

UNITED STATES OF AMERICA  
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2014-CFPB-**0005**

In the Matter of:

**JRHBW Realty, Inc.,  
doing business as RealtySouth;  
TitleSouth, LLC**

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed certain practices of JRHBW Realty, Inc., d/b/a RealtySouth (RealtySouth), and TitleSouth, LLC (TitleSouth), (collectively, Respondents), and has identified violations of Section 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, and its implementing regulation, 12 C.F.R. Part 1024 (formerly codified at 24 C.F.R. Part 3500) (collectively, RESPA) in connection with disclosures of affiliated businesses. Under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5563, 5565, and Section 8 of RESPA, 12 U.S.C. § 2607, the Bureau issues this Consent Order (Order).

**I**

**JURISDICTION**

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

**II**  
**STIPULATION**

2. Respondents have executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 16, 2014 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondents have consented to the issuance of this Order by the Bureau under Sections 1053 and 1055 of the CFPB, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any findings of fact or conclusions of law, except that Respondents admit that the Bureau has jurisdiction over Respondents and the subject matter of this action.

**III**

**DEFINITIONS**

3. The following definitions shall apply to this Order:
  - a. “Effective Date” shall mean the date on which the Order is issued.
  - b. “Enforcement Director” shall mean the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his delegatee.
  - c. “Respondents” shall mean JRHBW Realty, Inc., d/b/a RealtySouth; and TitleSouth, LLC; including their successors and assigns.

**IV**

**FINDINGS AND CONCLUSIONS**

The Bureau finds the following:

**Background**

4. JRHBW Realty, Inc., doing business as RealtySouth, Inc., is a real estate brokerage company that provides real estate settlement services involving federally related mortgage loans in Alabama.

5. TitleSouth, LLC, provides title examination and title insurance, and TitleSouth Closing Center provides real estate closing services, in Alabama. TitleSouth Closing Center is an operating division of TitleSouth, LLC (collectively, TitleSouth).
6. RealtySouth and TitleSouth are wholly owned by the same parent holding company.
7. TitleSouth's earnings are consolidated with RealtySouth's earnings. Whenever TitleSouth is profitable, the parent company also profits.
8. TitleSouth's President concurrently serves as the Vice President and General Counsel of RealtySouth.

#### **RESPA**

9. RESPA Section 8(a) prohibits giving or accepting a "fee, kickback, or thing of value" pursuant to an agreement or understanding to refer business related to real estate settlement services for a federally related mortgage loan. 12 U.S.C. § 2607(a). The implementing regulation defines a "thing of value" to include, "without limitation ... increased equity in a parent or subsidiary entity." 12 C.F.R. § 1024.14(d).
10. RESPA Section 8(c)(4) provides, in relevant part, that affiliated business arrangements are permitted as long as: (1) a disclosure of the existence of the arrangement and a written estimate of the charge or range of charges generally made by the provider to which the person is referred (ABA Disclosure) is provided, (2) the consumer is not required to use the affiliated business, and (3) the only "thing of value" received as a result of the arrangement is limited to a return on an ownership interest. 12 U.S.C. § 2607(c)(4).
11. RESPA's implementing regulation further provides that "an affiliated business arrangement is not a violation of Section 8 of RESPA if ... (1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Disclosure Statement set forth in Appendix D of ... part [1024], of the nature of the

relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, at the time of loan application ....” 12 C.F.R. § 1024.15(b).

12. The disclosure form contained in Appendix D includes five components: (1) a preliminary field allowing for identification of the consumer and the entity making the referral, the property address, and the date; (2) a notice and description of the business relationship between the affiliates and a notice of the potential financial benefit the referral may provide the referring party; (3) an acknowledgement with a line for signature by the consumer; (4) the estimated charges or range of charges for the settlement service, and (5) a block paragraph with the following language and typography:

Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

#### **RealtySouth's Referrals and Affiliated Business Arrangement Disclosures**

13. RealtySouth strongly encouraged its agents, and in certain instances told them they were required to use, RealtySouth's family of services, in particular, TitleSouth.
14. From March 2011 until May 2012, RealtySouth had a preprinted purchase contract that explicitly directed title and closing services for which consumers would pay a charge to TitleSouth (2011 Contract). Paragraph 5 of that contract stated, “Title Insurance. Seller agrees to furnish Buyer a

standard form owner's title insurance policy issued by TitleSouth, LLC in the amount of the purchase price...." Paragraph 18 of the same contract, entitled "Selection of Closing Agent," stated, "Buyer and Seller hereby agree that the closing of this transaction shall be conducted by the TitleSouth Real Estate Closing Center and agree to share equally the closing fees for this transaction."

15. In 2012, RealtySouth changed the language regarding title insurance and closing services in its preprinted purchase contract to allow consumers to check off TitleSouth or "Other" (2012 Contract). Specifically, Paragraph 5 states, "The title insurance policies specified herein shall be obtained from (check one)  TitleSouth;  Other." Paragraph 17 states, "The closing of the transaction contemplated by this contract shall be performed by (check one)  TitleSouth Closing Center;  Other."
16. RealtySouth provided consumers with an "Affiliated Business Arrangement Disclosure Statement" (RealtySouth's ABA Disclosure) with the 2011 or 2012 Contract used by its clients. RealtySouth's ABA Disclosure did not comply with 12 C.F.R. § 1024.15(b).
17. RealtySouth's ABA Disclosure did not use the format of Appendix D. It did not use capital letters or another means of highlighting the fact that consumers could obtain similar settlement services from other providers and that they were free to shop around for those services. RealtySouth's ABA Disclosure language informing consumers that they can shop around was not set apart, but rather incorporated into the end of a list of descriptions of seven affiliated businesses, and was hidden in what appeared to be a second description of RealtySouth.
18. RealtySouth's ABA Disclosure also included marketing statements touting the benefit and value of the affiliated entities. It stated, for example, that "[w]e at RealtySouth believe our affiliates provide superior service, value, and convenience;" "we believe that our affiliates' charges are reasonable and are competitive with the amounts charged by others for the same services;" and

“[w]ith competitive, reasonable rates, coupled with the smooth and efficient manner in which the transaction will be handled, the affiliates of RealtySouth are in a unique position to provide you with exceptional value and service in handling your transaction.”

19. When apprised of the Bureau’s concerns regarding RealtySouth’s ABA Disclosure, RealtySouth immediately changed its ABA Disclosure to address those concerns.

#### **Conclusions of Law**

20. In light of the factual findings set forth above, the Bureau concludes that Respondents violated Section 8(a) of RESPA by giving and receiving a thing of value pursuant to an agreement or understanding that RealtySouth refer settlement services related to federally related mortgage loans to TitleSouth by affirmatively influencing the selection of TitleSouth through the designation of that affiliate in the 2011 Contract and 2012 Contract, as well as a pattern and practice of referrals to TitleSouth, resulting in increased distributions to the entities’ shared parent company.
21. RealtySouth’s ABA Disclosure did not satisfy the “safe harbor” for affiliated business arrangements, 12 U.S.C. § 2607(c)(4), 12 C.F.R. § 1024.15(b).

#### **V** **ORDER**

22. **IT IS HEREBY ORDERED** that Respondents shall refrain from committing violations of Section 8 of RESPA.
23. **IT IS HEREBY ORDERED** that RealtySouth shall ensure that its ABA Disclosure complies with RESPA and in particular that it shall be in the format of Appendix D of 12 C.F.R. § 1024 and shall contain no additional marketing statements or any other statement or content that materially interferes with, detracts from, contradicts, or otherwise obscures the required disclosures.

24. **IT IS HEREBY ORDERED** that Respondents shall ensure that all training materials, manuals, continuing education materials, and any other documents that provide guidance to RealtySouth agents, emphasize that agents cannot require the use of any affiliate in real estate transactions, within 30 calendar days of the Effective Date.
25. **IT IS HEREBY ORDERED** that under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the unlawful practices set forth in Section IV of this Order, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), Respondents, jointly and severally, shall pay a civil money penalty of \$500,000 to the Bureau, as directed by the Bureau and as set forth herein:
- a. Within 10 calendar days of the Effective Date, Respondents shall pay the civil money penalty in the form of a wire transfer to the Bureau or to such agent as the Bureau may direct, and in accordance with wiring instructions to be provided by counsel for the Bureau;
  - b. The civil money penalty paid under this Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d);
  - c. Respondents shall treat the civil money penalty as a penalty paid to the Government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondents shall not:
    - i. claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any civil money penalty that Respondents pay under this Order; or
    - ii. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty that Respondents pay under this Order.

- d. In the event that there are any other enforcement actions by another governmental entity or any private damages actions brought against one or more Respondents based on substantially the same facts as set forth in Section IV of this Order (a “Related Enforcement Matter”), in order to preserve the deterrent effect of the civil money penalty, Respondents shall not argue that they are entitled to, nor shall Respondents benefit by, any offset or reduction of any monetary remedies imposed in any Related Enforcement Matter as a result of the civil money penalty paid in this action (Penalty Offset). If a regulator or court in any Related Enforcement Matter grants such a Penalty Offset, Respondents shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment shall not be deemed an additional civil money penalty and shall not be deemed to change the amount of the civil money penalty imposed in this action.
- e. In the event of any default on Respondents’ obligations to make payment under this Order, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue on any outstanding amounts not paid from the date of default to the date of payment, and shall immediately become due and payable.
- f. Respondents shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds shall be returned to Respondents.
- g. In accordance with 31 U.S.C. § 7701, Respondents, unless they already have done so, shall furnish to the Bureau their taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

h. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondents shall notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification shall indicate the amount of redress, if any, that Respondents paid or are required to pay to consumers and should describe the consumers or classes of consumers to whom that redress has been or will be paid.

**26. IT IS HEREBY ORDERED** that Respondents, upon the Bureau's request, produce to the Bureau within 30 calendar days of such request, all the HUD-1s associated with the 2011 Contract and 2012 Contract, or such other information sufficient to ascertain the identities of all consumers referred to TitleSouth pursuant to those contracts and the fees those consumers paid for title insurance and/or closing services.

## VI ADMINISTRATIVE PROVISIONS

27. The provisions of this Order shall not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondents, except as provided in paragraph 28.

28. The Bureau releases and discharges Respondents and all directors, officers, agents, servants, and employees of Respondents from all potential liability other than as set forth in this Order for violations that have been or might have been asserted by the Bureau based on Respondents' conduct, as described in Section IV of this Order, to the extent such practices occurred before the Effective Date and are known to the Bureau as of the Effective Date of the Order. Notwithstanding the foregoing, the practices described in Section IV of this Order may be used by the Bureau in future enforcement actions against Respondents and their affiliates for the sole purpose of establishing a pattern or practice of violations or the continuation of a pattern or

practice of violations or to calculate the amount of any penalty. This release shall not preclude or affect any right of the Bureau to determine and ensure compliance with the terms and provisions of the Order or to seek penalties for any violations thereof.

29. This Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
30. This Order is intended to be, and shall be construed to be, a final order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
31. This Order constitutes a settlement of the administrative proceeding against Respondents contemplated by the Bureau, based on the Bureau's findings described in Section IV of this Order.
32. The provisions of this Order shall be enforceable by the Bureau. Any violation of this Order may result in the imposition by the Bureau of civil money penalties under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c).
33. This Order and the accompanying Stipulation contain the complete agreement between the parties. No promises, representations, or warranties other than those set forth in this Order and the accompanying Stipulation have been made by any of the parties. This Order and the accompanying Stipulation supersede all prior communications, discussions, or understandings, if any, of the parties, whether oral or in writing.
34. Nothing in this Order or the accompanying Stipulation shall be construed as allowing Respondents, their officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 24th day of May, 2014.

  
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Richard Cordray  
Director  
Consumer Financial Protection Bureau