



Experts react to D.C. AG's JV settlements

Regulatory News

Thursday, August 29, 2024

RESPA News reached out to experts in the title industry and real estate compliance to hear their thoughts on the Office of the Attorney General (AG) for the District of Columbia's settlements with four title insurance companies after the office's investigation into the joint ventures (JVs) indicated "the widespread use of illegal kickback schemes."

Allied Title & Escrow, LLC (Allied), KVS Title, LLC (KVS), Modern Settlements, LLC (Modern), and Union Settlements, LLC (Union) will pay a combined \$3.29 million after an investigation by the AG's office revealed the widespread use of illegal kickback schemes.

According to the AG, title companies offered real estate agents discounted ownership interests and lucrative profit sharing in exchange for business referrals that boosted the companies' revenues.

"These conflict of interest-plagued, anticompetitive arrangements limited district homebuyers' ability to shop for the best price and service when purchasing title insurance and escrow services and hurt law-abiding competitors in the title insurance industry, in violation of the District's Consumer Protection Procedures Act (CPPA)," the AG's office stated in a release.

Saul Ewing Partner Francis "Trip" Riley, III, who represents one of the settling title agencies and their affiliates, was critical of the office's portrayal of the title insurance agency affiliated businesses formation and operations.

In conversations with RESPA News, Riley mentioned the AG office never explained or established how the agents who were part of the affiliated business arrangements (AfBAs) received discounted investments on their initial buy-ins to the JVs because of artificial inflation.

"The investment amounts were not artificially created; they were based on the needed capital requirements of the company – as a start-up," Riley said. "Moreover, the investment amounts reflected that the investors had no management or day-to-day authority, and the ownership interest could not be sold, transferred or assigned, and lastly that interest was dilutable with the advent of new investors. So how were the investment dollars 'discounted?' No answer from the [AG's office]."

As for the accusations about multiple yacht parties hosted by Allied – the AG's office alleged Allied put on these parties for their real estate agent JV members as a reward and an incentive for referrals – Riley explained the AG's office was provided evidence confirming these events were investor meetings and success celebrations paid for out of the AfBA's



profit dollars, i.e. the investors were indirectly paying for these events as their distributions were reduced based on cost of said events.

Riley also noted that while the AG's office claimed the investor agents "aggressively steer[ed] their homebuying clients to the AfBA companies in ways that reduced buyer's ability to shop for the best price or service, many of the investor agents in these companies referred less than half of their customers to the AfBA for settlement services.

"Allied's affiliated title agencies were formed and operated in complete compliance with the RESPA, which expressly permits the existence of title agencies with investors who are business referral sources, such as real estate sales associates and provides that they payment of profits to those investors is not an impermissible referral fee or kickback, pursuant to section 8(c)(4)," Riley explained, adding context to the settlements. "Allied and its affiliates met all the requirements for this section to apply. That is why the [D.C. AG's office] never alleged a violation of RESPA, but rather asserted that Allied's affiliated business violated a section of the D.C. code which in reality addresses only impermissible referral fees and kickbacks of premium to the insured.

"The [D.C. AG's office]'s statement that the distribution of profits based on an investors ownership interest (which it calls a 'kickback') is utterly belied by the fact that each consumer who is referred to an Allied affiliated business by an investor is provided with an affiliated business disclosure, which clearly discloses to the consumer that the person referring the consumer to the affiliated business is an owner of the company and will benefit if the consumer choses the company to provide it with title insurance," he added. "The disclosure also expressly encourages those being referred to the affiliated business to compare the rates and services of the affiliated with other title agencies and goes as far as identifying its rates as part of the disclosure so the consumer can in fact comparison shop. The rates, fees and charges of non-affiliated title agencies many times are in excess of those charged by Allied' affiliated title agencies."

Trip also said the allegations are "ironic," in light of the D.C. Department of Insurance's long history of licensing what it knew to be title agencies with referral source investors, and maintained a webpage describing, but not prohibiting, title insurance affiliated businesses.

"These fallacies in the [D.C. AG's office]'s position notwithstanding, the pressure exerted on Allied, its affiliates and the individual investors as part of the investigation and the treat of exorbitant legal fees and costs to defend against the [D.C. AG's office] who has unlimited economic resources, resulted in the resolution announced."

With conversations amongst regulators related to closing costs (like the Consumer Financial Protection Bureau's request for information on mortgage closing costs), the Biden-Harris administration's focus on affordability (with an emphasis on title insurance), and other actions



around the country, some professionals have reported unease about whether this interpretation will spread to other state AGs.

One industry attorney with knowledge about these settlements, but who wished to remain anonymous, told RESPA News in an interview that: “The way that the D.C. attorney general is applying this new interpretation, basically makes all affiliations in D.C. illegal.”