


OLD REPUBLIC TITLE

CFPB Enforcement Actions 2020


Anne L. Anastasi, CLTP, NTP
Old Republic Title
215-441-5500
AAnastasi@OldRepublicTitle.com

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The Power of the CFPB




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US Supreme Court Decision: Constitutionality of CFPB 6/2020

- 6/2020 Supreme Court rules CFPB structure unconstitutional.
- Chief Justice John Roberts (majority 5-4) "the structure of the CFPB violates the separation of powers."
- "The agency may therefore continue to operate, but its director, in light of our decision, must be removable by the president at will."



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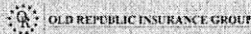


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CFPB's Enforcement Actions


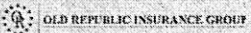
- Investigations
- Filed federal lawsuits
- Take administrative actions
- Cease and desist orders
- Refer to DOJ for criminal acts
- Report to IRS

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CFPB's Enforcement Powers

- Rescind Contracts
- Order payments
- Fines
 - Restitution
 - Award damages
- Publish Investigation and Findings
- Rulemaking

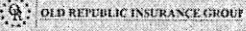

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CFPB's Ultimate Weapon



U.D.A.A.P.

Unfair, Deceptive, Abusive, Acts or Practices



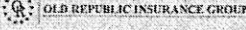

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Defining UDAAP

Unfairness:
The act/practice that causes or is likely to cause substantial injury to a Consumer that the Consumer cannot reasonably avoid.

Abusive:
The act/practice that materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of—

- Consumer's lack of understanding;
- the inability of the consumers to protect themselves; or
- the consumer's reliance on the professional.


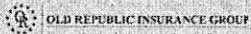


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U.D.A.A.P.

66%



2019 CFPB enforcement actions cited
UDAAP findings

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CFPB's Statutory Penalties

- \$5,000 per day per violation**
 - **for errors**
- \$25,000 per day per violation**
 - **Reckless conduct**
- \$1 million per day per violation**
 - **Knowing violations**

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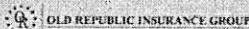

Where does the money go

Fines to others

- State departments
- Other regulators
- State AGs

Direct Restitution

Civil Money Penalty Fund

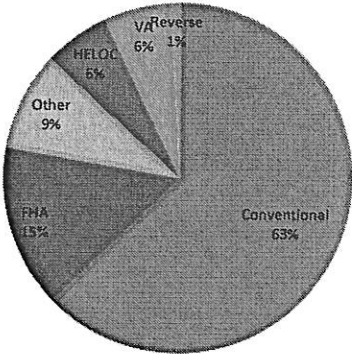


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27,300 Mortgage-related Complaints (2019)

PERCENTAGE BY LOAN TYPE

■ Conventional ■ FHA ■ Other ■ HELOC ■ VA ■ Reverse



Loan Type	Percentage
Conventional	63%
FHA	15%
Other	9%
HELOC	5%
VA	6%
Reverse	1%




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As of 9/2/2020

198 Actions consummated

\$ 972,100,849	Fines to others
\$ 8,006,523,114	Restitution to consumers
\$ 877,831,803	Civil Money Penalty Fund
<u>\$ 501,678,576</u>	CFPB Fines & Disgorgement

\$10,358,134,342 TOTAL



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Mortgage and Settlement Industry \$

43.6%

- fines, penalties and restitution from residential real estate transactions



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Notice of Opportunity to Respond & Advise (NORA)

cfpb
Consumer Financial Protection Bureau

Sample NORA Letter

March 10, 2016

[Recipient Name]
[Recipient Address]
[City, State, ZIP Code]

Dear [Recipient Name]:

The letter explains that [brief description of the complaint with the Consumer Financial Protection Bureau] is an enforcement action and [brief description of the action being taken]. It provides information about the opportunity to respond to the NORA. It also explains the consequences of not responding to the NORA. At the bottom, you will find information about the opportunity to respond to the NORA. It also explains the consequences of not responding to the NORA.

A NORA is an enforcement action by the Bureau. It is used to inform you of a violation of the Consumer Financial Protection Act (CFPA) and to provide you with the opportunity to respond to the NORA. It is used to inform you of a violation of the CFPA and to provide you with the opportunity to respond to the NORA.

Please be advised that the Bureau may use information provided in your submission as an admission, or as an other matter prohibited by law, in connection with CFPA enforcement proceedings or otherwise. For more information, please refer to the NORA. Please also be advised that information may be disseminated to all parties in accordance with applicable law.


For detailed instructions for the hearing, this notice, and for more information, please refer to the NORA. For detailed instructions for the hearing, this notice, and for more information, please refer to the NORA.

If you have any questions, please contact us at (202) 433-3270.


Sincerely,
Director
Consumer Financial Protection Bureau

Enforcement Notice and Opportunity to Respond and Advise

Consumer Financial Protection Bureau



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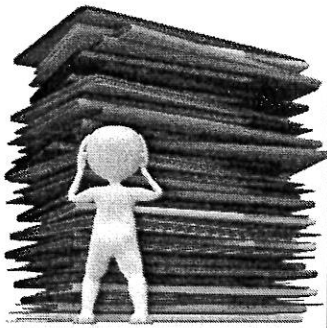



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
Notice of Opportunity to Respond & Advise (NORA)

- Pre-enforcement action
- Response due in 14 days
- < 40 pages





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CFP Financial Planning Institute
 Federal Bureau of Investigation
 United States of America
 Consumer Financial Protection Bureau
Civil Investigative Demand

To: **Howard E. Roberts**
 100 Peachtree Lane Drive
 New Albany, GA 31701

The following information is provided to you, in accordance with the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. 5491, and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. 5491, and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. 5491.

Action Required

Agree and Provide Our Documents
 I agree to provide the documents listed below to the Bureau of Consumer Financial Protection (Bureau) by the date specified below.

Provide Documents and/or Testify Under Oath
 I agree to provide the documents listed below to the Bureau of Consumer Financial Protection (Bureau) by the date specified below, and to testify under oath before the Bureau of Consumer Financial Protection (Bureau) on the following date.

Identification of Purpose Pursuant to 12 C.F.R. § 1026.9
 The purpose of this investigation is to determine whether persons involved in the provision of services to consumers in the card, deposit, investment, or other consumer financial products, have engaged in, or are engaging in, practices that violate or may violate 12 C.F.R. 1026.9. The Bureau is conducting this investigation pursuant to 12 C.F.R. 1026.9, and the Bureau is conducting this investigation pursuant to 12 C.F.R. 1026.9.

Consent / Deputized Custodian
 I consent to the collection, use, and disclosure of my personal information for the purposes of this investigation.

Witness Consent
 I consent to the collection, use, and disclosure of my personal information for the purposes of this investigation.

Date Issued
 10/08/2015

Signature
 [Signature]

Name / Title
 Deborah Miller / Deputy Bureau Counsel Director

Notice
 The Bureau of Consumer Financial Protection (Bureau) is conducting this investigation pursuant to 12 C.F.R. 1026.9, and the Bureau is conducting this investigation pursuant to 12 C.F.R. 1026.9.

Right to Regulatory Enforcement Powers
 The CFPA, enacted by the Dodd-Frank Act, provides the Bureau with a wide range of regulatory enforcement powers, including the authority to issue subpoenas, conduct examinations, and impose civil penalties.

Enforcement Authority
 The Bureau has the authority to enforce the CFPA, and the Bureau is conducting this investigation pursuant to 12 C.F.R. 1026.9, and the Bureau is conducting this investigation pursuant to 12 C.F.R. 1026.9.

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Enforcement Actions and Consent Orders

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Target #1

Affiliated Business Arrangements





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Blueprint includes

- 24 CFR 3500.15
 - *Three requirements for safe harbor*
- *§8(c)4*
- Policy Statement 1996-2
 - The 10-point test

<http://www.hud.gov/offices/hsg/ramh/res/res0607c.cfm>



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The Carter Decision

Carter v Welles Bowen Realty, Inc. 736 F 3rd 722 (6th 2013)

Welles Bowen Realty title agency

Court: Defendants satisfied the RESPA 8(c)4
for safe harbor:

Disclosure

No required use

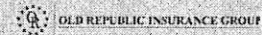
Return based on ownership

HUD Statement of Policy 1996-2 (10-point analysis)

received no deference (Chevron deference)

Kentucky, Ohio*, Tennessee, Michigan

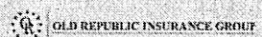
* See state Code



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Disclosure Lessons

- Civil Investigative Demand received
 - All RE and Title documents 2009-2012
 - Hard drives of executives and managers
 - Review ownership between realty and title
 - Review compensation between all affiliations
 - Review compensation of executives
 - Review rental payments



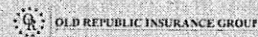
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Disclosure Lessons

Findings

- Inclusion of Title Company in contract = required use
- Disclosure
 - Added language, Added logo, Did not use bold words

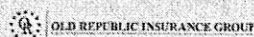
- \$500,000 Civil Money Penalty within 10 calendar days
- \$600,000+ legal fees
- \$80,000 e-discovery costs: Defendant's General Counsel
- Hundreds of hours



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New Jersey Title Code re: Fees

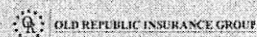
- Rating Bureau State
- Filed premiums, Endorsements
- Filed closing fee \$300 - \$325
- Filed exam fee \$100/chain



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US District Court 3rd Circuit Class Action Lannin vs NRT Title (2018)

- Defendants:
 - 11 Joint venture title agencies
 - 1 Messenger service company
 - 1 Escrow companyAll owned or partially owned by intertwined entities
- Motion to Dismiss (8/27/2019)
- Granted as to two defendants
Denied as to NRT Title



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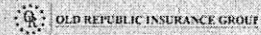
FEEES FOR SERVICES NOT RENDERED

- Document review \$75
 - Preparation of legal description \$50 (allowed only if prepped from new plan)
 - Transaction management fee \$25
 - Messenger fee \$50
 - Closing prep \$300
 - Secondary mortgage market endorsement \$25
- TOTAL \$525/file



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Affiliated Business Arrangements *Regulatory Trends*

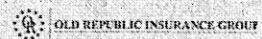


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Ohio:

Title Insurance Controlled Business Arrangements §3901-7-04

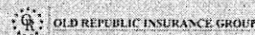
- Department of insurance incorporated HUD 1996 Policy Statement guidelines in regulations
- “In determining whether an entity is a sham arrangement, the superintendent may consider factors similar to those used to determine whether a controlled business arrangement is a sham arrangement under RESPA...”



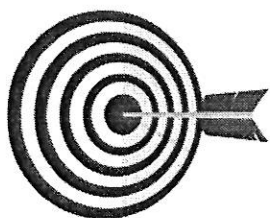
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Utah §31-23a-1001 et seq

- Repeals existing prohibition
- May 14, 2019
- RESPA regulations plus
 - \$100,000 minimum capitalization
 - 30% outside business
 - Most 1996 Policy Statement guidelines
 - Core Title “Essential” Services requirement
- Division of Real Estate to enforce

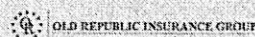


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Target #2

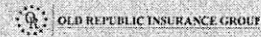
Marketing Service Agreements,
Desk Rentals, Sales Employment



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Lighthouse Title - Michigan

- Determinations
 - \$ paid had no relationship to value of services
 - Fees based on what competition was paying
 - Recognized that real estate agents threatened title agent
- Business increased after MSA
- \$200,000 Civil Money Penalty

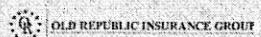


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Stonebridge — New Jersey 2014

Title company and Real Estate Agents

- 2008 – 2014 paid “referral commissions”
- 40% of Insurance Commissions
- “Independent Salespeople”
- Had state title licenses
- W-2



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Creig Northrop Team May 2013

Federal lawsuit

- Employment agreement with settlement co.
 - Did not maintain set hours
 - Did not conduct closings, process files, no office, telephone, email address
 - Disciplined non-cooperative team members
- Post Employment MSA
 - Lakeview exclusive provider
 - Paid \$6,000 - \$12,000/mo unspecified services
- Federal lawsuit \$11 m seeking Class certification
- March 2020 – 4th Circuit rules plaintiffs have no standing under Article III
 - Did not assert that they were overcharged for title services,



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Genuine Title - Maryland

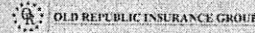
- Two National Lenders: 2009-2013
 - Paid for marketing leads from third-party loan officers
 - Paid for marketing letters to be:
 - Printed, Folded, Stuffed, Mailed
- 106 loan officers, 21 branches
- Paid wife of one LO in cash to appear more "compliant"



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The "E" in email = evidence

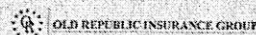
- Title entity emails to printing company:
 - "I need you to provide me with some invoices that we will ultimately not use."
 - "Can we also have 'Invoices' for certain loan officers Printed, Stuffed, Folded & Posted for 500 each? They would be individual 'Fake' invoices for the job you did for them last week. You did a few jobs for them so we just need fake invoices."
 - Directed to put LO's name on invoice but send them to Genuine Title.



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Consent Orders

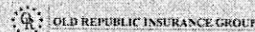
- Lender #1:
 - Money Judgement to CFPB/CPD = \$10.8 Million
 - Fine to CFPB = \$21 Million
 - Fine to Md. CPD = \$3 Million
- Lender #2:
 - Money Judgement to CFPB/CPD = \$300,753
 - Fine to CFPB = \$500,000
 - Fine to Md CPD = \$100,000



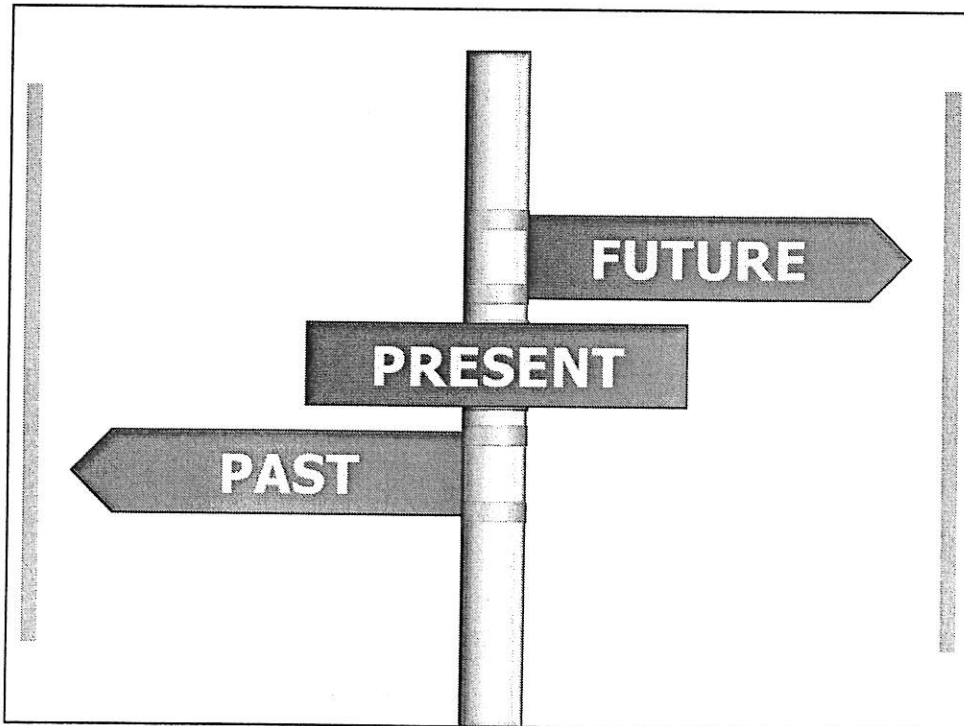
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National Lender #3 8/28/2020

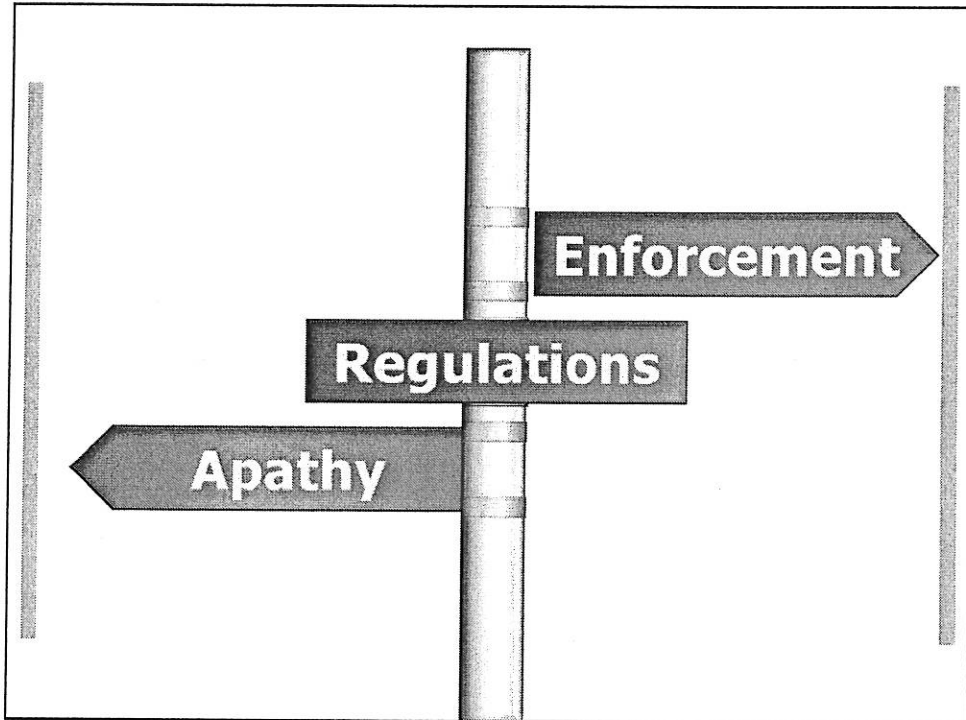
- Class Certified by 4th District Court vs Lender
- RESPA 1-year SOL tolled by theory of fraudulent concealment
- Alleged gross overcharging to fund kickbacks
- Genuine Title previous testimony
 - Admissibility challenged by defendant
 - Title agent testified he would have preferred “to give the borrower back a couple extra hundred dollars instead of paying it to them...”




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THANK YOU

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Old Republic Title
215-441-5500
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