



Federal Deposit Insurance Corporation
3501 Fairfax Drive, Arlington, VA 22226-3500

Legal Division

October 19, 2012

Via UPS

Chicago Title Insurance Company
Attn: Kristina A. Brumley
601 Riverside Avenue
Bldg. 5, 4th Floor
Jacksonville, FL 32204

Re: Lydian Private Bank
Settlement of Claim File Nos. [redacted]

(b)(4)

(b)(4)

Dear Kristina:

Regarding the above referenced Claim File Nos., enclosed please find the original, fully executed Settlement Agreement and Release between the FDIC as Receiver for Lydian Private Bank and Chicago Title Insurance Company.

Thank you again for your cooperation in this matter.

Very truly yours,

(b)(6)

[redacted]
Herbert G. Smith II

Enclosure

SETTLEMENT AGREEMENT AND RELEASE

(b)(4) _____ CLAIM FILE NO.

This Settlement Agreement and Release (this "Agreement") is entered into by and between CHICAGO TITLE INSURANCE COMPANY ("Chicago Title") and FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Lydian Private Bank (the "FDIC") (collectively, the "Parties"). This Agreement shall be effective the day of its execution by the last undersigned party (hereinafter, the "Effective Date").

WHEREAS, on August 19, 2011 Lydian Private Bank ("Lydian"), a federally chartered savings bank, was closed by the Office of the Comptroller of the Currency 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 Lydian, including those with respect to its assets, claims, demands, and causes of action. By operation of law, the FDIC succeeded to the Claims filed by Lydian and its divisions, including Virtual Bank, which are the subject of this Agreement and identified below:

WHEREAS, prior to the closing of Lydian, Lydian and its division Virtual Bank made six claims against Chicago Title (the "Claims") based upon real estate transactions conducted by Accurate Title Closings, Inc. ("Accurate Title"), Chicago Title's former title agent, involving the sale of properties by certain divisions of Lydian (the "Properties") located at:

1. NW 12th Ct., Pembroke Pines, Florida 33028 (Claim File No.) (b)(4)
2. 11 Ethan Pl., Palm Coast, Florida 32164 (Claim File No.) (b)(4)
3. 312 New Providence Promenade, Davenport, Florida 33897 (Claim File No.) (b)(4)
4. 541 Zinfandel Court, Ocoee, Florida 34761 (Claim File No.) (b)(4)
5. 1918 New Bedford Dr., Sun City Center, Florida 33573 (Claim File No.) and (b)(4)
6. 5101 N. Ocean Blvd., #D, Ocean Ridge, Florida 33435 (Claim File No.) (b)(4)

WHEREAS, the Claims are based upon the alleged failure of Accurate Title as closing agent to disburse seller's proceeds for the sale of the above-referenced Properties; and,

WHEREAS, the Parties wish to resolve the Claims according to the terms set forth in this Agreement in the interest of good will and compromise;

NOW, THEREFORE, for and in consideration of the mutual promises and obligations expressed herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

CLAIM FILE NOS.: [Redacted]

1. Chicago Title agrees to pay the FDIC the amount of \$1,019,843.39 (one million nineteen thousand eight hundred forty-three dollars and thirty-nine cents) (the "Settlement Funds") in full and final settlement of the Claims, which amount it will tender to the FDIC within thirty (30) days of the Effective Date (the "Due Date").

2. The payment referenced in Paragraph 1 shall be made to the FDIC in six separate payments, by direct wire transfer into an account designated by the FDIC or by certified or cashier's checks drawn upon a depository institution acceptable to the FDIC, in the following respective amounts:

- (b)(4) a. \$418,021.20 for Claim File No. [Redacted]
- (b)(4) b. \$138,593.99 for Claim File No. [Redacted]
- (b)(4) c. \$148,862.10 for Claim File No. [Redacted]
- (b)(4) d. \$60,233.27 for Claim File No. [Redacted]
- (b)(4) e. \$188,836.26 for Claim File No. [Redacted] and
- (b)(4) f. \$65,296.57 for Claim File No. [Redacted]

In the event the Settlement Funds are not delivered to the FDIC on or before the Due Date, interest shall accrue on all unpaid balances from the Due Date through the date of payment at the rate of one year U.S. Treasury bills as reported in the Wall Street Journal at the end of the last quarter immediately preceding the Effective Date of this Agreement.

3. 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 Due Date, the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds 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, and/or shall have the right to enforce this Agreement against Chicago Title with respect to the Settlement Funds not delivered, in which event the Parties agree to jurisdiction in Federal District Court in Florida and Chicago Title agrees 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 at any time prior to receipt of all Settlement Funds 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 Chicago Title.

4. The FDIC hereby represents and affirms that it has the authority to enter into this Agreement as Receiver of Lydian Private Bank and on behalf of Lydian's former divisions, Virtual Bank, Lydian Mortgage, and Virtual Bank Seniors Lending Group.

5. Each party acknowledges the adequacy of the consideration received pursuant to this Agreement.

6. In consideration of Chicago Title's payment to the FDIC as set forth in paragraph 1 and the undertakings herein, the Parties do mutually release, acquit and forever discharge each other from any and all actions, causes of action, whether known or unknown or suspected to exist by anyone, and whether statutory, in law or in equity, which the Parties ever had, now have or may now have against the other for any reason or cause in connection with the Claims.

7. 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 any 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, Lydian, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to Lydian or any person or entity other than the Lydian;

ii. against any person or entity not expressly released in this Agreement; and

iii. which are not expressly released in Paragraphs 6, 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.

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 District of Florida 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.

8. The Parties each represent that this Agreement was signed only after due consideration by each party and consultation with their respective counsel, and that no party was fraudulently induced, coerced or intimidated to sign this Agreement. In signing this Agreement, each party acknowledges that it did not rely upon any oral or written statement or acts of any party, other than as expressly stated in writing in this Agreement.

(b)(4)

CLAIM FILE NO. [REDACTED]

9. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Florida.

10. Any paragraph or part of this Agreement that is found void or unenforceable shall be severed from the Agreement, and all other provisions of the Agreement shall remain in effect.

11. The Parties acknowledge that the language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not for or against any of the Parties based upon the identity of the drafter.

12. This Agreement contains the entire agreement between the Parties hereto and the terms of said Agreement may not be modified except by a written instrument duly signed by each party.

13. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

14. The undersigned persons represent that they are vested with the authority to execute and enter into this Agreement on behalf of the respective Parties.

READ AND AGREED:

CHICAGO TITLE INSURANCE COMPANY

(b)(6)

By: [REDACTED]

(b)(6)

Name: Kristina A. Brunley [REDACTED]

Title: Claims Analyst

Date: October 19, 2012

FEDERAL DEPOSIT INSURANCE CORPORATION As Receiver for Lydian Private Bank

(b)(6)

By: [REDACTED]

(b)(6)

Name: Herbert G. Smith II

Title: Counsel

Date: October 19, 2012