Three Different Courts Find CFPB and Agency Regulation of Title Insurance Companies Overall Intrusive

Real Estate Attorney William Blanchard elaborated on three court decisions that each limit or abolish regulatory efforts by the CFPB or pursuant to RESPA.


William B. Blanchard, Real Estate Attorney

ST. CHARLES, ILLINOIS, UNITED STATES, July 9, 2018 /EINPresswire.com/ -- William Blanchard, a St. Charles, Illinois real estate attorney and General Counsel of Gaia Title, Inc., spoke about three recent court cases each ending with a decision to limit or abolish regulatory efforts by the Consumer Financial Protection Bureau (CFPB) or proceedings under the Real Estate Settlement Procedures Act (RESPA). The significance of these decisions is that together they demonstrate that the pendulum is swinging away from broad agency regulatory authority toward less intrusive business oversight.

On May 18, 2017, the Illinois Supreme Court deadlocked in the matter of Chultem v. Ticor Title Insurance Co. (2017 IL 120448). Plaintiffs in that case alleged that the title company defendants paid excessive commissions to attorney agents who referred title business to defendants. The complaint recognized that RESPA permitted payment to attorneys who provide core services during the title production process but argued that the quantity and quality of services provided did not justify agent commissions of up to 80% of policy premiums. The trial court rejected plaintiffs' assertion that the attorney agents must perform all of the core title services to avoid violating section 2607 of RESPA, and that under Freeman v. Quicken Loans, Inc., 132 S. Ct. 2034 (2012), it was irrelevant whether an attorney agent was overpaid for their services when performing less than all core title services.

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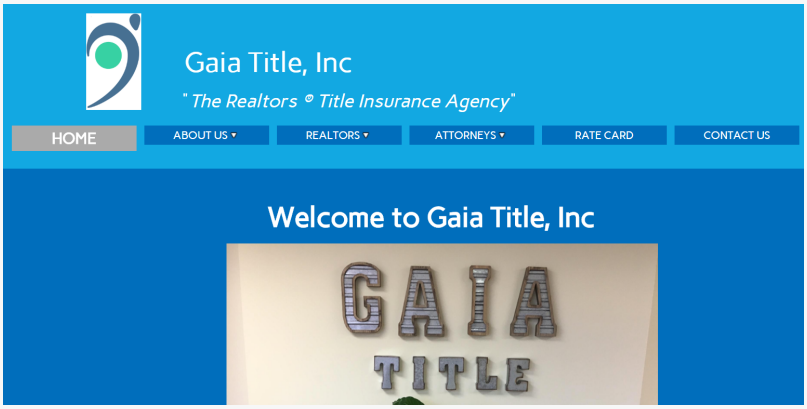
> *William B. Blanchard, Real Estate Attorney*

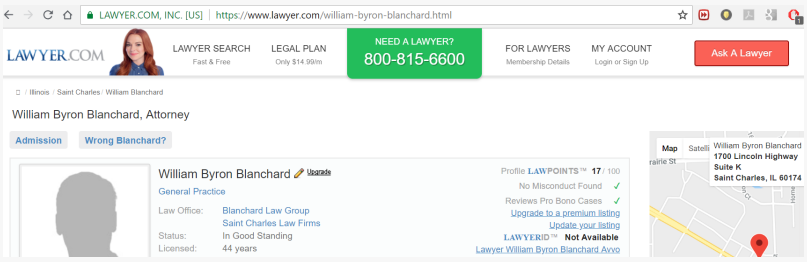
The Illinois Supreme Court justices deadlocked decision resulted in the decision by Appellate Court Judge Mary Mikva to stand, which favored title companies (Appeal from the Circuit Court of Cook County, Nos. 06-CH-09488, 06-CH-09489). In particular, Judge Mikva noted that “legal precedent holds attorneys need only perform some title services to allow them to be legally paid by the title companies as a “title

agent." In the Appellate Opinion Chultem v. Ticor Title Insurance Co., 2015 IL App (1st) 140808, the majority held that the federal law at issue, known as RESPA, doesn't spell out how much work attorneys must perform to receive payment, or control the amounts attorneys can collect in return for their work on a title.

"… RESPA is not concerned with whether the attorney agents were paid too much for their actual services, but asks only whether actual services were rendered," the majority wrote. "Thus, the title companies' payments were not unlawful."



Website of Gaia Title, William B. Blanchard, General Counsel



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The next example of a recent court decision that limits regulatory oversight is the decision of Judge Eileen Rakower of the Manhattan Supreme Court of July 6, 2018. In the case of the New York Land Title Association v. the New York Department of Finance, Judge Rakower found that regulations adopted by the DFS were overly broad and therefore invalid. This case dealt with title insurance company's practice of giving gifts of meals, event tickets, hotel rooms, and other perks to real estate brokers, bankers, attorneys and others who provided title insurance orders to title companies. The Department took the position that these gifts were things of value that increased premiums to consumers and amounted to unpermitted referral fees or kickbacks. The rules preventing such gifts had gone into effect earlier this year and were an attempt to lower real estate closing costs for New York consumers. The Court thus struck down a state regulation that prevented title insurers from passing along marketing and client-relation expenses to customers. See https://www.law.com/newyorklawjournal/2018/07/06/supreme-court-strikes-down-ny-title-insurance-regulation/

"To construe [the law] in this manner is to hold that the Legislature intended to prohibit title insurance corporations from marketing themselves for business is an absurd proposition," Judge Rakower wrote, validating many of the arguments made by title insurers and lawmakers who attempted to defang the regulations through legislation.

In the third case, a federal district judge ruled on June 21, 2018 that the structure of the Consumer Financial Protection Bureau (CFPB) violates the Constitution, countering a January ruling from a federal appeals court. Judge Loretta Preska of the Southern District of New York (a Republican judge), in the case of Consumer Financial Protection Bureau et al v. RD Legal Funding LLC et al (No. 1:2017cv00890 - Document 80, S.D.N.Y. 2018) ruled that the CFPB's creation as an independent agency with a director that could only be dismissed for wrongdoing was unconstitutional. In her written opinion, Judge Preska noted that the Bureau was virtually free from Congressional or Executive oversight and was in fact created as another branch of government not permitted by the Constitution. However, this decision conflicts with an earlier decision by the Court of Appeals of the District of Columbia which found that the President's ability to fire the CFPB Director at will was sufficient oversight to make its structure constitutional. Judge Preska failed to mention the United States Supreme Court's reasoning in May of this year in Murphy vs. NCAA which discussed the issue

and inferred most judges feel that it would be more logical to rule on specific CFPB actions or powers than to find the entire Act unconstitutional.

These three post-election decisions highlight the differences in attitude concerning business regulation between the previous and current administrations. The CFPB was originally staffed by Senator Elizabeth Warren of Massachusetts while President Trump recently appointed his choice to lead the Bureau.

Mr. Blanchard pointed out that, “Future court decisions including a determination by the United States Supreme Court will determine if this trend continues. An appeal of the conflicting findings by Judge Preska and the DC Court could determine that the Dodd Frank Wall Street Reform and Consumer Financial Protection Act is unconstitutional as currently structured. Presumably the political make-up of the Supreme Court will be more conservative with a second appointment by President Trump. All factors point to another point of contention between Republicans and Democrats after the mid-term elections.”

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Mr. Blanchard received his Juris Doctor from DePaul University College of Law in 1972 and was admitted to the practice of law in Illinois in 1973. He graduated with his B.S. in Business Administration from Southern Illinois University. More news insights from William Blanchard are at https://attorneygazette.com/william-blanchard%2C-esq#40b43d7b-94b2-48d3-b055-1979a636f1e7

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