ANY DEED OF TRUST EXECUTED BY A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR ACTING AS THE AGENT OF A TITLE INSURANCE PRODUCER SHALL INCLUDE ON THE RECORDED DEED OF TRUST THE NAME, ADDRESS, AND LICENSE NUMBER OF THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR AND THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR'S PRINCIPAL.

Article – Real Property

14-127

(a) (1) In this section the following words have the meanings indicated.

(2) "AFFILIATED BUSINESS ARRANGEMENT" "AFFILIATED BUSINESS ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH:

(I) A PERSON WHO IS IN A POSITION TO REFER BUSINESS INCIDENT TO OR A PART OF A REAL ESTATE SETTLEMENT SERVICE INVOLVING A MORTGAGE LOAN, OR AN ASSOCIATE OF THAT PERSON, HAS EITHER AN AFFILIATE RELATIONSHIP WITH OR A DIRECT OR BENEFICIAL OWNERSHIP INTEREST OF MORE THAN 1 % IN A PROVIDER OF SETTLEMENT SERVICES; AND

(II) EITHER OF THE PERSONS DIRECTLY OR INDIRECTLY REFERS BUSINESS TO THAT PROVIDER OR AFFIRMATIVELY INFLUENCES THE SELECTION OF THAT PROVIDER

(3) "ASSOCIATE" MEANS A PERSON WHO HAS ONE OR MORE OF THE FOLLOWING RELATIONSHIPS WITH A PERSON IN A POSITION TO REFER SETTLEMENT BUSINESS:

(I) A SPOUSE, PARENT, OR CHILD OF THE PERSON;

(II) A CORPORATION OR BUSINESS ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE PERSON;

(III) AN EMPLOYER, OFFICER, DIRECTOR, PARTNER, FRANCHISOR, OR FRANCHISEE OF THE PERSON; OR

(IV) ANYONE WHO HAS AN AGREEMENT, ARRANGEMENT, OR UNDERSTANDING, WITH THE PERSON, THE PURPOSE OR SUBSTANTIAL EFFECT OF WHICH IS TO ENABLE THE PERSON IN A POSITION TO REFER SETTLEMENT BUSINESS TO BENEFIT FINANCIALLY FROM THE REFERRALS OF SUCH BUSINESS.

(4) "Certificate of qualification" has the meaning stated in § 10-101 of this article.

[(3)]**(5)** "Consideration" includes:

(i) A fee;

(ii) Compensation;

(iii) A gift, except promotional or advertising materials for general distribution;

(iv) A thing of value;

(v) A rebate;

(vi) A loan; or

(vii) An advancement of a commission or deposit money.

(b) This section does not prohibit:

(1) The payment of a commission to an agent who has a certificate of qualification; or

(2) The referral of a real estate settlement business or a professional fee arrangement between attorneys, if the referral or professional fee arrangement does not violate § 17-605 of the Business Occupations and Professions Article.

(c) A person who has a connection with the settlement of real estate transactions involving land in the State may not pay to or receive from another any consideration to solicit, obtain, retain, or arrange real estate settlement business.

(d) **A PERSON WHO HAS A CONNECTION WITH THE SETTLEMENT OF REAL ESTATE TRANSACTIONS INVOLVING LAND IN THE STATE SHALL COMPLY WITH 12 U.S.C 2607(C)(4) AND 24 C.F.R 3500.15 AND APPENDIX D REGARDING DISCLOSURES OF AFFILIATED BUSINESS ARRANGEMENTS.**

(E) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding $1,000 or both.

[(e)] (F) Each violation of this section is a separate violation.

SECTION 2. AND BE IT FURTHER ENACTED, That the Maryland Insurance Commissioner shall:

(a) study, in consultation with the title insurance industry, the feasibility and structure of a guaranty fund and other avenues of remuneration for consumers and title insurers in a real estate transaction who are victims of theft of moneys held in escrow by a licensed title insurance producer;

(b) adopt regulations specifying the manner in which a title insurer conducts the required annual on-site review under §10-121(k) of the Insurance Article of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as principal agent; and

(c) examine the current rate review and approval process for title insurance premiums. The Commissioner's review will include a review of the appropriateness of "operating expenses" included in rates, as a component of the total rate charged. In addition, the Commissioner shall determine whether additional factors, including underwriting losses, loss ratios, and combined ratios should be considered when reviewing title insurance rates.

On or before December 31, 2010, the Commissioner shall report, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and House Economic

Matters Committee on the status and findings of the study, regulations, and review described above.

SECTION 3. AND BE IT FURTHER ENACTED, That the Maryland Insurance Administration (MIA) and the Department of Labor, Licensing, and Regulation (DLLR) shall:

(a) develop a document entitled a "Title Insurance Consumer's Bill of Rights" that explains a consumer's rights and responsibilities in a real estate transaction closing. The MIA and DLLR shall adopt regulations requiring that the Title Insurance Consumer's Bill of Rights be provided to a consumer at the same time a good faith estimate in connection with a mortgage loan is given to a consumer. The MIA and DLLR shall make available on their respective websites the Title Insurance Consumer's Bill of Rights; and

(b) share information regarding complaints involving real estate closings in order to work collaboratively to possibly track a pattern of problem transactions and licensees.

The MIA and DLLR shall, on or before December 31, 2010, report, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and House Economic Matters Committee on the status of the Title Insurance Consumer's Bill of Rights and the progress of the collaborative efforts of the two agencies.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.