

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

<u>In the Matter of:</u>	)	
Chicago Title Insurance Company	)	
Settlement Agent for:	)	
	)	
Whitney National Bank	)	
New Orleans, Louisiana;	)	AA-EC-2004-84
	)	
Southwest Bank of Texas, N.A.	)	
Houston, Texas; and	)	
	)	
Frost National Bank	)	
San Antonio, Texas	)	

**STIPULATION AND CONSENT ORDER**

**WHEREAS**, the Acting Comptroller of the Currency of the United States of America (“Comptroller”) contends that Chicago Title Insurance Company (“Chicago Title”), as settlement agent and service provider to federally insured depository institutions, has deficiencies in its policies, procedures, systems and/or compliance controls (“policies and procedures”);

**WHEREAS**, the Comptroller intends to initiate civil money penalty and cease and desist proceedings against Chicago Title pursuant to 12 U.S.C. §§ 1818(b) and (i);

**WHEREAS**, Chicago Title has represented to the Comptroller that it is in the process of addressing the deficiencies in its policies and procedures noted by the Comptroller;

**WHEREAS**, Chicago Title is cooperating with the Comptroller in this matter;

**WHEREAS**, in the interest of cooperation and to avoid the costs associated with administrative and judicial proceedings with respect to the above matter, Chicago Title desires to enter into this Stipulation and Consent Order (“Order”) through its duly authorized representative;

**WHEREAS**, Chicago Title enters into this Order (i) without any adjudication on the merits; (ii) without admitting or denying that grounds exist to initiate civil money penalty or cease and desist proceedings, except as to Jurisdiction (Article I, below), which is admitted; (iii) without admitting or denying the Comptroller’s Findings (Article II, below); and solely for the purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions;

**NOW THEREFORE**, pursuant to the authority vested in her by the Federal Deposit Insurance Act, 12 U.S.C. §§ 1818(b) and (i), the Comptroller hereby finds and orders that:

**ARTICLE I**

**JURISDICTION**

(1) Whitney National Bank, New Orleans, Louisiana, Southwest Bank of Texas, NA, Houston, Texas and Frost National Bank, San Antonio, Texas (collectively “Banks”) are national banking associations, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Banks are “insured depository institutions” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Chicago Title serves or served as settlement agent and service provider for the Banks and other federally insured depository institutions in connection with the settlement of federally and non-federally related mortgage transactions throughout the United States.

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain enforcement proceedings against Chicago Title. Therefore, Chicago Title is subject to the authority of the Comptroller to initiate and maintain civil money penalty and cease and desist proceedings against it pursuant to 12 U.S.C. §§ 1818(b) and (i).

## ARTICLE II

### COMPTROLLER'S FINDINGS

(1) For all the paragraphs of this Article, the Comptroller finds and Chicago Title neither admits nor denies that:

(2) Chicago Title, through its officers or employees, engaged in a pattern of violating section 4 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder by the United States Department of Housing and Urban Development, 24 C.F.R. Part 3500 *et seq.* (“RESPA”), by providing inaccurate HUD-1 Settlement Statements to federally insured depository institution lenders and borrowers that failed to accurately reflect all the actual charges and adjustments in connection with settlement of federally related mortgage transactions.

(3) Chicago Title, through its officers or employees, additionally provided inaccurate HUD-1 Settlement Statements to federally insured depository institution lenders and borrowers that failed to accurately reflect all the actual charges and adjustments in connection with the settlement of non federally related mortgage transactions.

(4) Chicago Title has deficiencies in its policies and procedures governing settlements it may perform for or on behalf of any insured depository institution lender.

(5) Chicago Title has represented to the Comptroller that its violations of law and regulation have ceased, and it is in the process of addressing the deficiencies in its policies and procedures noted by the Comptroller.

### **ARTICLE III**

#### **POLICIES AND PROCEDURES GOVERNING REAL ESTATE SETTLEMENT**

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

(2) 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 this Article prior to implementation.

#### **ARTICLE IV**

##### **TRAINING**

(1) 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 that 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 Article III of this Order.

(2) 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.

## **ARTICLE V**

### **AUDIT**

(1) 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 Articles III and IV 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.

(2) 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.

(3) 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.

## **ARTICLE VI**

### **BOARD OVERSIGHT AND CERTIFICATION OF COMPLIANCE**

- (1) 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.
  
- (2) 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 OCC's Director of Enforcement in writing of this designation.
  
- (3) 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 OCC's Director of Enforcement, 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 “non-public OCC information” pursuant to 12 C.F.R. § 4.32(b).

## **ARTICLE VII**

### **CIVIL MONEY PENALTY ORDER**

(1) Chicago Title is hereby assessed a civil money penalty in the amount of five million dollars (\$5,000,000). This payment shall be made by certified check, money order or wire transfer, shall be payable to the Treasurer of the United States, and shall be delivered to the OCC’s Director of Enforcement simultaneously with the execution of this Order.

(2) The civil money penalty referenced in the preceding paragraph shall be concurrent with the five million dollar (\$5,000,000) civil money penalty assessed by the Director of the Office of Thrift Supervision, and the five million dollar (\$5,000,000) payment required by the Secretary of Housing and Urban Development. Each of these assessments shall be satisfied by payment of the assessment amount to the Treasurer of the United States, and delivery of the payment instrument to the OCC’s Director of Enforcement.

## **ARTICLE VIII**

### **VIOLATIONS OF LAW**

(1) Chicago Title shall comply with all applicable laws, rules, or regulations governing its performance of settlements for any insured depository institution lender.

## **ARTICLE IX**

### **IMPLEMENTATION OF ORDER**

(1) Any communications, documents or payment instruments required by this Order to be sent to the OCC’s Director of Enforcement shall be sent to the Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219, to the attention of the Director of

Enforcement. Any request for modification or termination of this Order shall be delivered to the same address.

(2) Any communications relating to this Order directed to Chicago Title shall be sent to Kevin Chiarello, Chief Compliance Officer, Chicago Title Insurance Company, 17911 Von Karman Avenue, Suite 300, Irvine, CA 926144, with a copy to Ronald G. Glancz, Venable, LLP, 575 7<sup>th</sup> Street, NW, Washington, DC 20004.

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

(4) On reasonable notice and without service of a subpoena, Chicago Title will promptly respond to any written request from the OCC for documents that the OCC requests to demonstrate compliance with this Order.

(5) This Order will terminate five (5) years after the date of execution of this Order. This termination date may be extended for an additional two (2) years, on a year by year basis, if the Comptroller concludes that Chicago Title has not achieved the objective of adopting and implementing the policies and procedures directed by this Order, and the Comptroller notifies Chicago Title of this conclusion. This conclusion shall be solely made in the exercise of the Comptroller's discretion, and shall be final and non-challengeable by Chicago Title.

## **ARTICLE X**

### **DEFINITIONS**

(1) “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.”

(2) “Settlement” shall have the meaning provided in 24 C.F.R. § 3500.2(b), and shall be so defined for 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.

(3) “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 also include any bank holding company as defined in 12 U.S.C. § 1841(a) and any savings and loan holding company as defined in 12 U.S.C. § 1467a(a)(D)-(F).

(4) “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.

(5) “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.

(a) For purposes of Article V, Audit, Paragraph (3), and Article IX,

Implementation of Order, Paragraph (3), “Chicago Title” additionally means Chicago Title Insurance Company, all offices or branches owned, operated or controlled by 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.

## **ARTICLE XI**

### **WAIVERS AND PRESERVATION OF RIGHTS**

- (1) By executing this Order, Chicago Title hereby waives:
  - (a) the right to the issuance of Notices under 12 U.S.C. § 1818(b) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) and 12 C.F.R. Part 19;
  - (c) all rights to seek judicial review of this Order;
  - (d) all rights in any way to contest the validity of this Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of her agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

(f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts that form the basis for issuance of this Order.

(2) Chicago Title shall not cause, participate in or authorize the Banks (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except in accordance with 12 C.F.R. § 7.2014 and Part 359; and Chicago Title shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Banks (or any subsidiary or affiliate thereof) with respect to such amounts except in accordance with 12 C.F.R. § 7.2014 and Part 359.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, violations, breaches or practices described in Article II of this Order, or as referenced in the OCC’s letter to Chicago Title dated January 13, 2004, unless such acts, omissions, violations, breaches or practices reoccur.

(4) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting Chicago Title if, at any time, she deems it appropriate to do so to fulfill the responsibilities placed upon her by the several laws of the United States of America.

(5) Chicago Title understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein

constitutes, nor shall Chicago Title contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(6) The Comptroller acknowledges that the OCC is not the primary regulator of Chicago Title, and that Chicago Title is primarily regulated by state insurance authorities. Nothing herein shall constitute any acquiescence by Chicago Title to examination by the Comptroller. Nothing herein constitutes, nor shall the Comptroller contend that it constitutes, a waiver of any right of Chicago Title to challenge the authority of the Comptroller to regulate or otherwise supervise the business activities of Chicago Title other than (i) settlements it may perform for or on behalf of any insured depository institution lenders, (ii) as referenced in this Order and (iii) to allow the Comptroller to enforce compliance with the terms of this Order.

IT IS SO ORDERED, this 24<sup>th</sup> day of February, 2005.

*/S/ Timothy W. Long*

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Timothy W. Long  
Senior Deputy Comptroller  
Mid-size/Community Bank Supervision

*/S/ Peter Sedowski*

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Chicago Title Insurance Company

By: Peter T. Sedowski  
Title: Executive Vice President  
Date: 2/23/05

**On this 23rd day of February, 2005, Peter T. Sedowski, a duly authorized officer of Chicago Title Insurance Company, did acknowledge and sign this Order.**

*/S/ Kimberly A. Heath*

**Public Notary**

My Commission Expires: 9/28/07