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THE NATION'S HOUSING

Feds serious about cracking down on kickbacks

Sunday, December 04, 2005

KENNETH HARNEY

One of real estate's seamier practices is almost impossible for consumers to detect: kickbacks and sweetheart payoffs among realty agents, title and escrow companies, lawyers and lenders for referrals of mortgage or closing services.



The federal government is mounting its most aggressive campaign in decades to stamp out illegal referral fee schemes. Although it hasn't attracted widespread attention, the government's anti-kickback effort thus far this year has racked up six times the number of out-of-court settlements with alleged violators as it did during 2004.

The latest case, unveiled in mid-November, involved a highprofile New England mortgage lender, 1-800-East-West Mortgage Co. According to the settlement agreement, East-West employees allegedly asked for and received "tens of thousands" of dollars worth of Boston Red Sox and New England Patriots tickets, plus restaurant gift certificates and concert tickets from lawyers, title companies and appraisers to whom loan officers referred client business.

A joint investigation by the Department of Housing and Urban Development and the Federal Deposit Insurance Corp. found that East-West maintained a "give-to-get" policy that pressured settlement-services professionals for "gifts . . . that East-West used as employee incentives," according to HUD. East-West "expected certain attorneys and appraisers to pay for luxury seating at Red Sox games and concert events at Fenway Park. In addition, East-West induced attorneys and appraisers to pay for semiprivate barbecues and charitable galas with Patriot players."

East-West's president, David R. Bernotas, said that while "some providers of services who had long-term relationships and frequent contact with some East-West employees purchased seats at athletic events, restaurant gift certificates and the like," referrals of borrower-settlement services went "to those who provided high-quality services at the lowest possible cost." East-West denied any wrongdoing but agreed to pay \$150,000 to the Treasury Department as part of the settlement and pledged not to accept referral-fee compensation.

Earlier scalps on the government's real-estate payoff list for 2005 include units of major realty-brokerage companies, title insurance and lending companies such as Coldwell Banker Residential Real Estate, First American Title Insurance, Chicago Title Insurance, RE/MAX Masters and Prudential Locations. In the Prudential case, real-estate agents who referred at least \$1 million in new mortgage business to Wells Fargo Home Mortgage Hawaii allegedly were given free trips to Thailand and Las Vegas and even a free lease of a Mercedes-Benz for three years.

As of Wednesday, HUD had completed 12 major kickback settlements this year. For all of 2004, it had just two.

Under the Real Estate Settlement Procedures Act, the giving or receiving of anything of value in exchange for a referral of a home buyer or borrower's settlement services is prohibited.

The payoffs frequently take the form of gifts, cruises to exotic locations, theater tickets, and a variety of other trinkets and concessions.

For decades, anti-kickback prohibitions were ignored by the industry, in large part because the federal agency that enforced the law mounted only minimal efforts. It lacked the investigative staff, money and political will necessary to go after big names in real estate, banking and mortgage finance. Some realty-industry professionals even likened the government's role to that of the Wizard of Oz? a big, booming voice backed by no real teeth.

During the past three years, however, the Bush administration has added significantly to the enforcement staff and budgetary resources, and has contracted with professional gumshoes? retired FBI, Customs, Treasury and white-collar crime investigators? to track down those who are lining each others' pockets illegally.

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Montgomery's office reportedly has large numbers of investigations to pump up the pressure in 2006 and is considering creating a Web site where industry and consumer tips about referral-fee schemes can be communicated to federal investigators.

As a result, maybe the word finally will get out: Real-estate referral kickbacks are bad for consumers. They violate federal law, invite heavy financial penalties and could even lead to jail time.

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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