New Mexico to investigate title insurance competition

The New Mexico Superintendent of Insurance has issued an order for market conduct examination of all title insurance industry licensees, including independent agents, affiliated agents, direct operations and underwriters currently licensed in the state. The examination will analyze and evaluate the degree of competition in New Mexico title insurance markets.

The order states: “The purpose of the examination is to analyze and evaluate the degree of competition in New Mexico title insurance markets and to analyze and evaluate the cost of producing and administering title insurance policies based on the cost of component functions, including but not limited to: sales and marketing, title plant maintenance, title search and abstract, underwriting, preliminary reports, curing title defects, issuing a title policy, maintaining a title policy, claims and claim settlement, closing protection letters, administrative costs, profit and relevant escrow and closing activities.

The study will analyze and evaluate whether historical expenses reported by licensees accurately reflect the reasonable costs of producing and administering a title, continued.

The study will analyze and evaluate whether historical expenses reported by licensees continued.
Editor's Note

Another great NS3

Dear Readers,

One of my favorite times of the year has come and gone. Thank you for all who attended and sponsored NS3 this year. We had a wonderful time in Charlotte, and I, for one, learned a lot and met some great industry professionals.

Two of my favorite things every year are the October Research Awards and the "Make a Child Smile" bike building event. For the fifth year, October Research, LLC, presented its annual awards for leadership, innovation and philanthropy, with some of the brightest stars in the title industry recognized for their work. CEO and Publisher Erica Meyer presented the awards June 7. Mary Schuster, the chief product officer and executive vice president of regulatory affairs for RamQuest, was presented the leadership award. Dan Sogorka, the president of RealEC Technologies, a division of Black Knight Financial Services, was presented the innovation award. And Tali Raphaely, the president of Armour Settlement Services, was presented the philanthropy award.

Congratulations Mary, Dan and Tali, and thank you for all you do for the industry and your community!

Attendees took time out of their panel discussions, education and networking on June 6 to help build more than 30 children’s bicycles and Big Wheels as part of the fifth annual “Make a Child Smile” charity event, sponsored by WINDWARD Consulting | Software – ResWare. The bikes and corresponding helmets were presented to Ronald McDonald House of Charlotte on June 7.

I was able to greet a lot of you as you came in on Monday and know many of you were excited to participate. Thank you for helping make a child and their family smile during what can be a very difficult time.

Look for insights from the conference to make their way into The Legal Description throughout the summer.

Until next time, stay legal,

Andrea Golby
Editor
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accurately reflect the reasonable costs of producing and administering a title. The study will analyze and evaluate geographic areas in New Mexico title insurance markets for differences in competition, costs to produce title insurance products, availability of title and escrow products and services and opportunities to improve title insurance related products and services to New Mexico consumers," the order stated.

Contents

The examination commenced May 18 and will continue through June 30, 2017.

The examination may include reviewing the following:

- Existing licensees’ statistical and financial reports and regulatory filings;
- Revenues received and expenses incurred by licensees for producing and performing settlement services to the extent such services affect regulatory oversight and competition for regulated activities;
- Revenues received and expenses incurred by licensees for producing and issuing title insurance policies and other title-related products;
- Revenues received and expenses incurred by licensees for products and services other than title insurance products and settlement services to the extent such services affect regulatory oversight and competition for regulated activities;
- Contractual arrangements between licensees and between licensees and sources of title and settlement orders;
- Activities and associated cost of the activities conducted by licensees in the acquisition, preparation and issuance of title insurance products and settlement services;
- Licensees’ data on title and settlement transaction opened and closed;
- Collection of information on licensees’ fees charged for services and products other than title insurance policies and closing protection letters;
- Licensees’ internal revenue, expenses and profitability reports, analyses and projections;
- Licensees’ revenues and expenses by product or service and by function;
- Licensees’ organizational structure including number of employees, owners and key contractors, functions and activities of these personnel and compensation of these personnel;
- Audits by title underwriters of title agents;
- Data collected, software used and data systems maintained by licensees;
- Audited financial statements of licensees; licensees’ use of automation in acquisition and production of title insurance products;
- Licensees’ involvement and experience with closing protection letter claims;
- Licensees errors and omissions and other insurance policies;
- Curative actions performed by licensees;
- Selected individual title insurance policy transaction files of licensees;
- Interactions between licensees in the acquisition and production of title insurance products;
- Marketing and acquisition activities for title insurance products and settlement services;
- Licensees’ affiliated business arrangements;
- Licensees’ view on competition in NM title insurance markets;
- Licensees’ financial accounting methods and software;
- Licensees’ views on improving the regulatory climate for title insurance in New Mexico; and
- Any other data and experience necessary to fulfill the purposes of the examination.
Independent Review

The superintendent has determined that there is a need to employ an independent contract examiner to complete the examination. The consultant may conduct:

- Consultations with licensees in consultation with the Title Bureau Chief of the Office of the Superintendent of Insurance;
- Surveys and requests for information and data to licensees; and
- On-site examination of a representative sample of licensees to review the licensees’ submissions to the superintendent or consultant and licensees’ title insurance and escrow operations. The determination of licensees for on-site examinations and other decisions regarding the conduct and activities of the examination will be made by the consultant in consultation with the Title Bureau chief.

When the examination is over, the consultant will submit a report to the superintendent. This report will contain the consultant’s analyses, conclusions and recommendations.

Colorado title agencies close doors

Two Colorado-based title agencies have shuddered their doors amid Division of Insurance investigations.

A letter to customers on Williams Title Guaranty & Escrow, Ltd. (Williams) website stated, “All things have a season, and after 15 years and an estimated 40,000 closings Williams Title has decided that it is a good time for us to retire from the real estate title industry.” The letter was signed by Elizabeth Williams and Michelle McCollum.

The Colorado Division of Insurance (DOI), part of the Department of Regulatory Agencies, also notified consumers that Williams and Foresight Title, LLC (Foresight) no longer are accepting new title insurance business.

The DOI said it is actively investigating Williams and Foresight for possible violations of insurance laws, and has been in communication with Alliant National Title Insurance Company regarding these agencies. Alliant is the underwriter for both Williams and Foresight.

Alliant has retained Vesuvio Enterprises, LLC, to assist with consumer complaints and inquiries related to previous or recent real estate closings involving Williams or Foresight.

Consumers who believe their previous or recent real estate closings with Williams or Foresight may be impacted, or who have any complaints or inquiries about these companies should contact both Vesuvio and the DOI.

- Vesuvio – contact David F. Pellegrino 303-204-5748 or Shelli Star 720-219-9036
- Division of Insurance – 303-894-7499 / 800-930-3745 (outside the Denver Metro area)

The DOI notice stated that because the division has open investigations into Williams and Foresight, it is unable to provide any further details regarding the substance of the investigations.

“All things have a season, and after 15 years and an estimated 40,000 closings Williams Title has decided that it is a good time for us to retire from the real estate title industry.”

- Elizabeth Williams and Michelle McCollum

Visit TheLegalDescription.com for in-depth case law reporting and up-to-date coverage of current lawsuits and regulatory investigations.
Class action ruling issued in Genuine Title case

As the CFPB was investigating Genuine Title LLC and its lender associates, borrowers brought a purported class action against the companies for engaging in the alleged kickback schemes. As the case progressed, the U.S. District Court for the District of Maryland sought guidance from the Court of Appeals of Maryland as to whether the state statute prohibiting real estate kickbacks in exchange for settlement services provided an express or implied private right of action.

The case is Edward and Vicki Fangman, et al. v. Genuine Title LLC, et al. (Misc. No. 19).

Edward and Vicki Fangman seek to represent a class of 4,000 to 5,000 individuals who, from 2009 to 2014, retained Genuine Title LLC for settlement and title services for the purchase or refinancing of their residences. Each individual allegedly used Genuine Title’s services as a result of referrals from the lender appellees.

In the second amended complaint, the Fangmans alleged that they and other class members were victims of an illegal kickback scheme in which the lenders received unearned fees and kickbacks from Genuine Title and sham companies created by Genuine Title for the purpose of distributing the kickbacks.

The Fangmans filed suit in the Circuit Court for Baltimore County on Dec. 6, 2013. They filed two amended class action complaints, one Jan. 2, 2015 and one May 20, 2015. They alleged that the Genuine Title appellees and the lender appellees violated RESPA Section 8(a) and 8(b), RP Section 14-127 and Md. Code Ann., Com. Law Section 13-301, part of the Maryland Consumer Protection Act.

The case was removed to federal court, which, on Dec. 9, 2015, denied the appellees motion to dismiss the RESPA claims, granted the motions to dismiss the Maryland Consumer Protection Act claims and stayed the motions to dismiss the RP Section 14-127 claims so that the Court of Appeals of Maryland could determine whether RP Section 14-127 permits a private right of action.

Before the appellate court, the Fangmans argued that the statute provides an implied private right of action. They opined that the statute was enacted to protect a narrow class of individuals and that they are in the class for whose benefit the statute was enacted. They argue that the injuries they suffered constitute the exact type of harm that the statute was designed to prevent.

Genuine Title and its co-defendants argued that there is no evidence that the General Assembly intended to create a private right of action under RP Section 14-127 and there is no basis in law or fact for implying a private right of action. They argue that the statute does not confer any right at all, but rather is a broad prohibition on individuals who are involved in real estate transactions in Maryland from paying or receiving anything in exchange for settlement business.

The Court of Appeals of Maryland held that the statute did not provide an express or implied private right of action.

“RP § 14–127(c)(1) prohibits '[a] person who has a connection with the settlement of real estate transactions involving land in the state' from ‘pay[ing] to or receiv[ing] from another any consideration to solicit, obtain, retain, or arrange real estate settlement business.’ Nothing within RP § 14–127 generally, or RP § 14–127(c)(1) specifically, expressly provides a private right of action for anyone who is allegedly harmed by a violation of RP §14–127(c)(1).

Thus, the key question in this case — indeed, the question that the federal court certified to this court — is whether RP § 14–127 contains an implied private right of action,” the court stated. “We hold that it does not, as neither RP § 14–127’s plain language, legislative history, nor legislative purpose demonstrates any intent on the General Assembly’s part to create a private right of action.”

Although acknowledging that consumers of residential and commercial settlement services could benefit from the prohibition in RP Section 14-127, the court stated that the statute does not expressly provide a right to a particular class of persons.

“For example, the prohibition in RP § 14–127(c)(1) is not phrased along the lines of ‘all consumers of settlement services have the right to have kickback-free settlement services,’ ” the court stated. “Rather, RP § 14–127(c)(1) contains a general prohibition — namely, that persons connected '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.’ And, RP § 14–127(c)(1) appears to confer only, as a result of the prohibition, a generalized benefit that inures to consumers of settlement services. Significantly, RP § 14–127 does not mention, let alone identify, consumers or the public in general as a class who benefits from the provisions of the statute.”

The court then turned to the statute’s legislative history.
Upon consideration of the above-described circumstances, we conclude that RP § 14–127’s legislative history fails to demonstrate that an implied private right of action exists,” the court stated. “The legislative history of RP § 14–127’s prohibition against persons connected ‘with the settlement of real estate transactions involving land in the state ... pay[ing] to or receiv[ing] from another any consideration to solicit, obtain, retain, or arrange real estate settlement business’ is completely devoid of any mention whatsoever of an intent to create a private right of action on behalf of consumers of settlement services. There is simply nothing in RP § 14–127’s legislative history from which we can glean any intent on the General Assembly’s part to create an implied private right of action. In other words, RP § 14–127’s legislative history is silent as to any intent to create an implied private right of action. ‘[W]here the plain language of a provision weighs against implication of a private remedy, silence within the legislative history as to a private cause of action reinforces the decision not to find such a right implicitly.’

Indeed, in reviewing RP § 14–127’s legislative history, we observe that the only indication that the General Assembly even considered creating a private right of action was in connection with House Bill 1074, which was introduced as part of the Polovoy Package along with House Bill 1075 (which became Art. 27, § 465A, RP § 14–127’s predecessor),” the court continued. “Significantly, House Bill 1075 was intended to prohibit and criminalize kickbacks in real estate settlements, and the General Assembly was silent as to any intent to create a private right of action on behalf of consumers of settlement services who were allegedly harmed by a violation of the new prohibition against kickbacks. By contrast, House Bill 1074 would [have] ma[de] title insurance companies financially liable for any misuse of funds changing hands in real estate settlements. Plainly put, a review of RP § 14–127’s legislative history

Can association file more than one super lien?

A California homeowner appealed a judgment dismissing his suit against two mortgage services after the trial court sustained their demurrer to his second amended complaint. The complaint alleged a defective transfer of his note and deed of trust to a real estate trust, robo-signed documents and other related causes of action. Although most of these cases have not fared well, the appellate court evaluated the complaint in light of the California Supreme Court’s decision in Yvanova v. New Century Mortgage Corp., which recently had been handed down.

The facts

Oscar Jobe Bustamante borrowed $750,000 from Wells Fargo Bank N.A. in 2005. The loan was secured by a deed of trust on property in Laguna Niguel, Calif. The trustee was Fidelity National Title Insurance Co.
Bustamante provided an assignment of deed of trust dated May 28, 2010, from Wells Fargo to U.S. Bank National Association as an exhibit to the second amended complaint.


In his complaint Bustamante alleged that another notice of trustee’s sale was recorded, but he did not give a date or attach a copy to the complaint. Another assignment of deed of trust from Wells Fargo to U.S. Bank dated Sept. 27, 2012 was recorded in October 2012. The house was sold at public auction on June 3, 2013, and a deed upon sale was recorded on July 3, 2013. The deed stated that U.S. Bank was the grantee and foreclosing beneficiary. First American was the trustee and grantor.

Bustamante sued Wells Fargo, First American and U.S. Bank in October 2013. He alleged nine causes of action. He filed a second amended complaint in May 2014, after the respondents’ demurrers to the original complaint and the first amended complaint were sustained with leave to amend. The causes of action were breach of the loan contract, violation of the California Homeowners Bills of Rights, wrongful foreclosure, cancellation of instruments, negligence, unfair business practices and declaratory relief. The wrongful foreclosure cause of action was based on an alleged lack of legal authority to foreclose on the property.

U.S. Bank and Wells Fargo demurred for the third time, and the demurrer was granted without leave to amend. Bustamante then appealed.

**Court decision**

The appellate court affirmed in part, reversed in part and remanded the case to the trial court with instructions.

“In the past, these complaints have not fared well. In February, however, the California Supreme Court issued its opinion in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, which altered the legal landscape to some extent,” the court stated. “Although declining to decide some important and vexing questions in this area, the court held that a borrower could base a cause of action for wrongful foreclosure on a void (but not voidable) trustee’s sale. The court sent the case back to give the plaintiff a chance to amend the complaint to see whether she could allege the necessary facts.

“We believe Bustamante should be given the same chance. What makes the record in this case unusual is the number of times — three, to be exact — Wells Fargo apparently transferred its interest in Bustamante’s deed of trust to U.S. Bank,” the court continued. “It is thus entirely possible that the trustee’s sale was noticed, conducted, and recorded by an unauthorized party. If it was, then the trustee’s sale would have void, and *Yvanova* would apply; that is, Bustamante could state a cause of action for wrongful foreclosure. Likewise, if the trustee’s sale was void, the deed upon sale may have to be cancelled. Accordingly, the order sustaining the demurrer without leave to amend, issued before the decision in *Yvanova*, is reversed as to these two causes of action, and Bustamante may amend them to allege facts necessary to establish wrongful foreclosure and cancellation of instruments.”

The court thought it was advisable to return the case to the trial court to determine whether Bustamante can state a cause of action for wrongful foreclosure; however, the court cautioned that to survive a demurrer, a plaintiff must plead facts, not contentions.

“In addition, the three assignments from Wells Fargo to U.S. Bank have not been explained, and their effect has not been briefed,” the court stated. “If the first one from May 2010 was effective, then Wells Fargo had no interest in Bustamante’s deed of trust, and all the subsequent transfers and substitutions made in its name, such as the one that replaced Fidelity National with First American as trustee, lacked authority. The notice of trustee’s sale that was supposedly recorded in August 2012, is also missing — an important link in the chain by which the foreclosing entity claims that power. This was, presumably, one of the pre-foreclosure documents that must be filed for a valid sale. We are thus unable to tell what entity recorded it and on what entity’s authority. Under Civil Code section 2924, subdivision (a)(4), only the mortgagee, trustee, or other authorized person may record a notice of sale. If the notice of sale was recorded on behalf of Wells Fargo and Wells Fargo no longer had any interest in the deed of trust, the notice of sale and the sale itself were void. None of this can be sorted out on the record before us, and we judge the matter murky enough to warrant another shot at amending the complaint.”

The court found that the demurrer to the rest of the second amended complaint was sustained correctly without leave to amend.

“When respondents demurred to the first amended
Homeowner seeks damages after failure to pay

A Connecticut homeowner sought money damages against her title insurer after the insurer allegedly failed to pay costs, attorney’s fees and expenses in defense of her title to property in North Stonington, Conn.

The facts

According to the complaint, David and Sandra Schroeder owned fee title to property in Stonington. David Schroeder acquired his interest by warranty deed and Sandra acquired her interest in the land by quit claim deed.

On May 12, 2009, James Johnson claimed an easement over their property, and the Schroeders filed suit for injunctive relief to prevent Johnson from coming onto their land.

The plaintiffs had a title policy from Chicago Title Insurance Co. The Schroeders alleged that they incurred costs, attorney’s fees and expenses defending their title against Johnson’s claims, but Chicago Title refused to cover

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Case Law

complaint, the court sustained the demurrer to the cause of action for violation of the HBOR, saying, ‘[Bustamante] failed to clearly identify the specific statute violated or the specific conduct that allegedly violated such statute,’ the court stated. “The court gave Bustamante leave to amend his complaint; it would appear obvious that such an amendment for this cause of action would include allegations of specific misconduct attached to each allegedly violated statute.

“The second amended complaint contained no such allegations,” the court continued. “Instead, Bustamante discusses the statutes in general and once again fails to link a violation of the statute to specific misconduct. In addition, the HBOR became effective on Jan. 1, 2013; conduct occurring before that date cannot violate the statute. So, for example, none of the assignments of deed of trust or substitutions of trustee that are exhibits to the complaint — all of which occurred before Jan. 1, 2013 — could form the basis of a cause of action for statutory violations.”

Because Bustamante’s cause of action for negligence was the banks’ failure to abide by the Homeowners Bill of Rights, which came into effect after the alleged violations, the demurrer to this cause of action were sustained properly.

Bustamante also alleged that the respondents created false affidavits regarding mortgages to be filed in state and federal courts, as well as instituted improper and premature foreclosure proceedings to generate unwarranted fees.

“Bustamante failed to allege, however, how any of these practices caused injury to him and loss of his money or property,” the court stated. “He did not allege that he paid any unwarranted foreclosure fees. We have already determined that Civil Code section 2923.5 did not apply to Bustamante; at the relevant time, he was in bankruptcy. He could not have been injured by any failure to comply with this statute. We have also determined that the HBOR did not apply to Bustamante; he has alleged no violation of the statutes occurring after their effective dates. He has not alleged any injury or loss of money or property based on a misrepresentation of his foreclosure status, whatever that may mean. How did respondents’ failure to devote enough staff, oversight, internal controls, and the rest to the foreclosure process injure him and cost him money? How did failing to comply with treasury department orders and directives injure him? Bustamante has alleged no facts linking any of these allegedly fraudulent practices to his injury or the loss of his money or property.

“Similarly, Bustamante has failed to allege practices likely to deceive members of the public. Demanding payment for nonexistent debts would certainly be wrong, but it is not deceptive. Most homeowners know whether they have a debt or not,” the court continued. “How is failing to disclose a principal in violation of Civil Code section 1095 likely to deceive members of the public? Moreover, Bustamante did not allege that he lost money or property as a result of a demand for a nonexistent debt. For example, he did not allege that he paid a nonexistent debt. Likewise he did not explain how he lost money or property because respondents failed to disclose a principal. We cannot find a cause of action here.”

Bustamante had three chances to state causes of action for negligence, unfair business practices and the like, and because he has been unable to do so, the order sustaining the demurrer to these causes of action without leave to amend is affirmed, the court ruled.

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David Schroeder, et al., v. Chicago Title Insurance Co. (Superior Court of Connecticut, No. CV116008142S)
any of these costs and therefore breached its duties under the policy.

Chicago Title moved to dismiss for lack of standing.

Court decision
The court denied the insurer’s motion, finding that the claim raises an arguable and colorable claim.

To support its motion, Chicago Title filed an affidavit of legal assistant Sharon Quirk, who stated that at the time the policy was issued, Sandra Schroeder did not hold title to the property. Sandra Schroeder acquired title to the property through two conveyances, one from Robert Riviera on Oct. 3, 1994, and from David Schroeder on March 21, 2014. The court noted that there was no document identifying any insured on the owner’s policy.

Owners of property in Levittown, Pa., sued their title insurer after losing an ownership dispute over property adjacent to theirs. After the trial court granted summary judgment to the title company, the owners appealed.

The facts
Ronald and Theresa Krajewski had a title insurance policy from Fidelity National Title Insurance Co. covering property they owned in Levittown. Schedule C states that the policy is to cover property at 9 Cobalt Ridge Drive North (9 Cobalt), and not any other property.

On Nov. 9, 1960, a subdivision agreement was signed by the then owners of an adjacent lot, Lot 2, Walter and Mary Heller, and the Krajewskis’ predecessors, James and Patricia Jones. The agreement purported to forever join Lot 2 and 9 Cobalt.

Ownership of Lot 2 was subsequently transferred in 1961 to James E. Jones. The deed form the Hellers to James E. Jones adhered to the boundaries of Lot 2, but professed to ensure that Lot 2 and 9 Cobalt are “joined and shall never be severed.” Jones conveyed the property to the Krajewskis’ neighbors in 1989.

Also in 1961, James and Patricia Jones conveyed the property to themselves as a tenancy in the entirety. The deed included a metes and bounds description that referenced only 9 Cobalt and did not include any language calling for the lots to be joined and never severed. 9 Cobalt was sold to Dennis Kulp in 1989 as a result of a mortgage foreclosure. Kulp then transferred ownership of 9 Cobalt to the Krajewskis.

Believing they were the rightful owners of Lot 2 based on the 1960 subdivision agreement, the Krajewskis filed a claim with Fidelity. Fidelity denied the claim, arguing that Lot 2 was not covered under the policy. The Krajewskis brought a quiet title action against the owners of Lot 2, but were unsuccessful. After that, they filed suit against Fidelity, arguing that the title insurer breached the policy by failing to provide counsel in their quiet title action. The trial court granted summary judgment to Fidelity, and the Krajewskis timely appealed.

Court decision
The appellate court affirmed the trial court’s ruling, noting that restrictive covenants may be discharged if there has been acquiescence in its breach by others, or an abandonment of the restriction.
The Consumer Financial Protection Bureau (CFPB) has taken action against a former Wells Fargo employee for an illegal mortgage fee-shifting scheme. The CFPB found that David Eghbali referred a substantial number of loan closings to a single escrow company, which shifted its fees from some customers to others at Eghbali's request. Eghbali could then manipulate loan costs and ultimately increase the number of loans he closed, increasing his commissions. The CFPB filed an administrative consent order requiring Eghbali to pay an $85,000 penalty and banning him from working in the mortgage industry for one year.

Eghbali served as a loan officer for the Wilshire Crescent Wells Fargo branch in Beverly Hills, Calif. The CFPB found that from at least November 2013 to February 2015, Eghbali had an arrangement with New Millennium Escrow, Inc., that allowed him to manipulate the prices his customers would pay for escrow services. In California, an escrow company typically provides services such as preparation of certain documents and holding and transferring payments related to mortgage loan refinance transactions. Consumers obtaining a mortgage do not ordinarily have a preferred escrow company and often rely on their loan officers to recommend one.

“Respondent engaged in an illegal scheme to manipulate escrow fees charged to consumers in mortgage-loan transactions in violation of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2607(a); 12 CFR § 1024.14(b), and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. § 5536(a)(1)(A),” the consent order stated. “In exchange for his referrals of settlement-service business to New Millennium Escrow, Inc. (New Millennium), Respondent directed New Millennium, and New Millennium agreed, to decrease escrow charges for consumers in certain transactions and, to compensate New Millennium for such decreased fees, to increase them artificially for consumers in other transactions. Respondent directed these fee manipulations to avoid pricing constraints that otherwise would have restricted his ability to offer certain customers "no-cost" loans, and ultimately to increase the number of loan transactions he could close. Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563,5565, the bureau issues this Consent Order.”

The CFPB’s investigation found that, based on direction from Eghbali, New Millennium would reduce its fees for certain customers and make up for its loss by adding fees to loans for other customers. This scheme helped Eghbali generate business by allowing him to offer “no-cost” loans to price-conscious clients who might have gone to a competitor bank to find a cheaper loan. In exchange for these manipulations, the CFPB found that Eghbali referred nearly all his clients to New Millennium.

“As part of the Fee-Shifting Scheme, Respondent directed that escrow fees be lowered on certain loans so that he could offer the prospective borrowers ‘no cost’ refinancing transactions,” the consent order stated. “Respondent directed
these fee reductions where borrowers’ closing costs, including escrow fees, otherwise would have exceeded the credit available to them under Wells Fargos pricing guidelines, given their chosen interest rates. Respondent instructed New Millennium to raise fees for other borrowers, whom he identified, to permit the company to recoup its lost revenue. Respondent directed New Millennium to decrease or raise fees on numerous occasions.”

Eghbali was paid by commission. The CFPB found that Eghbali’s fee-shifting scheme ultimately increased the number of loans he was able to close and, as a result, the commissions he earned. In addition, Eghbali received a top-producing loan officer award from Wells Fargo each year from 2011 to 2014. This recognition meant that he received a bonus on each loan he closed. The CFPB found that Eghbali referred more than 100 loans to New Millennium through the fee-shifting scheme.

In addition to his fine and prohibition from working in the mortgage industry for one year, the consent order requires Eghbali to “cooperate fully with the bureau in this matter and in any investigation related to or associated with the conduct described in [the consent order].” This includes appearing for interviews, discovery, hearings, trials and any other proceedings that the bureau may reasonably request upon five days written notice.

A new Maryland law requires entities foreclosing on property in the state to notify the homeowners association about the foreclosure. The new law also will make foreclosing entities liable for the payment of homeowners association assessments and fees incurred after the date of judgment.

The bill, HB 970, was introduced by Delegate Kirill Reznik, D-Montgomery County.

The law now states that “the plaintiff shall send written notice of the proceeding to all persons having a recorded interest, claim or lien, including a judgment, who have not been made a defendant in the proceeding, and, if the subject property is part of a homeowners association or condominium association, to the homeowners association or condominium association governing the property.”

“Once a judgment is granted, the plaintiff immediately becomes liable from the date of judgment for the payment of assessments or fees charged by a homeowners association or a condominium association due and payable from the date of the judgment, the law also stated.”

“The plaintiff may be sued in an action to collect all assessments or fees charged by a homeowners association or a condominium association due and payable from the date of the judgment, and it is not a defense that a deed to the property has not been recorded.”

The new law will take effect July 1.
The New York State Assembly is considering amending the banking law by adding a definition of “consummation of mortgage.”

The bill, SB07183, was introduced by Assembly Member Diana Richardson of Brooklyn.

The bill would define “consummation of mortgage” as “for the purposes of the act of Congress entitled Truth in Lending Act and the regulation thereunder and the Real Estate Settlement Procedures Act of 1974, as amended, and the regulation thereunder, when the applicant for the mortgage loan executes the promissory note and mortgage.”

If passed, the bill would take effect immediately.

In its justification for the bill, the Assembly stated: “The Consumer Financial Protection Bureau is imposing new mortgage disclosure requirements tied to when a mortgage loan is ‘consummated’ as defined by state law. These new requirements can only be properly implemented if lenders know when New York state considers a mortgage loan to be a consummated contract with binding obligations imposed on both the lender and the borrower. Unfortunately, it is not clear whether a loan is consummated at closing or much earlier in the process when both the mortgagor and mortgagee sign a mortgage commitment letter. New York has no statutory definition of mortgage consummation. As a result, case law is the controlling guide to when consummation occurs.”

The Colorado General Assembly has passed a bill to create an electronic recording technology board, whose goal would be to maintain the privacy of personal identifying information and develop best practices for electronic filing systems. The bill awaits the governor’s signature.

The bill, SB 16-115, was introduced by Sen. Beth Martinez Humenik, R-Adams County.

The board would be created in the Department of State and consist of the secretary of state or his or her designee and eight other members, including:

- One member of the Real Estate Section of the Colorado Bar Association appointed by the governor;
- One member from the title industry appointed by the governor;
- One member from the mortgage lending industry appointed by the secretary of state;
- Three members who are clerks and recorders from a first or second class county as designated in Section 30-1-101, C.R.S. One would be appointed by the speaker of the House and the other two would be appointed by the secretary of state; and
- Two members who are clerks and recorders from a third, fourth or fifth class county, as designated in Section 30-1-101, C.R.S. One would be appointed by the president of the Senate and the other appointed by the secretary of state.

The initial board members would be appointed for terms beginning July 1 and the board would have its first meeting by Aug. 15, 2016.

The goals in developing and modernizing electronic filing systems would be to:
- Assure the security, accuracy and preservation of public records required to be maintained by a clerk and recorder;
- Maintain the privacy of personal identifying information, online public access to which is not necessary to the proper functioning of land title records or other public records required to be maintained by a clerk and recorder;
- Assure that the sequence in which documents are received by a clerk and recorder for recording or filing is accurately reflected in the records of the clerk and recorder, regardless of whether documents are received electronically or by other means;
- Provide for online public access to public records maintained by a clerk and recorder; and
- Assure that electronic filing systems used in different counties are similar so as to facilitate the submission and searching of electronic records.

The board would be permitted to impose an electronic filing surcharge of up to $2, to be uniformly collected on all documents received by a county clerk and recorder for recording or filing on or after Jan. 1, 2017, through Dec. 31, 2021.

The board would be tasked with:
- Developing a strategic plan that incorporates the core goals outlined above;
The New York State Assembly is considering a bill that would provide additional requirements for notaries public and commissioners of deeds relating to instruments of conveyance of real property.

The bill, **AB 10425**, is being sponsored by Assembly member **Latrice Walker** of Brooklyn.

The bill memo states: “Huge spikes in real estate values and lax standards for property transfers have left many homeowners vulnerable to deceptive practices by individuals and entities seeking to defraud homeowners out of their title to the home to make a profit. The two most common mechanisms of deed theft are through forged deeds and fraudulently transferred deeds. In the instances of a forged deed, the forger signs the document conveying real property as both the seller and buyer without any right to it. This type of theft typically affects properties in which ownership has recently passed through inheritance and these deed scammers quickly file the forged deed, which legitimizes their title, and enables them to take possession of the premises.

“In the case of fraudulently transferred deeds, homeowners sign over their deeds, either knowingly or unknowingly, under the false pretenses proffered by scammers. These individuals target homes in or nearing foreclosure by approaching the vulnerable homeowners with promises of refinancing, preventing foreclosure or some other financial relief, and some even manipulate the homeowners to do a short-sale, by which they promise to pay homeowners a sum of money to satisfy the outstanding mortgage in exchange for short-term title to the property, which they in turn promise to give back after the loan is repaid. Unwitting homeowners are often left without a home and still owing their mortgages.

“This bill seeks to prevent both scenarios by requiring the notary who is present at the signing of the document of conveyance to fill out and file a notarial record,” the bill stated. “In making grants to maintain existing electronic filing systems, the board shall give priority to counties that do not have sufficient revenue from the surcharge proceeds retained in accordance with Section 30-10-421(3)(b), C.R.S., to maintain their electronic filing systems. The board shall develop a grant application process and award grants based on a scoring system that incorporates the core goals.”

The board would be required to prepare an annual report on or before Sept. 1, 2017, and each Sept. 1 thereafter until Sept. 1, 2022. For each grant made during the prior fiscal year, the report would describe:

• The county that received the grant;
• The grant amount;
• The purpose of the grant; and
• The grant outcomes.

Under the proposed law, notaries would have to create a notarial record of each notarial act performed in connection with a document of conveyance. The record would have to contain:

• The date of the notarial act;
• The type, title or description of the document of conveyance being notarized, the property index number used to identify the residential real property for assessment or taxation purposes, and the common street address...
for the residential real property that is the subject of the document of conveyance;
• The signature, printed name and residence street address of each person whose signature is the subject of the notarial act, and a certification by the person that the property is residential real property; and
• The date of notarization, the fee charged for the notarial act, the notary’s home or business phone number, the notary’s business or residence street address, the notary’s commission expiration date, the correct legal name of the notary’s employer or principal, and the business street address of the notary’s employer or principal.

The notarial record also would have to include a description of the satisfactory evidence reviewed by the notary to determine the identity of the person whose signature is the subject of the notarial act. Satisfactory evidence would include presentation of:
• A valid driver’s license or identification card;
• A valid passport issued by the United States or a foreign government; or
• A valid municipal identification card issued by the city of New York.

The bill defines “document of conveyance” as “a written instrument that transfers or purports to transfer title effecting a change in ownership to residential real property, excluding:
• Court ordered and court-authorized transfer of residential real property including, but not limited to, a transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment or legal separation; and
• A deed from a grantor to himself or herself that is intended to change the nature or type of tenancy by which he or she owns residential real property.”

Independent notaries would have to deliver the notarial record to the county or city clerk or register within 14 days of completing the notarial act. If the notarial record was created by a notary public in the scope of his or her employment with a title insurance company, financial institution, law firm or attorney, the notary public would have to deliver the notarial record to his or her employer within 14 days of completing the notarial act. The employer then would have to retain the notarial record for seven years.

Any person or entity that violates the provisions of the bill would be liable for a civil penalty of up to $250 for each violation. The failure of the notary to comply with the requirements would not affect the validity of the residential real property transaction in connection to which the document of conveyance is executed, in the absence of fraud.

Alabama provides clarity to title licensing law

With the passage of House Bill 129 in the 2016 regular session of the Alabama Legislature, now Alabama Act No. 2016-296, attorneys licensed by the Alabama State Bar Association are exempt from the licensing requirements of the title insurance agent law. If a licensed attorney chooses to do business through an entity law firm, the Alabama Department of Insurance also will consider the entity law firm as exempt from the title insurance agent licensing requirements.

Please note, however, if a licensed attorney chooses to do title insurance agent business through an entity separate and apart from a law firm, that entity will be subject to the title insurance agent licensing requirements, and at least one individual licensed as a title insurance agent must be designated as responsible for the entity’s compliance with all applicable laws, rules and regulations. This individual also is designated to act as signatory on title insurance issued by the entity agent. An exempt attorney cannot be so designated unless the attorney submits to becoming licensed as a title insurance agent.

Additionally, if an individual who is not a licensed attorney seeks to do business as a title insurance agent through an entity law firm, then the entity law firm would be subject to the title insurance agent licensing requirements. In such a case, the non-attorney individual title insurance agent can be designated as the responsible party for the entity law firm.

Title insurance agents who now are exempt from the title insurance agent licensing requirements can request the immediate cancellation of the title insurance agent
license by faxing or mailing a letter to Producer Licensing Division requesting cancellation of license, or they can allow the license to expire by not renewing it. Title insurance companies can cancel a title insurance agent appointment by using the NIPR Interactive Appointments and Terminations application. If you do not have a PDB login for your company please contact the NIPR Marketing Department at 816-783-8467 or marketing@nipr.com. Individuals previously licensed as title insurance agents in this state, whether by having passed the examination or by being exempt from the examination, are exempt from the examination requirements should they subsequently seek to again become licensed as title insurance agents, but only if the application for license is received within 12 months of the date the previous license was cancelled.

Mortgage broker pleads guilty to conspiracy

U.S. Attorney A. Lee Bentley, III announces that Jason Martin, 36, Orange County, Calif., pleaded guilty to mortgage fraud conspiracy involving bank and wire fraud. He faces a maximum penalty of 30 years’ imprisonment. A sentencing date has not yet been set.

According to court documents, in 2005, entities controlled by co-conspirators entered into a contract to purchase The Arbors, an apartment complex in Hillsborough County, Fla. The new owners then engaged in a plan to convert the complex from rental apartments to condominium units. The co-conspirators engaged in a scheme to defraud mortgage lenders by developing a set of incentives, such as rental supplements, payment of homeowner’s association fees, and kickbacks to the buyers after closing. These buyer incentives deliberately were hidden from the lenders.

Martin’s role in the conspiracy, as a mortgage broker, involved originating mortgages through Envision Lending and Set 2 Go Loans. The loan applications submitted by Martin contained material misrepresentations, including false occupancy and inflated borrower income and asset information. These loan applications were submitted to FDIC insured institutions and other mortgage lenders. Additionally, through his company HUMAR Investments, Martin and his co-conspirator provided borrowers with cash to close without disclosing the payments to the lenders.

This case was investigated by the Federal Bureau of Investigation and the Federal Housing Finance Agency Office of Inspector General. It is being prosecuted by Special Assistant U.S. Attorney Chris Poor and Assistant U.S. Attorney Jay Hoffer.

Insurance commissioner announces changes

Insurance Commissioner Dave Jones announced that Nettie Hoge, chief deputy for the California Department of Insurance, is retiring June 30, 2016. Jones also announced his appointment of Joel Laucher, the current deputy commissioner of rate regulation, to fill the vacancy.

As chief deputy, Hoge has overseen all operations and policy matters at the department, on behalf of the commissioner. Hoge has served the department in various roles throughout the years, including health policy advisor, in which she advised former Insurance Commissioner John Garamendi on key insurance policy issues, with a special emphasis on health insurance.

Hoge developed and implemented Garamendi’s policies on healthcare reform, while at the same time managing the staff of the Consumer Services Division and the Policy and Research Division. She also served as policy director in the lieutenant governor’s office and spent time working as the executive director of a non-profit advocacy group for utility ratepayers and as a legal advocate.

“I have greatly appreciated Nettie Hoge’s wise counsel and leadership as my chief deputy since the start of my first term,” Jones said. “California’s consumers, the insurance marketplace, and the department are all much better off because of her tireless work advancing the mission of the Department of Insurance.”

Laucher takes over effective July 1, 2016. Since 2009, Laucher has served as the deputy commissioner of the rate regulation branch, managing the property-casualty rate regulation and prior approval process, and negotiating hundreds of millions of dollars in savings for consumers. During his 31 years at the department, Laucher has worked in a variety of capacities, including as chief of the market.
The United States Attorney’s Office announced that in federal court, Joseph Hal Kinlaw Jr., 63, of Bald Head Island, N.C., pled guilty to Bank Fraud.

Based upon the criminal information and evidence offered at the time of Kinlaw’s guilty plea, Kinlaw was a licensed North Carolina attorney who operated various alleged real estate investment and development entities on behalf of investors. Kinlaw used the entities to obtain real estate development loans from Branch Banking and Trust (BB&T), and First Citizens Bank. BB&T and First Citizens Bank extended loans to these entities under the auspices that the entities would be engaged in the development of residential real estate in various subdivisions in the area of Camp Lejeune in Onslow County.

Between January 2011 and April 2013, Kinlaw used the real estate development entities to defraud BB&T and First Citizens Bank by falsifying the legal descriptions of the loan collateral, and by falsifying releases of the collateral. By drafting a false legal description of the property, Kinlaw was able to use the collateral for other real estate investment activities and loans. By fraudulently releasing the banks’ collateral before the banks’ loans had been satisfied, Kinlaw was able, in several instances, to convey the collateral to third parties for value and continue the scheme.

To perpetuate the scheme and prevent its discovery, Kinlaw also used outside funds, that is, funds unrelated to the real estate development activity that was the subject of each loan, to make ongoing loan interest payments to BB&T and First Citizens Bank. In some instances, Kinlaw used loan proceeds on one transaction to make loan interest payments on another transaction. In other instances, Kinlaw fraudulently extracted funds from other investors and their business interests to make payments on the loans.

Ultimately, banks stopped loaning money to Kinlaw and his related companies and investors. As a result, the existing loans went into default. Because Kinlaw had substituted false legal descriptions of bank collateral, and fraudulently conveyed bank collateral, BB&T and First Citizens Bank were unable to capture their loan losses in foreclosure. Various title insurance companies and investors also lost substantial funds because of the scheme. Although the exact amount of the loss remains the subject of investigation, losses presently are anticipated to exceed $18 million.

At sentencing, Kinlaw faces up to 30 years in prison and five years of supervise release. The defendant also faces a fine of up to $1 million, and an order of restitution to victims.

The investigation of this case was conducted by the Federal Bureau of Investigation. Assistant U.S. Attorney William M. Gilmore of the Economic Crimes Section represents the United States.