

LIMS Mr
DIF / Mortgage Fraud

RECEIVED
12/22/09

ENTERED
12/23/09

CAUSE NO. 08-03625-C

FEDERAL DEPOSIT INSURANCE CORPORATION, as the duly appointed receiver for WASHINGTON MUTUAL BANK, f/k/a WASHINGTON MUTUAL BANK, FA,	§	IN THE DISTRICT COURT
	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
LANDAMERICA AMERICAN TITLE COMPANY, d/b/a AMERICAN TITLE COMPANY and NANCY J. CARROLL, ESQ.,	§	
	§	
	§	
Defendants.	§	68TH JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between the Federal Deposit Insurance Corporation, as the duly appointed receiver for Washington Mutual Bank, f/k/a Washington Mutual Bank, FA (the "FDIC"), LandAmerica American Title Company d/b/a American Title Company ("American Title"), and Nancy J. Carroll, Esq. ("Carroll"), effective as of the date last acknowledged below.

WITNESSETH:

WHEREAS, Washington Mutual Bank, f/k/a Washington Mutual Bank, FA ("Washington Mutual") issued a \$1.44 million home mortgage loan (the "Loan") to

David and Nancy Stoller (the "Stollers") arising out of their purchase of a residence in Frisco, Texas (the "Property") on or around October 28, 2003; and

WHEREAS, Carroll, an attorney, closed the transaction and purchased title services from American Title, and American Title issued a mortgagee's policy of title insurance to Washington Mutual on behalf of Lawyers Title Insurance Company (the "Policy"); and

WHEREAS, the Stollers defaulted on the Loan and later claimed their signatures on some or all of the Loan documents were forged (the "Signatures"); and

WHEREAS, the Stollers filed suit against Washington Mutual, American Title, and several others relating to the Loan in the 416th Judicial District Court of Collin County, Texas (the "Underlying Litigation"); and

WHEREAS, during the Underlying Litigation, Washington Mutual foreclosed and purchased the Property at foreclosure (the "Foreclosure"), and later sold it to a third-party; and

WHEREAS, the Stollers defaulted or non-suited all defendants but Washington Mutual and proceeded to trial against Washington Mutual in the Underlying Litigation, and secured a judgment against Washington Mutual that, among other things, cancelled the Loan and otherwise rescinded the transaction (the "Judgment"); and

WHEREAS, Washington Mutual filed suit against American Title and Carroll in the 68th Judicial District Court of Dallas County, Texas, Cause No. 08-03625-C, styled *Washington Mutual Bank, f/k/a Washington Mutual Bank, FA v. LandAmerica American Title Company d/b/a American Title Company and Nancy J. Carroll, Esq.* (the

“Lawsuit”), alleging that Washington Mutual suffered damages as a result of Carroll’s closing of the Loan transaction, and that American Title, as the purported principal of Carroll, was liable for Carroll’s conduct; and

WHEREAS, American Title denied Washington Mutual’s claims and asserted cross-claims against Carroll; and

WHEREAS, during the Lawsuit, Washington Mutual failed and the FDIC became its duly appointed receiver and the substituted plaintiff in the Lawsuit; and

WHEREAS, the parties, in order to avoid the expense, inconvenience, and uncertainties of further litigation, and without the admission of liability on the part of any party, the same being expressly denied, desire to settle and resolve the controversies between them in the Lawsuit; and

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, it is hereby **AGREED** that all claims asserted or assertable by the FDIC against American Title and Carroll are released subject to the terms herein, and shall be settled and compromised upon the following terms:

I. Payment. American Title shall pay the FDIC the total sum of TWO-HUNDRED AND SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$275,000.00) (the “Settlement Amount”) on or before 5:00 p.m. CST on December 15, 2009, by delivering a check to the FDIC’s counsel, Cheryl Diaz, which sum is accepted by the FDIC in full settlement of all disputed claims.

II. Promissory Note and Agreed Judgment. Carroll agrees to pay American Title the total sum of TWO-HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) in accordance with the terms and provisions set forth in the promissory note attached as Exhibit "1" hereto (the "Promissory Note"), which Carroll agrees to sign (in the exact form and substance) and deliver to American Title. Carroll's obligations under the Promissory Note shall be secured by an Agreed Judgment in the exact form and substance as is attached hereto as Exhibit "2" (the "Agreed Judgment"). The Agreed Judgment will be submitted for entry by the Court. American Title agrees not to take any action to abstract, execute or levy upon, seek to collect, or enforce the Agreed Judgment so long as Carroll makes the required payments described in the Promissory Note. Carroll agrees that she will not appeal the Agreed Judgment and waives all rights to do so.

III. Default. In the event Carroll fails to make any of the required payments required under the Promissory Note by their respective due dates, American Title may abstract, execute or levy upon, seek to collect, and enforce the Agreed Judgment by any and all lawful means. If a check is dishonored, Carroll will be considered in default of this Agreement and American Title may abstract, execute or levy upon, seek to collect, and enforce the Agreed Judgment. Any payments made prior to the date the Agreed Judgment is entered will be credited against the then accrued balance of the Agreed Judgment.

IV. Release of Agreed Judgment. Provided that Carroll timely makes all payments described in the Promissory Note and has not defaulted on her payment obligations,

American Title will release the Agreed Judgment by providing one original Release of Agreed Judgment in the exact form and substance as is attached hereto as Exhibit "3" save and except the insertion of dates to properly recognize the date the Agreed Judgment is entered by the Court.

V. Release by FDIC. The FDIC, for itself, its past and present parent companies, subsidiaries, affiliates, predecessors, successors, insurers, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants, assigns, and Washington Mutual RELEASES, ACQUITS; AND FOREVER DISCHARGES American Title and its respective past and present parent companies, subsidiaries, affiliates, predecessors, successors, insurers, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants, and assigns, and Carroll, her heirs, assigns and representatives, and her legal representatives from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever arising out of or relating to (1) the Loan; (2) the Stollers; (3) the Property; (4) the Policy; (5) the Signatures; (6) the Underlying Litigation; (7) the Foreclosure; (8) the Judgment; (9) any and all claims asserted or assertable by FDIC and Washington Mutual against American Title and Carroll in the Lawsuit, including, but not limited to, claims in contract or in tort, under statutory or common law, at law or in equity, for actual, multiple, or punitive damages, interest, attorneys' fees, or court costs; and (10) any act, transaction, or occurrence prior to the date of this Agreement pertaining to the specific subject matter of this Agreement.

VI. Release by American Title and Carroll. American Title, itself and for its legal representatives, attorneys, successors, past and present parent companies, subsidiaries, affiliates, predecessors, successors, insurers, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants, and assigns and Carroll, for herself, her heirs, assigns and representatives RELEASE, ACQUIT, AND FOREVER DISCHARGE the FDIC and Washington Mutual, their respective legal representatives, attorneys, successors, past and present parent companies, subsidiaries, affiliates, predecessors, successors, insurers, reinsurers, shareholders, officers, directors, employees, agents, representatives, attorneys, consultants, and assigns from any and all claims, rights, demands, debts, liabilities, controversies, or causes of action, known or unknown, asserted or unasserted, liquidated or unliquidated, fixed or contingent, of any nature whatsoever arising out of or relating to (1) the Loan; (2) the Stollers; (3) the Property; (4) the Policy; (5) the Signatures; (6) the Underlying Litigation; (7) the Foreclosure; (8) the Judgment; and (9) any act, transaction, or occurrence prior to the date of this Agreement pertaining to the specific subject matter of this Agreement.

VII. Representation Regarding Ownership of Claims. The parties represent and warrant that they own and have not sold, assigned, conveyed or otherwise transferred any rights, benefits, or claims released in the Agreement.

VIII. Dismissal. Upon the full execution and delivery of this Agreement, the parties agree to submit the Agreed Order of Partial Dismissal attached hereto as Exhibit "4." Such dismissal shall not include American Title's claims against Carroll. The Agreed

Judgment against Carroll will be submitted for entry after entry of the Agreed Order of Partial Dismissal.

IX. Careful Review and Understanding of Agreement. The parties represent to each other that they have carefully read this Agreement and understand its terms and conditions, and that they have had ample opportunity to consult with legal counsel of their choice and have not relied on any representations or statements of each other or each other's counsel.

X. Binding Effect. It is understood and agreed that this Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, attorneys, agents, and assigns.

XI. Severability. If any portion or portions of this Agreement may be held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force and effect in such jurisdiction, all remaining provisions of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

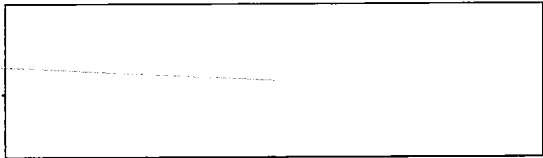
XII. Choice of Law. The parties agree that this Agreement shall be construed and enforced under the laws of the State of Texas, and performable in Dallas County, Texas.

XIII. No Other Agreements. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between them. This Agreement cannot be changed or terminated orally. All representations and promises made by any party to

another, whether in writing or orally, are understood by the parties to be merged into this Agreement.

IN WITNESS WHEREOF, the FDIC, American Title, and Carroll have executed this Agreement on the dates acknowledged below.

NANCY J. CARROLL, ESQ.



(b)(6)

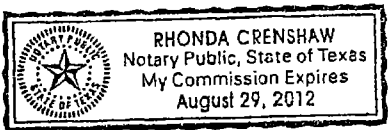
STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned Notary Public, on this day personally appeared Nancy J. Carroll, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 1 day of December 2009.



(b)(6)



Notary Public, the State of Texas

RHONDA CRENSHAW
Printed Name of Notary

My Commission Expires: 8/29/12

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Orange

On 12/17/2009 before me, Ariana L Rambuyan
(Here insert name and title of the officer)

personally appeared Mary Lynne Wilkins

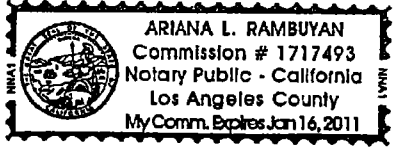
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)



(b)(6)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Settlement Agreement
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other Counsel

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, - is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document