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RESPA "Police" Target Alleged Referral Payment Schemes

by Kenneth R. Harney

The federal government's "RESPA police" have struck again -- this time targeting real estate agents' office space rental-fee arrangements with a title insurance company, and alleged "sham" affiliated business joint ventures.

In a settlement with Michigan-based Metropolitan Title Company, HUD alleged that the firm paid excessive room rental fees to various real estate brokers with whom it did business. The excess fees to brokers, according to HUD, constituted illegal referral payments under the Real Estate Settlement Procedures Act (RESPA).

As with virtually all RESPA settlements, the accused title firm admitted no wrongdoing, but agreed to cease overpaying rental fees to brokers, and paid \$150,000 to the U.S. Treasury. HUD regulations allow title agencies and other service providers to rent office space and equipment from Realtors, but with a strict proviso: The rental payments cannot be more than the going market value for the space or services involved.

If, for hypothetical example, a title agency paid ABC Realty \$400 for each settlement conducted in ABC Realty's conference room, that might be deemed an excessive rental amount for such a short period of time. The suspicion, say HUD officials, would be that the title company is actually paying for the regular referrals of title and closing services from ABC Realty, not simply paying a market-rate rental for a conference room.

HUD's settlement with Metropolitan did not provide specifics of the alleged overpayments to brokers, nor did it indicate whether the department planned to proceed against the realty brokers who allegedly received excessive fees. Under RESPA rules, it is a violation to pay or receive money or another "thing of value" in exchange for business referrals.

In a second RESPA settlement this month, HUD went after the fast-growing "affiliated business" joint venture trend. The settlement requires First American Title Insurance Co. to pay the government \$680,000, though the firm admitted no wrongdoing. According to the settlement, First American, operating in Tennessee as Memphis Title Co., maintained "sham" affiliated business arrangements with eight local title agencies. The government charged that First American "leased" two of its employees to provide title services for the eight affiliates, and rented space in its offices and computer services to the ostensibly independent agencies.

HUD's latest settlements are significant, according to department officials, because they hint at even bigger and more numerous crackdowns involving realty, title, mortgage lending and home building companies in the months ahead. HUD beefed up its anti-kickback enforcement unit last year, and has contracted with former FBI, Customs, CIA and banking regulatory investigators to pursue the hundreds of RESPA kickback allegations it receives annually.

Over 60 cases -- most headed for either settlement or possible prosecution by the US Department of Justice -- are pending on HUD's RESPA docket. Philip Schulman, a Washington lawyer who specializes in RESPA cases, says that while HUD in past years essentially ignored RESPA enforcement, the department today "is making it a top priority." Realtors, builders, title companies, lenders and closing attorneys "better understand that, and get serious about compliance."

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