

# SETTLEMENT AGREEMENT

## RECITALS

This Settlement Agreement is made and entered into between the U.S. Department of Housing and Urban Development (“HUD” or “Department”), and First American Title Insurance Company d.b.a. Memphis Title Company (“First American”) with a principal place of business located at 6465 Quail Hollow, Suite 300, Memphis, TN 38120 (collectively the “Parties”).

**WHEREAS**, the Secretary of Housing and Urban Development is authorized to enforce the Real Estate Settlement Procedures Act of 1974 (“RESPA” or “the Act”), 12 U.S.C. § 2601 *et seq.*, and its implementing regulations (the “regulations”), 24 C.F.R. § 3500 *et seq.*; and

**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 has violated or is about to violate any provision of the Act or any rule or regulation prescribed pursuant thereto; and

**WHEREAS**, Section 8(a) of RESPA, 12 U.S.C. § 2607(a), prohibits the giving or receiving 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; and

**WHEREAS**, Section 8(b) of RESPA prohibits the giving or accepting of any portion, split or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed; and

**WHEREAS**, 24 CFR 3500.14 sets forth the implementing regulations for RESPA Sections 8(a) and 8(b) and 24 CFR 3500.15 sets forth requirements for affiliated business arrangements; and

**WHEREAS**, HUD's Statement of Policy 1996-2 sets forth the factors that the Department uses to determine whether a controlled business arrangement is a sham under RESPA or whether it constitutes a bona fide provider of settlement services; and

**WHEREAS**, First American is a provider of title and settlement services involving federally related mortgage loans in or about Memphis, Tennessee; and

**WHEREAS**, the Department has conducted a formal federal investigation of First American concerning possible violations of Sections 8(a) and (b) of RESPA, and

**WHEREAS**, following this investigation, the Department determined that:

(A) On or about January 1, 2002, or subsequent to January 1, 2002, First American acquired controlling interests in the following limited liability companies: Title Group I, LLC; Title Group II, LLC; Title Group III, LLC; Title Group IV, LLC; Title Group VI, LLC, Title Group VII, LLC; Title Group VIII, LLC; and Landmark Title, LLC (collectively "Title Groups"). Various builders, real estate agents, and mortgage brokers compose the minority ownership interests in the Title Groups.

(B) First American allowed the Title Groups to lease at least two First American employees who were responsible for providing title services for the Title Groups. Additionally, First American allowed the Title Groups to rent space at its office and use its computer services.

(C) Little or no title work was provided by the Title Groups, and settlement services purported to be provided by the Title Groups were essentially provided by First American.

(D) The Title Groups are not independent business entities, are considered sham controlled business arrangements under RESPA and thus, are not bona fide providers of settlement services.

(E) The builders, real estate agents, and mortgage brokers with ownership interests in the Title Groups received substantial financial benefits from the referral of business to the Title Groups.

(F) First American received nearly \$680,000 in financial benefits arising from its ownership interest in the Title Groups between May 2002 and December 2004.

**WHEREAS** based upon the results of its investigation, HUD determined that First American violated RESPA and the regulations, and/or aided and abetted others in violation of the Act and regulations, with respect to practices described above; and

**WHEREAS** First American has voluntarily caused the Title Groups to cease their business activities; and

**WHEREAS** the Parties agree that this Settlement Agreement constitutes the settlement of disputed claims between the Parties, including claims under the Act and regulations; and

**WHEREAS** the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of First American for any conduct underlying this Settlement Agreement, nor shall it be construed as an admission that any person or entity acted wrongfully; and

**WHEREAS** the Parties desire to avoid formal proceedings, any further expense, 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;

**NOW, THEREFORE**, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement, the Parties reach a final settlement as set forth below:

### **AGREEMENTS**

1. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (hereinafter the "Effective Date"). The provisions of this Settlement Agreement apply only to the operations of First American in Shelby County, Tennessee (the county in which Memphis is located).
2. Based on First American's compliance with this Settlement Agreement, the Department will terminate its investigation of First American, and HUD agrees to take no further enforcement action under RESPA against First American, its shareholders, directors, officers, and employees, with respect to the practices described herein, or for which the Department received information about during this investigation, unless such practices recur.
3. First American hereby waives, releases, and remits any and all claims, directly or indirectly, against the Department, or any of its employees, agents, or representatives, with respect to HUD's investigation or this Settlement Agreement.
4. First American agrees hereafter to fully comply with all provisions of RESPA and its implementing regulations, and conduct its business in a manner consistent with the Department's RESPA policy statements.
5. Within thirty (30) business days of the Effective Date, First American shall make a settlement payment totaling six hundred eighty thousand dollars (\$680,000), payable to the United States Treasury, and delivered to counsel for HUD.

6. Within forty-five (45) business days of the Effective Date, First American will withdraw from all Title Groups as both a member and/or manager and cease all operations with the Title Groups.

7. At all times in the future, any title entities formed, owned or operated by First American, or in which First American has any interest, will be operated in accordance with the following terms:

- a. Each title entity will have sufficient initial and operating capital and net worth to conduct the settlement service for which it was created.
- b. Return on ownership interest to each owner shall be proportional to the percentage of that party's capital contribution.
- c. Each title entity will be staffed with employees who work only for that entity, and who are not shared with any other title entity, builder, real estate agent, mortgage broker, or other settlement service provider.
- d. Each title entity will manage its own business affairs and will not be managed or controlled by any other entity or person, except that First American and other owners of such an entity shall be entitled to exercise the ownership and control typical for owners of a business entity.
- e. Each title entity will have an office for its use in conducting business that is separate and apart from that of any other title entity.
- f. Each title entity will pay fair market value for the facilities that it occupies and uses in its business.
- g. Each title entity will comply with HUD Policy Statement 1996-4 with regard to the performance of and payment for title services.

- h. Each title entity will actively compete in the marketplace for title insurance business, and will actively seek business from parties other than the builders, real estate agents, and mortgage brokers, or other settlement service providers with which it has had an affiliate relationship.
    - i. Each title entity will refrain from business practices that provide unearned fees or kickbacks in return for the referral of settlement service business.
  8. First American agrees to cooperate with any HUD investigations of settlement service providers, including but not limited to the other members/managers of the Title Groups.
  9. The agreement to comply with RESPA undertaken in the above paragraphs 1-8 will apply to all of First American's business ventures in Shelby County, Tennessee.
  10. Should First American fail to comply with the terms set out above, or should any of its representations prove to be false or incomplete in any material manner, HUD may take appropriate enforcement action, and/or refer the matter to other governmental authorities for further action.
  11. 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.
  12. By entering into and performing its obligations under this Settlement Agreement, First American does not admit any liability to HUD or any other person or entity. First American denies any liability or violation of RESPA and the implementing regulations. This Settlement Agreement is entered into solely to compromise and to settle disputed matters.
  13. 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.

14. This Settlement Agreement applies to and binds First American and its respective predecessors, successors, directors, officers, principals, employees, representatives, and assigns. Provided, however, that First American shall be entitled to relief from the provisions of Paragraph 7 in order to engage in conduct permitted by any potential amendments to RESPA, Section 8 of RESPA or provisions of Regulation X interpreting and applying section 8 of RESPA.

15. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. No provision of this Settlement Agreement shall be construed against any party by reason of such party having drafted such provision of the Settlement Agreement.

16. By this Settlement Agreement the Parties do not waive, compromise, or release any claims or causes of action against any other person or entity not expressly released by this Settlement Agreement.

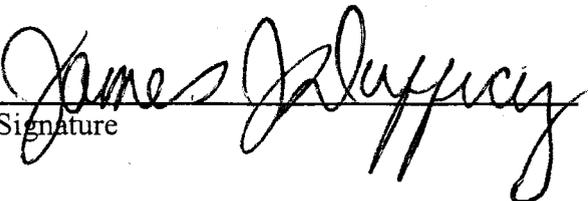
17. Failure by any Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver by such Party of any provision, nor in any way affect the validity of this Settlement Agreement or any part thereof.

18. 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.

19. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute on and the same agreement.

20. 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.

**On Behalf of First American Title Insurance Company,  
d.b.a. Memphis Title Company:**

  
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Signature

July 1, 2005  
Date

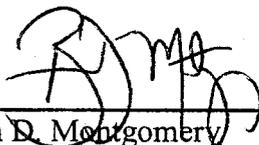
James J. Dufficy

\_\_\_\_\_  
Print Name

Senior Vice President, Regulatory Counsel

\_\_\_\_\_  
Title

**On Behalf of the U.S. Department of Housing and Urban Development:**

  
\_\_\_\_\_  
Brian D. Montgomery  
Assistant Secretary for Housing-Federal  
Housing Commissioner

7/8/05  
Date