

THE RELOCATION REPORT



AN INDEPENDENT NATIONAL NEWS SERVICE FOR RELOCATION PROFESSIONALS

Volume 33, Number 7

April 15, 2010

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Homeowners to Sue Agents over Short Sale Transactions

Short sale transactions are rising dramatically—and so may be lawsuits filed against agents, according to Pamela Simmons from the Law Office of Simmons & Purdy, a company that represents financially troubled homeowners.

Agents unfamiliar with the short sale process may get sellers in trouble by giving them wrong advice about tax ramifications or by overlooking key provisions in sales contracts, she explained.

Some agents, for instance, sign short sale contracts without realizing that a provision buried in the document allows lenders to recover unpaid debt.

A relocation director from Arizona was shocked when lenders asked a transferee to pay back some of the debt forgiven in the short sale transaction. “One of the banks asked (our client) to come up with \$40,000,” she told *Relocation Report*. How was the transferee going to pay for the bill?

“We were doing a short sale because we couldn’t come up with the money,” she said.

In the past, mortgage companies didn’t bother collecting unpaid debt because they figured the costs of tracking down borrowers outweighed the potential returns. Plus, some states prohibited lenders from taking such steps.

But as the housing market settles, more lenders are asking borrowers to pay back the debt.

Simmons said that many short sale agreements now have strings attached to them. The short sale contracts she handles typically require borrowers to sign a promissory note or allow the holder to pursue the deficiency.

Many borrowers, however, say they can’t afford to pay back the debt forgiven, but lenders are not taking no for an answer. Some are pursuing legal recourse to recover the deficiency. What can transferees do? “If you can’t negotiate a deal with the debt collector,” Simmons said, “you have to go into bankruptcy.”

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Homeowners to Sue Agents over Short Sale Transactions

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Homeowners Slapped with Debt Collection Bill Sue Agents

Homeowners stuck with paying a debt they can't afford are blaming agents for overlooking the debt payback contract provisions. "A lot of people (homeowners) are now saying, 'I did a short sale and my broker told me I wouldn't owe any money. Now someone is trying to collect the money.'"

Some are suing their agents for breach of fiduciary duties. Simmons said that the statute of limitations on a breach of fiduciary duty lawsuit is three years. She sus-

pects most of these cases will probably settle out of court, "with the real estate insurance companies agreeing to pay for some of the debt." Homeowners, she said, should consult with lawyers prior to signing a contract.

Banks Change Their Tune

Banks, however, are rethinking their debt collection practices.

The recently implemented Home Affordable Foreclosure Alternatives Program (HAFA) requires borrowers to be fully released from future liability for the first mortgage debt.

Agents Unaware of Tax Ramifications of Short Sale Transactions

Inexperienced agents may give sellers wrong advice about the tax ramifications of short sales, telling sellers that they don't have to pay taxes on debt forgiven when, in fact, such debt is considered income and must be declared to the IRS.

Steve Early, executive vice-president of Mortgage Debt Services (MDS), a foreclosure prevention company, said that, "Homeowners have to know that they'll be declaring (forgiven debt) as income and that thousands of dollars may result in a higher tax liability than originally anticipated."

Agents, he added, are experts in selling and buying real estate, but most are not unfamiliar with the inner-workings of government programs or tax ramifications of short sales.

Who should bear the burden of liability when a seller receives a 1099-C at the end of the year and has to pay taxes on debt forgiven? Homeowners who know ahead of time that they would have to pay taxes on the unpaid debt may pass the short sale process altogether and opt to rent out their houses instead.

Who is at fault when homeowners get slapped with a tax bill they were not expecting to get? That's for the courts to decide, experts said.

Foreclosure Activity Increases 7 Percent in First Quarter 2010

RealtyTrac's U.S.

Foreclosure Market Report for Q1 2010 shows that foreclosure filings were reported on 932,234 properties, a 7 percent increase from the previous quarter and a 16 percent increase from the first quarter of 2009. One in every 138 U.S. housing units received a foreclosure filing during the quarter.

"Foreclosure activity in the first quarter of 2010 followed a very similar pattern to what we saw in the first quarter of 2009: a shallow trough in January and February followed by a substantial spike in March," said James J. Saccacio, CEO of RealtyTrac. "One difference, however, is that the increases were more tilted toward the final stage of foreclosure, with REOs increasing 9 percent on a quarterly basis in the first quarter of 2010 compared to a 13 percent quarterly decrease in REOs in the first quarter of 2009."

We'd love to hear from you ...

Contact our editor, Marcela Kogan, at marcykog1@aol.com with comments, questions and suggestions.

LeadingRE Names Mortgage Debt Services Preferred Vendor

On April 6, Leading Real Estate Companies of the World (LeadingRE) named Mortgage Debt Services (MDS) a preferred vendor.

MDS supports real estate companies by relieving their agents from the task of negotiating potential short sales. “Our services allow agents to focus on their core business, rather than assuming the burdensome tasks related to short sales,” noted Steve Early, executive vice-president of MDS.

“These activities decrease the agent’s effective earning potential because they do not result in the creation of additional transactions,” he added. “By managing the entire short sale process for them, Mortgage Debt Services frees the agent to invest that time in activities directed at generating additional transactions.”

According to Phil Edwards, LeadingRE vice-president, “As short sales become more common, the need to service these transactions in a systematic and effective way has become increasingly important. Mortgage Debt Services has extensive experience in this area, making them the ideal partner to help our member brokerage firms assist clients with short sales.”

What Does Mortgage Debt Services Actually Do?

Mortgage Debt Services (MDS) works with distressed homeowners to avoid foreclosure by providing an array of loss mitigation services including short sale negotiation, according to Steve Early, executive vice-president of MDS.

MDS staff is trained to manage the short sale process from start to finish and to negotiate with lenders to ensure the short sale is approved. MDS consultants, he said, know how different lenders process short sales and have contacts at major lending institutions.

“For someone who has never attempted doing a short sale before,” Early said, “it can be an extremely confusing, long and frustrating process. Unless a homeowner stays on top of the lender constantly, their file can languish or important dates for meeting the lender’s requirements can be missed.”

Much of his job consists of collecting documents from sellers and real estate agents, faxing them to the lender, verifying that the documents were received, and calling the lender frequently to ensure a foreclosure auction has not been scheduled. MDS’ service including:

- Collecting the required documents from the seller and real estate agent(s)
- Faxing or uploading those documents to the lender’s system
- Verifying that documents were received
- Calling the lender frequently to ensure a foreclosure auction has not been scheduled
- Convincing the lender to postpone an auction if one is scheduled
- Following up frequently with the lender to be sure all the required documents are in
- Pressuring the lender to assign the necessary people on their end to get the job done
- Pushing the lender to appraise the property and compare the findings to the broker’s price opinion (BPO)
- Ensuring that the price offered to the lender is presented in the most favorable light
- Collecting any updated documents that are needed
- Preparing the HUD Statement for closing
- Working with the realtor, closing attorney and the lender to ensure the closing can take place.

Real Estate Agents Plead Guilty for Short Sale Mortgage Fraud

A real estate agent admitted defrauding banks in a short sale mortgage fraud scheme, according to a Feb. 19 statement issued by the United States Attorney's Office of the District of Connecticut.

Anna McElaney, 38, a licensed real estate agent residing in Norwalk, pleaded guilty to one count of bank fraud stemming from her involvement in a short sale mortgage fraud scheme.

According to court documents, McElaney worked with Sergio Natera, another real estate agent, to defraud Regions Bank, which held two mortgages on a residential property in Bridgeport. On December 5, 2007, McElaney, the listing agent for the property,

received an offer to purchase the property for \$132,500.

But both agents subsequently told Regions Bank that the highest offer to purchase the property was made by BOS Asset Management, LLC, an entity that Natera controlled, for \$102,375. The bank agreed to a short sale of the property for the lower price, and released its mortgages on the property.

On June 9, 2008, Natera sold the property for \$132,500 to the original bidder, and Natera and McElaney retained the difference in the two sale prices.

McElaney is scheduled to be sentenced on May 10, at which time she faces a maximum term of

imprisonment of 30 years, a fine of up to \$1 million, and an order of restitution. Natera pleaded guilty to one count of bank fraud on Feb. 11. He awaits sentencing.

In July 2009, the U.S. Attorney's Office and the Federal Bureau of Investigation announced the formation of the Connecticut Mortgage Fraud Task Force to investigate and prosecute mortgage fraud cases and related financial crimes occurring in Connecticut. In addition to investigating past mortgage fraud schemes, the Task Force will focus on emerging crime trends that are associated with the growing tide of foreclosures, including foreclosure rescue schemes and short sale schemes.

Retiring Baby Boomers Still On the Go, Study Shows

Whether it's in the Sunbelt or the Rustbelt, a move across the street or across the nation, Baby Boomers are still willing to move to a new place when they retire, according to the 2010 Del Webb Baby Boomer Survey.

According to the survey, nearly a third of older Baby Boomers plan to move in retirement, with more than 50 percent planning to move to a different state, about 25 percent to a different city within the same state, and less than 20 percent within the same city.

Where are Baby Boomers planning to move to?

According to the survey, the Carolinas have emerged as the preferred destination for retirement, while Florida and Arizona remain top contenders. Del Webb currently has six communities in the Carolinas, with five of them opening since 2006 to address this interest in the region as a growing retirement destination.

Two major factors Baby Boomers considered in deciding where to move included an area's cost of living and access to preferred healthcare programs. Surprisingly, the survey pointed out, cultural and recreational amenities, as well as a more favorable climate, ranked higher than being close to family members, including parents, children and/or grandchildren.

The survey confirms that Baby Boomers want, need and lead an active social life. "Their day planners are more scheduled today than ever before and they would have it no other way," its authors said. "They want to take their hard-earned money and stretch those dollars in a community that gives them confidence, not only in the stability of the market, but also a vibrant life. It's great if that community is near their children or grandchildren. But, if it's not, that's okay, too."

HAFAs Speed Up Approval of Short Sales

Short sales are expected to climb sharply this year as home values continue to plunge, leaving many borrowers underwater on their mortgages.

The recently launched Home Affordable Foreclosure Alternatives (HAFAs) Program offers additional options to avoid costly foreclosures including the use of short sales.

HAFAs simplify and streamline the short sales process by providing a standard process flow, minimum performance timeframes and standard documentation. Lenders, for instance, will now have to accept or reject a request for short sales within 10 days.

HAFAs guidelines accomplish the following:

- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds)
- Prohibits lenders from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6%)
- Requires borrowers to be fully released from future liability for the first mortgage debt and, if the subordinate lien holder receives an incentive under HAFAs, that debt as well (no cash contribution, promissory note, or deficiency judgment is allowed)
- Provides financial incentives: \$1,500 for borrower relocation assistance; \$1,000 for servicers to cover administrative and processing costs; and up to a \$1,000 match for investors for

allowing a total of up to \$3,000 in short sale proceeds to be distributed to subordinate lien holders

HAFAs SIMPLIFIES AND STREAMLINES THE SHORT SALE PROCESS BY PROVIDING A STANDARD PROCESS FLOW, MINIMUM PERFORMANCE TIMEFRAMES AND STANDARD DOCUMENTATION.

- Uses standard processes, documents and timeframes/deadlines.

Mortgage Lenders Comply with HAFAs Guidelines

Mortgage lenders are embracing HAFAs as they consider using short sales programs to get rid of troubled mortgage loans.

Some are holding seminars to teach real estate brokers how to conduct short sales. Others are hiring additional staff to handle increased volume, and creating new positions to oversee short sale departments.

Citigroup is placing more emphasis on education. "We are doing more to make people aware about short sales," Mark Rogers from Citigroup tells *Relocation Report*. "We have a short sale hot line number (for agents and home owners) to call."

Merck's CFO Gets over \$500,000 For Relocation Expenses

The merger of Merck and Schering-Plough resulted in massive layoffs, but Merck CFO Peter Kellogg's compensation went up by \$200,000, raising his earning to \$3.7 million, according to an April 12 filing with the SEC.

Kellogg joined the Whitehouse Station, N.J., company in 2007 from Biogen Idec (BIIB), based in Cambridge, Mass.

The SEC filing states that "in accordance with Old Merck's Relocation Policy, expenses totaling \$381,375 related to the disposition of Mr. Kellogg's prior residence were paid on his behalf through Dec. 31, 2009." Under the same policy, Kellogg received \$79,829 in relocation expenses in 2008, and \$42,690 in 2007.

On April 13, a Bnet Blogger speculated that Kellogg's move "coincided with the collapse of the real estate market," and wondered whether Kellogg "was forced to sell his Massachusetts pad at a loss, requiring Merck to make him whole as a result?"

Housing Tax Credits—The Hottest Issue in Corporate Relocation

The most hotly debated issue in corporate relocation today is Federal Housing Tax Credits. “The attention and interest level generated regarding this topic is unprecedented in my 25 years of analyzing relocation tax issues,” David Oltman, president of Relocation Taxes, told *Relocation Report*.

The Worker, Homeownership, and Business Assistance Act of 2009, he explained, has extended the tax credit of up to \$8,000 for qualified first-time home buyers purchasing a principal residence. It also authorized a tax credit of up to \$6,500 for qualified repeat home buyers.

Employees who are “losing their credit” because taxable relocation dollars have been added to their W-2s are asking their companies to address this issue. Of equal concern are the numbers of corporate transferees who have to “pay back” their credit because they have been moved again within three years since taking the initial home buyer tax credit.

“This new 2010 area of the tax code is extremely complex,” Oltman said. “Given that it’s a newly enacted portion of tax legislation, tax professionals are attempting to get their arms around the relevant issues.”

How does the housing tax credit work in relocation-related scenarios?

Oltman provides an example. An employee is asked to accept an assignment and move from a house that they had taken the \$8,000 or \$6,500 home buyer tax credit with-

in three years. If that house is sold for a “profit,” the \$8,000 or \$6,500 credit may have to be paid back to the IRS. On the other hand, if the house is sold for less than an \$8,000/\$6,500 loss, a portion of the credit may also need to be repaid.

If the house is sold for more than an \$8,000/\$6,500 loss, no money will need to be repaid to the IRS.

If employees are transferred and their individual tax situation allows them to take the \$8,000 first time home buyers tax credit on either this year’s tax return (or next year’s as well), the transferee may lose the ability to take the credit because taxable relocation dollars have been added to their W-2.

“If an employee/transferee loses an \$8,000 tax credit ‘because

of the move,’ our current experience indicates that the average cost to the company to gross-up the \$8,000 loss is an additional \$5,000,” Oltman explained. “Therefore, the total of the reimbursement of the relocation caused loss of the homebuyers tax credit and corresponding tax gross up makes the total expense to the company \$13,000.”

Oltman said: “Before a company considers a reimbursement of a loss of a homebuyers tax credit and the corresponding gross up to one of their employees who feel they lost their first time home buyer credit, we emphatically recommend that a complete ‘gross-up audit/tax reconciliation’ should be performed by an experienced tax professional with a strong background with relocation tax-related issues.”

CitiMortgage Gears Up To Comply with HAFA

Will banks comply with HAFA rules and stop collecting remaining debt from homeowners?

“Upon receipt of the agreed-upon sale proceeds in a short sale,” Mark Rodgers, director of City Public Affairs tells *Relocation Report*, “CitiMortgage will release its mortgage lien on the property and will not pursue the customer for the remainder of the debt.

“For short sales under HAFA,” he added, “we would follow the HAFA requirements. For certain properties that do not qualify for HAFA, such as properties not being used as the borrower’s principal residence, we may extend a soft note agreement or otherwise agree to collect the shortage post-sale as part of the deal, so that a short sale can be completed.”

Countrywide Pays \$1.27 Million to Residents Who Lost Homes

Attorney General Richard Blumenthal announced on Feb. 15 that Countrywide Financial is paying \$1.27 million to 370 state residents who lost their homes to foreclosure because of the company's abusive and unfair practices.

Countrywide mailed each eligible Connecticut resident a check for \$3,452.54 under a nationwide agreement Blumenthal's office helped negotiate. The payments are part of a \$113 million settlement.

"My office fought for and won compensation—more than \$3,400 per homeowner—to consumers duped by Countrywide's former management," Blumenthal said. "This money helps consumers who lost their homes begin rebuilding finances mauled by Countrywide's cruel mortgage cons.

"Countrywide's previous management turned the American Dream of home ownership into a nightmare by luring homebuyers into mortgages they could not afford, forcing foreclosure and bankruptcy," Blumenthal added. The company's traps and tricks included bait-and-switch payment terms, encouraging consumers to take out loans they obviously could not afford, and excessive and unjustified fees.

Blumenthal said that Countrywide's new owners did the right thing, "heeding our demand that they compensate consumers who were burnt and bamboozled."

Blumenthal added that he will continue to fight for comprehensive reform vital to preventing future abuses. He explained that the Federal Consumer Financial Protection Agency proposed by Congress is essential to protecting consumers from predatory practices that nearly cost these consumers their homes and almost wrecked the nation's economy.

"COUNTRYWIDE'S PREVIOUS MANAGEMENT TURNED THE AMERICAN DREAM OF HOME OWNERSHIP INTO A NIGHTMARE BY LURING HOMEBUYERS INTO MORTGAGES THEY COULD NOT AFFORD, FORCING FORECLOSURE AND BANKRUPTCY,"

ATTORNEY GENERAL
RICHARD
BLUMENTHAL

"Congress must overcome shameful and shameless banking industry resistance to this crucial watchdog," he said.

Blumenthal alleged that Countrywide's abuses included:

- Improperly inflating consumers' incomes to qualify them for loans they otherwise could not have received
 - Providing loans with different and more expensive terms than consumers were promised
 - Pressuring consumers into mortgages with temporary interest-only payment options when the company knew or should have known they could not afford the higher payments that would come due later
 - Providing variable rate loans to consumers with the assurance they could refinance before interest rates reset, only to later refuse to do so
 - Sending at least one consumer rejected for a home equity loan at one Countrywide office to another company branch where the loan request was approved
 - Demanding Connecticut consumers facing foreclosure pay excessive and inaccurate legal fees in order to reinstate their loans
 - Promising to help homeowners "in financial difficulty to establish suitable payment plans," but instead demanding loan modifications and repayment plans that were unsustainable, unaffordable or unsuitable.
- Encouraging consumers to take out loans the company knew or should have known they could not afford

Federal Judge Awards Homeowners \$2.6 Million in Chinese Drywall Suit

A federal judge in Louisiana ruled that a Chinese drywall manufacturer must compensate American homeowners who bought its product and who must now tear it out because of the corrosive effect its noxious fumes are having on the homes' wiring and plumbing systems.

In the first U.S. trial decision over faulty Chinese drywall, U.S. District Court Judge Eldon Fallon, of the Eastern District of Louisiana, ordered Taishan Gypsum Company, Ltd., to pay seven Virginia families a total of \$2,609,129.99 in remediation damages.

According to Christopher Seeger from Seeger Weiss LLP, the law firm that represented Virginia homeowners, "The message Judge Fallon's ruling sends to thousands of other homeowners who have been victimized is that help is finally coming—they will be made whole after the ravages of inferior Chinese drywall and will not have to bear the substantial costs of repairing their homes to get rid of it."

Seeger said that the U.S. Consumer Product Safety

Commission (CPSC) adopted the law firm's position that homeowners should remove the Chinese drywall and replace any system it has damaged. This case, Seeger said, is just the "opening salvo in what we

hope will be a national effort to make families whole again for having to live with this shoddy, corrosive and toxic gypsum material in their homes."

Who's Where

Sotheby's International Realty Affiliates opens Japan

Sotheby's International Realty in Tokyo. The firm, owned by **Hisashi Kitami**, will serve the Tokyo and Yokohama markets. Kitami has an exclusive 25-year master franchise agreement for Japan.

Better Homes and Gardens Real Estate Network adds **Las Vegas-based RE/MAX Associates** to its network. The company will now operate as **Better Homes and Gardens Real Estate Desert Properties** and will continue to operate under the direction of **Rick Shelton**, corporate broker. The franchise also announced the addition of **Real Estate III**, a Charlottesville-based real estate firm. The company will be called **Better Homes and Gardens Real Estate III**, and will continue to operate under the direction of **Jeff Gaffney**, CEO and chairman, and **Art Pearson**, president and principal broker.

Prudential Relocation announced its new affiliation with **Realty Group**, previously a Century 21 affiliate. The company will operate as **Prudential Indiana Realty Group**, serving consumers from Lafayette to Jeffersonville and from Muncie to Avon. Prudential Indiana Realty Group, a full-service real estate brokerage founded in 1980, operates 12 offices with 500 sales professionals and employees.

The Relocation Report is published twice each month by Federal News Services, Inc.

Publisher and Circulation:

The Federal News Services, Inc.
a division of PaperClip
Communications,
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Little Falls, NJ 07424
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