Community First
ABSTRACT

August 31, 2010

Via Electronic Transmission

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, S.W.
Room 10276
Washington, D.C. 20410-0500

Re: 24 CFR Part 3500, Docket No. FR-5352-A-01, RIN 2502-A178, (RESPA): Strengthening and Clarifying RESPA's "Required Use" Prohibition Advance Notice of Proposed Rulemaking

Ladies and Gentlemen:

Please accept my appreciation in your extending the opportunity to respond to your above-referenced ANPR and more specifically to the general environment of the real estate industry as it relates to all Affiliated Business Arrangements. I am an independent licensed title insurance agent and small business owner in the Commonwealth of Pennsylvania.

The existence of ABA's and CBA's create a tremendous amount of power for real estate brokers, home-builders, and mortgage lenders, and are anti-competitive and anti-consumer.

The National Association of REALTORS and its members have lobbied for many years to keep banks out of the business of managing and selling real estate. Why? They think it to be a conflict of interest.

After President Obama signed into law the FY 2009 Omnibus Appropriations Act which prohibits banks from managing and selling real estate, the National Association of REALTORS stated: *If banks had been allowed to engage in real estate brokerage, it would have created anti-competitive and anti-consumer concentrations of power within the financial services sector, which would have ultimately increased costs for homebuyers.* The NAR went on to say: *Permitting banks to* *engage in commerce also would have compromised bank lending decisions and created conflicts of interest while restricting consumer choice and competition among mortgage lenders.*[1]

Conflicts of interest are exactly what occur under the current system that allows a real estate company, home-builder, appraiser, title insurer or agency, and mortgage lender to have joint ownership in any format. Simply put Affiliated Business Arrangements and Controlled Business Arrangements run afoul of the very foundation of this country's system of checks and balances.

The consumer deserves a real estate system void of conflicts of interest and with our current system the consumer has no idea who to trust. And furthermore, the consumer is more likely to pay "junk" fees or increased fees when steered to an affiliated business simply because increased revenues are needed to satisfy all the parties sharing what is in most cases a price-regulated pie.

I am not the only Pennsylvanian who dismisses the purported benefits and efficiencies of vertical integration.

Thomas W. Corbett, Jr., the Pennsylvania Attorney General in his comments of July 2, 2009 to the Pennsylvania Department of Insurance answered the following questions:

1. Should ABA's be unlawful? *Yes. ABA's create tremendous opportunities for illegal rebating and referrals.*

2. Does vertical integration increase efficiency of title firms? *Not necessarily. Supporters of ABAs argue that by having vertical integration of real estate services, efficiencies between services are maximized and, therefore, beneficial to the consumer. However, there has been no evidence to suggest that title firms are, in fact, realizing these efficiencies or passing them off to consumers.* Mr. Corbett further comments that *a real estate agent or mortgage broker that owns or earns profit from a title agency may have a conflict when there is a defect in the title. Certain defects could cause the buyer to abandon the transaction. Losing the transaction will cost the real estate agent or mortgage brokers thousands of dollars, much more, as the industry points out, than a title agent earns. So there may be an incentive for title agencies, which are owned by other real estate professionals, to overlook or downplay title defects which could jeopardize the*

[1] National Association of REALTORS (www.realtor.org), Banks in Real Estate, Frequently Asked Questions: Banking Conglomerates Permanently Barred from Real Estate Activities by the FY 2009 Omnibus Appropriations Act.

overall profitability for the deal for the parent organization. This conflict may best be resolved by eliminating affiliated business arrangements and precluding vertical integration.

3. <u>Does "one-stop shopping" provide consumers with savings that are greater than the cost of the bundled services</u>? *There is no evidence to suggest that the close affiliation between mortgage brokers, realtors, and title agents reduces costs in time or money to consumers. A 2007 GAO study citing HUD officials stated that "while properly structured, ABAs may provide some consumer benefits, they also create an inherent conflict of interest as the owner of an ABA is in a position to refer a customer to that same ABA...As a result of this guaranteed order flow...title agents at that ABA might not be as interested in competing on price or service.*[2]

There are many examples of why each sector of the housing industry should remain separate and without the opportunity to influence the transaction for the purpose of self-dealing. One simply needs to watch the evening news to hear a story of a builder who has filed for bankruptcy and leaves a trail of mechanics' liens. It would not be a stretch to learn that in most cases the affiliated title agency handled the closings and the consumer is left in limbo.

I've handled more than one closing where I've been pressured by the real estate agent with "I will get 'my' title agency to close it if you won't." I take seriously my obligation to perform my duties in an effort to minimize and hopefully eliminate the risk of the hazard of litigation and ensure the peace-of-mind of homeownership for the consumer, but I fear, others might not.

I am reminded on a daily basis of the motivation of some real estate agents regarding their affiliated/controlled businesses. One-stop shopping is a misnomer. There is no shopping at all and an Affiliated Business Disclosure is hidden in a stack of paperwork, merely for the protection of the ABA/CBA and not the consumer. Here are a few comments from real estate agents I have worked with:

- You provide excellent service but my broker tells me that he cannot pay me the higher commission split if I do not refer my customers to the affiliated title agent.
- You cannot imagine the pressure we are under to use the affiliates.
- I use the affiliated title agency because I have the opportunity to buy-in.
- Our commission split is not affected but they do keep track of how many times we use the title and mortgage companies and then give us relocation deals based on our support of the affiliated businesses.

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[2] Comments of the Pennsylvania Office of Attorney General to the Pennsylvania Department of Insurance Regarding the Department's Title Insurance Informational Hearing (May 28, 2009), July 2, 2009, pages 9-12, Thomas W. Corbett, Jr., Attorney General; 2007 GAO study, pages 32-33.

The motivation of the referring party is not in seeing to the best interest of the consumer, it is not for efficiency purposes, it is simply for the fact that the referrer is being compensated either directly or indirectly for steering the consumer to the affiliate.

Most consumers would recognize, if explicitly revealed, that there is something wrong with a regulation that permits a bank to pay its loan officers a cash referral fee for each consumer the loan officer refers to the affiliated title insurance agency. The same applies for the real estate broker who compensates his/her office manager for business driven to the affiliated title and lending agencies by the individual real estate agents.

The consumer can only benefit when:

1. Affiliated Business Arrangements and Controlled Business Arrangements are prohibited.
2. Service providers (real estate brokers, appraisers, home-builders, title insurers/agents, mortgage lenders) locally and nationally, are prohibited from owning outright or in any form, a business outside of its product line.
3. A real estate broker or home-builder is prohibited from compensating its managers/employees for the referral of a consumer's business to a title agency and/or mortgage lender.
4. A bank is prohibited from compensating its loan officers for referring a consumer's business to a title agency.
5. Enforcement is made priority one.

The Pennsylvania Attorney General says it best:

> *The independent title agent, which has his or her insurer's money on the line, is the last bulwark against fraud. Truly independent title agents may be necessary to prevent fraud.*[3]

Thank you for the opportunity to submit my comments.

Respectfully yours,

Francine D'Elia Wirsching, ALTP

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[3] Comments of the Pennsylvania Office of Attorney General to the Pennsylvania Department of Insurance Regarding the Department's Title Insurance Informational Hearing (May 28, 2009), July 2, 2009, page 11, Thomas W. Corbett, Jr., Attorney General