



April 13, 2005

HUD's RESPA Effort 'Misplaced'

by Lew Sichelman

With more than 60 investigations into alleged illegal kickbacks in the works, Assistant Secretary John Weicher said last week that enforcement of the Real Estate Settlement Procedures Act will continue to be a "high priority" at the Department of Housing and Urban Development.

But a leading regulatory attorney, Phillip Schulman of Kirkpatrick & Lockhart Nicholson Graham, maintained that HUD's stepped up RESPA efforts are misplaced. The government, the housing business and home buyers all would be better served if federal regulators did a little more teaching and a little less policing.

Both men spoke at the Real Estate Service Providers Council's annual conference in Washington, where Schulman, who once worked at HUD, said lenders "need more guidance, not more police actions."

"It's not fair to use enforcement as a way to teach you what HUD thinks the rules are," he said.

On March 21, HUD announced two settlements, in the Tulsa area, under the 1974 law involving what it said were illegal affiliated business arrangements and profit sharing between builders, real estate brokers and title companies.

Those agreements followed one a month earlier alleging inaccurate settlement states, and Schulman predicted an even more rapid fire pace in the coming months.

"I fear one settlement a week or every other week," he told a conference session.

To hear Weicher tell it, the lawyer may be right.

"We view RESPA enforcement as an important part of our mission," the HUD official said. "It continues to be a high priority."

Indeed, at a time when HUD's overall staffing has declined, the department has tripled its enforcement staff, adding 15 people to what was a five-person unit.

Last year, the RESPA and Interstate Land Sales Division cleared 1,200 complaints, more than double the workload handled in 2002, according to the lame duck Federal Housing Commissioner, who has announced his resignation and will leave HUD on April 30.

Currently, he added, the unit has "more than 60 on-going investigations" into supposed violations under Sections 4 and 8 of the now 31-year-old law, a law even HUD believes is woefully outdated and has been trying to re-write for the better part of a decade.

Sec. 4 prescribes the use of the uniform "HUD-1" settlement statement in all federally related mortgage transactions and requires the settlement agent to provide a copy of the completed form to the borrower, seller and lender.

Sec. 8 bans settlement service providers from paying fees to others in the transactions in return for steering business their way. However, the prohibitions against kickbacks and unearned fees do not apply to affiliated business arrangements as long as they are disclosed and the borrower is not required to use a particular provider.

Copyright © 2005 Realty Times. All Rights Reserved.

With an award winning staff of writers providing up to the minute real estate news and advice, thousands of REALTORS® in North America reporting daily market conditions, and a nationally broadcast television news program, Realty Times is the one-stop shop for real estate information. That's why over 10,000 real estate professionals have turned to us for their publicity needs.