

3. At least as early as December 2011, Respondent advertised himself on the Premium Title website as “an attorney who practices Real Estate Transactions and Bankruptcy.”

4. At all times relevant to these charges, Respondent was also a “Settlement Agent,” as that term is defined in D.C. Code § 42-2401.

5. D.C. Code § 42-2405 “Duties of a Settlement Agent” provides:

A settlement agent shall cause recordation of the deed, the deed of trust or mortgage, or other documents required to be recorded, and shall cause disbursement of settlement proceeds within 1 business day of settlement. At least 5 days prior to settlement, the settlement agent shall inform the seller of the terms of this chapter. If settlement is delayed, the settlement agent shall notify, in writing, all of the settlement parties explaining the reasons for the delay. If any of the reasons are the fault of a settlement agent or the lender, the settlement agent or the lender at fault shall be subject to the provision of § 42-2407.

6. At all times relevant to these charges, Respondent was also a licensed “Title Insurance Producer,” as that term is defined in D.C. Code § 31-5041.01. As part of his business, he solicited and procured title insurance contracts on behalf of Chicago Title, a title insurance underwriter and provider associated with Fidelity National Financial Group (“Fidelity”). When parties chose Chicago Title as their title insurer, Respondent and Premium Title were compensated a percentage of the overall charges. The remainder of the fees were paid to Chicago Title.

7. D.C. Code § 31-5041.06(a)(2) requires that funds deposited with a title insurance producer in connection with an escrow, settlement, closing, or indemnity deposit “shall be applied only in accordance with the terms of the individual instructions, settlement statement, or agreements under which the funds were accepted.”

The 2461 18th Street Transaction

8. In 2012 and 2013, Respondent and Premium Title handled a transaction involving 2461 18th Street (“the Property”), which was home to Madam’s Organ, a local blues bar. William Duggan, the proprietor of Madam’s Organ, was seeking to obtain from City First Bank a loan for a corporate entity, Lenjeswil, LLC, using the Property and another property as collateral.

9. During examination of the title history of the Property, it became clear that no document had ever been recorded with the Recorder of Deeds reflecting that title to the Property had been transferred to Mr. Duggan, despite his operating a bar on the property for many years. Instead, the property was still titled to Jack Littlejohn, who had died in 1993.

10. In connection with the transaction and as set forth below, Respondent and/or Premium Title staff filed with the Recorder of Deeds documents including a

Deed, an FP-7/C tax form for the Deed, a Deed of Trust, and an FP-7/C tax form for the Deed of Trust.

**Reopening of Littlejohn Estate and Preparation of the Deed and
Corresponding FP-7/C Tax Form**

11. Ara Parker is an attorney licensed in the District of Columbia who practices probate law. Sometime in July 2012, Mr. Duggan contacted her and stated that he was interested in having the Littlejohn estate reopened so that title to the Property could be formally transferred. Mr. Duggan informed her that Homer Littlejohn, who was Jack Littlejohn's son and who had served as personal representative to his father's estate in 1993, had agreed to reopen the estate but needed counsel. Mr. Duggan further informed Ms. Parker that he had agreed to pay Mr. Littlejohn's legal fees.

12. On or around July 17, 2012, Ms. Parker agreed to represent Homer Littlejohn as personal representative in filing a petition to re-open the (Jack) Littlejohn estate, for the sole purpose of transferring title.

13. On or around July 17, 2012, Mr. Duggan paid Ms. Parker \$1,000 via check.

14. Ms. Parker understood that the Littlejohn estate no longer had a financial interest in the Property. Moreover, she understood Homer Littlejohn did not wish to pursue the matter beyond executing the Deed.

15. On August 20, 2012, Ms. Parker, on behalf of Homer Littlejohn as personal representative, filed in D.C. Superior Court a petition to re-open the estate.

16. The probate court granted the petition on September 20, 2012, re-appointing Homer Littlejohn as personal representative, with Ms. Parker as his attorney.

17. On November 6, 2012, Ms. Parker e-mailed Respondent the petition to re-open the estate pursuant to his request.

18. On December 14, 2012, Respondent e-mailed Ms. Parker a copy of the Deed and corresponding Real Property and Transfer Tax (FP-7/C) Form that Premium Title had prepared, for her client to execute. The Deed reflected that the Property was being transferred to Lenjeswil, LLC in “consideration of the sum of No and 00/100 Dollars (\$.00)[.]”

19. The transfer and recordation taxes calculated in the FP-7/C form that Respondent sent to Ms. Parker were based on the assessed value of the Property. Specifically, the transfer tax and recordation tax were each calculated as 1.45% of \$856,990, which totaled \$24,852.72 owing to the D. C. government.

Assessed Value of Property:	\$856,990
Recordation Tax Amount:	\$12,426.36 (856,990 x 1.45%)
Transfer Tax Amount:	\$12,426.36 (856,990 x 1.45%)

Recordation and Transfer Tax Total:
(as reflected in FP-7/C form) \$24,852.72

20. On December 17, 2012, in the presence of Ms. Parker and a notary, Homer Littlejohn executed the Deed reflecting zero consideration and the tax form containing the above calculations.

21. Mr. Littlejohn provided these executed forms to Premium Title.

**Respondent's Alteration of the Deed and the Alteration of the Corresponding
FP-7/C Form**

22. On February 15, 2013, a member of Respondent's staff e-mailed some closing documents to Mr. Duggan, including a draft HUD-1 statement that included the transfer and recordation taxes that would be paid in connection with the recording of the deed.

23. On February 18, 2013, Mr. Duggan responded by e-mail to the staff member, complaining about the "ridiculous transfer/recordation fees" and asking that Respondent call him as soon as possible.

24. Respondent then altered or caused to be altered the notarized Deed that Mr. Littlejohn had already signed, replacing the statement that no consideration was paid with a false statement that \$450,000 in consideration had been paid.

25. Respondent did not inform Ms. Parker of the changes.

26. Respondent also altered or caused to be altered the corresponding FP-7/C tax form so that it reflected \$450,000 in consideration. The insertion of the false consideration amount into the form resulted in a computation of significantly less in transfer and recordation taxes payable to the D.C. Government. Specifically, under the formula set forth in the form, \$13,050 was now owing, rather than the \$24,852.72 referenced in ¶ 19.

False Consideration Amount:	\$450,000
Recordation Tax Amount:	\$6,525 (1.45% of \$450,000)
Transfer Tax Amount:	\$6,525 (1.45% of \$450,000)
<u>Recordation and Transfer Tax Total:</u> (as reflected in altered FP-7/C form):	\$13,050

27. Respondent did not inform Ms. Parker of these changes.

Alteration of the Deed of Trust FP-7/C Form, Settlement, Respondent's Delay in Recording the Required Documents and Failure to Distribute Funds in Accordance with the HUD-1

28. During the same time period, on or around February 20, 2013, Ms. Bien, on behalf of Lenjeswil, entered into a Deed of Trust and Security Agreement with City First Bank, and also executed a Deed of Trust Note.

29. On or around February 20, 2013, Respondent signed, on behalf of City First Bank, the FP-7/C form to accompany the Deed of Trust. The form reflected that \$15,950 in recordation tax would be paid to the D.C. government in connection with the Deed of Trust, based on the \$1,100,000 loan amount listed on the Deed of Trust. Respondent affirmed under penalty of perjury that the statements on the form were true and correct.

Loan Amount Listed on Deed of Trust:	\$1,100,000
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<u>Recordation Tax:</u> (as reflected in FP-7C form):	\$15,590 (\$1,100,000 x 1.45%)
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30. On or around February 20, 2013, Respondent signed a HUD-1 settlement statement. The HUD-1 reflected the lesser recordation and transfer tax amounts (\$6,525 each) that obtained from reporting the false \$450,000 consideration amount on the FP-7/C tax form in connection with the Deed. *See* ¶ 26. As to the Deed of Trust, the HUD-1 reflected that the recordation tax amount of \$15,950 would be paid to the D.C. government. *See* ¶ 29.

31. The HUD-1 contained the following affirmation by Respondent:

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

32. On February 20, 2013, a member of Respondent's staff e-mailed the HUD-1 to the lender, City First Bank.

33. On February 22, 2013, City First wired funds into Premium Title's checking account at Eagle Bank in accordance with the HUD-1.

34. Despite the transaction having settled in February 2013, Respondent did not record, or cause to be recorded, the Deed, Deed of Trust and two required FP-7/C tax forms until April 3, 2013.

35. At some point, Respondent or one of his employees altered the notarized FP-7/C tax form for the Deed of Trust to effectively assert that the false \$450,000 amount listed in the Deed had been paid using proceeds from the loan and removing that amount from the tax calculation. This reduced the computed recordation tax liability for the Deed of Trust by \$6,525 (the amount of recordation tax paid on the false \$450,000 amount in connection with the Deed (*see* ¶ 26)).

Original Recordation Tax Amount (<i>See</i> ¶36) (1.45% of \$1,100,000):	\$15,590
Amount of Recordation Tax After Altering of Form (1.45% of (\$1,100,000 – 450,000))	\$9,425
	<hr/>
Difference:	\$6,525

36. On April 3, 2013 Respondent recorded or caused to be recorded with the Recorder of Deeds the altered Deed, the altered tax form corresponding to the Deed, the Deed of Trust, and the altered tax form corresponding to the Deed of Trust.

37. Premium Title paid the lesser tax amounts that obtained from the computations in both altered FP-7/C forms. Respondent and Premium Title retained the excess (\$6,525) from the reduced payment of taxes in connection with the Deed of Trust in its account, where it earned interest, for approximately two years.

Further Probate Proceedings and the Auditor-Master Proceedings

38. On September 13, 2013, a member of Respondent's staff e-mailed Ms. Parker, copying Respondent and others, stating:

Per our conversation this morning over the phone, please find attached the recorded copy of the Deed and the signed FP-7C form for submittal to the court on behalf of the estate. I apologize you haven't received resolution until now but I hope that this helps with your proceedings.

Although this e-mail attached the altered Deed, it attached an FP-7/C form that was a mixture of the form Ms. Parker's client had actually signed and the altered form that had been filed with the Recorder of Deeds. Specifically, the second page of the attached FP-7/C form was the second page of the altered form that was filed with the Recorder of Deeds and reflected the change in consideration to \$450,000.

However, the third page of the attached FP-7/C form, which was the page Ms. Parker's client signed, was in the same state as when Ms. Parker's client signed it; it contained the appropriate tax calculations and did not reflect the alterations Respondent or a member of his staff had made prior to recording.

39. On September 16, 2013, Ms. Parker filed the first and final account for the re-opened probate matter, reflecting her understanding that the Property had been transferred out of the estate via a Deed in Lieu of Foreclosure.

40. On October 1, 2013, Ms. Parker e-mailed Respondent about the changed consideration amount on the Deed.

41. In one of his e-mails in response, Respondent stated as follows:

Hi Ara,

I just tried calling you. At some point after the signing, the Deed was changed to show consideration of 30% of the tax assessed value in order to assist the grantee in paying less transfer taxes. You are correct that we should have ran this past you. The transaction was a complete mess and that slipped through the cracks. But, as I mentioned, no consideration was paid to your client. The consideration was obviously the loan that foreclosed on your client.

Please let me know if you have any questions. Sorry for the confusion.

42. Respondent did not advise Ms. Parker that he or a member of his staff had also altered the FP-7/C tax form signed by Mr. Littlejohn.

43. Meanwhile, sometime after the accounting was filed, the Superior Court auditing branch requested that Mr. Littlejohn and/or Ms. Parker produce a copy of the Deed to the property. Either Ms. Parker or Mr. Littlejohn (or both), provided the branch with the Deed as it was recorded with the Recorder of Deeds, which included the figure of \$450,000 paid as consideration.

44. On January 15, 2014, a probate auditor sent Ms. Parker and Mr. Littlejohn a notice of audit, requiring that the personal representative provide “a copy of the settlement agreement with respect to the deed in lieu of foreclosure[,]” and “[p]lease advise as to the disposition of the \$450,000 as reflected on the deed[,]” and further “advise as to the reason the funds were not reported in the estate.”

45. On March 18, 2014, Ms. Parker filed a response, advising that the estate had not received any money in connection with the transaction and that Respondent’s title company had switched the first page of the Deed. She attached the October e-mail correspondence and copies of the Deed and FP-7/C tax form that her client originally executed.

46. On May 14, 2014, a probate auditor sent to Mr. Littlejohn and Ms. Parker a requirements letter asking that Mr. Littlejohn “[p]lease provide an explanation of action taken by the personal representative to rectify the deed situation as indicated in the e-mails submitted by counsel.”

47. Thereafter, Ms. Parker made efforts to replace the Deed which had been filed with the Recorder of Deeds with the one her client had in fact signed. However, the Recorder of Deeds would not allow a replacement.

48. On November 5, 2014, the probate court held a hearing. At that hearing, Ms. Parker discussed an affidavit detailing Mr. Littlejohn's attempt to correct the deed, but that the document still needed Mr. Littlejohn's signature.

49. The auditing branch reviewed the unsigned affidavit and determined it was insufficient to satisfy the May 14, 2014 requirements letter.

50. On November 10, 2014, the Probate Court referred the matter to the Auditor Master for investigation based on Mr. Littlejohn's failure to file a response to the requirements letter. The court ordered the Auditor Master to state all accounts and conduct an investigation of any fraud about the recording of the Deed.

51. As part of its investigation, the Auditor-Master subpoenaed documents from Respondent and Premium Title in December 2014.

52. The Auditor-Master held an evidentiary hearing and took sworn testimony. On February 27, 2015, the Auditor-Master filed a report finding that the Littlejohn estate did not receive any money from the transfer of property and that "[t]he issue concerning the alteration of the deed will be referred to the appropriate body for investigation."

53. On March 11, 2015, the Office of the Auditor Master referred the matter to Disciplinary Counsel for investigation.

54. On March 20, 2015 Respondent sent or caused to be sent to Lenjeswil a check for \$6,588.

Disciplinary Counsel Investigation and Recorder of Deeds Lien

55. On March 25, 2015, Disciplinary Counsel docketed its investigation, based on the referral from the Auditor Master.

56. On May 15, 2015, Respondent responded to Disciplinary Counsel's investigation. Respondent personally signed the response, certifying that the answers contained therein were true and correct to the best of his knowledge.

57. The response falsely stated that "[t]he actual consideration for the Deed was \$450,000 and was based on the loan the buyer provided to the decedent, which was never paid back and forgiven by the Deed, and all of the buyer's costs to upgrade the property to pay property taxes over the years."

58. Lenjeswil never provided a loan to Jack Littlejohn; it did not even exist until shortly before the transaction. To the extent that Lenjeswil could be considered "the buyer," it did not provide Mr. Littlejohn a loan.

59. On March 3, 2016, Disciplinary Counsel sent Respondent a subpoena for his file relating to the 2461 Property matter. The subpoena called for "complete

records relating to you and Premium Title and Escrow LLC's handling of the 2461 18th Street NW property matter." "Complete Records" was defined to include "each and every document and item you and/or your agent provided, obtained, or created associated with the 2461 18th Street property," including all "correspondence, email communications, bills, invoices, accountings, financial records, settlement sheets..."

60. On March 24, 2016, Respondent responded, through counsel, providing documents that he stated constituted "the entire settlement file." The documents provided did not include: any copy of the March 20, 2015 check for \$6,588; stub for the \$6,588 check; disbursement statement demonstrating how those funds had been retained in one of Premium Title's checking accounts for an additional two years after settlement; and/or a disbursement statement demonstrating that the funds had ultimately been sent to Lenjeswil after that period had elapsed. The production contained a check stub for every other check that was paid in connection with the transaction.

61. Respondent's March 24, 2016 production contained copies of the signed and notarized Deed and Deed of Trust tax forms, as they existed before Respondent and/or one of his employees altered them, but did not contain copies of the forms after they were altered.

62. On October 7, 2016, Respondent provided a signed statement in further response to Disciplinary Counsel. The response stated that Respondent contacted the Recorder of Deeds prior to altering the Deed. The response falsely stated that the Recorder of Deeds “agreed” that “the calculation of the consideration was appropriate.”

63. The October 7, 2016 response attached an affidavit from Mr. Duggan. In March of 2017, Mr. Duggan told the Office of Disciplinary Counsel that Respondent had convinced him to make assertions in that affidavit that were not accurate, and that he wanted to withdraw it.

64. On December 22, 2016, the Recorder of Deeds filed a lien on the Property in the amount of \$9,439.57, based on the claimed purchase price exemption referenced in ¶ 35. The amount represented the additional taxes that would have been paid (\$6,525) without the claimed purchase price exemption, plus penalties and interest.

65. On April 27, 2017, Disciplinary Counsel sent Respondent a letter of inquiry asking him to address 1) the alteration to the FP-7/C tax form corresponding to the Deed of Trust, and 2) the discrepancy between the HUD-1 and the amount actually paid in taxes in connection with the Deed of Trust (the \$6,525).

66. On May 16, 2017, Respondent provided a further response. For the first time, Respondent provided Disciplinary Counsel with a copy of the check and disbursement statements demonstrating that the \$6,525 had been held in Respondent's accounts for a period of years.

67. As a licensed title insurance producer in the District of Columbia, Respondent underwent required audits by Fidelity National Financial, Inc. Respondent also employed the firm "Escrow Experts, LLC" to assist in reconciling Premium Title's accounts.

68. Premium Title organized its files by file number. The file number for the 2461 18th Street transaction was 12-0520.

69. In connection with the yearly audits and the services of Escrow Experts, from 2013 to 2015, Respondent and/or Premium Title produced and/or received documentation demonstrating that there was an excess balance in the 12-0520 file. This included summary documentation which was forwarded to Respondent by the president of Escrow Experts on July 1, 2014.

* * * * *

70. Respondent's conduct violated the following provisions of the Rules of Professional Conduct:

VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.

/s/
Joseph C. Perry
Assistant Disciplinary Counsel

I declare under penalty of perjury that the foregoing is true and correct.

/s/
Joseph C. Perry
Assistant Disciplinary Counsel

Executed on August 14, 2020.

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**

In the Matter of

BENJAMIN M. SOTO, Esquire,

Respondent

Bar Registration No. 453728

Date of Admission: January 6, 1997

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PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

D. Procedures

(1) **Referral to Hearing Committee** - When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** - Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** - The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** - Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** - Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

