

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2017-CFPB-0019

In the Matter of:

MERIDIAN TITLE CORPORATION

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed certain real estate settlement services practices of Meridian Title Corporation (MTC, Meridian, or Respondent) and has identified violations of § 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, and its implementing regulation, Regulation X, 12 C.F.R. Part 1024 (formerly codified at 24 C.F.R. Part 3500) (collectively, RESPA), in connection with its referring consumers to an affiliated title-insurance business.

Under §§ 1053 and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5563, 5565, and § 8 of RESPA, 12 U.S.C. § 2607, the Bureau issues this Consent Order (Order).

I

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, and § 8 of RESPA, 12 U.S.C. §2607.

II

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated September 26, 2017 (Stipulation), which is incorporated by reference as if fully set forth herein, and is accepted in full by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III

Definitions

3. The following definitions shall apply to this Order:
 - a. “Affected Consumers” means those consumers who did not receive a RESPA-compliant affiliated business disclosure form in 2014, 2015, or 2016, in relation to a title insurance policy issued by Respondent in its capacity as title policy-issuing agent for Arsenal Insurance Corporation.
 - b. “Board” means Respondent’s duly elected and acting Board of Directors.
 - c. “Effective Date” means the date on which the Order is issued.
 - d. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or their delegate.
 - e. “Related Consumer Action” means a private action by or on behalf of one or more consumers, or an enforcement action by another governmental

agency brought against Respondent based on substantially the same facts as described in this Order.

- f. “Relevant Period” includes the period from January 1, 2014 through and including December 31, 2016.
- g. “Respondent” means Meridian Title Corporation; its subsidiaries, successors and assigns.

IV

Bureau Findings and Conclusions

The Bureau finds the following:

- 4. Respondent is a settlement agent and title insurance agency headquartered in South Bend, Indiana. Respondent issues title-insurance policies, provides mortgage loan settlement services, and conducts loan closings in connection with residential real estate transactions. In its role as title policy issuing agent, Respondent, among other things, procures title policy orders from borrowers and lenders and issues title policy commitments, final title policies, and related endorsements. As a settlement agent, Respondent facilitates the real property and mortgage loan settlement services required to close the mortgage loan and purchase.
- 5. Respondent is a “covered person” as that term is defined by 12 U.S.C. § 5481(6).
- 6. Title insurance is a required element of almost all residential real estate purchases involving a mortgage loan. It is a significant cost for consumers in those transactions. Title insurance premiums are paid only once, at the time of sale or refinancing, typically to the title agent who has procured the insured’s title policy order. Under an agency agreement between a title policy issuing

agent and the title insurance underwriter, title agents ordinarily retain or are paid a portion of the title policy premium as a commission for the procurement and issuance of the title insurance policy. Accordingly, a title-policy issuing agent generally has a contractual duty to their title insurance underwriter principal to account for the premiums it has collected, and the title insurance underwriter generally has the contractual right to audit the title agent's relevant financial records. The party responsible for ordering and paying for the title policies varies, by custom or practice, by state, and in some cases by area within states. For example, in many areas, the seller pays for the owner's title policy and the buyer for the lender's title policy; but the buyer may also pay for both policies or split some (or all) of the costs with the seller.

7. The selection of the title policy issuing agent and the title policy underwriter, as well as the settlement agent, is an infrequent and unfamiliar transaction for many borrowers. Accordingly, consumers must often rely on the advice of a real estate or mortgage professional in choosing a title issuing agent and settlement agent. As a result, title policy issuing agents, settlement agents, or those who conduct settlements normally market their products and services to settlement services professionals rather than to consumers. So while consumers pay for the title policy, they often do not know from whom the policy is being purchased or how to "shop around" to determine the best price or best terms of the title policy they purchased.
8. Respondent acts as the title policy issuing agent in residential property mortgage transactions. It receives orders for policies from lenders and real estate agents, and in some cases directly from consumers. Respondent then

assigns those orders to a variety of title insurance underwriters for which it is a title policy issuing agent, including Arsenal Insurance Corporation (Arsenal).

9. Arsenal is a title insurance underwriter headquartered in Carmel, Indiana. Arsenal was established in 2004 and provides loss indemnity under its title insurance policies to real estate owners and lenders. Under its title policies, Arsenal provides indemnity for actual loss suffered by an insured policy holder due to liens, encumbrances, or defects in the title to property located in the State of Indiana.
10. Arsenal has three individual owners. Respondent has eight individual owners, three of whom are the owners and executives of Arsenal. Arsenal's President has an ownership interest in Respondent and serves as its Vice President and Senior Counsel. Arsenal's Vice President/Agency Representative has an ownership interest in Respondent and serves as its Vice President of Sales and Marketing. Respondent's CEO has an ownership interest in Arsenal and Respondent.
11. Respondent and Arsenal have an "affiliated business arrangement" as that term is defined in 12 U.S.C. § 2602(7).
12. Because of Respondent's overlapping ownership and control of Arsenal, which was not disclosed to consumers, Respondent was able in some cases to deviate from its contractual terms and to keep money beyond the commission allowance outlined in its agency contract when issuing Arsenal title insurance policies. These additional amounts that fell outside the contractually-outlined commission structure were not reasonable compensation for services actually

performed in the issuance of Arsenal's title insurance policies, nor were they a return on an ownership interest or franchise relationship.

Respondent's RESPA Violations

13. RESPA § 8(a), entitled "Prohibition Against Kickbacks and Unearned Fees," states that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." 12 U.S.C. § 2607(a).
14. RESPA's implementing regulation defines "referral" to include "any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service..." and "whenever a person paying for a settlement service or business incident thereto is required to use a particular provider of a settlement service or business incident thereto." 12 U.S.C. § 2607(a).
15. RESPA defines "thing of value" broadly to include "any payment, advance, funds, loan, service, or other consideration"; and the implementing regulation defines "thing of value" to include "without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or

free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation.” 12 U.S.C. § 2602(2); 12 C.F.R. § 1024.14(d).

16. Respondent routinely selected Arsenal as its customers’ title insurance underwriter during the Relevant Period. Respondent thus received things of value—money beyond Arsenal’s contractual commission allowance—pursuant to an agreement or understanding that it would refer business to Arsenal by recommending homebuyers to use its affiliated business Arsenal for title insurance. Respondent thus violated RESPA § 8.

Affiliated Business Arrangement Disclosure

17. Under the regulation implementing RESPA § 8(c)(4), 12 U.S.C. § 2607(c)(4), “[a]n affiliated business arrangement is not a violation of § 8 of RESPA” if, among other conditions, “(1) ... each person whose business is referred [is provided] a written disclosure, in the format of the Affiliated Business Disclosure Statement set forth in appendix D of [12 C.F.R. Part 1024] of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, at the time of loan application....” 12 C.F.R. § 1024.15(b).

18. From 2014 through 2016, Respondent made no Affiliated Business Arrangement disclosures to consumers.

ORDER

V

Conduct Provisions

IT IS ORDERED, under §§ 1053 and 1055 of the CFPB, that:

19. Respondent and its officers, agents, servants, and employees who have actual notice of this Order, whether acting directly or indirectly, may not violate § 8 of RESPA, 12 U.S.C. § 2607, including that for the issuance of title-insurance policies for federally related mortgage loans it cannot receive any amount of money, as commission or for any other reason, beyond reasonable compensation that is specifically permitted under its contracts with underwriters in exchange for services actually performed in the issuance of the relevant title-insurance policies.
20. Respondent must establish, implement, and maintain testing policies, procedures, and standards, and technology reasonably designed to create a compliance management system that will monitor the delivery of forms disclosing its affiliated business arrangement with Arsenal, and any other affiliated business arrangement, as appropriate under RESPA sec. 8 or its implementing regulation, and signed confirmations evidencing consumers' receipt of those forms, where Arsenal is selected as the title insurance underwriter.

VI

Compliance Plan

IT IS FURTHER ORDERED that:

21. Within 60 days from the Effective Date, Respondent must submit to the Enforcement Director a comprehensive Compliance Plan designed to ensure that Respondent's marketing and sales of settlement services comply with all applicable laws the Bureau enforces, particularly RESPA, and the terms of this Consent Order. The Compliance Plan must include, at a minimum:
 - a. Detailed steps for addressing each action required by this Consent Order;
and
 - b. Specific timeframes and deadlines for implementation of the steps described above.
22. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the Enforcement Director directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 60 days.
23. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

VII

Compliance Committee

24. Respondent must maintain and support a compliance oversight board committee (Compliance Committee) that individually and collectively is tasked with:
 - a. Ensuring that Respondent's policies and procedures are reasonably designed to ensure compliance with RESPA, including Affiliated Business Arrangement disclosure requirements;
 - b. Ensuring that all Affiliated Business Arrangement disclosure forms are sent to consumers at or prior to the acceptance of any title or settlement order, where Arsenal is selected as the title insurance underwriter;
 - c. Ensuring that all of Respondent's executives and staff are trained on RESPA, including Affiliated Business Arrangement disclosure form requirements and Respondent's related compliance management system;
25. For five years, following the Effective Date of this Consent Order, the Compliance Committee will be responsible for monitoring and coordinating Respondent's adherence to the provisions of this Consent Order. The Compliance Committee must meet at least bi-monthly and must maintain minutes of its meetings.

VIII

Role of the Board

IT IS FURTHER ORDERED that:

26. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order prior to submission to the Bureau.
27. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring Respondent complies with this Consent Order.
28. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
 - a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
 - b. Require timely reporting by management to the Board on the status of compliance obligations; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

IX

Order to Pay Redress

IT IS FURTHER ORDERED that:

30. Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account \$1.25 million for the purpose of providing redress to Affected Consumers as required by this Section.
31. Within 60 days of the Effective Date, Respondent must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the Enforcement Director directs the Respondent to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the Enforcement Director within 15 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.
32. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than \$1.25 million, within 30 days of the completion of the Redress Plan Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$1.25 million.

33. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
34. Respondent may not condition payment of redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

X

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

35. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
36. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
37. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

38. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

XI

Reporting Requirements

IT IS FURTHER ORDERED that:

39. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
40. Within seven days of the Effective Date, Respondent must:
- a. designate at least one telephone number and email, physical, and postal address as point(s) of contact, which the Bureau may use to communicate with Respondent;

- b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
41. Respondent must report any change in the information required to be submitted under Paragraph 40 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.
42. Within 90 days of the Effective Date, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, or a Committee thereof, which, at a minimum:
- a. Describes in detail the manner and form in which Respondent has complied with this Order; and
 - b. Attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

43. Within 30 days of the Effective Date, Respondent must deliver a copy of this Order to each of its Board Members and executive officers; as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

44. For five years from the Effective Date, Respondent must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section XI, any future Board Members and executive officers, as well as to any managers, employees as part of their employment package, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
45. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

XIII

Recordkeeping

IT IS FURTHER ORDERED that:

46. Respondent must create, or if already created, must retain for at least five years from the Effective Date, the following business records:
 - a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, as well as all submissions to the Bureau.
47. Respondent must retain the documents identified in Paragraph 46 for the duration of the Consent Order.
48. Respondent must make the documents identified in Paragraph 46 available to the Bureau upon the Bureau's request.

XIV

Notices

IT IS FURTHER ORDERED that:

49. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “In re Meridian Title Corporation, Case No. 2017-CFPB-0019” and send them either:
 - a. By overnight courier (not the U.S. Postal Service), as follows:
Assistant Director for Enforcement
Consumer Financial Protection Bureau
1625 Eye Street N.W.
ATTN: Office of Enforcement
Washington, DC 20006; or
 - b. By first-class mail to the address below and contemporaneously by email to:
Enforcement_Compliance@cfpb.gov
Assistant Director for Enforcement
Consumer Financial Protection Bureau
1700 G Street, N.W.
ATTN: Office of Enforcement
Washington D.C. 20552.

XV

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

50. Respondent must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in Section IV. Respondent must provide truthful and complete information, evidence, and testimony. Respondent must cause Respondent’s officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials,

changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XVIII

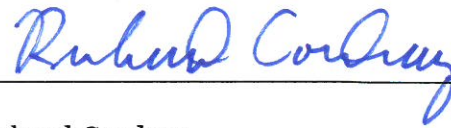
Administrative Provisions

56. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 57.
57. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
58. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

59. This Consent Order will terminate five years from the Effective Date or five years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
60. Calculation of time limitations run from the Effective Date and are based on calendar days, unless otherwise noted.
61. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
62. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

63. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
64. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 27th day of September, 2017.



Richard Cordray
Director
Consumer Financial Protection Bureau