MAY 2012

ARIZONA REALTOR® MAGAZINE

(UN-)COMMON COURTESY

From MLS Updates to Lockbox Etiquette, Courtesy Can Help You Make It to the Closing Table

2

IN THIS ISSUE...

6 *Helvetica Servicing, Inc. v. Pasquan*
Arizona's Anti-Deficiency Law Continues to Evolve

7 *Investment and Vacation Home Sales Surge*
Plus, Resort & Second-Home Markets (RSPS) Courses Scheduled in Bullhead, Lakeside & Phoenix

10 *10 Things REALTORS® Should Know About Septic Systems*

12 *Duty to Investigate*
Prevent an Article 16 Violation by Making Sure a Prospect Isn't Already Represented

14 *Legal Hotline*

AAR UPDATES

3 *Doing the Right Thing: Compensation for Lease Agreement*

5 *rCRMS: Claims & Remedies*

7 *Maternity Discrimination in Lending Is Illegal, Says HUD*

9 *BPOR Course: The Agent's Role in Property Valuation*

11 *Short Sale Decision Timelines Set by Fannie and Freddie*

17 *Listing & Selling REOs Class*

18 *Master Educator Certification Now Available*

ARIZONA association of REALTORS®
REAL SOLUTIONS. REALTOR® SUCCESS.

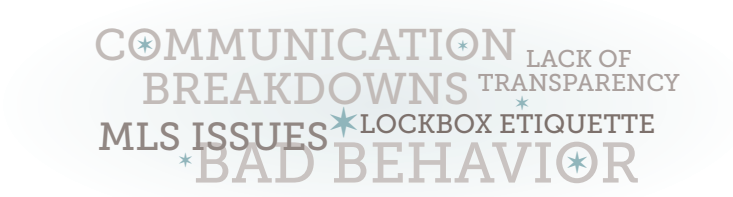
Publication Information: www.aaronline.com/AZR/PubInfo.pdf
Questions *or* Comments: editor@aaronline.com

(Un-)Common Courtesy

From MLS Updates to Lockbox Etiquette, Courtesy Can Help You Make It to the Closing Table

Put a few real estate agents together in a room, and they'll tell war stories that will make you alternately laugh and cry. A recurring theme tends to emerge: In the last few years, the agents say, common courtesy has gone out the window.

At the end of the day, we all want to close deals and make our clients happy. But it's the middle of the day where things get hairy. Herewith, a few common problems and suggestions that just might help you make it to the closing table.



COMMUNICATION BREAKDOWNS

- ☞ **LISTING AGENT'S VOICEMAIL IS FULL.**
- ☞ **BUYER AGENT CALLS INCESSANTLY.**

With today's low inventories, listing agents are bombarded with calls, texts and emails from desperate buyer agents trying to get a foot in the door for their clients. It's easy to see why both sides end up frustrated. Everyone involved needs to remember that there are real people on the other end of the communication.

"I just ran into an old favorite: 'Call lister to arrange showing. Do not email, must call,'" reports Dane Briggs, ABR, GRI with Firebird Realty in Phoenix. "So when you call, it goes straight to voicemail, and the mailbox is full so you can't leave a message."

http://www.danebriggs.com/

Listing agents who are drowning in incoming messages might consider hiring an assistant or working with an answering service. "If you can't control that portion of your business, hire staff and arm them with the right information," suggests Brad Bergamini, GRI with Realty Executives Northern Arizona in Prescott. If you can't justify the expense, consider other ways to manage the influx. "I have Google Voice for my voicemail, which emails me a transcription of the voicemail, so I read all my messages and have no limit on my mailbox," explains Briggs.

http://www.everythingprescott.com/

On the buyer's side, persistent stalking of the listing agent could net you a call-back—or it could turn the agent against you. Prepare your buyers early for the realities of today's market. No response is common, and it often just means no. Decide what you consider a reasonable amount of "touches" and stop there. And be sure to review the MLS before you reach out.

While Bergamini is generally a listing agent, he does work with the occasional buyer and is in constant contact with his buyer agents. This helps him remember to see the transaction from their side as well. "If you can put yourself into the seller's (or buyer's) shoes, you will see more deals closed and have happier clients," he says.

Bottom Line: Remember the Golden Rule. Treat others as you want to be treated.

LACK OF TRANSPARENCY

- ☞ **LISTING AGENT DOESN'T ACKNOWLEDGE OFFERS.**
- ☞ **BUYER AGENT DOESN'T DISCLOSE THAT BUYER HASN'T SEEN THE PROPERTY.**

If you're listing well-priced homes in today's market, you are likely to encounter multiple offers—and frustrated buyer agents. Knowing this, you might choose to set some ground rules right away. For example, provide specific time periods when the home will be available for showings and announce a deadline for the first review of offers. This way, the other side knows whether they still have a chance.

Draft a simple acknowledgement that you can copy and paste in reply to all offers received. "Even if it's a simple 'Thank you for the offer, I'll let you know as soon as I hear from the bank' or 'My seller is reviewing all offers this weekend, and I'll let you know by Sunday,'" says Leah Wolfe-Kraemer, GRI of Welcome Home Realty in Avondale. "Your clients aren't the only ones who deserve reasonable service and common courtesy."

http://www.unlockingdreams.net/

If buyer agents expect listing agents to be transparent about the process, they should consider returning the favor. "If your client put offers in on ten short sales and just closed one, don't leave us hanging out there thinking the buyer is still around while we are negotiating their offer," suggests Briggs.

If you're making an offer on a home your client has not yet seen, is it because you've counseled your buyer that they can always bow out during the inspection period? Or is it because you're working with an investor that trusts you to preview the home for them? Let the listing agent know so that they can appropriately evaluate your offer.

Of course, an agent's first duty is to their client, and not everything can or should be disclosed. "Don't make assumptions," says Cynthia Leggitt with HomeSmart in Gilbert. "There may be a back-story you know nothing about. So be courteous to your fellow agents in a spirit of cooperation."

http://thesmartmovegroup.com/

Bottom Line: Be as transparent about the process as possible.

MLS ISSUES

- ☞ **LISTING AGENT DOESN'T UPDATE MLS STATUS.**
- ☞ **BUYER AGENT IGNORES SHOWING INSTRUCTIONS.**

"Update the MLS religiously," pleads Gerri Bara with West USA Realty in Mesa. "Have some pity on the people who read and rely on the information contained in your listings!"

No buyer agent wants to make an offer on a home that should have been marked pending ten days ago.

http://www.gerribara.com/

Similarly, no listing agent wants to answer call after call requesting information that is clearly outlined in the agent notes. "Consult the listing before you call," says Bergamini. "Half the time buyer agents call with questions that show they haven't even looked at the listing."

If you see something that doesn't seem right, don't jump to the conclusion that the other agent is lazy or has improper motives. It could be an honest mistake or a newly licensed agent still figuring out the rules. "When someone has a property listed as active and it shouldn't be, email them a gentle reminder," suggests Bergamini. C. Dale Hillard, designated broker at West USA Realty in Phoenix and the Rules Committee Chair at ARMLS, agrees. "If it's a simple thing you spotted, call the agent and give them a chance to correct it," he says. "For flagrant violations, I encourage you to push the button every time."

http://www.westusa.com/

"I have spoken to listing agents, and when I question them about it, they tell me they leave it active to try and secure back-ups," says Steve Bachman with HomeSmart in Scottsdale. "[That's an] immediate report."

http://www.stevebachmanhomes.com

Bottom Line: Assume the best, but report the worst.

Doing the Right Thing:
Compensation for Lease Agreement

AAR Risk Management Specialist Jan Steward recently posted on AAR's blog about a common complaint received by our Professional Standards Department: Despite a compensation offer in the MLS for a lease agreement, REALTOR® B does not pay REALTOR® A the promised compensation. Is it ethical not to pay a fellow agent if it is under a certain amount, say $600 or $700? Read more.

http://blog.aaronline.com/2012/04/doing-the-right-thing-compensation-for-lease-agreement/

SHARE COMMENT

LOCKBOX ETIQUETTE

☞ **LISTING AGENT USES COMBO LOCKBOX, AND NO ONE BOTHERS TO SCRAMBLE THE CODE.**

☞ **BUYER AGENT HANDS PLANS TO CLIENT WITH AGENT-ONLY INFORMATION.**

Listing agents must do all they can to protect the seller and the property. The last thing you want is to find that someone used a lockbox to enter a home and steal the appliances. This means using the best lockbox you can afford and being cautious about codes. "I've walked up to far too many combo boxes with the combo staring back at me," reports Paul Slaybaugh with Realty Executives in Scottsdale. "Then there are the ubiquitous codes that are used for every listing that we all know by heart."

http://www.scottsdalepropertyshop.com/

"If an agent can't afford $80 for a lockbox, perhaps they should not take the listing," says Tonia Vickery, CRS with RE/MAX Renaissance Realty in Peoria. "Listing homes is not free, which is why we want good compensation when it closes." She recommends that listing agents investigate used boxes. "When I picked up in listings years back, I started asking agents who were getting out of the business and got tons of used ones for at least 50% off," she reports.

http://www.toniavickery.com/

Buyer agents also have a role to play in safeguarding the home—and in avoiding liability. First, a lockbox on a home is not an invitation to enter. Even if a listing is pending or vacant, you must have the listing agent's permission to enter. Unauthorized lockbox access could earn you a hefty fine from your MLS or local association. And if you checked the listing a week ago, check it again before you arrive, advises Mary Roberts, GRI with Keller Williams Arizona Living in Lake Havasu City. "A house may have been vacant last week and now have tenants in there."

http://www.marysellshavasu.com/

Be aware of who might be watching when you enter codes on a combo box and scramble it right away. Never hand clients information that is for agents' eyes only, such as a plano with codes. Have a plan for what to do if another agent arrives while you are showing a home. "I either ask them to wait or put the black box back in, so they have to

When & How to Escalate an Issue

You've done your best. You've been patient. You've given the other agent the benefit of the doubt and a few extra chances. Now it's time to get serious.

Brokers. "Anytime there's a situation that has escalated to more than one phone call, your broker probably needs to be aware of it," says Bergamini. "Your broker is there to protect your license, their license and your client. The sooner they get wind of it the better." Occasionally, a broker-to-broker call can clear up an issue quite effectively.

MLS. Some situations can be handled agent-to-agent, but egregious problems should definitely be reported. Most MLSs make it easy to report violations anonymously. For something like unauthorized lockbox access, it's a good idea to provide as much detail as possible: lockbox number, MLS number, a police report, if available. "I always get a statement, even if email, from the seller," says Vickery.

Ethics. If you are dealing with an agent or broker who is a REALTOR® (that is, a member of a REALTOR® association), they are bound by NAR's Code of Ethics. If you feel that an article of the code has been willfully violated, consider mediation or an ethics complaint. The disputes section of AAR's website covers the processes involved. Or you can give AAR's professional standards department a call at 602-248-7787.

http://www.aaronline.com/Disputes/

Department of Real Estate. ADRE responds to consumer investigation requests about licensees who may have violated real estate law or the Commissioner's Rules. Learn more about the Investigations Division.

http://www.azre.gov/Inv/Forms/Form_INV-800_Request_For_Investigation.pdf

http://www.azre.gov/Inv/Inv.aspx

"Some practices just need to be stopped, but unless they are reported, the Department of Real Estate and AAR can't do anything about them," advises Judy Osmanski with Ken Meade Realty, Inc. in Sun City. "Step up to the plate and report a violation."

enter their code," reports Briggs. "If the home has a combo lockbox, I ask the buyer agent to show me the MLS printout, so I can confirm they are an agent."

While in the house, keep tabs on your buyers. Agents have had buyers do crazy things in other people's homes, from letting their kids jump on beds to stealing medicine from the bathroom to unlocking a window for an unlawful re-entry later. Before you leave, double-check that all doors and windows are locked. (And we don't need to tell you not to steal keys out of lockboxes to prevent other buyers from seeing it, right?)

Bottom Line: Protect the consumer.

BAD BEHAVIOR

- ☞ **THE COOPERATING AGENT CALLS YOU OR YOUR CLIENT NAMES.**
- ☞ **YOU TELL YOUR CLIENT THAT THE OTHER AGENT'S INCOMPETENCE IS TO BLAME FOR ISSUES ARISING.**

Article 15 of the Code of Ethics states, "REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses or their business practices." Bergamini takes this to heart in his interactions with clients: "If my sellers ask me what I know about the other agent, I tell them that I know he/she's a good agent and will do the best for their client. That's all they need to know."

When things go badly, it's easy to blame the other side, to tell your client that the other agent is an amateur or that the seller is delusional. Sometimes agents do this to minimize their own missteps. Sometimes they may say those things because they're true. Either way, it's a disservice to the transaction. "It's our responsibility not to let clients know if we have an issue with someone," says Bergamini. "They should end the deal feeling like, 'Wow! What an easy process.'"

"There needs to be common decency with regard to one's chosen language about other agents/brokers and parties to a transaction," reports Patrick Brennan with @Home Properties and Management in Peoria. "I recently had to ask that a listing agent not call my client names." Persistent disrespectful behavior should be reported to the agent's broker.

It's not only unethical to bad-mouth another agent. It can also be bad for business. "You don't know if the biggest deal in your life will be with someone you just said something nasty about on Facebook," says Bergamini.

Candice Hudson with Sonoran Fine Properties in Scottsdale has a long memory for agents who behave badly. "I also remember all the good ones, the true professionals who know that every market turns at some point," she notes.

Bottom Line: Stay positive.

SHARE COMMENT

rCRMS: Claims & Remedies

Friday, June 1 | 9:00am – 4:15pm
Phoenix Association of REALTORS®
$99 | Register Online | Class Flyer
http://www.regonline.com/crmsclphx
http://www.aaronline.com/education/class-flyers/120601-rcrms-par.pdf

This course is a detailed look at common claims and remedies for issues that may occur in real estate transactions. It specifically addresses Arizona state laws but also looks at how the NAR Code of Ethics applies. Students will gain a clear understanding of how claims happen, are pursued and resolved. They will learn to apply that understanding to minimize risk in their real estate practice.

Related Video
http://youtu.be/G_CNi5sknII

Instructors: Attorney Rick Mack & REALTOR® Frank Dickens
CE: 3-legal/3-disclosure

rCRMS (Certified Risk Management Specialist) helps you manage risk in your real estate business.
Learn more. http://www.aaronline.com/rcrms

SHARE COMMENT

HELVETICA SERVICING, INC. V. PASQUAN

Arizona's Anti-Deficiency Law Continues to Evolve

BY SCOTT M. DRUCKER, ESQ. – MACK DRUCKER & WATSON

With the increased number of foreclosures experienced in Arizona over the last several years, the Arizona Court of Appeals continues to issue significant decisions addressing previously unresolved questions pertaining to the protections afforded by Arizona's anti-deficiency statutes. This trend continued on March 20, 2012 with the court's published opinion in *Helvetica Servicing, Inc. v. Pasquan,* 1 CA-CV 10-0418.

In *Pasquan,* the Court of Appeals addressed three significant legal questions pertaining to Helvetica's judicial foreclosure of the Pasquans' Paradise Valley home, which was secured by a loan with *Helvetica* in the principal amount of $3,657,793.30. Specifically at issue was Helvetica's right to a deficiency judgment against the Pasquans in the approximate amount of $3,200,000.00 following Helvetica's purchase of the property at a sheriff's sale pursuant to a $400,000.00 credit bid.

In an effort to determine the Pasquans' alleged deficiency liability, the Court of Appeals first addressed the issue of whether a purchase money loan loses its purchase money distinction and thus its deficiency protection following a refinance. Upholding its previous decision in *Bank One v. Beauvais,* 188 Ariz. 245, 934 P.2d 809 (App. 1997), the court held that a refinance in and of itself does not destroy the loan's purchase money status, stating that "A change in the lender's identity does not, standing alone, alter the nature of the underlying purchase money debt." Accordingly, refinancing a purchase money loan with a new lender does not cause the borrower to forfeit their anti-deficiency protection.

The second issue addressed by the Court of Appeals is whether a construction loan qualifies as purchase money in nature, and is thereby eligible for anti-deficiency protection. This issue is not directly addressed by Arizona's anti-deficiency statues because the borrowed funds on a construction loan are not used simply to purchase a qualifying residential property. Rather, construction loans are typically used in part to purchase raw land and in part to pay for the services performed by contractors. Although property improvement loans do not constitute purchase money obligations, the Court of Appeals in *Pasquan* ruled that "a construction loan qualifies as a purchase money obligation if: (1) the deed of trust securing the loan covers the land *and* the dwelling constructed thereon; and (2) the loan proceeds were in fact used to construct a residence that meets the size and use requirements set forth in A.R.S. § 33-729(A)" i.e. - a single one-family or single two-family dwelling on less than two and one-half acres.

Finally, the Court in *Pasquan* addressed "cash-out" refinances and examined whether a lender is entitled to a deficiency judgment following the foreclosure of a loan where only a portion of the borrowed funds constitute purchase money. While lenders have long argued that the entire deficiency is a recourse obligation on blended loans of this nature, borrowers have asserted that the entire loan receives the protection afforded by Arizona's anti-deficiency statutes. In what appears to be a well-reasoned compromise, the Court of Appeals very simply held that the purchase money portion of the loan is eligible for anti-deficiency protection while the cash-out portion is not.

In explaining its rationale, the Court expressed that on the one hand, "it appears unnecessarily punitive and contrary to the consumer-protection goals of Arizona's legislature to convert an entire obligation into a recourse loan simply because it happens to include non-purchase money sums." Alternatively, "it seems similarly inappropriate to shield borrowers from deficiencies for loan disbursements unrelated to the acquisition or construction of a qualifying residence." Following a foreclosure, the lender may therefore seek to recover a deficiency judgment only on the non-purchase money portion of the loan. However, in order to obtain such a judgment, the lender must first trace and segregate the non-purchase money funds.

While the decision in *Pasquan* may be appealed to Arizona's Supreme Court, for now the case provides

further clarification of Arizona's evolving anti-deficiency statutes and their application to construction loans and "cash-out" refinances.

SHARE COMMENT

ABOUT THE AUTHOR

Scott M. Drucker, *a shareholder and founding partner of Mack Drucker & Watson, PLC, focuses his practice in civil litigation, with an emphasis on real estate litigation, commercial litigation and construction law. His clients range from individuals to large corporations, which he represents in both federal and state courts, mediation, arbitration and appellate practice.*

Sdrucker@mackazlaw.com

http://www.mackdruckerwatson.com/

Maternity Discrimination in Lending Is Illegal, Says HUD

"It is against the law for any lender to deny a mortgage loan to a woman because she is pregnant or on paid maternity leave," said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity, in an April new release. Read more.

http://portal.hud.gov/hudportal/HUD?src=%2Fpress%2Fpress_releases_media_advisories%2F2012%2FHUDNo.12-066

SHARE COMMENT

INVESTMENT AND VACATION HOME SALES SURGE

Sales of investment and vacation homes* jumped in 2011, with the combined market share rising to the highest level since 2005, according to the National Association of REALTORS®.

NAR's 2012 Investment and Vacation Home Buyers Survey, covering existing- and new-home transactions in 2011, shows investment-home sales surged an extraordinary 64.5 percent to 1.23 million last year from 749,000 in 2010. Vacation-home sales rose 7.0 percent to 502,000 in 2011 from 469,000 in 2010. Owner-occupied purchases fell 15.5 percent to 2.78 million.

Vacation-home sales accounted for 11 percent of all transactions last year, up from 10 percent in 2010, while the portion of investment sales jumped to 27 percent in 2011 from 17 percent in 2010.

NAR Chief Economist Lawrence Yun said investors with cash took advantage of market conditions in 2011. "During the past year investors have been swooping into the market to take advantage of bargain home prices," he said. "Rising rental income easily beat cash sitting in banks as an added inducement. In addition, 41 percent of investment buyers purchased more than one property."

Yun said the shift in investment buyer patterns in 2011 shows the market, for the large part, is able to absorb foreclosures hitting the market. "Small-time investors are helping the market heal since REO (bank real estate owned) inventory is not lingering for an extended period. Any government program to sell REO inventory in bulk to large institutional companies should be limited to small geographic areas. Even where alternatives are needed, it's best to rely on the expertise of local businesses, nonprofit organizations and government," he said.

All-cash purchases have become fairly common in the investment- and vacation-home market during recent years: 49 percent of investment buyers paid cash in 2011, as did 42 percent of vacation-home buyers. Half of all investment home purchases in 2011 were distressed homes, as were 39 percent of vacation homes.

* *Vacation homes are recreational property purchased primarily for the buyer's (or their family's) personal use, while investment homes are residential property purchased primarily to rent to others, or to hold for other financial or investment purposes.*

"Clearly we're looking at investors with financial resources who see real estate as a good investment and who aren't hesitant to use cash," Yun said. Of buyers who financed their purchase with a mortgage, large downpayments were typical. The median downpayment for both investment- and vacation-home buyers in 2011 was 27 percent.

"Given the tight credit in recent years, many would-be normal home buyers for owner occupancy declined," Yun said.

The median investment-home price was $100,000 in 2011, up 6.4 percent from $94,000 in 2010, while the median vacation-home price was $121,300, down 19.1 percent from $150,000 in 2010.

Investment-home buyers in 2011 had a median age of 50, earned $86,100 and bought a home that was relatively close to their primary residence – a median distance of 25 miles, although 30 percent were more than 100 miles away.

"The share of investment buyers who flipped property remained low in 2011, and many of those homes likely were renovated before reselling," Yun said. Five percent of homes purchased by investment buyers last year have already been resold, up from 2 percent in 2010. The typical investment buyer plans to hold the property for a median of 5 years, down from 10 years for buyers in 2010.

The typical vacation-home buyer was 50 years old, had a median household income of $88,600 and purchased a property that was a median distance of 305 miles from the primary residence; 35 percent of vacation homes were within 100 miles and 37 percent were more than 500 miles. Buyers plan to own their recreational property for a median of 10 years.

Lifestyle factors have consistently been the primary motivation for vacation-home buyers, while the desire for rental income drives investment purchases. Vacation homes purchased last year were more likely to be in suburban or rural areas; investment homes were concentrated in suburban locations.

Eighty-two percent of vacation-home buyers said the primary reason for buying was to use the property themselves for vacations, or as a family retreat. Thirty percent plan to use the property as a primary residence in the future, and only 22 percent plan to rent to others.

Half of investment buyers said they purchased primarily to generate rental income, and 34 percent wanted to diversify their investments or saw a good investment opportunity.

Sixteen percent of vacation buyers and 14 percent of investment buyers purchased the property for a family member, friend or relative to use. In many cases the home is intended for a son or daughter to use while attending school.

Forty-two percent of vacation homes purchased last year were in the South, 30 percent in the West, 15 percent in the Northeast and 12 percent in the Midwest; 1 percent were located outside of the U.S.

RSPS Resort & Second-Home Property Specialist

RESORT & SECOND-HOME MARKETS (RSPS) COURSES SCHEDULED IN BULLHEAD, LAKESIDE & PHOENIX

Wednesday, May 23 | Bullhead City | Class Flyer
http://www.aaronline.com/education/class-flyers/120523-rsps-bullhead.pdf
OR
Tuesday, June 12 | Lakeside | Class Flyer
http://www.aaronline.com/education/class-flyers/120612-rsps-lakeside.pdf
OR
Thursday, June 14 | AAR Classroom (Phoenix) | Class Flyer
$79 (includes lunch) | Register Online
http://www.aaronline.com/education/class-flyers/120614-rsps-aar.pdf
http://www.regonline.com/2012rsps

Trainer: Holly Mabery, ABR, GRI
C/E: 6-general

Be a part of this exciting opportunity to learn about the resort area and second-home specialty. This one-day course focuses on the essentials of assisting customers in tourist-driven areas. You'll learn to:

- Develop a second-home clientele
- Identify real estate niches in your market
- Understand 1031 exchanges and how to use them in your marketing
- Recognize how the market shift has impacted luxury & second-home buyers

This is one of the core requirements for NAR's RSPS certification and fulfills the elective course for the ABR designation.

Forty-four percent of investment properties were in the South, 23 percent in the West, 17 percent in the Midwest and 15 percent in the Northeast.

Eight out of 10 second-home buyers said it was a good time to buy. Nearly half of investment buyers said they were likely to purchase another property within two years, as did one-third of vacation-home buyers.

Currently, 42.1 million people in the U.S. are ages 50-59 – a group that has dominated second-home sales since the middle part of the past decade and established records. An additional 43.5 million people are 40-49 years old, while another 40.2 million are 30-39.

"Given that the number of people who are in their 40s is somewhat larger than the 50-somethings, the long-term demographic demand for purchasing vacation homes is favorable because these younger households are likely to enter the market as their desire for these kinds of properties grows, and individual circumstances allow," Yun said.

NAR's analysis of U.S. Census Bureau data shows there are 8.0 million vacation homes and 42.8 million investment units in the U.S., compared with 75.3 million owner-occupied homes.

NAR's 2012 Investment and Vacation Home Buyers Survey, conducted in March 2012, includes answers from 2,241 usable responses about home purchases during 2011. The survey controlled for age and income, based on information from the larger 2011 NAR Profile of Home Buyers and Sellers, to limit any biases in the characteristics of respondents.

The 2012 Investment and Vacation Home Buyers Survey can be ordered by calling 800-874-6500 or online. The report costs $19.95 for NAR members and $149.95 for non-members.

http://www.realtor.org/prodser.nsf/Research

This news release was published by the NATIONAL ASSOCIATION OF REALTORS® (NAR) on March 29, 2012. "The Voice for Real Estate," NAR is America's largest trade association, representing 1 million members involved in all aspects of the residential and commercial real estate industries. Information about NAR is available at www.realtor.org. This and other news releases are posted in the News Media section. Statistical data, tables and surveys also may be found by clicking on Research.

SHARE COMMENT

BPOR Courses:
THE AGENT'S ROLE IN PROPERTY VALUATION

Wednesday, May 9
Southeast Arizona Association of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120509-bpo-sierravista.pdf
OR
Friday, May 11
Prescott Area Association of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120511-bpo-prescott.pdf
OR
Thursday, June 14
Yuma Association of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120614-bpo-yuma.pdf
OR
Friday, July 20
Northern Arizona Association of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120720-bpo-flagstaff.pdf
OR
Tuesday, September 25
Santa Cruz County Board of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120925-bpo-riorico.pdf

This one-day course from NAR provides students with the resources and knowledge to reduce their risk and increase their opportunities. Students will learn about the multiple uses of BPOs, how to evaluate and minimize the risk of the valuation process, ways to identify and use effective tools, and methods for filtering and selecting comparables in order to create professional and accurate BPOs. This class also offers you the option of earning NAR's new certification, BPOR (BPO Resource).

$79 (includes lunch)
Register Online
http://www.regonline.com/bpo2012

Instructor: Frank Dickens
CE: 6-legal issues

SHARE COMMENT

10 THINGS REALTORS® SHOULD KNOW ABOUT SEPTIC SYSTEMS

BY DR. KITT FARRELL-POE & DAWN LONG

As long as people have lived in relatively concentrated populations, there has been a need for sanitary disposal of human wastes. Over 3,000 years ago, Indus Valley residents had bathrooms with water-flushed latrines that emptied into pits similar to modern septic tanks. In the United States, early sanitation consisted of outhouses with earthen pits. Today, many homes are connected to public sewers; homes not connected to public systems usually have separate onsite treatment systems to treat and disperse household wastewater. This article gives a brief overview of how our modern septic systems work and 10 things that REALTORS® should know about them.

HOW A SEPTIC SYSTEM WORKS

Septic systems are designed to hold, treat and disperse household wastewater. Household wastewater contains bacteria, viruses, household chemicals and excess nutrients such as nitrates. All of these contaminants can cause health-related illnesses if not treated properly.

Septic systems have two major parts: a septic tank and a soil treatment area. Wastewater from toilets, sinks, showers and other drains flows from the household sewer drain to an underground septic tank. Waste components then separate with the heavy solids settling on the bottom, forming a sludge layer. The grease and fatty solids float to the top, forming a scum layer. Normal bacterial action in the tank will partially decompose the solids.

With normal use, solids will build up in the tank and must be removed periodically by a professional contractor. The relatively clear layer of wastewater in the middle is called effluent. Effluent flows from the septic tank outlet to the soil where most of the treatment process occurs.

The soil treatment area, also known as the drainfield or leach field, consists of gravel-filled trenches containing plastic chambers or perforated plastic pipe. This underground portion of the system accepts effluent from the septic tank outlet. Effluent moves through the pipes and seeps into surrounding soil for final treatment. Soil particles filter out small suspended solids and organic matter, while soil bacteria break down potentially harmful microorganisms and other organic components. Most viruses adhere to clay particles in the soil and eventually die. The now treated effluent continues its flow through the soil layers.

A properly designed, installed and maintained septic system should protect the environment and provide your clients many years of good service.

10 THINGS THAT REALTORS® SHOULD KNOW ABOUT SEPTIC SYSTEMS

1. Do you know the difference between a conventional and alternative system in Arizona? Arizona defines a conventional septic system as one that has a septic tank followed by a trench, bed, chamber or seepage pit. An alternative system is anything else.

2. Did you know that using a cesspool as the property's wastewater system is illegal in Arizona? Cesspools take the property's wastewater and deliver it to a hole in the ground. These systems have been illegal since the 1970s.

3. Did you know that your septic system is supposed to treat and disperse the sewage from the property (not just make it "go away")? A well-functioning septic system will prepare the property's sewage so that the effluent is safe for people and the environment.

Related AAR Form

ONSITE WASTEWATER TREATMENT FACILITY ADDENDUM

http://www.aaronline.com/documents/OSWWTFA.pdf

This discloses to the buyer that an onsite wastewater treatment facility exists on the property and outlines what information the buyer will receive from the seller and in what timeframe.

(Last revised 10/06)

4. Did you know that your septic system works much like your body in the way it treats and disposes of wastes? If you shouldn't put it in your body, then you probably shouldn't send it down the drain to your septic system. You can actually make your septic system sick or kill it.

5. Did you know that a septic system is truly a system and not just a tank in the ground? The soil treatment portion of the system is critical to the life of the system. If it has been built on, covered over (including improper landscaping) or disturbed, it will not treat the sewage properly, and the system will probably not last long.

6. Did you know that septic systems have a limited life span? The usual design life of a septic system is 20 years. With careful management and care of the system, it can last much longer. But if the septic system has been overloaded or otherwise abused, then the system might not last its full design life.

7. Do you know two of the most common causes of failure for a septic system? 1) Using too much water; and 2) Not checking the septic tank for solids and scum. Using too much water can disrupt the septic tank settling and push solids into the soil treatment area, clogging the soil pores. A septic tank should be checked for the level of solids and scum in the tank. It is not necessary (and it's expensive) to pump a tank that does not have an excessive build up of solids and scum layers, BUT it's equally as bad to not pump out a tank that is becoming too full.

8. Did you know that a malfunctioning septic system can pollute the groundwater and adversely affect the public health and that of the environment?

9. Did you know that septic tanks are not supposed to leak? Since 2005, wastewater tanks, including septic tanks, are supposed to be watertight. Many older tanks leak untreated sewage into the environment. This can be caused by many things such as cement deterioration, cracks caused by settling, being driven over or rotting of fiberglass or steel tanks. When you look into a septic tank, it should have liquid right up to the outlet pipes. Effluent below the outlet pipe could mean that the septic tank needs to be inspected for leaks.

10. Did you know that all conventional and alternative septic systems are required to be inspected when a property is sold? The only exception is for systems that are new and have not been used yet.

REALTORS® are a primary source of information for the buyer and seller. This article is intended to help you inform your client. For more information on household septic systems, visit the Arizona Extension publications web page.

http://ag.arizona.edu/pubs

Thanks to Dave Bartholomew, Jonathan Catlin, Brian Chiordi, Jake Garrett and Randy Phillips for their contributions to this article.

SHARE COMMENT

ABOUT THE AUTHOR

Dr. Kathryn (Kitt) Farrell-Poe *is a Water Quality Extension Specialist and Professor in the Agricultural & Biosystems Engineering Department at the University of Arizona. She is the State Extension Water Quality Coordinator and directs the University of Arizona's Onsite Wastewater Education Program. She's originally from Ohio, received her B.S. in Agricultural Engineering from the University of Nebraska-Lincoln, her M.S. in Agricultural Engineering from Purdue University and her Ph.D. in Civil/Environmental Engineering from Purdue University. She has been educating practitioners, regulators, real estate professionals and homeowners about onsite wastewater treatment systems since 2000.*

Short Sale Decision Timelines Set by Fannie and Freddie

On April 17, in a five-page bulletin, the GSEs issued new guidelines for Fannie Mae- and Freddie Mac-backed loans. As of June 15, 2012, agents working with distressed homeowners should expect to receive a decision on the short sale offer within 30-60 days. Service providers must comply with the new time frames as described in the bulletin. For more information about the initiation of the time frames, read the DSNews article "Fannie and Freddie Set Timeline Requirements for Short Sales." (This update was originally published on the short sales portion of AAR's blog.)

http://www.freddiemac.com/sell/guide/bulletins/pdf/bll1209.pdf

http://www.dsnews.com/articles/fannie-and-freddie-set-timeline-requirements-for-short-sales-2012-04-17

http://blog.aaronline.com/2012/04/short-sale-decision-timelines-set-by-fannie-and-freddie/

http://blog.aaronline.com/category/short-sales/

SHARE COMMENT

DUTY TO INVESTIGATE

Prevent an Article 16 Violation by Making Sure a Prospect Isn't Already Represented

BY PETER J. CHRISTENSEN, J.D., UTAH ASSOCIATION OF REALTORS® LEGAL COUNSEL

For several years, I have had the opportunity to teach a class on the topic of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics. As I go out to teach and talk with agents, I hear similar questions and see common misunderstandings about certain parts of the Code of Ethics. One of most common questions has to do with Article 16 and an agent's duty to determine whether or not a prospective client has contracted with another agent for the same services.

HYPOTHETICAL SITUATION

Article 16 says REALTORS® should not interfere with the exclusive agency agreements of other REALTORS®. When I teach Article 16, I always start with the following hypothetical situation:

Dwight Agent has a friend of a friend, Angela Client. At a birthday party for their mutual friend, Dwight and Angela strike up a conversation. Angela mentions she is looking for a house to buy, one that can fit a lot of dogs.

Dwight decides to seize the opportunity for new business, and he tells Angela he could help her in her search. Dwight asks Angela whether or not she is currently working with any other agents. She says she was using one for a while, but it wasn't working out, so she is now looking on her own. But she is willing to give Dwight a shot. Dwight tells her that as long as she is not currently being represented by another agent, he can be her agent. They sign an exclusive agency agreement right there at the party and begin searching for a dog-friendly home the very next day.

Unbeknownst to Dwight, Angela is still under contract with Bernard the Agent. Angela had asked Bernard to release her from their contract but had never actually received a release.

AGENCY AGREEMENTS

After explaining this hypothetical situation, I ask my classes two questions:

1. **Does Dwight have a problem?**
2. **Is it enough that Dwight asked Angela if she was working with somebody else?**

Hopefully the answer to the first question is obvious. Yes, Dwight has a problem. His client is contracted to two different agents to provide the same service.

The second question, however, usually produces a variety of responses. Some agents say, "Yes, you should take your clients' word that they aren't represented and that should be good enough." Other agents aren't as sure and answer with, "I would hope that asking them is enough, but maybe not." And still others say, "I always double check my clients' answers; they don't know these things."

I usually follow up with this question, "Can't you trust your buyers?" After the laughter dies down, I ask, "Do buyers always understand the agency contracts they sign? Do they?"

I have heard, countless times, clients recount how they "fired" their agent. When asked how they did this, they tell how they called their agent and said, "You're fired."

Article 16, Standard of Practice 16-9

NATIONAL ASSOCIATION OF REALTORS® CODE OF ETHICS

"REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service."

Is this enough to terminate a signed agency agreement? Not if they have signed a buyer-broker agreement. A buyer-broker agreement is a binding contract and requires a mutual release before it is terminated. That means the broker and the client both need to agree to terminate the contract.

Buyers often don't understand the nature of the buyer-broker agreement. This means you can't always trust your client's answer, not because they aren't telling the truth, but because they may not understand how to properly end their relationship with an agent.

ARTICLE 16 – DUTY TO INVESTIGATE

Take a look at Article 16 of the Code of Ethics. In Standard of Practice 16-9, it says, "REALTORS®, prior to entering into a representation agreement, have an *affirmative* obligation to make *reasonable* efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service." (Emphasis added.)

Notice that it says agents have an affirmative obligation to make reasonable efforts, meaning the burden is on the agent and not the client. Most of the time, simply asking your clients whether they have been working with another agent will be enough to satisfy your duty under Article 16. But why might asking this question not have been enough in the hypothetical above? What red flag should Dwight have noticed?

Angela told him she had been working with another agent. Remember, Dwight has an *affirmative* obligation to take *reasonable* efforts to make sure Angela is not contracted with another agent. If Angela had simply answered, "no," without any other evidence of a second buyer's agent, Dwight would have been safe to proceed based on Angela's answer. Because she said she *had* been working with an agent, Dwight then had the duty to take further efforts to ensure the client was not still under contract with the other agent.

These further steps could be as simple as asking Angela a few more questions:

"How long ago were you working with the other agent?"

"Did you sign an agency agreement with that agent?" If so, "When was it set to expire?"

"Did you put in any offers?"

Depending on the answers to these questions, Dwight may be safe to proceed or may need to follow up with a few more questions. If Angela says she was working with her cousin two years ago but never put in an offer and never signed anything, then Dwight is safe to represent Angela.

If, however, she answers that she was working with someone a few months ago and put in several offers on properties, then Dwight is probably going to need to investigate further and ask if she has a release or a copy of her agency agreement.

Eventually, if Dwight cannot get a satisfactory answer, he may need to call the other agent and ask if there is still a current agency agreement in place. It may be an uncomfortable phone call, but it will be more comfortable than sitting through an ethics hearing.

The point is that your potential client's answers and circumstances will determine how far you need to go to satisfy your *affirmative* duty to make *reasonable* efforts to determine if your client is already under contract with another agent.

Simply put, if your client gives you any hints that he may be subject to a current exclusive agency agreement, then you, as the agent, have the duty to make sure he is not currently contracted to another agent for the same services. You must continue investigating until you are satisfied your client is free to contract with you.

SHARE COMMENT

ABOUT THE AUTHOR

Peter J. Christensen, J.D., *is legal counsel to the Utah Association of REALTORS®.*
http://utahrealtors.com/

LEGAL HOTLINE

BY MACK, DRUCKER & WATSON

Q&A

The following is for informational purposes only and is not intended as definitive legal or tax advice. You should not act upon this information without seeking independent legal counsel. If you desire legal, tax or other professional advice, please contact your attorney, tax advisor or other professional consultant.

Q&As are not "black and white,"

so experienced attorneys and brokers may disagree. Agents are advised to talk to their brokers/managers when they have questions.

SHORT SALES

http://www.aaronline.com/documents/HL_shortsales.aspx

Seller Should Not Transfer Title to a Trust Prior to a Short Sale

FACTS AS PRESENTED BY THE CALLER:

The agent would like to enter into a contract with a company who will negotiate her short sale contracts. The company says they have contacted the Arizona Department of Real Estate, and they are in full compliance with Arizona laws. The company does not charge the seller anything for negotiations, although they do offer a deed audit for a $500 fee. As part of the negotiation, the company places the house in a trust, which remains in control of the seller.

ISSUE:

Does placing a house into a trust as part of a short sale transaction violate any real estate or banking laws?

ANSWER: See discussion.

DISCUSSION:

As set forth in the Arizona Department of Real Estate Short Sale Seller Advisory, short sale transactions are susceptible to a number of predatory scams. A "red flag" associated with many schemes to defraud involve a scenario in which title to the property is transferred from the borrower's name immediately prior to initiation of the short sale negotiations. Simply put, there is no reason why title should be conveyed from the borrower to any other individual or entity, including a revocable family trust.

In evaluating the propriety of a title transfer in conjunction with a short sale, the borrower should understand why such a transfer is allegedly beneficial. Some third-party negotiators claim that a transfer of title to a revocable family trust is necessary to "protect…the property from any future liens being attached to title." Assuming title is conveyed to avoid any future liens that may legitimately attach to the property, the conveyance of title for this purpose likely constitutes a fraudulent conveyance.

Other third-party negotiators claim that conveyance of title to a revocable family trust is needed to attract potential purchasers and enable specific forms of financing. Claims of this nature rarely prove true, and in fact, if the home was not originally purchased by the trust that is now the seller, this arrangement will often slow the short sale approval process.

In most instances, the use of a revocable family trust is of no benefit to the borrower. Rather, it is designed to maximize the profits of the third-party short sale negotiator who intends to flip the property in a manner often referred to as the "Dovetail Method." Many "investors" use trusts to overcome title seasoning requirements they encounter in the flipping of short sale properties, a scenario in which Party A sells the property to Party B, which then sells the property to Party C. Because such deals virtually never disclose the dual contract to the lender, AKA the flip, they constitute lender fraud. Ultimately, third-party short sale negotiators that instruct a seller to convey their home into a revocable family trust are almost certainly doing so as part of a scheme to flip the property and keep the profit for themselves.

Furthermore, virtually all deeds of trust contain a due-on-sale clause. By conveying title without the lender's approval, the borrower runs the risk that the lender may accelerate the promissory note, declaring the entire balance of the loan immediately payable.

Ultimately, there appears to be no legitimate reason why a property should be conveyed from the borrower to a revocable family trust in advance of a short sale. Rather, such a conveyance is likely being used to facilitate a short

sale flip. However, even if the conveyance is for a legitimate purpose, it is critical to have the borrower obtain independent legal counsel to prepare the trust and ensure that the borrower's ownership rights are protected. The third-party short sale negotiator should never be charged with creating such a trust as doing so creates an opportunity for the third-party negotiator to: (1) swindle the borrower out of title; and (2) assume control of the trust.

Note: Before entering into any agreement with a short sale negotiator, the broker should confirm that the negotiator is complying with all Department of Real Estate and Department of Financial Institutions laws and regulations.

SHORT SALES

http://www.aaronline.com/documents/HL_shortsales.aspx

Approval Letter from Lender Does Not Constitute "Agreement Notice" Contemplated in Short Sale Addendum

FACTS AS PRESENTED BY THE CALLER:

The listing agent receives short sale approval letters from the seller's creditors. Upon receipt, the listing agent emails the approval letters to the buyer's agent via an email stating: "Attached are the Lien Approval Letters. Please let me know if the buyers are going forward." Neither approval letter was signed by the seller.

ISSUE:

Does the email from the listing agent to the buyer's agent constitute an Agreement Notice, as required by lines 22-23 of the Short Sale Addendum to the Residential Resale Real Estate Purchase Contract?

ANSWER: No.

DISCUSSION:

Lines 22-23 of the AAR Short Sale Addendum state: "If Seller and Seller's creditors enter into a short sale agreement, the seller shall immediately deliver notice to Buyer ('Agreement Notice')." In this instance, the buyer was only informed that the seller's creditors had issued short sale approval. The buyer was not informed that the short sale terms offered by the creditors met with the seller's approval or that the seller intended to proceed under those terms. In other words, although short sale approval had been issued, there is nothing to indicate that the terms of that approval met with the seller's satisfaction. Conveyance of the approval letters, absent an express representation that the terms are acceptable to the seller, does not constitute the issuance of an Agreement Notice. Until such time as the seller chooses to issue an Agreement Notice, the seller is not required to proceed with the transaction.

Note: The new AAR Short Sale Agreement Notice should be used in this circumstance to ensure that all parties have a complete understanding of their respective positions.

BROKERAGE

http://www.aaronline.com/documents/HL_Broker.aspx

Designated Broker May Report Agent's Misconduct to Arizona Department of Real Estate and Be Absolved of Administrative Liability

FACTS AS PRESENTED BY THE CALLER:

The broker has a listing for a husband and wife, who live out of state. The broker discovers that, after the husband's death, the agent continues to use blank, pre-signed status change forms signed only by the husband. The broker has since entered into an exclusive listing agreement with the wife to correct the issue.

ISSUE:

Does the broker have an obligation to self-report this issue to the Arizona Department of Real Estate?

ANSWER: No.

Have you signed up for the Legal Hotline?

The Legal Hotline provides all AAR broker members (designated REALTORS® — DRs) free access to a qualified attorney who can provide information on real estate law and related matters.

Find out how brokers can access the Legal Hotline

http://www.aaronline.com/documents/hotline_access.pdf

Browse more Legal Hotline topics online

http://www.aaronline.com/documents/LH.aspx

DISCUSSION:

The Arizona Department of Real Estate does not require the reporting of this issue. However, A.A.C. § R4-28-1103(F) provides that "[a] designated broker who, upon learning of a violation of real estate statutes or rules by a salesperson or associate broker under the broker's supervision, immediately reports the violation to the Department is not subject to disciplinary action by the Department for failure to supervise the salesperson or broker." Accordingly, disclosure is not mandatory, but disclosure would absolve the broker of any administrative liability for failure to supervise the agent.

LANDLORD/TENANT

http://www.aaronline.com/documents/HL_L_T.aspx

Tenant Must Give Landlord Reasonable Access to Make Repairs

FACTS AS PRESENTED BY THE CALLER:

During the residential tenancy, the tenant notified the landlord of an issue needing repair inside the residential rental property. The landlord provided the tenant with a two-day notice that the landlord would be entering onto the property to inspect and/or repair the problem. The tenant took the position that he will only provide the landlord access if the tenant is available to accompany the landlord. The tenant further insisted that the landlord provide the tenant with an estimated timeframe in which to make the needed inspections and repairs.

ISSUE:

Can the tenant condition the landlord's ability to inspect and repair the residential leased property?

ANSWER: See discussion.

DISCUSSION:

Under A.R.S. § 33-1343(A), a "tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises and make necessary or agreed repairs." Section B goes on to state, "if the tenant notifies the landlord of a service request for maintenance as prescribed in A.R.S. § 33-1341, paragraph 8, the notice from the tenant constitutes permission from the tenant to enter the dwelling unit pursuant to section D for the sole purpose of acting on the service or maintenance request." Section D provides that "the landlord shall not abuse the right of access or use it to harass the tenant, thus the landlord, outside of emergencies, shall give the tenant at least two days' notice of the landlord's intent to enter during a reasonable time."

In this instance, the tenant is most likely unreasonably denying the landlord access by requiring that the tenant be present during the inspection and repair as long as the landlord provided the required minimum two days notice and enters the rental property during a reasonable time.

CONTRACTS

http://www.aaronline.com/documents/HL_Contract.aspx

Proof of Funds Is Typically Cash or Other Immediately Payable Funds

FACTS AS PRESENTED BY THE CALLER:

An agent represents a seller in a real estate transaction. The contract requires a substantial down payment. The contract therefore provides that the buyer will furnish proof of sufficient funds prior to close of escrow or the seller can cancel the transaction. The buyer has produced a "Contract for Deed" pursuant to which he receives monthly installment payments. The monthly payment is substantially less than the down payment required in the contract.

ISSUE:

Is the buyer's "Contract for Deed" valid as proof of funds?

ANSWER: No.

DISCUSSION:

Evidence of a receivable for the sale of another property does not constitute sufficient proof of funds for the required down payment. Proof of funds for a down payment is typically evidenced by cash or other immediately available funds.

FORECLOSURES, REOS & LIENS

http://www.aaronline.com/documents/HL_F_L.aspx

A Deed of Trust Is the Most Commonly Used Real Property Security Agreement

FACTS AS PRESENTED BY THE CALLER:

Broker's client is contemplating selling his property with carryback financing, and has asked whether a deed of trust and promissory note or an agreement of sale should be utilized. The client's primary goal is to protect his interest in the property.

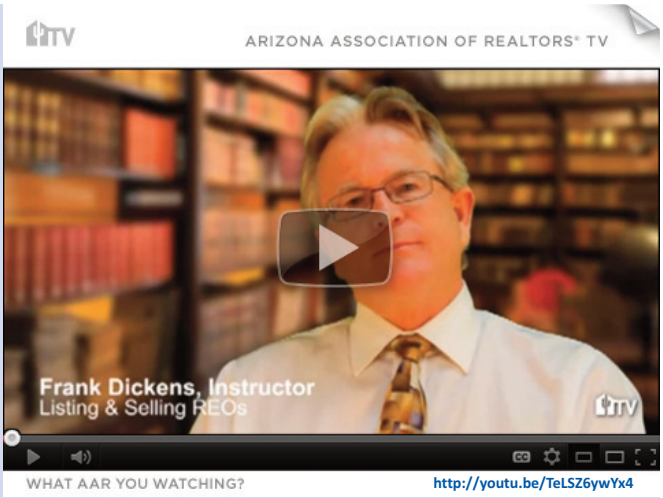
ISSUE:

Does a deed of trust and promissory note provide greater protection for a carryback seller than an agreement of sale?

ANSWER: Probably.

DISCUSSION:

A deed of trust is the most commonly used real property financing instrument in Arizona. They are commonly recognized, and the foreclosure process only takes 90 days. Because of this common usage and the simplicity of the foreclosure process, a note secured by a deed of trust is usually the best financing method.



Listing & Selling REOs Course

Tuesday, May 8
Santa Cruz County Board of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120508-reo-santacruz.pdf
OR
June 6, 2012
Southeast Arizona Association of REALTORS® | Class Flyer
http://www.aaronline.com/education/class-flyers/120606-reo-sierravista.pdf

This NEW course from NAR covers the basics of working with sellers and buyers of REO properties. This is not just about foreclosures! The goal of the course is to enable you to participate in and take advantage of business opportunities presented by the REO market, from small community banks to large investors to probate attorneys and beyond. The course focuses on single-family homes and small multi-family properties. Watch a short video preview of the class from instructor Frank Dickens, ABR, SRS, SRES.

http://youtu.be/TeLSZ6ywYx4

Register Online
http://www.regonline.com/2012reo

$79 (includes lunch)
CE: 6-general

SHARE COMMENT

It is strongly recommend that the seller consults with a real estate attorney to more fully understand the differences between these two arrangements and to draft appropriate documents.

FORECLOSURES, REOS & LIENS

http://www.aaronline.com/documents/HL_F_L.aspx

RESPA Prohibits Kickbacks to Agents for Referral to a Loan Officer

FACTS AS PRESENTED BY THE CALLER:

The agent works with REO properties with XYZ Bank (the "Bank"). The Bank is "encouraging" the agent to refer her clients to the Bank's loan officer. Although the Bank does not require the agent to refer her clients to the Bank's loan officer, the Bank has indicated that the agent's referrals will be considered when determining whether the agent will receive future REO listings from the Bank.

ISSUE:

Is it a RESPA violation for the agent to refer her clients to the Bank's loan officer knowing that her receipt of future REO listings from the Bank may be dependent on the referrals she sends to the Bank?

ANSWER: Probably.

DISCUSSION:

Section 8 of the Real Estate Settlement Procedures Act ("RESPA") prohibits kickbacks and referral fees. Section 8(a) provides:

> No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

Therefore, Section 8 prohibits an agent from giving or accepting any "thing of value" for referrals of settlement service business. As a result, real estate agents/brokers cannot receive gifts, prizes, fees or kickbacks (even if they are disclosed) for the referral of business to other settlement service providers.

A "thing of value" includes, among other things, money, services, discounts, commissions and even the opportunity to participate in a money-making program. Payment of a thing of value does not require transfer of money. Any type of consideration that has value to the recipient is covered by RESPA. Even a referral in expectation of a referral back can be considered a thing of value. For example, a mortgage lender who refers business to a real estate broker in anticipation of the referral of closing business to an employee of the mortgage broker would likely be found to have violated RESPA. Further, it is a violation of RESPA for real estate agents/brokers to receive a thing of value, even if the referral agreement is informal and not in writing. Thus, an agent's referral of business to a settlement service provider in exchange for the referral of REO business would likely constitute a RESPA violation.

COMMENT

ABOUT THE AUTHOR

Richard V. Mack *is a shareholder at Mack, Drucker & Watson, which provides the AAR Legal Hotline service. He is a State Bar of Arizona Board Certified Real Estate Specialist and AV rated by Martindale Hubbell. He has also been designated as a Southwest Super Lawyer. Mr. Mack practices commercial litigation with an emphasis on real estate litigation. He is admitted to practice in the state and federal courts of Arizona and before the 9th Circuit Court of Appeals. Mr. Mack graduated Magna Cum Laude from Southwestern College in Winfield, Kansas with a Bachelor of Business Administration, with an emphasis in economics, and received his Juris Doctor from the University of Arizona.*

http://www.mackdruckerwatson.com/

Master Educator Certification Now Available

http://www.aaronline.com/education/master-educator.aspx

You're not the average real estate instructor. You actively engage your audience. You work every day to improve your presentation skills. You make class relevant to your students' businesses.

Why not tell people?

Introducing the Arizona Association of REALTORS® Master Educator Certification

MASTER EDUCATOR

The ME certification was created to recognize Arizona's outstanding instructors and will be awarded to those who have demonstrated an understanding of adult learning principles and delivery skills.

Why should you earn the Master Educator Certification?

- Stand out from the competition
- Gain a marketing edge
- Be recognized for your skills
- Make the hiring decision easier

Criteria

- Fill out and submit the application form
- Attend an instructor development workshop in presentation skills (within two years preceding the certification application)
- Teach a minimum of five classes annually
- Pass a certification examination
- Submit two professional references
- Submit two copies of a 30-minute segment of your teaching
- Remit a non-refundable certification fee of $75 (special roll out price. Expires 5/11/2012)

SHARE COMMENT

You know you're the best of the best. Now it's time to make it official.