

Short Sale Task Force
November 10, 2009

The short sale task force has identified some common mistakes agents are making in the field of short sales that could result in agent and or broker transaction problems, liability or discipline. This list is being disseminated to assist REALTORS® engaged in short sale transactions. Short sales are not exempt from the rules and laws governing ~~our~~ other real estate transactions.

Common Violations in Short Sale Transactions

- 1) Multiple Offers for Short Sales are handled no differently than any other transaction. Only one primary offer can be accepted on any property. All other accepted offers must be designated as back-up offers in the order of acceptance priority and all parties notified.
- 2) When an offer is accepted by the seller (not the third parties), a copy of the signed contract must be received by all parties to the transaction.
- 3) SC License Law states that the seller is the owner of record and the third party (lender) in a short sale is merely a contingency, not a necessary party for contract. Approval by the third party is not needed to have a ratified contract.
- 4) Once a contract is ratified, SC License Law requires the earnest money be deposited within 48 hours of acceptance between buyer and seller (not lender).
- 5) SC Contract Law requires that all contracts must have a beginning and ending, price and legal description in order to be enforceable. It is not acceptable to use TBD or "other" related to other party performance and the offer must have a finite ending date.
- 6) It is a violation of SC License Law for an agent to disclose confidential client information without the consent of the client. Rules of confidentiality apply to Short Sales.
- 7) **Code of Ethics – Article 11** states the services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, real estate appraisal, real estate counseling, real estate syndication real estate auction and international real estate.
Realtors shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types for property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.
- 8) Agents with a ratified contract on one property that continue to submit offers on additional properties (with the intention to withdraw the first ratified contract) are placing their buyer client in jeopardy of being bound to multiple contracts to purchase. This practice could not only subject the client to litigation but would also constitute a failure of the agent's fiduciary duty and a violation of agency.
- 9) SC License Law requires the owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission. The form may be delivered electronically through the Internet or other similar methods. Property disclosure forms must be provided even if the property is listed in "as is" condition.
- 10) It is a violation of SC License Law to fail to submit all offers.

- 11) MLS Rules require all short sale listings be properly designated as short sales, or potential short sales and all changes of status must be entered within 72 hours. All other MLS rules apply to short sales.
- 12) **REALTORS® are experts in marketing property not in taxes or the law.** Advise sellers of the potential for liability, credit and tax consequences and to seek advice from an attorney, a certified public accountant or other professional regarding the credit, legal and tax consequences of a Short Sale.
- 13) Variable Commissions is where one amount of commission is payable if the listing broker's firm is the procuring cause of the sale and a different amount of commission is payable if the sale results through the efforts of the seller or a cooperating broker. This term is not applicable to commissions subject to reduction by a lender. Disclosure of potential commission adjustment must be made in the MLS listing information.