

FILED

STATE OF WASHINGTON
BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

2011 SEP 22 A 8:55

IN THE MATTER OF:

**STEWART TITLE GUARANTY
COMPANY,**

An Authorized Title Insurer.

Docket No. 11-0106

Patricia D. Peiersen
Chief Hearing Officer

**OIC RESPONSE TO STEWART
TITLE'S OPPOSITION TO MOTION
AND CROSS-MOTION FOR
SUMMARY JUDGMENT**

I. RELIEF REQUESTED

OIC staff requests that the Administrative Law Judge deny Stewart Title's motion for summary judgment and grant the OIC's motion for same and impose a fine in an amount of no less than \$250 and no more than \$10,000 in accordance with RCW 48.05.185.

II. REBUTTAL ARGUMENT

First and foremost, this is not a matter of the OIC seeking to impose "vicarious liability" on Stewart Title for the acts of Rainier Title, its appointed agent. This a matter of regulatory authority and responsibility as contemplated by the Insurance Code. Common law principles of agency do not control here, and any agreement between Stewart Title and Rainier Title is irrelevant and does not limit the broad authority of the Commissioner under RCW 48.02. Furthermore, Stewart Title's citation of debt collection, taxation and out-of-circuit case law does not apply to an insurer and its duly appointed agent in regard to liability for *regulatory* infractions. RCW 48.17.010(15) and RCW 48.17.160 together set the parameters of the title insurer-title insurance agent relationship.

The Insurance Code first defined by statute both the existence and the scope of agency relationships in the business of insurance in 1911. That statute defined an “agent” as an entity “duly appointed and authorized by an insurance company” to “solicit applications for insurance”. Session Laws, 1911, Ch. 49 [S.S.B. 6], Rem. Code §§ 6059-2; *see also Reynolds v. Pacific Marine Ins. Co.*, 105 Wash. 666, 671, 178 Pac. 811 (1919). An agent appointment process was enacted that same year. Rem. Code §§ 6059-45. This 1911 definition of “agent” is essentially the same definition of “title insurance agent” applicable to this case in RCW 48.17.010(15).

In discussing the 1911 insurance agent definition, the Washington Supreme Court held that the Insurance Code was passed for the purpose of closely regulating the entire insurance relationship and to clearly define an insurance company’s duties and liabilities:

In 1911, the legislature passed the insurance code, which is a complete act in itself and **was intended to cover the entire insurance relationship...**the [insurance] code expressly provides who shall be agents of the company, and **was passed for the purpose of clearly defining the insurance company's duties and liabilities.** It was error, therefore, for the court to leave to the jury, as a question of fact for it to determine, the status of Fraser, and **it should have been determined, as a matter of law, that Fraser was either the agent[,] or broker** representing the respondent, and any knowledge he had or representations he made were the knowledge and representations of the respondent.

Day v. St. Paul Fire & Marine Ins. Co., 111 Wash. 49, 53-54, 189 Pac. 95 (1920) (emphasis added). Where the underlying actions of the alleged agent are undisputed, the 1911 statute made determining the scope of agency in insurance transactions a pure issue of law settled by the Insurance Code. *Id.* By precisely delineating what it takes to create a principal-agent relationship between an insurer and an agent, and defining acts within the scope of that agency, the Legislature eliminated the need for an extensive, case-by-

case common law fact analysis to establish the legal responsibilities of the insurer for the acts of its appointed agents.

The term “underwritten title company” does not exist in the Insurance Code, but is apparently favored when an insurer seeks to distance itself from responsibility for the acts of its appointed “title insurance agent” as defined in RCW 48.17.010(15).

The Consent Order entered into by Rainier Title clearly states that it agreed to the finding of fact that it had advertised with a producer of title insurance business, a mortgage loan broker, and that by doing so, Rainier Title violated WAC 284-29-215. There is no language in the Consent Order to the effect that Rainier Title neither admits nor denies a violation. And regardless of any suspected reasons why Rainier Title agreed to the Consent Order, it nonetheless did so, and its agreement with the conclusion of its having violated the regulation is dispositive. Photocopies of the relevant portions of Rainier Title’s website’s contents relative to Nest Financial, LLC, obtained by the undersigned on July 20, 2010 by visiting Rainier Title’s website, are attached as Exhibit 1. In short, there is no ambiguity or uncertainty to the assertion that Rainier Title violated the Insurance Code by advertising with a licensed mortgage loan broker, a producer of title insurance business as defined in RCW 48.29.010(3)(e).

Good public policy favors strict compliance to rules and statutory restrictions relative to the marketing and solicitation activities of persons involved in the business of insurance. Scare tactics about the disappearance of title insurance agents and therefore the ability of the public to obtain title insurance in rural areas are at best speculative and not germane to the resolution of this matter.

That Rainier Title entered into a Consent Order with the Commissioner prior to Stewart Title demanding a hearing is irrelevant. The OIC could have offered Stewart Title a Consent Order months or weeks after Rainier Title entered into its Consent Order. Stewart presents no basis for complaining about the timing of the issuance of the proposed Consent Orders because they were actually contemporaneous. Stewart Title, as well as Rainier Title, was offered a Consent Order on or about November 12, 2010, clearly indicating that it was issued as a result of the regulatory violation by Rainier Title. Rather than consult with its agent, Rainier Title, as to a course of action, Stewart Title immediately began efforts to postpone the matter due to the pending *Chicago Title* matter, alluded to in Stewart Title's opposition to motion. To say that Stewart Title had no chance to contest the matter with the OIC before Rainier Title signed its Consent Order is simply false and irrelevant.

RCW 48.04.010(1)(b) provides that if a person is aggrieved by a threatened act of the Commissioner, he or she may demand a hearing on the matter. Receipt of the proposed Consent Order was a clear threat that the OIC would potentially take unilateral action if Stewart Title declined to enter into the Consent Order, as eventually occurred. Stewart Title spent almost a year trying to settle the matter when at any time it could have demanded a hearing, irrespective of the actions of Rainier Title. In a letter from Stewart Title dated December 7, 2010, Stewart Title stated "Stewart Title is not in a position to nor does it wish to dispute the facts surrounding the allegation against Rainier Title" (Exhibit 2). In the same letter, Stewart Title acknowledged its right to demand a hearing, but obviously never did so. Stewart Title made a conscious decision to work for a settlement rather than litigate the underlying allegations against Rainier Title. It appears

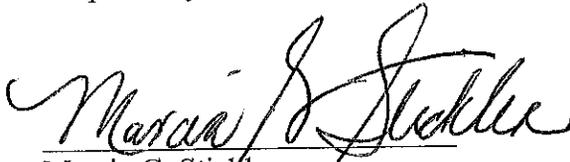
that Stewart Title took little interest in the allegations against Rainier Title until very recently, never mind seek to litigate them.

Moreover, Stewart Title falsely claims that the regulatory violation of Rainier Title involved nothing more than provision of a link to Nest Financial, LLC's website. Had Stewart Title ever inquired of the OIC or Rainier Title, or even visited the Rainier Title website itself, it would have discovered that Rainier Title expressly touted on its *own* website its being the preferred provider of title and escrow services to Nest Financial. Rainier Title praised Nest Financial's trustworthiness and ability to assist in short sale and loan modification activities, plus providing a link to Nest Financial's website. Rainier Title's boasting about its relationship with Nest Financial and praising of Nest Financial's abilities certainly constituted blatant "advertising" as defined in WAC 284-29-205(1).

III. CONCLUSION

The undisputed facts of this case show that Rainier Title admitted to violating WAC 284-29-215(2) and agreed to a fine and entry of a Consent Order for conduct that occurred while Rainier Title issued title insurance exclusively for Stewart Title. Stewart Title and Rainier Title were and are still in a principal-agent relationship as a matter of law. Rainier Title's violation of WAC 284-29-215(2) is therefore attributable to Stewart Title and it is equally responsible for such violation.

Respectfully submitted this 22nd day of September, 2011.



Marcia G. Stickler
OIC Staff Attorney



100% Locally Owned and Operated
We provide high-quality title insurance, property information, and escrow services in King, Pierce, and Snohomish Counties

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- [About](#)
- [Rates](#)
- [Short Sale](#)
- [First Time Home Buyer](#)

Site Search



Welcome to Rainier Title

Place Orders

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- [Order Supplemental](#)
- [Access Existing Orders](#)

We protect your rights of ownership by providing the highest quality title insurance, property information and escrow services in King, Pierce & Snohomish Counties.

We are well known in the local Real Estate Community and understand local customs and procedures. You can depend on Rainier Title to provide you with consistent, accurate and timely service for all of your title and escrow needs.

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Personalized Support
Our employees are trained to offer friendly, personalized support for you and your customers.

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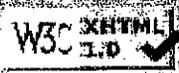


Exhibit 1 p. 1



Short Sales

Choose a professional team to handle the details for a successful and timely closing!

Rainier Title is honored to be selected as the preferred provider of Title and Escrow Services by Nest Financial, a premier provider of Loan Modification and Short Sale Solutions.

What are the facts?

How can we help?

- Real Estate Agents DO receive commissions on short sales.
- While Short Sales can be difficult, the reality is that much of our current inventory of properties is distressed in one way or another.
- A Foreclosure is far more damaging to a homeowner's credit than a Short Sale. A homeowner who successfully negotiates and closes a Short Sale will be eligible for a Fannie Mae backed mortgage after only 2 years.
- In a properly managed Short Sale, the home is sold at a price that should be close to market value, and in most cases, that reduces or eliminates the bank's right to a deficiency from the borrower.
- Banks prefer Short Sales to Foreclosure as they help mitigate their losses.
- It takes a professional team to successfully close a short sale. The professional skills and experience of a listing agent, an outside negotiator, and an escrow company, each knowing the right steps and how to coordinate with each other and with the seller, are needed to turn your listing into a closed sale.
- Nest has expertise in the banking & mortgage industry, with proven success in securing Loan Modifications & Short Sales for their clients. They are licensed mortgage brokers.
- Nest will do everything possible to protect Real Estate Agent commissions. Their processing fee can either be paid by the bank, the listing agent, or shared.
- Nest will do all the required paperwork and manage all package submittals for the agent and the seller, keeping everyone informed along the way.
- Nest will use its skills and experience throughout the process to negotiate on behalf of the homeowner to get a waiver of the deficiency by the bank.
- To Get Started: [Click Here](#)



W3C
7-20-10
Exhibit 1, p. 2

HOME

WHAT WE DO

LOAN MODIFICATIONS

SHORT SALES

CONTACT US



QUESTIONS? ASK MAX

Welcome to Nest Financial.

If you're worried about your mortgage payments, you've come to the right place.

We're here to help.

- Would you like to modify your mortgage?
- Are you considering walking away from your home?

RESOURCE CENTER

We've collected a number of our favorite news stories and government reports providing some perspective and insight into the current mortgage crisis.



The Mortgage Meltdown
12/14/2008



House of Cards
2/14/2009



The Giant Pool of Money
05/08/2008



Another Frightening Show
About the Economy
10/03/2008



Bad Bank
02/27/2009



Special Section
The Reckoning



Special Section
What Went Wrong?



Special Section
Economy in Turmoil



Modifying Mortgages Can Be a Tricky Business
2/19/2009



What Does \$700 Billion Buy Taxpayers?
12/12/2008

NEST VIEWPOINT

REOs heading up at F...

Things continue to head in the wrong direction, with Freddie Mac reporting that Real Estate Owned levels increased in ev ...

April 10, 2010 more

Your census form was...

John Stewart provides a look at what happens if you don't mail your return. ...

April 1, 2010 more

New government progr...

Second mortgages can be a significant stumbling block for loan modifications and short sales. Consider the following fro ...

March 27, 2010 more

Short sales to the r...

More on the fed plan from The Washington Post Sellers will be allowed at least 120 days to market the home and possibly ...

March 14, 2010 more

Feds to begin subsid...

HAFA (Home Affordable Foreclosure Alternatives) is due to launch on April 5. We've talked about this before and have seen ...

March 8, 2010 more

We'll continue to post new Nest Financial resource information here!

Exhibit 1 p 3

GET STARTED

We encourage you to get started now. Complete this form for a no-cost evaluation. You may return it to us by fax or e-mail, or just give us a call. A Nest Financial representative will be in touch with you within 24 hours.
Fax: 425-883-3044 | E-mail: GetStarted@NestFinancial.com | Call toll-free: 866-970-NEST (6378)

PERSONAL INFORMATION

Applicant

Co-applicant

First Name _____

Last Name _____

Please check your preferred method of contact:

Home Phone () _____

Mobile Phone () _____

E-mail Address _____

PROPERTY INFORMATION

Property Address _____

City _____

State _____

Zip _____

Estimated Value _____

Is this your primary residence? Yes No

First Mortgage

Second Mortgage

Lender Name _____

Loan Balance _____

Monthly Payment _____

Interest Rate _____

Loan Start Date _____

Annual Taxes _____

Included in monthly payment

Annual Insurance _____

Included in monthly payment

Mortgage Type 3/1 ARM 5/1 ARM 7/1 ARM
 Fixed Option ARM Other

Fixed HELOC

Are You Behind? Current 30 Days 60 Days
 90 Days 120+ Days In foreclosure

Current 30 Days 60 Days
 90 Days 120+ Days In foreclosure

Exhibit 1 p. 4 [Signature]

INCOME INFORMATION

Applicant

Co-applicant

Monthly Net
W-2 Wages

Monthly Gross
1099 Income

Other Verifiable
Income*

Please describe:

Please describe:

GENERAL INFORMATION

What are your
immediate goals?

Stop foreclosure

Modify my mortgage

Walk away from my home

What are your
long-term goals?

Sell home

Stay in home

Not sure

Please describe your hardship situation, i.e., job loss, illness, increased loan payments, etc.

Is there anything else you would like to tell us?

Fax: 425-883-3044 | E-mail: GetStarted@NestFinancial.com | Call toll-free: 866-970-NEST (6378)

Submit

nest FINANCIAL
HOMEOWNER SOLUTIONS

WA MORTGAGE BROKER LICENSE # 510-MB-51384

EXHIBIT 1 p. 5

HOME WHAT WE DO LOAN MODIFICATIONS SHORT SALES CONTACT US

QUESTIONS? ASK MAX

Top 5 Reasons to Turn to Nest

Nest helps distressed homeowners secure short sales and avoid foreclosure. We're committed to providing resources to help distressed homeowners like you make a clean break so you can restart your financial future. With Nest on your side, the process will run as smoothly as possible and all important issues will be addressed. Five things that you should consider in the short sales process are:

SHORT SALES

[Successful Short Sales with Nest](#)
[Top 5 Reasons to Turn to Nest for Short Sales](#)

GET STARTED TODAY

- 1. Industry Expertise** – You can take comfort in the knowledge that you are in expert hands. We are adept at negotiating with banks on behalf of sellers. We know that banks are not in the business of owning real estate. They will look seriously at an offer from a qualified buyer. Banks are motivated to take a short sale over the financial risks and uncertainties of the foreclosure and re-sale process.
- 2. Delay Legal Proceedings** – Timing is everything for avoiding foreclosure. Nest can often help postpone foreclosure proceedings by working aggressively with the bank as we submit a short sale package. We have the experience to clear the hidden roadblocks and gotchas. A qualified offer in hand can provide the leverage to delay legal proceedings while the bank considers accepting the short sale.
- 3. Speed to Sale** – Time is not your friend if you have already reached the NOD or NTS stage of a foreclosure. By submitting a complete and compelling package, including a qualified offer, Nest speeds the approval and closing process.
- 4. No Obligation** – There is no obligation to you: no up-front fees, and no cancellation fee. Our fee is negotiated between Nest, the bank, and the realtors. We are motivated to deliver because we are paid only after successful completion of the short sale.
- 5. Peace of Mind** – One of the most crucial outcomes of a successful short sale is securing complete forgiveness of the mortgage debt. We make every effort to ensure that the bank has no claims on the unpaid balance following the sale. You will be able to move forward with your life, without a black mark of a foreclosure on your reputation and free from the burden of the mortgage debt.

Nest helps distressed homeowners secure short sales and avoid foreclosure. [Talk to a short sale expert at Nest today.](#)

phone (425) 883-3022 | toll free (866) 970-NEST (6376) | fax (425) 883-3044
 Washington Mortgage Broker's License # MB-148026
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MFB
 Exhibit 1 P.6

HOME

WHAT WE DO

LOAN MODIFICATIONS

SHORT SALES

CONTACT US



Contact Us

Nest Financial is here to help you protect your nest – and your nest egg.

Two Ways to Get Started Now

1. Call us: (866) 970-NEST (6378)
2. Fill out this simple [Get Started form](#) and a Nest representative will contact you for your initial consultation

If you prefer to speak to a Nest Financial Representative directly, please call us toll-free at:

(866) 970-NEST (6378)

(425) 883-3022

(425) 883-3044 fax

Monday – Friday 9am – 6pm

Pacific Standard Time

Nest Financial Office Location:

16655 Redmond Way

Redmond, WA 98052

phone (425) 883-3022 | toll free (866) 970-NEST (6378) | fax (425) 883-3044
Washington Mortgage Broker's License # MB-148026
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Exhibit 1 p. 7

stewart



Mary Payne Thomas
Vice-President
Litigation Counsel
Stewart Title Guaranty Company
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(800) 729-1902
(713) 629-2248 fax
mthomas@stewart.com

December 7, 2010

Mike Kreidler
Washington Insurance Commissioner
C/O Marcia Stickler, Staff Attorney
Office of the Insurance Commissioner
Legal Affairs Division
5000 Capitol Blvd.
Tumwater, WA 98501

RECEIVED

DEC 08 2010

INSURANCE COMMISSIONER
LEGAL AFFAIRS DIVISION

VIA FEDERAL EXPRESS AND EMAIL

Re: Stewart Title Guaranty Company
Proposed Consent Order No. 10-0158

Dear Mr. Kreidler,

Please allow this letter to serve as a response to Ms. Stickler's November 12, 2010 correspondence to Stewart Title Guaranty Company ("Stewart") regarding the above referenced matter. Stewart submits this letter to you in hopes that we may be able to reach agreement with respect to a final resolution of the above referenced matter.

Stewart finds itself in an extremely difficult situation as a result of the proposed consent order. Please allow me to briefly summarize the contents. The consent order alleges that Stewart's independent agent, Rainier Title violated WAC 284-29-215(2) and therefore, Stewart violated WAC 284-29-215(2). The consent order further seeks a fine against Stewart in the amount of \$2,500.

Stewart is not in a position to nor does it wish to dispute the facts surrounding the allegation against Rainier Title. Stewart only disputes the legal conclusion that as a result of Rainier's conduct, Stewart is liable. It is our understanding that this very issue is at the core of your office's dispute with another underwriter, Chicago Title. The issue of underwriter liability for the acts of independent agents under Chapter 284 WAC will be decided by a court of law in the Chicago Title matter.

In light of these facts, it makes very little sense to waste either time or money on both of our parts to litigate the same issue that will be decided in the Chicago Title matter.

Please understand that we are coming to you in an abundance of good faith in order to seek resolution of this matter that would be mutually agreeable to both of us. Stewart would be willing to entertain any potential solution. Stewart would gladly sign a tolling agreement or other such agreement to hold this matter until the resolution of the Chicago Title matter. Stewart would even be open to signing an agreement admitting the facts but holding the conclusions of law until such time as the Chicago Title matter reaches resolution, even potentially submitting the \$2,500 under protest so long as we could seek reimbursement should Chicago Title ultimately prevail.

Exhibit 2 p 1

Unless we can seek resolution, Stewart will be forced to seek a hearing on this matter. We simply cannot consent to liability for the acts of independent agents. A hearing and potential appeals over a \$2,500 fine would be a waste of Washington taxpayer dollars and your very valuable time. A hearing also presents significant costs and time to Stewart.

Stewart respectfully seeks your guidance on this most sensitive issue. Stewart sincerely wishes to work with you and your office in order to reach resolution.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely yours,

A handwritten signature in cursive script that reads "Mary P. Thomas". The signature is written in black ink and is positioned above the typed name.

Mary Payne Thomas

EXHIBIT 2 p 2