

## CFPB Enters Into RESPA Settlement With Title Agent

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The Consumer Financial Protection Bureau (CFPB) recently entered into a consent order with Meridian Title Corporation (Meridian) under the Real Estate Settlement Procedures Act (RESPA).

The CFPB found that Meridian is a title insurance agency that issues title insurance policies and provides loan settlement services in connection with residential mortgage transactions that are subject to RESPA. The CFPB also found that three of the eight owners of Meridian are the owners and executives of Arsenal Insurance Corporation (Arsenal), a title insurance underwriter. As a result, the CFPB asserted that Meridian and Arsenal are in an affiliated business arrangement under RESPA. The CFPB also asserted that because of the relationship between Meridian and Arsenal, in some cases when Meridian referred title insurance business to Arsenal as a title agent of Arsenal, Meridian was able to retain more than the standard commission provided for in its agency contract with Arsenal.

The CFPB concluded that Meridian violated the referral fee prohibition under RESPA section 8 when it “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.”

The CFPB also addresses an aspect of the affiliated business arrangement provisions of RESPA section 8 and Regulation X, the regulation under RESPA. Regulation X provides that an affiliated business arrangement does not violate RESPA section 8 when the three conditions of the affiliated business arrangement exemption are satisfied. One of the conditions is that a written disclosure of the affiliated business arrangement be provided to a person being referred to a settlement service provider by the party making the referral. The written disclosure commonly is referred to as an “affiliated business arrangement” disclosure or notice. Generally, when the referral is made by a party other than a lender, the disclosure must be provided at or before the time of the referral. The CFPB asserts that from 2014 to 2016, Meridian did not provide an affiliated business arrangement disclosure to consumers. The CFPB did not expressly assert that the disclosure was not provided when Meridian referred consumers to Arsenal for title insurance business, but from the asserted facts that is the only context in which the disclosure would be required.

Meridian agreed to pay \$1.25 million for the purpose of providing redress to affected consumers. Meridian also agreed to maintain and support a compliance oversight board committee to ensure that:

- Meridian’s policies and procedures are reasonably designed to ensure compliance with RESPA, including affiliated business arrangement disclosure requirements;
- 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; and
- All of Meridian’s executives and staff are trained in RESPA, including affiliated business arrangement disclosure form requirements and Meridian’s related compliance management system.

The consent order also addresses the responsibilities of Meridian’s board in connection with the order, and provides that the board “will have the ultimate responsibility for proper and sound management of [Meridian] and for ensuring [Meridian] complies with” the order.

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