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THE NATION'S HOUSING

Using title agency affiliated with broker can be mistake

Sunday, September 25, 2005

KENNETH HARNEY

A new financial settlement between the federal government and one of the nation's best-known real-estate brokerage companies offers home buyers insights into the under-the-table games that might be played with closing costs.



Coldwell Banker Residential Real Estate agreed to pay the federal government \$250,000 to settle charges that some of its offices illegally paid higher commissions as well as provided gifts and other incentives to realty agents who steered purchasers to an affiliated title agency.

The Coldwell Banker offices involved are in metropolitan Atlanta. Coldwell Banker Residential Real Estate admitted to no wrongdoing in the settlement but agreed to cease the practices the government claimed were illegal under a 1974 law that prohibits giving things of value in exchange for referrals of settlement business.

"We deny that our conduct violated (federal law) and do not believe HUD's allegations accurately portray our conduct," said Charlotte Sears, president and chief operating officer for Coldwell Banker in Atlanta.

The settlement was signed by James M. Schmidt, senior vice president of NRT Inc., a real-estate investment trust that is the nation's largest owner of realty brokerages, including a number of Coldwell Banker offices.

According to the Department of Housing and Urban Development, which investigated Coldwell Banker Residential Real Estate's practices for a year, the company has "an affiliated business" ownership interest in Regency Title of Atlanta.

Ownership of settlement and mortgage affiliates is common among many major realty brokerages. Affiliates can be highly profitable ? sometimes generating millions of dollars of revenues a year for the brokerage though not necessarily any direct remuneration for individual sales agents.

When a sales agent encourages ? or outright steers ? a client to an affiliated title company, the brokerage typically gets a piece of the title-insurance premium and other fees at closing.

An affiliated-business arrangement might work like this: ABC Realty and XYZ Title form a corporate joint venture to provide title and settlement services. Both companies are supposed to invest capital or pay for employees who perform title-insurance and other services. The joint-venture partners receive profits or losses based on their ownership shares.

In reality, however, the joint venture might be little more than a shell corporation designed to give the realty brokerage a split of the title agency's fees in exchange for supplying a steady stream of clients.

HUD did not claim Coldwell Banker was participating in an illegal shell corporation. But it did attack the brokerage's alleged methods of ensuring a steady stream of home buyers to the affiliated title company.

Coldwell Banker allegedly offered sales agents trips, Atlanta Braves baseball tickets and agent-of-the-month ads in newspapers based on the number and volume of referrals to Regency Title, according to HUD.

Coldwell Banker also allegedly paid higher sales commissions to agents who steered their customers to the affiliated title agency and paid those agents their commissions immediately at the closing rather than on a more typical delayed basis, HUD said.

In effect, sales agents who steered the greatest number of clients to the brokerage's title affiliate received extra compensation.

The issue of broker-owned affiliates often is contentious inside realty companies. Sales agents often get no direct piece of the affiliate's profits; the brokerage company's owners and executives pocket it all. Sales agents are required to disclose the existence of affiliated service providers to their clients, and the disclosure typically indicates that buyers are free to select any service provider they choose.

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But most buyers have scant knowledge of competing title or escrow companies, and the agents are in a powerful position of trust. Their recommendations can direct the buyer's profit-laden settlement-services business to one company or another.

If an affiliated title or mortgage company is willing to send high-referral-volume agents to the Bahamas or Cabo San Lucas for free vacations, where do you think the agent's client referrals are likely to go? Worse yet, the company that receives the referrals might not be the lowest-cost, fastest or most efficient choice for the buyer.

Federal law guarantees you the right to choose settlement-service providers. Don't be steamrolled to companies that might be padding the pockets of your real-estate agent to get your business.

Kenneth R. Harney covers housing issues on Capitol Hill for the Washington Post Writers Group. You can write to him at P.O. Box 15281, Chevy Chase, Md. 20815 or send e-mail.

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