

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

_____)
In the Matter of:)

Chicago Title Insurance Company)

Settlement Agent for)

Allied Houston Bank)
Houston, Texas)
OTS No. 08315)

and other savings associations.)
_____)

OTS Order No. MWR 05- 2

Date: February 25, 2005

ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Chicago Title Insurance Company (“Chicago Title”), by and through its authorized representative, has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief and for the Assessment of Civil Money Penalties (“Stipulation”); and

WHEREAS, by executing the Stipulation, Chicago Title has consented and agreed to the issuance of this Order to Cease and Desist for Affirmative Relief (“Cease and Desist Order”), pursuant to Section 8(b) of the Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. 1818(b)¹; and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue consent orders on behalf of the OTS pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. 1818.

¹ All references to the United States Code (“U.S.C.”) are as amended, unless otherwise indicated.

NOW, THEREFORE, IT IS ORDERED THAT:

CEASE AND DESIST

1. Chicago Title and its directors, officers and employees, shall not engage in any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting any violation of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., and the regulations promulgated thereto, 24 C.F.R. Part 3500 (“RESPA”), in connection with providing settlement services for or on behalf of any insured depository institution lender.

AFFIRMATIVE REQUIREMENTS

POLICIES AND PROCEDURES GOVERNING REAL ESTATE SETTLEMENT

2. Within one hundred twenty (120) days of the execution of this Order, Chicago Title shall develop, implement, and thereafter adhere to written policies, procedures, systems and/or compliance controls (“Policies and Procedures”) governing settlements it may perform for or on behalf of any insured depository institution lender. Such Policies and Procedures shall, at a minimum:

- (a) require the implementation of a consistent framework of internal controls in support of the integrity of settlement documents, fraud prevention, and compliance with all applicable laws and regulations, including Sections 4 and 8 of RESPA;
- (b) require Chicago Title’s employees and/or officers to prepare complete and accurate HUD-1 Settlement Statements, in accordance with applicable laws and regulations and in accordance with any and all instructions provided by any insured depository institution lender;

- (c) require Chicago Title's employees and/or officers to deliver any corrected, amended, or changed HUD-1 Settlement Statements to any insured depository institution lender and the borrower(s) as soon as practicable, whether the corrections, amendments, or changes occurred before or after the closing of the transaction described on the HUD-1 Settlement Statement;
- (d) address the fiduciary responsibilities of Chicago Title to the parties in a transaction, on a state-by-state basis if necessary, and shall comport with the fiduciary duties imposed by any applicable law governing the settlement; and
- (e) require that in no event may a Chicago Title employee or officer who knows or recklessly ignores information that either the seller, borrower, or any other party to a settlement is engaged in fraud, violations of law, or any other misconduct in connection with the transaction, disburse any funds of the insured depository institution lender in connection with the settlement.

3. The Board of Directors of Chicago Title (the "Board of Directors") shall review and approve any Policies and Procedures prepared or developed in accordance with paragraph 2 of this Order prior to implementation.

TRAINING

4. Within one hundred twenty (120) days of the execution of this Order, Chicago Title shall establish, implement, and thereafter adhere to written Policies and

Procedures to ensure that every current and prospective employee and officer who engages in settlements for insured depository institution lenders at any branch or office owned or operated by Chicago Title receives timely and adequate training to:

- (a) perform such settlements in compliance with all applicable laws, rules and regulations (including the applicable fiduciary duties incumbent upon Chicago Title in the jurisdiction(s) where such settlements occur); and
- (b) comply with the Policies and Procedures implemented pursuant to paragraph 2 of this Order.

5. Within one hundred twenty (120) days of the execution of this Order, Chicago Title shall develop and implement a management information system to monitor its training programs. At a minimum, this system shall be capable of providing to Chicago Title:

- (a) a listing of training sessions offered;
- (b) reports of attendance at training sessions;
- (c) reports of those employees or officers requiring training in one or more subjects; and
- (d) a listing of those who have not received timely training.

AUDIT

6. Within one hundred twenty (120) days of the execution of this Order, Chicago Title shall develop, implement and thereafter adhere to Policies and Procedures to ensure that every office or branch owned or operated by Chicago Title that is engaged in settlements for insured depository institution lenders is audited, with respect to such

settlements, at least once every two (2) years. This audit program shall include policies and procedures to:

- (a) govern the scope of these audits, which shall include, at a minimum, tests to determine each office or branch's compliance with applicable laws and regulations, including RESPA, and any Policies and Procedures implemented pursuant to paragraphs 2-5 of this Order;
- (b) monitor the frequency and progress of audits and determine which audits, if any, have remained open beyond expected close dates, and which audits, if any, required or will likely require resources beyond those previously allocated;
- (c) ensure that each audit tests a sufficient and statistically significant number of records in each office or branch, given the volume, complexity, and diversity of the operations of each branch or office, and other qualitative matters, such as regulatory findings;
- (d) reconcile the magnitudes of identified issues with auditor ratings and conclusions;
- (e) require written responses from Chicago Title management detailing planned corrective actions where significant issues of noncompliance or needed corrective actions are noted in audit reports;
- (f) ensure a reporting process whereby an audit committee ("Audit Committee"), comprised of persons independent of the audit process and the Chicago Title office or branch being audited, has a direct reporting line to the Board of Directors; and

(g) ensure that audit findings or results are communicated to the Audit Committee without interference by any party who is not part of the audit process.

7. The Audit Committee shall produce quarterly written reports (the “Quarterly Reports”) to the Board of Directors wherein the Audit Committee shall summarize the results of the audits performed pursuant to this Article in the previous quarter and examine the effectiveness of the audits and whether a consistent rating system was applied to each branch or office.

8. Within one hundred twenty (120) days of the execution of this Order, Chicago Title shall develop, implement and thereafter adhere to the Policies and Procedures to:

(a) correct any and all material issues noted in the Quarterly Reports and respond to (and thereafter correct, as required) any and all material criticisms, citations, or deficiencies noted in any report of examination or the equivalent from any state or federal regulatory authority regarding settlements conducted by any office or branch controlled, owned or operated by Chicago Title; and

(b) collect and monitor complaints received, and any litigation filed, regarding the settlements conducted by any office or branch controlled, owned or operated by Chicago Title and inform the Audit Committee of all material complaints and/or litigation.

BOARD OVERSIGHT AND CERTIFICATION OF COMPLIANCE

9. The Board of Directors shall:

- (a) ensure Chicago Title's compliance with the provisions set forth in this Order;
- (b) institute an annual review of the Policies and Procedures developed and implemented pursuant to this Order to determine their adequacy and effectiveness; and
- (c) promptly distribute to the Audit Committee all reports of examination or the equivalent received by Chicago Title from any state or federal regulatory authority.

10. Within 30 days of the execution of this Order, the Board of Directors shall designate a director or officer of Chicago Title to serve as its representative (the "Representative Officer") and inform the OTS in writing of this designation.

11. Within one hundred twenty (120) days of the execution of this Order, and on every yearly anniversary of that date, until the termination of this Order, the Representative Officer shall submit to the OTS, via affidavit signed under penalty of perjury, an acknowledgement that the Policies and Procedures required by this Order are in force and effect (or with the exercise of reasonable diligence, will come into effect) and shall detail Chicago Title's compliance with such Policies and Procedures and noncompliance, if any. Such acknowledgement and detail of compliance by the Representative Officer will constitute "unpublished OTS information" pursuant to 12 C.F.R. 510.5(a)(2).

12. Any communications or documents required by this Order shall be sent to the OTS, Dallas Regional Office, P.O. Box 619027, Dallas/Ft. Worth, Texas 75261-9027, Attention: Regional Director.

13. Within one hundred twenty (120) days of the issuance of this Order, Chicago Title shall provide all current employees, officers or agents, including individuals employed in all offices and branches that are owned, operated or controlled by Chicago Title, who are engaged in the settlement of federally or non-federally related mortgage transactions, notice that Chicago Title has entered into this Order. Until this Order terminates, Chicago Title shall also provide identical notice to subsequently hired and/or retained employees, officers or agents, including individuals employed in all offices and branches that are owned, operated or controlled by Chicago Title, who are engaged in the settlement of federally or non-federally related mortgage transactions.

Definitions

14. As set forth in the Stipulation and in this Cease and Desist Order:

- (a) “HUD-1 Settlement Statement” shall mean the standard form for the settlement prescribed by the United States Department of Housing and Urban Development under 12 U.S.C. 2603 and required to be used as the standard real estate settlement form in all federally related mortgage transactions, and shall also be synonymous with “HUD-1A Settlement Statement.”
- (b) “Settlement” shall have the meaning provided in 24 C.F.R. 3500.2(b), and shall be so defined for the purposes of this Order irrespective of whether Chicago Title performs such settlements in connection with federally related mortgage transactions or not. Pursuant to 24 C.F.R. 3500.2(b), the term “settlement” may also be called “closing” or “escrow” in certain jurisdictions.

- (c) “Insured depository institution” shall have the meaning provided in 12 U.S.C. 1813(c)(2), and shall also include credit unions as defined in 12 U.S.C. 1752(1), entities identified in 12 U.S.C. 1813(c)(3), and any subsidiaries of such institutions or entities; and shall include any savings and loan holding company as defined in 12 U.S.C. 1467a(a)(D)-(F) and any bank holding company as defined in 12 U.S.C. 1841(a).
- (d) “Insured depository institution lender” shall mean any insured depository institution that is referenced as lender on a HUD-1 or HUD-1A Settlement Statement, irrespective of whether or not the transaction involves a federally related mortgage loan.
- (e) “Chicago Title” means Chicago Title Insurance Company, all offices or branches owned or operated by Chicago Title Insurance Company, and all predecessor and successor organizations. For purposes of paragraphs 8 and 13 of this Order, “Chicago Title” additionally means Chicago Title Insurance Company, including, but not limited to offices or branches under agency or contractual agreement with Chicago Title Insurance Company to provide title insurance products to insured depository institution lenders and borrowers, in connection with the settlement of federally and non-federally related mortgage transactions, and all predecessor or successor organizations.

- (f) All other technical words or terms for which the meanings are not specified or otherwise provided by the provision of this Cease and Desist Order shall, insofar as applicable, have meanings as defined by Chapter V of Title 12 of the Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda or other published OTS guidance. Any such technical words or terms used in this Cease and Desist Order and undefined in the Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda, or other published regulatory guidance shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

Successor Statutes, Regulations, Guidance, Amendments

15. Reference in this Cease and Desist Order to provision of statutes, regulations, OTS Memoranda, and other published guidance shall be deemed to include references to all amendments to such provision as have been made as of the date of issuance of this Order, and references to successor provisions as they become applicable.

No Violation Authorized; OTS Not Restricted

16. Nothing in this Cease and Desist Order or the Stipulation shall be construed as: (a) allowing Chicago Title to violate any law, rule, regulation, or policy statement to which it is subject; or (b) restricting or estopping the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law including, without limitation, any type of supervisory, enforcement or other action that the OTS determines to be appropriate.

Time Limits; Stipulation Incorporated; Effective Date; Duration

17. Time limitations for compliance with the terms of this Order run from the date of issuance of the Order, as indicated in the caption.

18. The Stipulation is made a part hereof and is incorporated herein by reference.

19. This Order is and shall become effective on the date it is issued, as shown on the first page hereof. This Order will terminate five (5) years after the date of its issuance. This termination date may be extended for an additional two (2) years, on a year by year basis, if the Director of the OTS, or his delegate, concludes that Chicago Title has not achieved the objective of adopting and implementing the Policies and Procedures directed by this Order, and the Director or his delegate notifies Chicago Title of this conclusion. This conclusion shall be solely made in the exercise of the Director's or his delegate's discretion, and shall be final and non-challengeable by Chicago Title.

OFFICE OF THRIFT SUPERVISION


Frederick R. Casteel
Midwest Regional Director