

# **“Top-producing Long & Foster Team Facing Class-action Respa Suit over Alleged Kickbacks”**

By: Ken Hamey (2/25/14)

A federal district court’s decision to certify a class-action suit against one of the highest-volume Realtor teams in the country should set off alarms for brokerage firms that have marketing agreements between themselves and settlement service providers, say RESPA legal experts.

Not only is the class-action certification ominous in its own right, but it comes on top of indications that the Consumer Financial Protection Bureau is actively probing marketing agreements and other forms of affiliated business dealings, and is preparing at least several, as yet unannounced, enforcement actions involving realty firms.

At the end of last month, a U.S. District Court in Maryland certified a major class-action suit against the Creig Northrop Team P.C., which is affiliated with Long & Foster Real Estate Inc. The Northrop Team was ranked No. 2 in the U.S. last year and No. 1 the year before in transaction volume by the Wall Street Journal and Real Trends Inc.

The class certified by the court is potentially large — all purchasers from Jan. 1, 2008, up to the present who have engaged the Creig Northrop Team and a defendant title insurance agency in connection with their transactions.

The case (Patrick Baehr et al. v. The Creig Northrop Team P.C. et al.) was filed last year and alleged that the Northrop group received more than \$500,000 in kickbacks in violation of RESPA from Lakeview Title Co. Inc. over a period of years.

RESPA prohibits payments between realty service providers in exchange for referrals of business. The suit claimed that Northrop engaged in two illegal schemes — “a sham employment agreement and a sham marketing agreement to generate unearned fees and kickbacks.”

The lawsuit seeks \$11.2 million in compensatory damages, plus “three times the actual damages awarded,” and “treble damages for settlement services charged by Long & Foster.”

If you’re a real estate broker, you would be wise to seek legal counsel to review all terms and pricing [in marketing or employment agreements with affiliates].”

The Northrop Team denied these claims and sought dismissal of the case and rejection of the request for class-action certification. Attorneys representing the defendants either said that they could not discuss the matter or did not respond to a request for comment last week when I contacted them. Greg Lawrence and Glen Donaldson, attorneys representing the plaintiffs, declined to discuss the substance of the case but welcomed the class certification decision by the court.

Sources familiar with the litigation, but not directly involved, say certification is significant and greatly raises the potential financial liability for the defendants if the litigation proceeds to trial and is not decided in their favor. Class-action certification increases the pressure for the parties to reach a settlement, but there are no indications in this case whether that will occur or the case will go to trial in federal district court.

According to the suit, Patrick and Christian Baehr purchased a home through the Northrop Team in 2008 and were referred to Lakeview Title for their title insurance and settlement services. Unknown to the Baehrs, according to the suit, the defendants had created a sham employment agreement between the title agency and Carla Northrop, Creig's wife, "to disguise payments of illegal referral fees."

Though Ms. Northrop was listed as an employee of Lakeview Title for a period of time, allegedly "she did not perform any actual work or services" for that company, "did not appear for work, conduct any closings, process any files, nor did Lakeview provide her with an office, telephone number or email address." The defendants allegedly concealed her "supposed employment ... from the public," according to the district court's summary.

Northrop and Lakeview allegedly also created a marketing agreement under which Northrop would designate Lakeview as its exclusive provider of title and settlement services. In exchange for this endorsement, the title company paid Northrop \$6,000 a month for what the court called "mostly unspecified" marketing services, although actual payments varied and reached as high as \$12,000 a month, according to the suit.

However, the court said in its summary, there is no record of "any real joint marketing services reasonably related to actual amounts paid by Lakeview."

Under RESPA, realty and other firms covered by the law can conduct joint promotions, but the parties must each contribute substantive services to justify any compensation. Also, any payments made from one party to another must bear some reasonable relationship to the value of the actual services provided.

Marx Sterbcow, a RESPA attorney based in New Orleans, said the district court's willingness to "quickly" certify the class action should refocus the realty brokerage industry's attention on the potential legal vulnerability of some of their long-standing business arrangements with affiliates.

"If you're a real estate broker," he said in an interview, "you would be wise to seek legal counsel to review all terms and pricing" contained in any marketing or employment agreements you may have with affiliates.