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## **Title Insurance Agents and Small Business Owners Do Not Support H.R. 4323, the Consumer Mortgage Choice Act**

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On behalf of the hundreds of independent title insurance agents, independent regional title insurance underwriters and interested title insurance industry stakeholders who are members of our organization and the tens of thousands of employees and title agents across the United States that are employed by our members, please allow me to formally introduce you to the **National Association of Independent Land Title Agents (NAILTA) ([www.nailta.org](http://www.nailta.org))**. NAILTA was formed in November, 2008 by concerned independent title insurance agents from across the United States who are determined to foster transparency, promote education and understanding and preserve the value of the land title process.

NAILTA is the only land title association in the United States that comprises its complete organizational document on the issues affecting independent land title insurance agents and like-minded independent real estate settlement service providers. NAILTA is uniquely situated to provide feedback regarding **H.R. 4323, the Consumer Mortgage Choice Act**, which seeks to redefine the term "Qualified Mortgage" pursuant to the Dodd-Frank Act<sup>1</sup>. NAILTA members are small business owners across the United States who depend upon the strength of the housing market to survive. Our members fear that efforts to remove affiliated title charges from the definition of "points and fees" under Dodd-Frank will result in the continued decline of competition in the title insurance industry, reduce important underwriting safeguards that keep referral sources like banks and real estate firms out of the business of title insurance and decrease the quality of services provided to consumers. We urge opposition to H.R. 4323.

Title insurance is an important component of the risk elimination function of any residential mortgage loan. Title insurance provides valuable information concerning the status of the land title records pertinent to the real estate involved and allows lending institutions to have the assurance that their lending risk in the property is protected. Prior to 1980, the title insurance industry was comforted by the fact that only title insurers or those with a vested interest in the insurance portion of a real estate transaction were involved in eliminating title risks. However, since 1980, lenders, real estate firms, mortgage companies, homebuilders, developers and other referral sources have infiltrated the title insurance industry through joint ventures called affiliated business arrangements (AfBAs) or controlled business arrangements (CBAs). Through these

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<sup>1</sup>Pub. L. 111-203, July 21, 2010.

AfBAs and CBAs, the quality of title insurance has been degraded. Those who refer business to title insurance agencies and their underwriters now have an uncommon degree of control, whether actual or implied, over not only the profits of title insurers but also their underwriting practices. NAILTA is gravely concerned that this issue will be magnified by a rush to create policy under the QM rule.

For example, the largest title insurance underwriters that control nearly 90% of all title insurance business in the United States<sup>2</sup> have numerous joint title insurance ventures with some of the largest national lending institutions, like Wells Fargo, Bank of America and others, and as a result of those relationships have reduced the historical norms of proper title underwriting in an effort to build market share and drive smaller, independent title insurance agents and underwriters out of the market. In some cases, these joint ventures are accepting title insurance premiums without the benefit of a title search and relying solely on credit reports to underwrite their risks. This is not only dangerous to the consuming public but it also puts the entire industry at risk of solvency issues.

While title insurance is certainly a helpful tool of risk elimination in the financial market, the wrong kind of title insurance provided by AfBAs or CBAs with no interest in the health or welfare of the title insurance industry would be a catastrophe. NAILTA members are those who exhibit the highest standards of title insuring practices in the United States. Our members include some of the oldest and most competent title insurance agencies and most respected regional title insurance underwriters in the country. A QM proposal that would require title insurance for QM and non-QM mortgage loans and mandate the independence of the provider of that title insurance would be an endorsement of the highest standards and practices that the title insurance industry could provide.

Proponents of H.R. 4323 represent some of the largest companies in the banking, real estate, mortgage lending and homebuilding industries. They are not small business owners. They are not title insurers and they have little interest in the risk associated with the affiliate title businesses they seek to help with this bill. Their motive has little to do with helping consumers – who, according to their own studies, do not understand what an affiliated business arrangement is<sup>3</sup> and, more importantly do not prefer to use. The motivation of H.R. 4323 proponents is to promote profits for the referral sources (i.e. banks, real estate firms, mortgage companies and homebuilders) at the expense of the title insurance industry and on the backs of unsuspecting consumers.

Current federal law under the Real Estate Settlement Procedures Act (RESPA) has already attempted to deal with the fact that affiliated business arrangements monopolize markets, reduce consumer choice and lead to anti-competitive market conduct.<sup>4</sup> Realizing these attributes, Dodd-Frank seeks to encourage choice in the real estate settlement market and to strengthen the

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<sup>2</sup> First American Title Insurance Corporation, Old Republic National Title Corporation, Stewart Guaranty Company and Fidelity National Financial, Inc.

<sup>3</sup> Harris Interactive Poll (2008) (Nearly 75% of respondents did not prefer to use an affiliated business arrangement. Over 70% of respondents did not know what an affiliated business or “one-stop shop” was.).

<sup>4</sup> See 11. U.S.C. 2607 and HUD Policy Statement 1996-2.

necessary checks and balances that protect consumers. These concerns were further buttressed by a recent study in Ohio that concluded:

“Title insurance agents lack meaningful access to Ohio real estate consumers concerning the merits and differences of their services. These inequities are enhanced by the referral sources and their advocates who promote CBAs and market consolidation as a further means to separate consumers from title insurance agents.”<sup>5</sup>

Title insurance agents and small business owners within the title insurance industry do not support H.R. 4323 and we ask you to join us in opposing this bill. For more information about NAILTA and our legislative agenda, please visit our website at [www.nailta.org](http://www.nailta.org) or email us at [info@nailta.org](mailto:info@nailta.org).

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<sup>5</sup> Ohio Association of Independent Title Agents Settlement Preference Survey (2010) (58% of respondents believed it was a conflict of interest for a referral source to give compensation to their employees for referring settlement work if they receive a financial benefit from the referral).