

Just Say We're Suspicious

One of the first things a new Consumer Financial Protection Agency will do is come after the land title industry.

Do we know this? Of course not, but there are reasons to believe it likely. Just say we're suspicious.

Consider how Congress is going about 'reforming' the mortgage business. It could have decided to pass a few simple laws, such as prohibiting usury (as most states once did), killing option ARMs, outlawing teaser rates, or prohibiting negative amortization. Each of these would have been of enormous help to consumers.

Instead, Congress will probably pass a massive new financial services bill that lays out a few broad (and appropriately vague) principles and empowers a big new federal agency to take things from there. Home mortgages will be controlled using rules, regulations, and enforcers rather than with laws, plaintiffs, and courts.

What's all this got to do with the title industry being an early target?

Put yourself in the place of a newly appointed Director of the Consumer Financial Protection Agency. You have broad powers and no particular agenda. You're supposed to fix what's wrong with consumer services, especially real estate mortgages. And, coincidentally, you are now the sole rule-maker and enforcer of RESPA.

An early victory would be a Godsend. Something that rights acknowledged wrongs, cuts down some bad guys, and lowers costs to consumers. You have major fish to fry, yes, but a victory over those title insurance people would be a great start, establishing the credibility of your new agency forever.

- The facts are undisputed. Title insurance costs too much and is probably unnecessary. No other country on earth uses it (or knows what it is). The major title companies tacitly admitted to overcharging in New York a while back and undoubtedly do so everywhere. They also as much as admitted it by secretly paying millions to big customers disguised as captive reinsurance premiums. Title agents by the dozens steal millions entrusted to them left and right, something the underwriters find powerless to stop. One major insurer was nearly done in by defalcations last year.
- Besides, the title industry is antiquated, using nineteenth century methods in city after city. Its use of computers is elementary and laughable. It refuses (or rather ignores) all attempts at modernization, however simple, preferring things as they are. It has no machinery for improving itself or the customer experience on any industry-wide basis and no interest in doing so. Its thousands of attorney agents, mostly from the lowest tiers of their profession, are inept as businesspeople, dismissive of customer service, and frequently have other agendas.
- The title industry has no answers to these charges. It has never refuted them or tried to refute them. Its entire strategy consists of hoping they will go away. It hides behind the variety and complexity of real estate law and practice in the U.S. and hides as well behind state insurance regulation, which is a joke.
- The way has been paved for reforming the title industry by a highly-respected government agency, the Government Accountability Office, or GAO. Its two studies of the industry tell it all.
- The media has taken long looks at the industry as well, are sympathetic, and will applaud. The *New York Times*, the *Washington Post*, *Forbes*, and the *Wall Street Journal* have all published critical pieces. They will support reform.
- The title industry is defenseless. It has no mechanisms, no resources, for defending itself. Dealing with it will be easy, duck soup. It has no friends, no allies. It has no voice, no way of making its case. It uses its national trade association as a shield, awkward because it includes both agents and underwriters, with widely diverging interests.

This all sounds pretty bad, doesn't it? Painful to read. Unfortunately, it's just part of the case that will be made against us when and if it is made.

If the title industry is lucky the CFPA will confine itself to forcing the cost of title insurance to become uniform and to come down. If the industry is unlucky the CFPA will additionally seek to replace title insurance with something better, something more efficient, more modern, more like Europe and Canada, less expensive, and nationally uniform.

Just say we're suspicious. ♣

Condell Private Letter No. 203

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Published by The Fort Sherman Group Inc, PO Box 6168, Hilton Head Island, SC 29938. Fax 843-686-6515

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