



# Are You Protected?

## How to Remain Safe While Managing a Short Sale Transaction

by Mathias Bergendahl, Director of Marketing & Communications

*I*t's in the morning newspaper. It's on television at night. It's discussed on radio talk shows. It's all over the internet. Everywhere you turn you probably see a reference to the ever-increasing number of foreclosures in our country. Our local area is no exception when it comes to the frequency of people losing their homes. In fact, you may even see it within your own neighborhood.

It's a depressing end to what once started as an exciting purchase of a new home. Whatever caused homeowners to fail in making their mortgage payments, many now face the embarrassment of leaving their homes and the devastating effect a foreclosure will have on their credit score. One way out, however, may be a short sale.

Customers will now turn to you for help. You will be asked about options available to them. They want advice and expect you to know the answers to their questions. Are you prepared to assist them? More importantly, are you protected against any issues that may arise from accepting such transactions? Have you taken actions to lessen your exposure to potential liabilities?

The legal and financial ramifications of any mistakes made while guiding customers through a short sale process may be severe unless you take the necessary steps to guard your business. In an effort to help our members protect themselves, I spoke with several industry professionals about what REALTORS® can do to build a shield against accusations from customers who may feel they've been wronged. Hopefully their suggestions will help you stay protected.

*"Once the dust settles, many will start looking for someone to blame."*

Real estate attorney S. Thomas Abraham is referring to a now too-common aftermath of foreclosures and short sale transactions. In the midst of increased short sale activities, many REALTORS® are now faced with managing transactions they may not be completely familiar with and unaware of the due diligence required by them.

Abraham, partner of Abraham & Sweeney, P.A. in Ft. Lauderdale, works with clients across the state of Florida and is knowledgeable of common issues facing REALTORS® and brokers arising from short sale transactions.

Abraham mentioned a recent case where he, last-minute, was referred by a REALTOR® to represent a client in Broward county who faced a foreclosure auction only days later.

After denying an emergency motion to stop the auction proceedings, the judge turned to Abraham's client and recommended he file a claim against his REALTOR® for not advising him to seek legal counsel earlier.

According to Abraham efforts to protect yourself should start at the time you meet your client for the first time.

"As soon as a REALTOR® has arrived at the conclusion that a transaction could be a short sale they should, immediately and in writing, advise their client to seek the assistance of an attorney as well as a CPA. Both should specifically be experienced with short sales and foreclosure cases. Asked if simply writing such a referral letter to a client would stand in court, Abraham's answer was short: "absolutely."

Do you currently have a real estate attorney and a CPA in your network? Now is the time to start building referral relationships with those to whom you can refer your clients. Become familiar with their practices and comfortable with how they will serve your clients. That way, once a short sale transaction appears, you will be ready to refer your customers immediately.

Abraham further mentioned another possible pitfall easy to miss when a REALTOR® is working to bring a short sale to close: the language in a lender's pay-off statement. Consider the following two sentences:

1. We, the lender, accept \$250,000 to release lien on the subject property.
2. We, the lender, accept \$250,000 as full and final settlement of debt for the subject property.

There is a significant difference. In the first sentence the lender merely states that the customer is released from the property while any financial liabilities may still remain. The second sentence clearly states that the lender accepts an amount as final settlement and that any future claims will not be made. What you convey to your client about the meaning behind such a sentence could be the difference between being cleared from any wrong-doing or being the recipient of a claim.

Look at a possible scenario based on a pay-off statement containing the first sentence: One year after closing the lender notifies the customer that he or she is responsible for the deficiency amount stemming from the short sale. The customer may claim that you didn't properly advise him about the meaning behind the lender's letter and is now filing a lawsuit against you for the amount owed.

So what do you do to prevent such a situation from occurring? Refer your client to a real estate attorney who will give you the clearance to move forward to closing.

#### **Exposure throughout a Transaction**

Your exposure to risk does not end just by simply referring your clients to other professionals. All continued actions throughout a short sale transaction carry a certain amount of risk. Here are a few suggestions as to what agents and brokers can do to protect themselves.

Let's say an attorney has verified that a transaction indeed appears to qualify for a short sale. Initially, your clients will need to provide their financial information to their lenders. They turn to you to act as their agent. You are now responsible for the accuracy of what they give you.

According to Real Estate Attorney James N. Powell of St. Petersburg-based Powell Carney Gross Maller & Ramsay, P.A., who also serves as General Counsel for the Pinellas REALTOR® Organization, agents who transmit customer information subject themselves to risk. Powell said that agents need to make sure all information is absolutely accurate. "Relaying incorrect information to a lender is fraudulent and constitutes a federal offense," he cautioned. Before submitting any materials to a lender, including a hardship letter, bank statements, tax filings and income verifications, you as their REALTOR® are responsible for making sure all data is correct. Failure to do so may result in being accused of fraud.

There are steps REALTORS® and their brokers can take in order to protect themselves. According to Powell,

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