



November 15, 2012

Hon. Deborah Bortner  
Director of Consumer Services  
Department of Financial Institutions  
Division of Consumer Services  
State of Washington  
PO Box 41200  
Olympia, WA 98504-1200

Dear Ms. Bortner,

I have been made aware of a letter you have sent to Cobalt Mortgage, a client of one of our contract partners, challenging our business model and question whether it is redundant and somehow harmful to consumers because it might increase mortgage related costs.

Based upon my review of your letter, I believe that your department may be under some misimpressions about how and why we formed our business, who our clients are, and how we conduct our business. With respect to the issues you have raised, please allow me to explain briefly.

I have personally advocated for greater risk management with respect to closing transactions since 2002, and have written numerous articles on the subject going back to at least 2007. I formed Secure Settlements in April 2009, well before Dodd-Frank and the CFPB were even created. Having been a closing attorney and later a mortgage industry consultant and attorney, I was concerned about the lack of risk management taken by lenders with respect to the closing process, where their money and critical collateral security documents are at stake, and where consumers can be harmed by errors and omissions. Given the fact that there is no "closing professional" license, that the universe of closing professionals can include attorneys, notaries, realtors, escrow agents, title agent employees and independent contractors, it appeared to me then, and now, that there was an unacceptable risk taken by banks and imposed upon borrowers.

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In 2006 I met with warehouse lenders and suggested vetting and the establishment of a uniform database of closing agent data for access by industry players and consumers, as a method of obtaining more information and making better choices with respect to closing professionals, to act as a deterrent to fraudsters, and to potentially establish an underwriting basis for the creation and implementation of a real insurance product to replace the closing letter issued by title underwriters which offers limited coverage for losses to banks and consumers.

At that time the industry was not prepared to adopt a new process. I then proceeded to reach out to the major title underwriters, with whom I had extensive conversations between 2008-2010 about adopting my concept for a vetting process and the possibility for new insurance. I met with the senior management of First American, Fidelity, Old Republic, Stewart and the now defunct NJ Title. These entities expressed support for my idea and the possibility of the insurance product and encouraged me to bring the concept to the warehouse community as they have set the requirements for a CPL/CIL in residential mortgage transactions.

In the past 18 months or more I have had extensive discussions with the warehouse banks, who expressed serious concern over what they felt was a non-uniform approach to risk management and the rising cost of fraud affecting them and their lender clients. Thereafter in January 2012, well before CFPN Bulletin 2012-3, we were already beta testing our systems with data from warehouse banks, using their approved agent lists, and negotiating the terms of agreements with them to act as a third party risk management service replacing or enhancing their internal risk management staff. As you know, many warehouse banks already have had for some time a process by which closing agents would have to be approved by them before they would wire proceeds to their trust accounts.

When the April CFPB Bulletin was released, having studied the issue for almost a decade, it was my belief which has been confirmed with a discussion with the author of the Bulletin, that the CFPB was merely giving teeth to guidelines and recommendations for non-bank lender risk management in this area dating back as far as 2001. The OCC has had requirements for supervised institutions since November 2001, FNMA has offered guidance to non-banks since 2005, and even the NCUA has recommended that credit unions adopted stricter standards for closing agent vetting since 2007. Therefore no one in the industry should be surprised by the CFPB bulletin or a call for greater management of closing agent risk.

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Thus to summarize, SSI is not a creature of the CFPB or the April 2012 Bulletin, although we believe that our process meets the expectations of the CFPB with respect to addressing closing agent risk management, as part of the overall concern of third party service provider risk. We are acting instead under contracts to warehouse banks who are advising their lender clients to have agents vetted or they will not wire funds to them after a set date. The motivation is greater risk management, not CFPB.

With respect to some of your questions about our company and our process, please note the following:

- We have never stated anywhere that licensing is not important or that licensing agencies do not discipline bad actors. Nor have we ever said we “don’t recognize licensing” because in fact we require proof of licensing a part of our vetting process and we monitor changes in licensing status as one of 17 points of evaluation. We believe that licensing is an important function of professional credentialing because it sets minimum requirements to entry, as well as some ongoing continuing education standards. In general we know from years of experience in mortgage fraud investigations and litigation that licensing authorities generally have limited resources to actively monitor entity and individual risk on an ongoing basis. Licensing authorities rarely provide or participate in shared databases of real time risk information to offer businesses and consumers real time data to make decisions about who they should do business with. Licensing authorities can take disciplinary action but only after defalcations and violations are reported to them, and if they are not reported are unaware of acts or omissions and therefore can neither prevent harm nor take action to make harmed parties whole. Most importantly, not all individuals who perform closing services are licensed, licensed by the same regulators, or meet the same standards of licensing. In truth an examination of reported incidents of fraud disclose that nearly everyone was licensed by someone at the time the act was committed.
- We have not exempted anyone from the vetting process; we believe anyone who disburses funds or handles documents and interacts with consumers at the closing table should be vetted independently for risk. Some of our warehouse clients have determined that due to longstanding relationships, and in some cases indemnity agreements with certain underwriters, they feel comfortable excluding them at this time. It is my position that everyone who disburses funds or interacts with consumers

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at the closing table must be vetted. Entity vetting is not enough; lenders and consumers need to know who the individuals are to act on their behalf in such an important financial transaction. This was their decision not ours and since we are a service company we honored their request. We also provide risk management services for lenders who require everyone to be vetted no matter their affiliation, and we are working with large title agencies and settlement firms in the vetting of all their employees and independent contractors.

- We have never made business decisions regarding whom to vet or how due to “political reasons,” as I could have compromised my beliefs about good risk management and consumer protection at any time over the past ten years where I have been a lonely voice in advocating for changes. I have been attacked, harassed, ridiculed and pressured by many different interests in the industry to conform to their ideas about how to handle risk management but have consistently pushed for comprehensive, independent, uniform risk evaluation and the need to share the data obtained with lenders and consumers to make better choices about their partners.
- For the past three years we have taken numerous public opinion surveys and polls of consumers because we cared about their opinion in this matter and they have consistently indicated support for programs that would manage real estate attorney and closing agent risk, and also have indicated that they believe attorneys and closing agents are not sufficiently regulated for the potential harm they can cause at a closing. A copy of our most recent survey is enclosed for your information.

The cost of mortgage fraud in the last several years has been unacceptable to banks and to consumers. Estimated Mortgage Fraud Losses in 2011 and 2012 (FBI Records and Estimates) were \$11 Billion - \$13 Billion. Estimated mortgage fraud losses attributable to escrow and closing agents (FBI Records): 15% - or \$1.65-1.95 Billion Annually. The segment with the highest growth rate in fraud (FinCEN Report, July 2012) has been escrow and closing agents, with an estimated 20% growth in 2011. Clearly, mortgage fraud, including fraud related to escrow and closing agents, has increased not decreased in the past 5 years despite efforts to address the risk, and I have seen no demonstrable evidence of reduction in fraud that can be related to enhancements in licensing, association membership or even bond and insurance requirements (where they exist).

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The mortgage industry spends upwards of \$1 Billion annually to fight mortgage fraud on the front end of the process (origination, processing and underwriting)(MBA Figures 2011). There is no uniform approach to addressing risk at the back end of the process (closing) other than reliance on the Closing Insurance Letter/Closing Protection Letter (in those states where it is permitted). The CIL/CPL is not risk management, is not insurance, does not adequately cover the consumer and lender from all losses, and is reactive not proactive.

In the absence of greater risk management, lenders remain at risk from fake title agencies and settlement companies, theft of mortgage proceeds, improper disbursements of mortgage proceeds, failure to follow closing instructions and properly document closing details, failure to disclose cash outside of closing, failure to disclose true source of funds brought to closing, conspiracies to commit fraud: short sale fraud, foreclosure rescue scams, undisclosed intervening transaction flips, straw buyers and identity thefts, negligent document handling, failure to properly record instruments and failure to return closing packages. The result? repurchases, audit issues, litigation and billions in losses.

In the absence of greater risk management, consumers remain at risk from fake title agencies and settlement companies, theft of mortgage proceeds, theft of consumer contributions to closing, improper disbursements of mortgage proceeds, failure to pay off prior liens and judgments after closing, failure to follow closing instructions and properly document closing details, negligent document handling, failure to properly record instruments and failure to return closing packages. The result? Clouds on title, litigation costs, and untold losses.

Lenders want and need our services. The objections we have heard have come from those who do not want to be vetted and can be summarized as follows:

- “We don’t need more risk management”
- “We are already vetted”
- “We are licensed”
- “We belong to an association”
- “Our personal data is private”
- “We don’t cause fraud, mortgage brokers do”
- “Vetting costs too much (\$199/\$99 for a year)”

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Meanwhile, every day lenders wire millions of dollars into the trust accounts of escrow and closing agents with whom they have little or no relationship, and every day thousands of consumers arrive at mortgage closing ceremonies conducted by individuals who have no uniform standards of care, no uniform best practices, uniform licensing, nor comprehensive identity and credential verification.

We are not a fly-by-night company created to take advantage of anyone. Our management team and board of advisors are comprised of some of the most experienced and talented individuals in the industry, including a former chairperson of the MBA, a past president of ALTA, a former chair of TIPAC and thirty year title insurance executive, the former Director of FHFA, a former state deputy commissioner of banking, a former senior HUD executive, a former state insurance commissioner, and legal, banking and title industry leaders. We have had productive educational and fact exchanging meetings with the CFPB, OCC, NCUA, FDIC, the National Notary Association and the National Association of Realtors as well as state and federal policymakers. We are also in discussions with committee members of the National Association of Insurance Commissioners regarding the weaknesses surrounding closing protection letters and better consumer protection from escrow theft and fraud.

I welcome a telephone conference with you regarding these issues, and would be happy to participate in a constructive and mutually respectful dialogue to review these matters in further detail. I hope that by doing so we can raise your comfort level regarding who we are and what we are doing.

Respectfully,

Andrew Liput  
President & CEO  
ALL:pm

cc: SSI Advisory Board  
Lowenstein Sandler PC