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HUD Settlement With Coldwell Banker Sends "Affiliated Business" Warning To Realtors.

by Kenneth R. Harney

A large new financial settlement between HUD and a major realty brokerage firm is intended to be an alarm bell for the hundreds of "affiliated business" ventures involving brokers, title, mortgage and other service providers around the U.S.

The word from HUD is blunt. Housing commissioner Brian Montgomery says his agency's RESPA sleuths are "taking a serious look at affiliated business arrangements to make certain that business practitioners don't blur the line between legitimate relationships and those based on kickbacks and referral fees."

The latest settlement involves Atlanta-area realty offices of Coldwell Banker Residential Real Estate, Inc. Under the agreement Coldwell Banker is to pay the federal government \$250,000 for allegedly giving certain sales associates higher commissions, gifts and other incentives when they referred home buyers' settlement and title business to Coldwell Banker's title affiliate, Regency Title Co.

Coldwell Banker Residential Real Estate president Charlotte Sears disputed HUD's allegations. "We deny that our conduct violated RESPA, and we do not believe HUD's allegations accurately portray our conduct." The settlement agreement was signed for Coldwell Banker by James M. Schmidt, senior vice president of NRT, Inc., the real estate investment trust that is the country's largest owner of realty brokerages, including a number of Coldwell Banker offices. In the settlement, the company denied all wrongdoing.

HUD said that "after a year-long investigation," it found that Coldwell Banker "offered its sales agents incentives including trips, Atlanta Braves baseball tickets, and agent-of-the-month ads in local newspapers based on the number and volume of referrals to Regency Title." HUD also charged that "certain agents who referred business to Regency Title received higher sales commissions or were paid immediately at the time of closing."

The settlement focuses fresh light on a subject that is highly sensitive inside some large realty brokerage firms. Many of them rely on affiliated business joint ventures to bring in sizable cash infusions to support corporate operations and pay executive salaries. Some realty-title joint ventures reportedly earn the broker-partners millions of dollars in revenue a year.

The key to successful affiliate deals, however, is to keep a strong stream of title or mortgage business flowing into the joint venture from sales associates. Typically, however, associates receive no direct compensation for recommending affiliates to their home buyer customers. All the compensation goes to the corporate or management levels of the brokerage, rather than to the agents who are in the position to influence consumers' choices. Office managers may attempt to encourage agents to send business to the affiliates, but often have relatively little leverage over top-producing agents, who are free to refer business to whomever they choose.

Moreover, RESPA prohibits payments of "things of value" -- cash or other non-cash consideration -- in exchange for referrals of settlement or mortgage-related business.

HUD's allegation in the Coldwell Banker case is that management stepped over the line and sought to provide "things of value" as incentives to cooperative sales associates. Housing commissioner Montgomery said, "When companies create incentives and base compensation on referrals by the real estate sales agents to their affiliated businesses, that is against the law."

Sources inside HUD said dozens of other cases of alleged affiliated business violations are at various stages of investigation around the country. Most of the probes begin with an inside tip-off such as a realty sales associate who doesn't like being pressured to refer clients to the broker's in-house joint ventures, which may not offer the agent's clients the best service or the lowest costs.

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Kenneth R. Harney writes an award-winning, nationally-syndicated column on housing and real estate from Washington, D.C. He is also

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He served as a member of the U.S. Department of Housing and Urban Development's Working Group on Computerized Loan Origination (CLO) systems, and is a member of the Editorial Board of the Fannie Mae Foundation's journal, Housing Policy Debate. He is the author of two books on mortgage finance and real estate.

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