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## Major Federal Crackdown On Realty Fee Kickbacks Underway "In Every State."

*by Kenneth R. Harney*

The federal government has issued a warning to realty agents, builders, title agencies, mortgage brokers and other industry participants: Get ready for a wave of RESPA crackdowns, and financial penalties that could make your head spin.

In remarks last week, the federal government's top Real Estate Settlement Procedures Act (RESPA) investigator, Ivy Jackson, said that a recent \$450,000 settlement with Tulsa realty agents and builders is just the tip of the iceberg. Potentially dozens of additional crackdowns are in the wings.

Jackson heads HUD's RESPA enforcement unit, and has unleashed dozens of on-staff and contract investigators -- often ex-FBI, Customs Bureau or financial regulatory agency sleuths -- to break up what she called "blatant violations" of federal anti-kickback rules among realty agents, title companies, lenders and others nationwide.

"We are doing investigations in every state," she said, and "we anticipate a very busy (enforcement) year." Jackson's office gets hundreds of tips a year about alleged payoff arrangements involving realty agents, brokers, lenders, mortgage brokers, builders and title and escrow agencies every year. The tips come mainly from local competitors inside the industry, but also are sent in by individual consumers, federal banking regulators, and state officials.

The Tulsa settlement, unveiled in late March, involved allegations that realty agents and builders created shell corporations that bought into local title companies, and then distributed referral-fee kickbacks based on which agent or builder made the referrals to the companies. The participants all denied wrongdoing, but agreed to pay nearly half a million dollars to settle the case.

That settlement followed a much larger agreement with Chicago Title Insurance Co., involving alleged referral-fee payoffs in Texas. In that case, Chicago Title paid the federal government \$5 million and the Texas Department of Insurance \$1.2 million. HUD alleged that Chicago Title knowingly participated in schemes involving falsified closing documents and illegal payoffs. Chicago Title denied all wrongdoing as part of its settlement.

Jackson told a, real estate lenders and brokers, conference last week that "we are using every resource at our disposal" to move against realty agents, mortgage brokers, lenders and title companies "who ignore the rules" on referral fees. Jackson said that over 60 major investigations, or settlement cases, are currently underway, and that the department now routinely works with state real estate and financial regulatory officials, insurance commissioners, and state attorneys general to identify and stop illegal activities.

She conceded that until recently, RESPA enforcement was less prominent than it is now. But HUD has recently tripled its RESPA investigative staff, and has a contract with a company in Virginia that provides ex-FBI, ex-Customs Bureau and other trained law enforcement and financial investigators to deconstruct even the most sophisticated cover-ups of referral fee arrangements.

In the Tulsa case, for example, Jackson said the realty agents and builders created a "multi-tier" kickback scheme which appeared to pass federal legal tests at the surface level, but failed at the next level below. RESPA prohibits anyone from giving or accepting a kickback, or other thing, of value in exchange for referral of settlement business. HUD regulations permit realty, lending, and title agencies to create "affiliated business" arrangements and joint ventures, but require the participants to have bona fide economic stakes at risk in the ventures. The rules also require distributions of joint venture profits according to ownership shares, rather than on the basis of numbers of referrals of business.

According to HUD, the Oklahoma realty agent and builder ventures distributed profits, based on volume of referrals, and allowed some participants into the scheme for nominal, below-market investments. HUD also charged that the title companies marked up some customers' fees illegally.

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