

Settlement and Release Agreement

This Settlement and Release Agreement (“Agreement”) with an effective date of December 16th, 2013 (“Effective Date”), by, between, and among the following Parties: the Plaintiff Federal Deposit Insurance Corporation, in its capacity as receiver for NetBank, FSB (“FDIC”), and Title Security Agency of Arizona and Commonwealth Land Title Insurance Company (collectively the “Settling Defendants”) (the FDIC and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to September 27, 2007, NetBank (“Bank”) was a depository institution organized and existing under the laws of Georgia. On September 27, 2007, the Bank was closed by the Office of Thrift Supervision, and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC as receiver succeeded was the subject matter of this case because, as Receiver of NetBank and by express operation of law, FDIC-Receiver assumes all rights, titles, powers, privileges, and operations of NetBank. *See* 12 U.S.C. § 1821(d)(2).

On September 17, 2010, FDIC filed a complaint for money damages against certain persons, including the Settling Defendants, who were involved in performing escrow services and issuing a closing protection letter regarding said escrow services relating to a mortgage loan

(b)(4),(b) funded by [REDACTED] on June 7, 2006, for the purchase of residential
(6)
(b)(4),(b) property at [REDACTED]. Those claims for damages are now
(6)
pending in the United States District Court for the District of Arizona, Case: 4:10-cv-00562-FRZ (“the Action”). The Settling Defendants have denied liability for the FDIC's claims in the Action.

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC

1) As an essential covenant and condition of this Agreement, the Settling Defendants agree to pay the FDIC the sum of \$135,000 (“the Settlement Funds”). The Settlement Funds shall be paid to FDIC from the Settling Defendants, as follows: 1) \$110,000 from Title Security Agency of Arizona; and 2) \$25,000 from Commonwealth Land Title Insurance Company.

2) The general terms of settlement regarding the following Parties are identified as follows: Unless specifically otherwise noted in this Agreement, upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than thirty days after the execution of this Agreement (“the Payment Date”), the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC, or by check drawn upon a depository institution acceptable to FDIC, made payable to the FDIC as Receiver for NetBank, FSB and reference the District Court Action, “FDIC v. Title Security Agency of Arizona, et al., Case No. 4-10-cv-99562-FRZ – Settlement Title Security of Arizona and Commonwealth.” The checks should be mailed to the following address:

Robert J. DeHenzel, Jr.
Counsel
Federal Deposit Insurance Corporation
3501 Fairfax Drive, Room VS-B-7002
Arlington, Virginia 22226

With a copy to Rudow Law Group.

In the event that the Settlement Funds are not delivered to the FDIC (or its counsel) by thirty (30) days after the execution of this Agreement, interest shall accrue on all unpaid amounts

at the rate of 5% per annum thirty (30) days after the execution until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by thirty (30) days after the execution of this Agreement, as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until thirty (30) days after the FDIC executes the Agreement.

In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds are not received by the FDIC on or before the Payment Date, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only, the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Party or Parties failing to deliver their share of the Settlement Funds, in which event the non-delivering Party, or Parties, agree to jurisdiction in Federal District Court in District of Arizona and agree to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to the non-delivering Party, or Parties, at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement by the non-delivering Party, or Parties. In no event shall the FDIC declare this Agreement null and void with respect to any Party that has delivered its share of the Settlement Funds on or before thirty (30) days after the execution of this Agreement. The failure of one Party to deliver its share of the Settlement Funds shall not affect the validity of this Agreement with respect to a Party that has delivered its share of the Settlement Funds.

SECTION II: Stipulation and Dismissal

Within five business days of the execution of this Agreement by all of the undersigned Parties, the FDIC shall file a Notice of Settlement in the Action. Within ten business days of the FDIC's receipt of the Settlement Funds, the FDIC shall move to dismiss Settling Defendants from the Action, with prejudice. The undersigned Parties agree to enter stipulation(s) providing that the dismissal(s) set forth above shall be with prejudice, with each Party to bear its own costs as these were originally incurred.

SECTION III: Releases

1) Release of Individual Settling Defendants by FDIC.

Effective upon payment of the Settlement Funds plus any accrued interest and dismissal described in SECTION I above, and except as provided in PARAGRAPH(S) 4) and SECTION IV below, the FDIC, for itself and its agents, representatives, attorneys, affiliates, parents, subsidiaries, officers, directors, employees, former employees, insurers, sales representatives, successors and assigns, , hereby releases and discharges each of the Settling Defendants and their respective heirs, executors, administrators, agents, representatives, attorneys, affiliates, parents, subsidiaries, officers, directors, employees, former employees, insurers, sales representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC, that arise from or relate to the claims, allegations or defenses set forth in the Action.

2) Release of FDIC by the Settling Defendants.

Effective simultaneously with the release granted in PARAGRAPH III.1) above, the Settling Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, attorneys, affiliates, parents, subsidiaries, officers, directors, employees, former employees, insurers, sales representatives, successors and assigns, hereby release and discharge FDIC, and its agents, representatives, attorneys, affiliates, parents, subsidiaries, officers, directors, employees, former employees, insurers, sales representatives,

successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the acts pled in the Action or the prosecution of the same.

3) Release by Settling Defendants of Each Other.

Effective simultaneously with the releases granted in Paragraph III.2). above, the Settling Defendants, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge each other and each other's attorneys, affiliates, parents, subsidiaries, officers, directors, employees, former employees, insurers, sales representatives, successors and assigns, and anyone whose conduct may be imputed to the Settling Defendants, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, whether known or unknown, that arise from or relate to the acts pled in the Action or the defense of the same.

4) Express Reservations From Releases By FDIC.

- a) Notwithstanding any other provision, by this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action:
 - i) against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC, the Bank, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than Bank;
 - ii) against any person or entity not expressly released in this Agreement; and
 - iii) which are not expressly released in Paragraph III.1), above.
- b) Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority

of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

- c) Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office for the State of Arizona or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

SECTION IV: Waiver of Dividends

To the extent, if any, that Settling Defendants are or were shareholders of the Bank and by virtue thereof are or may have been entitled to a dividend, payment, or other pro rata distribution upon resolution of the receivership of the Bank, they hereby knowingly assign to the FDIC any and all rights, titles and interest in and to any and all such dividends, payments or other pro rata distributions.

SECTION V: Representations and Acknowledgements

- 1) No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.
- 2) Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties

subscribed thereto upon the execution by all Parties to this Agreement.

3) Binding Effect. Each of the undersigned persons represents and warrants that they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

4) Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Arizona.

5) Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

6) Specific Representations Warranties and Disclaimer. Intentionally Left Blank.

7) Reasonable Cooperation.

a) The undersigned Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the Action and to otherwise perform the terms of this Agreement.

8) Advice of Counsel. Each Party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its capacity as receiver for NctBank, FSB

(b)(6)

Date: 12-16-13

BY:



Robert J. Deffenzel, Jr.,
Counsel, Legal Division

TITLE SECURITY AGENCY OF ARIZONA

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

COMMONWEALTH LAND TITLE INSURANCE
COMPANY

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its capacity as receiver for NetBank, FSB

Date: _____

BY: _____
Robert J. DeHenzel, Jr.,
Counsel, Legal Division

TITLE SECURITY AGENCY OF ARIZONA

(b)(6)

12-18-13
Date

BY: 

TITLE: Executive Vice President/COO

PRINT NAME: Vivian Boggie

COMMONWEALTH LAND TITLE INSURANCE
COMPANY

Date

BY: _____

TITLE: _____

PRINT NAME: _____

FEDERAL DEPOSIT INSURANCE CORPORATION,
in its capacity as receiver for NetBank, FSB

(b)(6)

Date: 12-16-13

BY:

[Redacted Signature]

Robert J. DeFenzel, Jr.,
Counsel, Legal Division

TITLE SECURITY AGENCY OF ARIZONA

Date

BY: _____

TITLE: _____

PRINT NAME: _____

COMMONWEALTH LAND TITLE INSURANCE
COMPANY

(b)(6)

Date: 12/17/13

BY:

[Redacted Signature]

TITLE: VP Counsel

PRINT NAME: Robert J. Novak