



**Presentation before  
The National Association of Insurance Commissioners (NAIC)  
Title Insurance Task Force  
May 6, 2015**

**I. Description of RESPRO<sup>®</sup> and American Home Title and Escrow Company**

Good afternoon. My name is Patrick Rice, and I am President of American Home Title and Escrow Company (AHT), a title insurance agency based in Denver, Colorado with offices in Las Vegas, Nevada and Winchester, Virginia. AHT is licensed as a title insurance agent in CO, FL, MD, NV and VA and is a wholly-owned subsidiary of MDC Holdings, Inc. (NYSE as “MDC”) and is a sister company to Richmond American Homes and HomeAmerican Mortgage Corporation.

Today I am representing RESPRO<sup>®</sup>, a national non-profit trade association of companies from all segments of the residential home buying and financing industry, including real estate brokerage firms, homebuilders, mortgage lenders, and title companies. The common bond of RESPRO<sup>®</sup> members is that they offer a diversified menu of services (commonly referred to as “one-stop shopping”) for home buyers and home owners through wholly-owned subsidiaries or through joint ventures with other companies, both of which are regulated under the Real Estate Settlement Procedures Act (RESPA) as “affiliated business arrangements”, known as AfBAs.

**II. The Basic Facts about Affiliated Businesses**

Congress recognized the potential benefits of affiliated businesses when it amended RESPA in 1983 to allow for companies to offer diversified services for home buyers and owners as long as three conditions are met:

- First, that they do not require the use of an affiliated company;
- Second, that there are no payments for referrals among the affiliated companies that are not specifically allowed under RESPA; and
- Third, that the person who refers business to an affiliated settlement service company discloses at or before the time of the referral that he/she has a financial interest in the company.

RESPRO<sup>®</sup> testified before the Task Force on the consumer benefits of affiliated businesses in March 2014 ([view testimony](#)). Today, I will be discussing the third condition of RESPA’s affiliated business standards – the RESPA-required affiliated business disclosure – and will be commenting on the proposed “Title Consumer Alert” that has been presented to the Task Force.

### III. RESPRO® Position on Proposed NAIC Affiliated Business Disclosure

One of the 2015 charges to the NAIC Title Task Force is to “determine the feasibility of developing effective consumer disclosures related to affiliated business arrangements and reverse competition for the purchase of title insurance and related settlement services, including, but not limited to, a one-page consumer disclosure at the beginning of the title ordering process to alert the consumer to key issues and opportunities.”

As the Task Force carries out this charge, we believe that it is important for its members to fully understand current federal disclosure requirements for affiliated title providers. Because in our opinion, federal disclosure requirements provide adequate safeguards to consumers, and a state-mandated disclosure that contains language which is duplicative of or inconsistent with the RESPA-required affiliated business disclosure would confuse consumers. We also have concerns about the express wording, timing, and effectiveness of the proposed Title Consumer Alert.

### IV. The RESPA-Required Affiliated Business Arrangement Disclosure Provides Adequate Safeguards

RESPA is an umbrella regulation that regulates the entire residential real estate transaction, including real estate brokers or agents, homebuilders, title entities, and mortgage lenders. Under RESPA, any person who refers business to an affiliated title company – whether a real estate broker or agent, a homebuilder, or a mortgage company – must provide an [Affiliated Business Arrangement Disclosure](#)).

This Disclosure, set out in Appendix D of Regulation X, must be provided separately “at or before the time of the referral” and must be acknowledged in writing by the consumer. As you can see:

- Persons referring business to an affiliated title company not only must disclose that they have a business relationship with the affiliated title company, but they must describe the nature of the relationship, including the percentage of ownership interest in the company.
- They also must specifically tell the consumer that he or she is NOT required to use the affiliated title company.
- And they must state the following, in capital letters:  

“THERE ARE FREQUENTLY OTHER PROVIDERS WHO OFFER THE SAME SERVICES, AND YOU SHOULD SHOP AROUND TO SEE THAT YOU ARE GETTING THE BEST SERVICES AT THE BEST RATES.”
- Finally, they must provide the estimated charge or range of charges for the settlement services that are being referred.

I think it’s important to note that consumers who are referred to unaffiliated title companies are:

- not advised that they should shop around for title services,
- not provided with the estimated charges for those services outside of the estimated charges provided in the current Good Faith Estimate, and
- not informed as to relationships between the referring source and the title entity – relationships such as familial connection to the referral recipient (in certain cases a familial connection can result in an affiliated business arrangement) or financial arrangements such as rental agreements, cost-sharing arrangements, marketing agreements, or payments of “things of value” in exchange for referrals of business (e.g., gifts, free seminars or golf outings).

The Consumer Financial Protection Bureau (CFPB) enforces RESPA, and has made clear that it expects companies to strictly comply with RESPA’s disclosure requirements. In a May 28, 2014 Consent Order, the CFPB ordered RealtySouth, the largest real estate firm in Alabama, to pay a \$500,000 civil penalty because it deviated from the format in the Model Affiliated Business Disclosure Notice provided in Appendix D of Regulation X. The CFPB made apparent in its Consent Order that it will not consider an affiliated business arrangement notice to be compliant if it deviates from the form of the Model Notice or if it contains any endorsements of the affiliated company.

**V. A State-Mandated Disclosure Would Create Unnecessary Duplication and Confuse the Consumer**

Given the comprehensiveness of the RESPA-required affiliated business disclosure and given the CFPB’s demonstrated intent to enforce its delivery in accordance with RESPA regulations, we see no reason for an additional state-mandated affiliated business disclosure that contains language which is duplicative of or inconsistent with the RESPA-required affiliated business disclosure.

The RESPA-required disclosure already informs the consumer of the exact nature of the business relationship between the affiliated parties in the transaction, advises the consumer that he or she is not required to use the affiliated service and that he or she should shop around, and provides the consumer with the estimated charges of the affiliated services. It is provided by the person making the referral at or prior to the time of any such referral. This is generally when a contract for purchase/sale is executed or when a loan application for refinancing is made. This is the appropriate time for the consumer to shop around for services and decide on the entity to provide the settlement services, particularly since contractual deadlines are likely in effect for the consumer.

State title insurance laws have a much smaller umbrella than RESPA and are limited in scope to title insurance entities. State title insurance laws do not extend their jurisdiction over real estate brokers, homebuilders or mortgage lenders. However, virtually all referrals of title insurance business are made by these entities and not by title insurance entities.

**VI. The Proposed “Title Consumer Alert” is Flawed and Would Confuse the Consumer**

The proposed Title Consumer Alert is problematic on many levels and appears to be a “One Size Fits All” approach. Put another way, it tries to fit a square peg in a round hole. There are fifty states and fifty sets of state laws and regulations. RESPA is one law applied to fifty states.

First, the Alert is intended to be delivered by real estate brokers, lenders or builders, none of whom are subject to the title insurance laws of the states. There is no authority to create title insurance laws that dictate the forms to be delivered by these entities.

Second, any requirement for a title insurance entity (AfBA or non-AfBA) to provide a disclosure under state law would result in the delivery of a disclosure AFTER delivery of the Affiliated Business Disclosure Notice - which could create confusion for the consumer and potentially add additional costs. In order for a title entity to effectively issue a disclosure, it would need to receive from the referring source detailed information as to the parties to the transaction, legal description and address of the property and other contractual terms. By this point, the “referral” has already been made. Disclosing that the consumer has a choice AFTER a referral makes little sense and would confuse any consumer, particularly since title commitments are routinely issued within hours or within a day from the receipt of the referral to meet contractual deadlines at a considerable cost to the title entity in terms of labor and title-related search expenses. Assuming a consumer elected to choose a different title entity to provide title insurance related services, the consumer may be faced with state-mandated or filed rate-mandated cancellation fees if that choice is made after the title commitment or preliminary report has been issued.

Third, the timing of the Alert is problematic in that it mandates that the consumer be given the disclosure at the first mention of title insurance or closing. Answering consumer questions about the real estate purchase and sale process should not trigger the need for this type of a disclosure, particularly when there is no contract or loan to shop around for title insurance yet. Shopping would be meaningless.

Fourth, the definition of “an affiliated business arrangement” used in the Alert is wholly inconsistent with RESPA – an AfBA does not hinge on whether a professional “may make money” from an AfBA – in fact, investors in an AfBA may lose money on their investment. On the contrary, the RESPA definition is based on the person making the referral having an ownership interest in, or other relationship with, the settlement service provider. Redefining terms will result in consumer confusion. Even if defined properly, why disclose that another disclosure is coming? This would be frustrating to consumers as they navigate through the stacks of other disclosures.

Fifth, the statements that the Alert warns consumers to “be aware of” might actually be factual and appropriate in certain circumstances. Consumers would be led to falsely believe that any such statement is some violation of the law when, due to the unique circumstances of their situation, the statement is warranted and appropriate.

Sixth, the gross generalizations in the “What You’re Buying” section also could create confusion. For example, there are numerous circumstances where title coverage is not purchased for certain risks and a “problem with the title” occurs, which might not be insured (e.g., mechanic’s liens, known and disclosed title defects, liens knowingly incurred by the insured). The creation of false expectations would be detrimental to consumers.

## **VII. Conclusion**

In summary, RESPRO<sup>®</sup> believes that the federally-mandated Affiliated Business Arrangement Disclosure provides the information that consumers need to know about affiliated businesses at the time when it is most useful, and that the proposed Title Consumer Alert would only serve to confuse the consumer.

I appreciate the opportunity to present RESPRO<sup>®</sup>'s views on this issue, and hope that we will have the opportunity to work with the Task Force as it carries out this 2015 charge.