



## **Cutting a Better Title Deal**

*Money-Back Settlement Programs Put Cash in Buyers' Pockets*

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Competition to cut real estate closing costs is bubbling over in the Washington area, with at least two title insurance agencies now offering substantial credits or rebates to home purchasers at closings.

The money-back programs rely on cash that otherwise would go to little-publicized joint venture arrangements between real estate brokerage companies and title insurance agencies. These joint ventures funnel hundreds, and sometimes thousands, of dollars from home buyers' settlement fees to the brokerage firm owners, but not to the brokerage firm's sales agents. Though joint venture relationships are legal and typically are disclosed on settlement sheets, consumers rarely understand that their payments are flowing back to the realty company, according to settlement and mortgage industry executives.

In Northern Virginia, Vienna-based First Savings Mortgage Co. and McLean-based Monarch Title Inc. have begun offering a money-back settlement program they call "The Edge." The program guarantees closing cost credits of anywhere from \$500 to \$5,000 to home buyers who obtain their mortgages from First Savings and their settlement services from Monarch Title.

The Edge program averages more than \$1,000 per settlement in credits paid back to home buyers, said Jerry Boutcher, president of Monarch Title.

The money paid to home buyers, Boutcher said, is money that otherwise would have been paid from the title premiums to a real estate brokerage firm through a joint venture agreement. Boutcher said his firm avoids such deals with real estate companies, which involve paying for "what are essentially customer referrals."

"We think it is time to give that money directly back to the consumers and to guarantee their total closing costs up front," he said. First Savings Mortgage and Monarch began offering their money-back program in the Maryland suburbs last month and plan to inaugurate it in the District sometime in February.

A competing program, sponsored by Federal Title & Escrow Co., is underway in the District, said Todd Ewing Federal Title's president. Marketed under the name "1Roof Credit," the program offers credits with or without use of its mortgage lender partner. The credits paid back to buyers range from \$525 to \$1,525 on a \$300,000 home sale to \$1,650 to \$2,650 on a \$1.2 million sale.

In announcing its program, Federal Title was explicit about where the settlement credit paid to buyers come from. Unlike companies that "profit from affiliated business referral relationships at the expense of their home buyers," said a statement released by Federal Title last month, "[we are] giving the home buyer the financial benefit rather than giving it to the real estate company as a reward for the referral."

Still another title company may have entered the money-back field as well, but with a twist. According to a brochure distributed to a group of Long & Foster real estate agents, RGS Title LLC in McLean and Prosperity Mortgage Corp. have begun offering a cut-rate settlement program called "Home Run." Prosperity Mortgage is the home loan subsidiary of Fairfax-based Long & Foster Cos., one of the largest independent realty brokerage firms in the country. According to the brochure, under the Home Run program, buyers who obtain their mortgages through Prosperity and close at the Beverly Road, McLean, office of RGS Title may qualify for "cash credits at closing" ranging from \$900 on a \$450,000 house purchase to \$2,300 on a \$1.3 million purchase.

Though Long & Foster sales agents confirmed that the Home Run program was outlined and brochures were distributed to them before Christmas, officials at both Long & Foster Real Estate and Prosperity Mortgage were unwilling to discuss the program, despite repeated requests. An RGS title office manager did not respond to a request for comment.

Juli Verrier, a spokeswoman for Long & Foster, said, "We don't want to comment on [the Home Run program] until the federal rules come out."

She was referring to settlement reform regulations expected to be issued soon by the U.S. Department of Housing and Urban Development. Among the expected options in the forthcoming regulations is a concept called "guaranteed mortgage packages," under which lenders and others offer mortgage loans with fixed-price closing charges, including all title and loan origination fees. The idea, said former HUD secretary Mel Martinez, who first proposed it, "is to give people a measure of certainty when they take out a mortgage" and eliminate some of the "unnecessary extra costs that get tacked on" to home purchase transactions.

All three of the new closing cost credit programs in the Washington market appear to be designed to jump out ahead of the expected federal reforms, and to pitch guaranteed-fee, guaranteed-date closing packages, including discounted title and settlement services, to home buyers now rather than later. In all three, the lenders involved appear to be “bundling” fixed or discount-cost loan fees -- appraisals, credit reports, flood certifications, processing and origination charges -- into a guaranteed cost package. The title firms taking part appear to be cutting their own net fees in exchange for expected higher volumes of business from individual buyers and their realty agents.

Asked whether the Edge or other programs could be in conflict with the eventual HUD settlement reform rules, Monarch's Boutcher said, “I cannot imagine how charging people lower fees could violate any rules. All we are doing is giving consumers money back that we would otherwise be paying to a real estate broker through an affiliated business joint venture.”

Larry Pratt, president and chief executive of First Savings Mortgage, said two separate levels of cost reductions are built into his firm's program: First Savings is reducing or putting lids on cost items such as appraisals, credit reports and other origination services, and then guaranteeing home buyers that those costs will not exceed a specific amount at settlement.

“I have told appraisers that if they want to work with us in this program, they cannot charge more than \$350 for an appraisal. We have to have that sort of control over costs in order to make the guarantee [to the home buyer] work,” he said.

“If the appraisal turns out to be more difficult than expected and the appraiser needs to be paid more,” said Pratt, “then we will eat the extra cost rather than violate the guarantee to the buyer. If the credit report costs more than we expect because [the credit vendor] has to re-score the applicants or spend a lot of time double-checking disputed items, we will eat the extra cost.”

A second level of savings in the new money-back programs is the lower total fee for title and settlement services by virtue of not having to split the money with a real estate broker via an affiliated business relationship. “A lot of people do not understand that the bulk of the title insurance premium they pay goes to the title agency that is doing the closing,” Pratt said. “Only a fraction of it is actually going to a title insurance” underwriter -- the company that provides the insurance coverage against title problems.

As a general rule, “a substantial percentage” of the title premium paid by consumers at real estate settlements often goes to the title agency or settlement company performing the closing, said James Maher, the executive vice president of the American Land Title Association, the industry's Washington-based trade group. Title agents in the Washington area typically take 70 to 85 percent of the title premium cut, depending upon the amount of business they direct to a specific title insurance underwriter, according to those in the industry.

Those same title agents, however, may have joint venture arrangements with large real estate brokerage firms, and share with the brokers the total fees generated by every client the firm brings in for a settlement transaction. Those joint ventures, in turn, can be highly lucrative sources of income for the realty firms who sponsor them -- funds that go directly to the brokerage company, rather than being shared with sales agents. For example, Monarch Title's

Boutcher says that MBH Settlement Group, which he founded with two partners in 1994, sometimes conducted about 1,000 settlements per month for Long & Foster and paid an average of "\$800 to \$1,000" per transaction to Long & Foster via a joint venture partnership. Boutcher left MBH last year and founded Monarch Title.

"We are talking about a lot of money that is coming out of the home buyer at the settlement table and going to the broker," Boutcher said.

Long & Foster, whose Web site says it has "prestige partner" relationships with nine title and settlement groups in the District, Maryland, Virginia, Pennsylvania, Delaware and West Virginia, did not return phone calls seeking comment on settlement cost practices.

Calls to Weichert Real Estate, another major brokerage firm with title and settlement joint venture partnerships, also were not returned.

"You bet this is a very sensitive subject for the big brokers," Boutcher said. "They have exclusive arrangements to direct as many settlements as they can to their [joint venture] partners."

Boutcher said most of the joint venture agreements are tightly held proprietary deals, with no information available about them to the general public or to the firms' sales agents. Most of the firms that use them are privately held and are under no obligation to disclose earnings splits or other details to consumers.

Under federal guidelines designed to prevent illegal kickbacks, however, the partnership entities must perform actual work and split revenue based on the percentage ownership held by each party in the joint venture.

Though federal law permits joint venture arrangements, it prohibits any required use or steering of buyers to specific settlement lawyers or agencies. Home buyers are free to choose to use any title or settlement service provider they wish.

The title and settlement issue has sensitivity for real estate agents, some of whom say they do not appreciate pressure placed upon them by their office managers or home offices to direct settlement and title business to joint venture partners.

Most agents interviewed for this article sought anonymity or used diplomatic language in describing how the broker/managers of their branch offices promote use of the parent company's joint venture partners for title, settlement, mortgages and other services.

"We are encouraged to use [the company's] preferred partner, but are not required to do so," an agent said. "That would be foolish."

Sales agents for realty firms typically are independent contractors, not employees, of the realty brokerage under whose banner they work. Their compensation flows solely from the commission dollars they generate with listings or sales. Those commissions generally are split with the brokerage firm, with the agent's share ranging from 50 percent up, depending upon the specific arrangements that she or he has negotiated with the broker.

High-producing agents in most firms tend to get the highest splits, and sometimes are the most resistant to pressure -- subtle or otherwise -- to direct settlement and title business to company-favored joint venture partners. One of Long & Foster's highest-volume agents in Virginia, McLean-based Lilian Jorgenson, said that when it comes to advising home buyers about a choice of settlement agents or financing, "my sole motivation is to see that my [customers'] interests are best served."

"I am a team player," said Jorgenson, but she is also an enthusiastic participant in the independent Edge program, which competes directly against Long & Foster's local preferred joint venture partner for settlement and title business. "I think settlement costs are very high already, and I like to be able to tell my clients that they are going to be credited back money at settlement," Jorgenson said. "Maybe because I am a top agent, there is no pressure on me" to direct title and settlement business to Long & Foster's joint venture partners. Jorgenson said she did \$63 million in closed sales last year, and has been among the top 10 highest-producing agents in Virginia for each of the past 10 years. Another top-producing Long & Foster sales agent, Tena Nauheim of McLean, said that while she "supports [using] Long & Foster partners," she also likes the money-back, guaranteed-price concept and recommends it if it seems to fit the needs of a particular client.

Real estate settlements should be simpler and more transparent to consumers, Nauheim believes. "I want full disclosures, I want people to fully understand what's going on and what their choices are," she said. "I don't want the real estate industry to look like the car business, where you're not really sure you're being told everything."

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