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HEADLINE: **Builder can't steer buyer for own financial benefit**

BODY:

ONE OF THE federal government's top housing officials has this practical advice for anyone negotiating with a builder to buy a new house: You can always say no.

When the builder dangles thousands of dollars of "free" upgrades or closing cost discounts in front of you if you'll agree to use the builder's affiliated mortgage lender -- and threatens to withhold those incentives if you get your loan elsewhere -- you don't have to roll over and play dead.

As **Brian D. Montgomery, federal housing commissioner**, puts it: "Often consumers feel compelled to use a builder's handpicked mortgage company because they feel they've been offered an incentive they can't refuse." But **federal real estate settlement rules "require that these incentives be legitimate and not built into the price of the house or the cost of the loan."**

In other words, builders cannot tempt you with illusory benefits -- alleged discounts that you're actually paying for somewhere else in the deal.

Montgomery was commenting on reports of consumers being forced -- or feeling compelled -- to sign on with a builder's mortgage company even when competing loan offers from unaffiliated brokers or banks were far superior.

In one case described by **Marc Savitt, head of the National Association of Mortgage Brokers' consumer protection subcommittee**, a **major builder in Arizona told buyers that they could not purchase a house in a desirable subdivision unless they used the builder's affiliated lender**. The purchasers, who had deposited \$11,000 and signed a contract for the property, found the in-house lender's rate a full percentage point higher than competing quotes from independent lenders.

The buyers decided to sign up with the independent broker offering the best rate and fees. The builder retaliated by refusing to participate in the closing, pocketing the \$11,000 good-faith deposit, canceling the contract and threatening to sell the house to another buyer.

Though federal officials declined to discuss the case, Savitt says Montgomery 's real estate settlement staff quietly intervened and persuaded the builder to put the \$11,000 back on the table, proceed with the sale and even contribute another \$3,800 to "buy down" the purchaser's interest rate.

In an ongoing case in Tennessee, Memphis mortgage broker Roseann Sullivan says a builder offered one of her clients a \$3,000 rebate off closing costs if the client agreed to go with the builder's wholly owned mortgage company. The buyer "figured that nobody else is offering me \$3,000 in cash, so why not?" Sullivan recounted.

Then the builder's mortgage company pulled a bait-and-switch maneuver. It informed the client that after a second review of her credit history, underwriters concluded that she only qualified for a high-cost interest-rate package. The buyer's near-700 FICO scores, however, actually qualified her for market-rate mortgage money.

Sullivan says she sees this "all the time. Builders think they can play games with people because buyers are in such an emotional state" -- they don't want to lose the house and they're willing to believe that they really are getting a discount or rebate.

Savitt, who for more than a year has urged federal and state officials to aggressively police builder incentives, says antitrust and unfair trade practice issues also are involved.

According to the Federal Trade Commission's Web site (www.ftc.gov), **"tie-in sales" may violate federal antitrust law: "The sale of one product on condition that a customer purchase a second product, which the customer may not want or can buy elsewhere at a lower price, is a tie-in.** Requirements like these are illegal if they harm competition."

Savitt and other mortgage brokers argue that when a builder links an upgrade or closing cost rebate to the required use of its affiliated lender, that fits the definition of a tie-in. And when the tied-in mortgage is at a higher cost than available elsewhere in the marketplace, and effectively prevents the customer from choosing the lower-cost competing alternative, that fits the definition of "harming competition."

"You become their captive," says Savitt, "and there appear to be huge disincentives for

Bottom line here for you? Listen to Commissioner Montgomery: As a home buyer, you cannot be compelled to use the builder's lender. You can be enticed. You can be wheedled. You can be attracted by the builder's incentives, which may be entirely legitimate and a great deal.

But you should also shop around vigorously and see what other lenders or brokers have to offer. Nobody can stop you.

