

## SETTLEMENT AGREEMENT

AK DOI Case No. D 09-25

### **RECITALS**

This Settlement Agreement is made and entered into between the U.S. Department of Housing and Urban Development (“HUD” or “Department”), the state of Alaska Division of Insurance (“Alaska DOI”), and Alyeska Title Guaranty Agency (“Alyeska”). HUD, Alaska DOI, and Alyeska shall be referred to herein as the “Parties.”

**WHEREAS**, the Secretary of Housing and Urban Development (“Secretary”) and Alaska DOI each have regulatory jurisdiction over the title insurance industry in the State of Alaska pursuant to the Real Estate Settlement Procedures Act of 1974 (“RESPA” or “the Act”), 12 U.S.C. § 2601 *et seq.*, and its implementing regulations, 24 C.F.R. § 3500 *et seq.*, and Alaska Statutes (“AS”) § 21.66.310;

**WHEREAS**, the Secretary is authorized by Section 19 of RESPA to investigate any facts, conditions, practices, or matters deemed necessary to determine whether any person, as defined in Section 3(5) of the Act, has violated or is about to violate any provision of the Act or any rule or regulation prescribed pursuant thereto;

**WHEREAS**, Section 8(a) of RESPA, 12 U.S.C. § 2607(a), prohibits the giving or accepting of any fee, kickback or thing of value pursuant to an agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person;

**WHEREAS**, Section 8(b) of RESPA, 12 U.S.C. § 2607(b), prohibits the giving or accepting of any portion, split, or percentage of any charge made or received for the

rendering of a real estate service in connection with a federally related mortgage loan other than for services actually performed;

**WHEREAS**, 24 C.F.R. § 3500.14 sets forth the implementing regulations for RESPA Sections 8(a) and 8(b) and 24 C.F.R. § 3500.15 sets forth requirements for affiliated businesses;

**WHEREAS**, the State of Alaska's anti-rebating statute, AS § 21.66.310, prohibits title companies and their agents from giving anything of value, directly or indirectly, as an inducement to obtaining title insurance business and prohibits a person in the real estate services industry, or any other person, from receiving, directly or indirectly, any rebate, reduction, or a special favor or advantage, or a monetary consideration or inducement;

**WHEREAS**, Alyeska is engaged in the title insurance business in the State of Alaska, the Department and Alaska DOI have conducted a joint investigation into Alyeska's business practices, during which investigation Alyeska voluntarily cooperated with the Department and Alaska DOI;

**WHEREAS**, Kirk Wickersham ("Wickersham") owns 100% of FSBO System, Inc. ("FSBO");

**WHEREAS**, the Department and Alaska DOI allege that, since at least 2003, Alyeska maintained a sham employment arrangement with Wickersham under which Wickersham would work as a "title marketer" for Alyeska, marketing Alyeska's services to FSBO;

**WHEREAS**, the Department and Alaska DOI allege that Alyeska paid a percentage of Alyeska's title insurance premiums to Wickersham in exchange for referrals in violation of RESPA and AS § 21.66.310;

**WHEREAS**, the Department and Alaska DOI allege that Wickersham did not provide any actual services to Alyeska and that Alyeska and Wickersham created the arrangement to disguise payments of referral fees to Wickersham;

**WHEREAS**, the Department alleges that Alyeska's conduct violated Sections 8(a) and 8(b) of RESPA, and the Alaska DOI alleges that Alyeska's conduct violated AS §21.66.310;

**WHEREAS**, Alyeska terminated its relationship with Wickersham on January 14, 2009, and represents that it does not have similar relationships with other individuals, and that it is not violating RESPA or AS § 21.66.310;

**WHEREAS**, Alyeska denies that its conduct violated RESPA or Alaska Statutes, and nothing in this Settlement Agreement shall be construed as an admission of wrongdoing, liability, or legal fault for any conduct underlying this Settlement Agreement, or an admission that any person acted wrongfully;

**WHEREAS**, the Parties desire to avoid prolonged proceedings, any further expense of investigation and/or possible litigation, and to finally resolve this matter under the terms and conditions set forth below; and

**WHEREAS**, the terms of this Settlement Agreement are an appropriate disposition of this case and are in the public interest.

## AGREEMENTS

**NOW, THEREFORE,** in consideration of the mutual promises and representations set forth herein, and in further consideration for HUD's and the Alaska DOI's reliance upon the substantial accuracy and good faith of the representations and submissions made to it by Alyeska, HUD, the Alaska DOI and Alyeska, intending to be legally bound, agree as follows:

1. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (hereinafter the "Effective Date").
2. Based on Alyeska's compliance with this Settlement Agreement, HUD and Alaska DOI will terminate their investigation of Alyeska, and hereby waive, release, remit and compromise any and all claims, causes, and actions, direct or indirect (together, "Claims"), and agree to take no enforcement action under RESPA and its implementing regulations or AS § 21.66.310 against Alyeska, and its respective shareholders, partners, directors, officers, principals, employees and representatives, with respect to the business practices described in this Settlement Agreement, unless such practices recur.
3. Alyeska agrees to fully comply with all provisions of RESPA and its implementing regulations, conduct its business in a manner consistent with the Department's Statements of Policy regarding RESPA, and to fully comply with AS § 21.66.310.
4. On January 14, 2009, Alyeska terminated its arrangement with Kirk Wickersham, and agrees not to enter into any agreements with Wickersham or any other person or entity that violate Section 8 of RESPA or AS § 21.66.310.

5. Within thirty (30) business days of the Effective Date, Alyeska will make an initial settlement payment of \$50,000 as follows: (a) a payment in the amount of \$25,000, payable to the United States Treasury, and delivered to counsel for HUD; and (b) a payment in the amount of \$25,000, payable to State of Alaska, Division of Insurance, and delivered to counsel for Alaska DOI; such payments shall not be considered for any purposes to be a civil money penalty or fine.
6. Within one (1) year of the Effective Date, Alyeska will make a second settlement payment of \$50,000 as follows: (a) a payment in the amount of \$25,000, payable to the United States Treasury, and delivered to counsel for HUD; and (b) a payment in the amount of \$25,000, payable to State of Alaska, Division of Insurance, and delivered to counsel for Alaska DOI; such payments shall not be considered for any purposes to be a civil money penalty or fine.
7. Within two (2) years of the Effective Date, Alyeska will make a third settlement payment of \$55,000 to HUD and Alaska DOI, with half of that amount due to each. However, this payment shall be waived provided that Alyeska fully complies with the terms of this Settlement Agreement and does not violate the Alaska insurance code or regulations, or any provisions of RESPA and its implementing regulations. If Alyeska does violate any of the foregoing, the full settlement payment will be automatically reinstated and Alyeska will also be subject to any and all sanctions authorized under this Settlement Agreement and applicable state or federal laws.

8. In addition to the documents and information already provided, Alyeska agrees to cooperate fully with all future requests for documentation, information, and testimony from HUD and/or Alaska DOI, as authorized by law.
9. This Settlement Agreement applies to and binds Alyeska, its subsidiaries and its respective predecessors, successors, parents and assigns, and their respective directors, officers, principals, employees, and representatives (in such individuals' official capacities as directors, officers, principals, employees or representatives of Alyeska).
10. Alyeska hereby waives, releases, remits and compromises any and all Claims against HUD and Alaska DOI, or any of its employees, agents, or representatives, with respect to the investigation of this matter or this Settlement Agreement.
11. Should Alyeska materially fail to comply with the terms set out above, or should any of its representations prove to be false or incomplete in a material manner, HUD or Alaska DOI may take appropriate enforcement action, and/or refer the matter to other governmental authorities for further action.
12. This Settlement Agreement constitutes the complete agreement between the Parties as to the matters addressed herein. This Settlement Agreement may not be amended except by written consent of the Parties.
13. By this Settlement Agreement the Parties do not waive, release, remit or compromise any Claims against any other person not expressly released by this Settlement Agreement.

14. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
15. Nothing in this Settlement Agreement shall be construed as an admission of wrongdoing, liability, or legal fault for any conduct underlying this Settlement Agreement, or an admission that any person acted wrongfully.
16. Each person who signs this Settlement Agreement in a representative capacity warrants that his or her execution of this Settlement Agreement is duly authorized, executed, and delivered by and for the entity for which he or she signs.
17. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of this Settlement Agreement and shall not affect the validity and enforceability of all the other provisions of this Settlement Agreement, as long as such severance does not materially change the Parties' rights and obligations.
18. Each of the Parties to this Settlement Agreement shall bear its own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.
19. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute the same agreement.

On Behalf of Alyeska Title Guaranty Agency

Naomi Louvier  
Signature

11/13/09  
Date

Naomi Louvier  
Print Name

Sec Treas.  
Title

On Behalf of the U.S. Department of Housing and Urban Development in Settlement with Alyeska Title Guaranty Agency:

David H. Staves  
Signature

1-11-10  
Date

David H Staves  
Print Name

ASSISTANT SECRETARY FOR  
HOUSING - FEDERAL HOUSING COMMISSIONER  
Title

On Behalf of the state of Alaska Division of Insurance in Settlement with Alyeska Title Guaranty Agency:

Linda S Hall  
Signature

11-16-09  
Date

Linda S Hall  
Print Name

Director  
Title