When broker handles escrow

Escrow companies are licensed and regulated by the California Department of Corporations under the Escrow Law in Division 6 of the California Financial Code, commencing with Section 17000. The Escrow Law defines “escrow agent” as any person engaged in the business of receiving escrows for deposit or delivery.

The escrow holder acts to ensure that all parties to the transaction comply with the terms and conditions of the agreement as set forth in the escrow instructions. The escrow holder may also coordinate the activities and professional services involved in the transaction, such as the activities of the lender and the title company as well as those between the buyer, seller and broker.

This article briefly discusses the scope of the real estate broker exemption from escrow agent licensing requirements. When a real estate broker acts in the capacity of an escrow holder under the exemption of the Financial Code Section 17006(a)(4), the broker is subject to all the requirements of the Real Estate Laws and the Commissioner's Regulations.

Financial Code Section 17006(a)(4) — Exemptions from Escrow Law

This Financial Code Section requires that “Any real estate broker licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required” is exempt from the Escrow Law.

Short sales — an overview and warning to licensees re: fraud, legal and ethical minefields*

By Wayne Bell, Chief Counsel, and Mark Tutera, Senior Deputy Commissioner

I. Introduction

In the current distressed California residential real estate environment, where many mortgage loan borrowers owe more on their homes than their properties are worth and some have opted to simply walk away from their homes and mail in their keys, so-called short sales have become favored transactions. For a long time, loan modifications were the primary strategy of the day for financially distressed homeowners. However, the results for loan modifications have been anemic at best.

In April of 2010, the federal government will offer financial incentives to push short sales through a program called Home Affordable Foreclosure Alternatives. The program is designed to spur home sales, and it specifically imposes new requirements on lien holders, including requiring certain debt forgiveness, an abbreviated time frame to respond to short sale offers, and provides government payments to homeowners (for moving and/or relocation expenses), servicers, and lien holders.

*The authors thank Deputy Commissioner Summer Bakotich for her comments and review of this article.

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What is a Short Sale?

Because not all real estate professionals are aware of the mechanics of short sale transactions, the following overview is offered as a quick primer.

A short sale is a pre-foreclosure residential real estate transaction where the owner of the mortgage loan, the lender or lien holder (hereinafter sometimes “Lender”), agrees to (i) allow the home owner to sell his or her property for less than – or “short” of -- the outstanding amount owed on the mortgage loan, and to (ii) release the property from the mortgage.

Homeowners who are “underwater” or “upside down” with respect to their mortgage loans, seek to sell their homes “short” to avoid the threat of foreclosure action and to lessen the credit damage that would accompany a foreclosure. Because of the “shortage”, the transaction may involve “debt forgiveness” by the Lender. But this is often preferable to the Lender compared to a foreclosure – which has costs and risks for the Lender in terms of lost payments, eviction, property maintenance, insurance, taxes, fees, and the like -- or a loan modification, with the associated lack of certainty. Also, a short sale gets the non-performing mortgage loan asset off of the Lender’s financial books.

Is a Real Estate License Required to Represent the Parties to a Short Sale?

The simple answer is YES, with some extremely narrow and limited exceptions and exemptions.

A real estate broker license (or a real estate salesperson license where that person is working under the supervision of his or her broker) is required under § 10131 (d) of the California Business and Professions Code (B&P Code) where a person, in a representative capacity on behalf of another, “negotiates loans…or performs services for borrowers or lenders …in connection with loans secured directly or collaterally by liens on real property…” for or in expectation of compensation, “regardless of the form or time of payment.”

In addition, under B&P §10131(a), a real estate broker license (or salesperson license with appropriate supervision by the broker of record) is required of any person who, as a representative of another, “Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property…”

The exceptions and exemptions from the licensure requirement are few and narrowly drawn. For example, a California licensed lawyer is exempt when that person renders services in the course and scope of his or her practice as an attorney. Additionally, if a person is acting solely on behalf of himself or herself, or itself in the case of an entity, there is no need for a real estate license since the person or entity is not acting on behalf of another or others.

Because there is or may be mortgage loan “debt forgiveness” in a short sale, some people and entities argue that they can, and attempt to, consummate short sales on behalf of others without a real estate license by asserting that they are “debt negotiators”, “debt resolution experts”, “loss mitigation practitioners”, “foreclosure rescue negotiators”, “short sale processors”, “short sale facilitators”, “short sale coordinators”, “short sale expeditors”, or some other type of unlicensed short sale or debt specialist.

Yet it is because the loan debt is “secured directly or collaterally by liens on real property” that brings into play the legal mandate for a real estate broker license under California law.

If a real estate licensee wants to take a short sale listing and not conduct the short sale negotiations with the homeowner’s lender, then the licensee must seek to ensure that an unlicensed third party is not performing the negotiations on behalf of the seller.

Criminal Penalties for Those Who Participate in Unlicensed Activities

Those who engage in short sale transactions, including the related “negotiations”, and who are unlicensed (and do not have the benefit of an exception/exemption), are in violation of Continued on page 3
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California law. The penalties include fines and/or imprisonment under B&P §10139.

II. Fraud, and Questionable Conduct and Activities

In addition to seeing unlicensed activities in the market with respect to short sales, the California Department of Real Estate (hereinafter "DRE") has also been alerted to fraudulent short sale transactions. Before discussing an example of short sale fraud that is becoming prevalent, it must be noted that the types and varieties of fraud (some quite elaborate) are many and are limited only by the imaginations of those who commit fraud. Thus, this segment and the succeeding discussion on scenario/scheme variations and legal and ethical minefields, is intended to raise concerns and issues for real estate licensees in California. But it is not intended to be comprehensive in scope.

A. Short Sale Fraud -- Flipping by Unlicensed Entities Using Straw Buyers

In some cases, unlicensed "short sale facilitators" hone in on homes that are on the verge of foreclosure and persuade the lenders to accept "lowball" purchase offers, often times by using "straw buyers", questionable or self-interested broker price opinions or appraisals, and by failing to disclose that a sale at a higher price has previously been put on the table or negotiated.

In this case example, ABC Short Sale Services (hereinafter "ABC" -- the name has been changed for the purposes of this example), an unlicensed "short sale facilitator", contacts a distressed homeowner and tells him that ABC will facilitate the sale of underwater property with the best possible economic outcome to the homeowner. Payments to the homeowner may even be promised to entice interest.

ABC then contacts a licensed California real estate broker (hereinafter "Broker") with little or no knowledge about short sale transactions, and offers to refer a short sale listing to the Broker. For the business, the Broker pays a referral fee to ABC. Once ABC has a Broker on board, ABC requires that the homeowner/seller sign a contract with ABC, in which the homeowner/seller agrees to permit ABC to serve as the homeowner/seller's "short sale negotiator". The contract has language like the following: "Seller agrees that he will no longer market the property and grants to ABC all necessary rights to market, negotiate, and enter into an agreement to sell the property to an unrelated third party".

For its services, ABC charges the homeowner/seller a $395 upfront fee and then a second $195 fee for the negotiation services.

In this case, $480,000 is owed on the mortgage loan to the Lender, a federally insured financial institution, and the fair market value has fallen to $410,000. The property is listed by the Broker for $410,000, and the Broker takes no part in the "negotiations". Because lenders and lien holders do not always require the listing brokers to present to them every single offer made for the short sale property, ABC only presents to the Lender the offer(s) it so chooses. Because ABC controls all of the information provided to the Lender, ABC also decides to withhold legitimate offers from the Lender and convinces the Lender that the home is overpriced at $410,000.

ABC presents its own $340,000 offer to the Lender, in the name of a fictitious buyer or "straw person" (hereinafter "SP 1"). Because ABC has controlled all of the information to the Lender during the listing period, and has withheld legitimate higher offers, the Lender is led to conclude that SP 1's $340,000 offer is the highest and best, and the Lender accepts SP 1's offer.

Following acceptance of SP 1's $340,000 offer, and once escrow is open, ABC will focus on the primary objective of its scam by finding a second, legitimate buyer for more money as a "flip". To accomplish this, ABC, through SP 1, will offer the soon to be newly purchased property for sale via the Multiple Listing Service. ABC will also contact the various buyers' agents who presented offers higher than $340,000 during the short sale listing process, but whose offers were not presented to and withheld by ABC from the Lender.

ABC will inform all prospective buyers' agents that "the short sale property is already in escrow", but that it will be available for immediate sale after the close of escrow.

Buyer 1 is extremely interested in the property, and is willing to pay the fair market value of $410,000. Buyer 1 then agrees to participate in a double or simultaneous escrow and offers $410,000. ABC, through SP 1 (ABC's confederate), concurrently enters into a $410,000 purchase contract for the property with Buyer 1, conditioned upon SP 1 obtaining title, and that the "second" sale to Buyer 1 go through ABC's handpicked lender.

After the closing of the second sale, ABC makes over $70,000, including referral fees from the Broker and fees from the original distressed homeowner/seller.

Brief Analysis of this short sale flipping fraud example: In the case above, ABC has violated the California B&P Code by engaging in real estate licensed activities without a license. Also, they have collected advance fees in violation of California law. Then, they have made a large profit through false pretenses at the expense of a federally insured financial institution, by misrepresenting the value of the home to the Lender. This may constitute federal loan fraud, which is a serious felony offense which is punishable by imprisonment and fines.

The Federal Bureau of Investigation lists variations of short sale flipping as real estate fraud.

B. Short Sale Fraud – Scenario/Scheme Variations and Warnings re: Legal and Ethical Minefields

1. Multiple Lenders and Lien Holders, and Payments Outside of Escrow:

Where more than one Lender or lien holder is involved, the negotiations are complicated. Second and other subordinate lien holders often hold up the short sale transaction, and seek to extract the largest possible payment in consideration for releasing their lien.

Often times there are monies secretly paid outside of escrow, without the knowledge of the senior lien holder. This is a sure
Disciplinary action: September 2009 — November 2009

- A list of actions is not published in this Bulletin until the 30-day period allowed for court appeal has expired or, if an appeal is filed and the disciplinary action is stayed, until the stay is dissolved. Names of persons to whom licenses are denied on application are not published.
- Licensees are listed alphabetically by the District Office region of responsibility.
- The license type is listed in parentheses after the licensee’s name. [REB – Real Estate Broker; RREB – Restricted Real Estate Broker; RES – Real Estate Salesperson; RRES – Restricted Real Estate Salesperson; PRLS – Prepaid Rental Listing Service; RPRLS – Restricted Prepaid Rental Listing Service; REO – Real Estate Officer; REC – Real Estate Corporation]
- Below are brief summaries of various regulations and code sections. The full text of the sections is available on the DRE Web site www.dre.ca.gov under Real Estate Law and/or Regulations.
- Disciplinary actions that are “stayed” means there is “a delay in carrying out” all or part of the recommended discipline.

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### COMMISSIONER’S REGULATIONS

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Vazquez, Angel Ricardo (RES) 13965 Herron St, Sylmar Effective: 10/22/09
Violation: 490, 10177(b)

Vega, Ericka Kyra (RES) 8430 Glendola Dr, Pico Rivera Effective: 11/3/09
Violation: 490, 10177(b)

World Financial Funding, Inc. (REC) 120 S. Victory Blvd, Burbank Effective: 9/23/09
Violation: 2715, 10162, 10165, 10177(d)(g)

Yoo, James (REB, REO) 3435 Wilsdale Blvd, Ste. 1103, Los Angeles Effective: 9/14/09
Officer of: Blue leaf Financial, Inc. Violation: 10137, 10159.2, 10177(d)

Almasi, Azita (RES) 1302 Southgate Ave, Daly City Effective: 11/25/09
Violation: 490, 10177(b)

Hamilton Financial Mortgage Corp. (REC) 17015 Walnut Grove, Ste. 103, Morgan Hill Effective: 11/15/09
Violation: 10176(e), 10177(j)

Huynh, Cindy Tuyet (REB) 37553 Fremont Blvd, Fremont Effective: 11/23/09
Violation: 10176(a)(i), 10177(j)

Jones, Alton L. (RES) 6055 Wood Dr, Oakland Effective: 9/9/09
Violation: 490, 10177(b)

Livermore, William Sealy (REB) 15 Garden Ave, San Rafael Effective: 10/20/09
Violation: 10177(b)

Mendoza, Stephen Aquino (RES) 1302 Southgate Ave, Daly City Effective: 11/25/09
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Moen, Ali R. (RES) 20605 Ashley Way, Saratoga Effective: 10/20/09
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Nitsch, Grail Marie (RES) 18600 Paseo Tierra, Saratoga Effective: 9/9/09
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Oakland Region

Alemasi, Azita (RES) 965 Laurel Glen Dr, Palo Alto Effective: 9/7/09
Violation: 10177(b)

Anthony, Manequa Shavaughn (REB) 4900 Canada Valley Rd, #37, Antioch Effective: 11/3/09
Violation: 490, 10177(b)

Aromas Financial Group, Inc. (REC) 968 Merrey Ave, Fremont Effective: 11/2/09
Violation: 2970, 2972, 10085, 10130, 10137, 10146, 10177(d)

Barajas, Alfredo (REB) 1652 Alum Rock Ave, San Jose Effective: 11/6/09
Violation: 2725, 2726, 2726(a), 2735, 2802, 10159.3, 10160, 10177(e)(b)(c)(i), 10177(d)(g)(h)

Barajas, Juan Manuel (RES) 4914 Wellington Park Dr, San Jose Effective: 11/16/09
Violation: 10177(b)(a)(b)(c)(i), 10177(d)(g)(h)

Barclays Pacific Lending Corp. (REC) 605 E. Tennant Ave, Unit E, Morgan Hill Effective: 11/15/09
Violation: 10176(b), 10177(j)

Boswall, Jeffrey Cary (RES) 1050 Camino Coronado, Rohrnet Park Effective: 11/20/09
Violation: 10177(j)

Buaron, Recio Espayos (REB) 4197 Watkins Way, San Jose Effective: 10/22/09
Violation: 2715, 10162, 10177(d)

Carrasco, Martin Jr. (RES) 3182 Dovey Way, San Jose Effective: 11/16/09
Violation: 10130, 10178(a)(b)(c)(i), 10178(b)(i), 10177(d)

Charis, Darrick J. (RES) 983 Centennial Dr, Brentwood Effective: 11/5/09
Violation: 10177(d)

Feldman, Harry Warren (REB) 6834 Jarvis Ave, Newark Effective: 10/8/09
Violation: 490, 10177(b)

Foxworthy, Kathleen Marie (RES) 6 ½ Willowem Rd, Danville Effective: 9/22/09
Violation: 490, 10177(b)

Guten, Zandra Dee (REB) 580 Grand Ave. #9, Oakland Effective: 10/5/09
Violation: 10177.5

San Diego Region

Barclays Pacific Lending Corp. (REC) 605 E. Tennant Ave, Unit E, Morgan Hill Effective: 11/15/09
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Guten, Zandra Dee (REB) 580 Grand Ave. #9, Oakland Effective: 10/5/09
Violation: 10177.5

Wong, Gilbert M. (RES) PO Box 361805, Milpitas Effective: 10/29/09
Violation: 490, 10177(b)

SACRAMENTO REGION

Adare, Aokee Belanyeh (RES) 2911 Santa Paula Ct., Sacramento Effective: 11/16/09
Violation: 10176(a)(i), 10177(j)

Allofere, Lulu Bardenado (REB) 4600 S. Tracy Blvd., Ste. 114, Edgewood Corporate Center, Tracy Effective: 10/9/09
Violation: 10176(a)(i), 10177(d)(g)(h)

Apostol, Winston Villanueva (RES) 8909 Clancy Ct., Elk Grove Effective: 9/8/09
Violation: 490, 10177(b)

Arce, Hector Abayan (RES) PO Box 580512, Elk Grove Effective: 11/02/09
Violation: 490, 10177(b)

Balalis, Emanuel Michael (RES) 898 San Ramon Way, Sacramento Effective: 9/3/09
Violation: 10176(b), 10177(d)

Blanchard, Donald Mark (RES) 873 S. Artistic Cir., Springville, UT Effective: 10/28/09
Violation: 490, 10177(b)

Crawford, Shane Anthony (RES) 4611 Judson Ave, Unit B, La Mesa Effective: 11/10/09
Violation: 490, 10177(b)

Descampo, Honerato D. (RES) 452 Newhall Dr, Corona Effective: 11/4/09
Violation: 490, 10177(b)

Duever, James (REB) 4425 Eastgate Mall Dr., #130, San Diego Effective: 10/5/09
Violation: 490, 10177(b)

Ferreich, Clemens (RES) 11526 College Way, Encinitas Effective: 11/3/09
Violation: 490, 10177(b)

Gallegos, Edwin E. (RES) 5260 San Pedro Point Ct, Chula Vista Effective: 10/30/09
Violation: 490, 10177(b)

Gray-Medina, Robin Lynn (RES) 510 First Ave, #703, San Diego Effective: 10/5/09
Violation: 490, 10177(b)

Herrmann, Frederick III (REB) 4455 Tawan Ave. #A, San Diego Effective: 10/30/09
Violation: 490, 10177(b)

Joyner, Gregory Thames (RES) 5222 Clarendon Mesa Blvd. #106, San Diego Effective: 10/5/09
Violation: 490, 10177(b)

Khan, Tiffany (RES) 12112 Hunter Green Ct., San Diego Effective: 10/5/09
Violation: 490, 10177(b)

McCarta, Tony-Curtis (RES) 29230 Annadale Rd., San City Effective: 9/15/09
Violation: 490, 10177(b)

McMurray, Randy Alan (RES) 879 Lehigh Ave., Chula Vista Effective: 11/10/09
Violation: 490, 10177(b)
Armienta, Frank Raul (RES)  
1307 West 6th St., Ste 217, Corona  
Effective: 9/9/09  
Violation: 2831, 2833, 2831.2, 2833, 2853, 2953(3), 2951, 10145, 10176(e), 10177(d), 10240  

Ogwo, Anthony L. (RES)  
7717 Forestral Rd., San Diego  
Effective: 9/15/09  
Violation: 490, 10177(b)  

SACRAMENTO REGION  

Art, Susan Evette (RES)  
4053 Robertson Ave, Sacramento  
Effective: 11/10/09  
Violation: 10176(c),(g), 10177(g)(j)  
Right to RREC license on terms and conditions  

San Diego Region  

Perkins, James Robert (RES)  
44041 Orchard Rd., Hinkley  
Effective: 11/25/09  
Violation: 2831, 2831.2, 2833.1, 10145, 10177(d)(g)  
Right to RRES license on terms and conditions  

Kremer, Dustin N. (RES)  
22935 Redwood Rd., Castro Valley  
Effective: 11/10/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Rangel, Steven Raul (RES)  
15300 Ventura Blvd #401, Sherman Oaks  
Effective: 10/29/09  
Violation: 490, 10177(b)  
Right to RRES license on terms and conditions  

Sargent, Leonard Duendele (RES)  
499 Jackie Dr., San Jose  
Effective: 11/10/09  
Violation: 490(a), 10177(b)  
Right to RREC license on terms and conditions  

SACRAMENTO REGION  

Schenkel, Russell Keith (RES)  
4990 Forest Hill Dr., Pleasanton  
Effective: 11/25/09  
Violation: 10159.2  
Right to RREC license on terms and conditions  

Swenson, Eric Stephen (RES)  
P.O. Box 8553, San Jose  
Effective: 10/15/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Barto, Alicia Tanya (RES)  
711 12th St., Paso Robles  
Effective: 9/10/09  
Violation: 10176(a), 10177(g)  
Right to RRES license on terms and conditions  

San Diego Region  

Voigt, Mark Douglas (RES)  
P.O. Box 3602, Vista  
Effective: 10/5/09  
Violation: 490, 10177(b)  

Girod, Anna R. (RES)  
904 S. Main St., Larkspur  
Effective: 11/4/09  
Violation: 490, 10177(b)  
Right to RRES license on terms and conditions  

White, Todd Raymond (RES)  
P.O. Box 3602, Vista  
Effective: 10/5/09  
Violation: 490, 10177(b)  

Cline, Jeanette Ann (RES)  
P.O. Box 5553, San Jose  
Effective: 9/23/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

VOIT, Mark Douglas (RES)  
P.O. Box 3602, Vista  
Effective: 10/5/09  
Violation: 490, 10177(b)  

Schwimer, Brian Steven (RES)  
32126 Harborview Ln., Westlake Village  
Effective: 10/7/09  
Violation: 490, 10177(b)  
Right to RRES license on terms and conditions  

Williams, David John (RES)  
2004 Dallons Dr., Ste 100, Paso Robles  
Effective: 11/2/09  
Violation: 10177(g)  
Right to RREC license on terms and conditions  

Smyth, Peter Michael (REB)  
4316 Marina City Dr., Marina Del Rey  
Effective: 11/13/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Barto, Alicia Tanya (RES)  
711 12th St., Paso Robles  
Effective: 9/10/09  
Violation: 10176(a), 10177(g)  
Right to RRES license on terms and conditions  

San Diego Region  

Williams, David John (RES)  
2004 Dallons Dr., Ste 100, Paso Robles  
Effective: 11/2/09  
Violation: 10177(g)  
Right to RREC license on terms and conditions  

Los Angeles Region  

Girouard, Stephen (RES)  
P.O. Box 3602, Vista  
Effective: 10/5/09  
Violation: 490, 10177(b)  

Ahmed, Afaz (REB, REO)  
305 N. Brookhurst St., Anaheim  
Effective: 9/16/09  
Violation: 10159.2, 10177(d)(g)  
Right to RREC license on terms and conditions  

Stillwell, Blaise Charles (RES)  
P.O. Box 662, Carlsbad  
Effective: 10/5/09  
Violation: 490, 10177(b)  

Girod, Anna R. (RES)  
904 S. Main St., Larkspur  
Effective: 11/4/09  
Violation: 2731, 2831, 2831.1, 2832.1, 2834, 2835, 10145, 10177(d)  
Right to RREC license on terms and conditions  

Los Angeles Region  

Colette, Gregory (RES)  
21113 Devonshire St. #433, Chatsworth  
Effective: 10/5/09  
Violation: 10130, 10177(d)  
Right to RREC license on terms and conditions  

Townsend, Jane Hamburger (RES)  
2810 Warner Ave., Apt. 254, Irvine  
Effective: 11/13/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Armas, Reyes (RES)  
770 W. Hemlock St., Port Hueneme  
Effective: 10/29/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Harrington, John DeForrest (RES)  
3113 10th St., Ste 108, Huntington Park  
Effective: 11/12/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Rangel, Steven Raul (RES)  
15300 Ventura Blvd #401, Sherman Oaks  
Effective: 10/29/09  
Violation: 490, 10177(b)  
Right to RRES license on terms and conditions  

Sargent, Leonard Duendele (RES)  
499 Jackie Dr., San Jose  
Effective: 11/10/09  
Violation: 490(a), 10177(b)  
Right to RREC license on terms and conditions  

Los Angeles Region  

Cline, Jeanette Ann (RES)  
P.O. Box 5553, San Jose  
Effective: 9/23/09  
Violation: 490, 10177(b)  
Right to RREC license on terms and conditions  

Dumlao, Raul (RES)  
1290 Frederick St., Ste. D, Moreno Valley  
Effective: 10/15/09  
Violation: 10159.2, 10165, 10166, 10177(d)(g)  
Right to RREC license on terms and conditions  

Similarly, the table continues with entries for the SAN DIEGO REGION, CRUZ, FORRESTAL, and other regions, each detailing the licensees' names, addresses, violations, effective dates, and respective conditions or restrictions. The entries cover a range of violations and conditions, including license suspensions, restrictions, and other regulatory actions.
SUSPENDED

LOS ANGELES REGION

Minassian, Ronald (REB, REO)
411 N. Central Ave., #100, Glendale
Effective: 11/20/09
Violation: 2831, 2831.1, 2831.2, 2832(d), 2840, 10145, 10159.2, 10177(d)(h), 10240
Suspended for 30 days

Shaboud, Arthur Joseph (REB, REO)
411 N. Central Ave., #100, Glendale
Effective: 11/20/09
Violation: 2831, 2831.1, 2831.2, 2832(d), 2840, 10145, 10159.2, 10177(d)(h), 10240
Suspended for 30 days

U S Capital Funding Corporation (REC)
12411 Neda Dr., Granada Hills
Effective: 10/3/09
Violation: 2831, 2831.1, 2831.2, 2832(d), 2840, 10145, 10177(d), 10240
Suspended for 30 days

OAKLAND REGION

Foppiano, Peter Carl (REC)
16001 Healdsburg Ave., Healdsburg
Effective: 11/23/09
Violation: 2726, 2726, 2731, 10148, 10177(d)(g), 10240
Suspended for 30 days

Gonzales, Gerald Steven (RES)
365 Clark St., Crockett
Effective: 11/12/09
Violation: 10177(g)
Suspended for 30 days

FRESNO REGION

Bot, Joan Marie (REB)
16439 Curtis Trail, Faimitz Park
Effective: 9/8/09
Violation: 2831, 2831.1, 2831.2, 2832, 2905, 2906(c), 10145, 10148, 10177(d), 10240
Suspended for 60 days—30 days stayed for 2 years on terms and conditions

RCA Properties, Inc. (REC)
711 12th St., Paso Robles
Effective: 9/1/09
Violation: 10177(g)
Suspended for 60 days—stayed for 2 years on terms and conditions

Williams, Elissa K. (REB)
711 12th St., Paso Robles
Effective: 9/1/09
Violation: 10177(g)
Suspended for 60 days—stayed for 2 years on terms and conditions

Brown, Patricia Gall (REB)
56100 29 Pahmye Ave., Yucaipa Valley
Effective: 11/6/09
Violation: 2831, 2831.1, 2831.2, 10145, 10177(d), 10232(c)(1), 10240
Suspended for 90 days—45 days stayed for 2 years on terms and conditions

SUSPENDED WITH STAY

Capital Direct Lending Corporation (REC)
3 San Joaquin Plaza, Ste. 250, Newport Beach
Effective: 10/16/09
Violation: 2731, 2840, 10159.5, 10177(d)(g), 10232(c)(1), 10240
Suspended for 60 days—stayed for 2 years on terms and conditions

Gateway Funding Corporation (REC)
25255 Cabi Rd. #208, Laguna Hills
Effective: 11/20/09
Violation: 2831, 2831.1, 2840, 10145, 10177(d)(g), 10240
Suspended for 60 days—30 days stayed for 2 years on terms and conditions

Minassian, Ronald (REB)
411 N. Central Ave., #100, Glendale
Effective: 11/20/09
Violation: 2831, 2831.1, 2840, 10145, 10177(d)(g), 10240
Suspended for 60 days—30 days stayed for 2 years on terms and conditions

Gomez, David William (REB, REO)
821 W. Beverly Blvd., Montebello
Effective: 11/25/09
Violation: 2831, 2831.1, 2840, 10145, 10177(d)(g), 10240, 10226.4
Suspended for 60 days—30 days stayed for 2 years on terms and conditions

Hernandez, Francisco Guillermo (REB, REO)
8141 East 2nd St., Ste. 620, Downey
Effective: 10/30/09
Violation: 10169
Effective: 10/16/09
Suspended for 60 days—stayed for 2 years on terms and conditions

Hulbert, Michael (REB, REO)
3 San Joaquin Plaza, Ste. 250, Newport Beach
Effective: 10/16/09
Violation: 10149
Effective: 10/16/09
Suspended for 60 days—stayed for 2 years on terms and conditions

Juniper, David Allen (REB, REO)
26200 Enterprise Ctr. #230, Lake Forest
Effective: 9/23/09
Violation: 10130, 10131.1(c), 10177(d)(g)(3), 10240(c)
Suspended for 60 days—stayed for 2 years on terms and conditions

Ogami, Tienou (REB, REO)
8320 Florence Ave., Downey
Effective: 10/14/09
Violation: 2726, 2731, 2832.1, 2832(d), 2840, 2840.1, 2905(d)(g)(h), 2906, 10145, 10159.5, 10177(g), 10240
Suspended for 90 days—stayed for 2 years on terms and conditions

Williams, Elissa K. (REB)
711 12th St., Paso Robles
Effective: 9/1/09
Violation: 10177(g)
Suspended for 60 days—stayed for 2 years on terms and conditions

Osorno, Bertha Margarita (RES)
2515 E. Chestnut Ave, Orange
Effective: 9/1/09
Violation: 10130, 10177(d)
Suspended for 45 days—25 days stayed for 1 year on terms and conditions

Pellizzon, Paul Anthony (REB, REO)
25255 Cabot Rd. #208, Laguna Hills
Effective: 11/20/09
Violation: 2831, 2831.1, 2840, 10145, 10177(d)(g), 10240
Suspended for 60 days—stayed for 2 years on terms and conditions

Reed, Paul Henry (REB)
2855 E. Coast Hwy, Ste A, Corona Del Mar
Effective: 11/16/09
Violation: 2751, 10148, 10162, 10177(d)
Suspended for 60 days—stayed for 2 years on terms and conditions

San Diego Region

Peay, Lester L. (REB)
631 14th Street, Poway
Effective: 10/26/09
Violation: 10148, 10159.2
Suspended for 90 days—60 days stayed for 2 years on terms and conditions

Robe, Michael Welles (RES)
410 Jamacha Rd., Ste. 101, El Cajon
Effective: 9/15/09
Violation: 10177(g)
Suspended for 30 days—stayed for 2 years on terms and conditions

Vaca, Eric William (REB)
1525 Ketner Blvd., San Diego
Effective: 10/16/09
Violation: 2731, 2847.3, 2848(4), 2848(6), 2848(12), 2848(16), 2848(17), 2848(18), 10139.2, 10195.9, 10177(d), 10235, 14702, 14753.6
Suspended for 50 days—stayed for 2 years on terms and conditions

LICENSE SURRENDERED

LOS ANGELES REGION

Canyon Capital Funding Corp. (REC)
151 Torba, Tustin
Effective: 9/21/09

Capital Home Corporation (REC)
10021 Thomas St., Ste. 300, Rancho Santa Margarita
Effective: 11/20/09

Cirson, Eugene (REB)
5281 Dartmouth Ave., Westminster
Effective: 9/2/09

Gano, James Stephen Jr. (RES)
393 Box 7075, San Dimas
Effective: 11/16/09

Grimes, Wayne Wray (REB, REO)
30112 Pixie, Running Springs
Effective: 11/16/09

Los Angeles County</div>
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Short Sales
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sign of fraud. Such undisclosed payments are likely illegal. The economic substance of and all payments in the short sale transaction should be disclosed on the HUD 1 statement. There should never be dual or multiple contracts, only one of which shows the true purchase price.

Added Twist re: Payments Outside of Escrow
– some short sale listing contracts have a provision in an addendum for payments outside of escrow for some amount of money (usually $1,000 up to 1 percent of the sales price) to a third party short sale negotiator, processor, or facilitator, for some unknown or unspecified service. The money is sometimes to be paid by the seller, and other times by the buyer. These may be payments to a confederate of the real estate broker, some affiliate of the broker, and/or an unlicensed short sale entity. It is not known from a review of the addendum whether these fees are paid for a real service, or whether they are “junk” fees paid to increase the monies payable to the real estate licensee. If they are paid for a legitimate purpose, they must be disclosed to all parties to the transaction, including the senior Lender. If they are “junk” fees, or fees paid to an unlicensed entity, they are problematic from a legal perspective.

All such payments may violate RESPA, the Real Estate Law, and other federal and/or State laws.

2. Sometimes the End or Retail Buyer is the Only One Putting Money into the Short Sale Transaction.

Here the end buyer’s money is used to close the transaction, without any or proper disclosure.

3. The Ownership of the Underwater Property is Transferred to Some Sort of Trust.

This may be done to keep the chain of title intact and to hide the true owner of the property. In many cases, the homeowner seller is listed as the beneficiary of the trust.

4. Additional Things to Consider (A Word to the Wise):

(a) Your fiduciary duties are to your principal(s), which cannot be signed away. The duties include honesty, loyalty, confidentiality, full disclosure of all material and relevant facts, skill, care, and diligence, and placing your client’s interests ahead of yours. For a more complete discussion of fiduciary duties that are imposed on California real estate licensees, please see DRE’s Real Estate Bulletin of Summer 2007.

If you are the listing agent, you have a number of fiduciary duties to the seller imposed on you. You certainly cannot delegate your real estate license and fiduciary duties to an unlicensed third party who shuts you off from communication with the short sale lender.

Dual Agency Considerations: Consider also if you are an agent of the third party investor/short sale facilitator. You may have a dual agency situation which raises a whole host of issues. If you are a dual agent, you may have an irrevocable conflict that a dual agency disclosure cannot remedy. By getting the best price for the first buyer/investor, you most assuredly cannot get the best sales price for the seller. If you have listed the home for the seller, your duty should run to that seller. How can it also run to the third party?

(b) Your legal obligations under the California real estate law regarding disclosures, including agency relationships, and the prohibitions against fraud and secret profits.

(c) Real estate licensees wishing to collect an advance fee in
connection with performing short sales must first submit an advance fee contract to the DRE for review and then receive from the DRE the issuance of a no-objection letter relative to that contract. All advance fees collected thereafter under the terms of that contract must be placed in a trust account and handled as client trust funds under the California Real Estate Law and regulations of the Real Estate Commissioner.

(d) By entering into an agreement with a person who is engaged in mortgage fraud (even unwittingly or innocently), you can be held liable both civilly and criminally, and may be the subject of administrative discipline by the DRE.

(e) RESPA's anti-kickback and unearned fee provisions. The U.S. Department of Housing and Urban Development has many informative materials on RESPA and the prohibitions against giving or receiving any fee, kickback, or any thing of value for the referral of settlement service business.

(f) By participating in a short sale fraud, with artificially deflated offers for the short sale property, you may be defrauding the new lender on the retail sale – in addition to the fraud committed against the short sale Lender. In a typical simultaneous sale transaction, a property is stated as having two different values to two separate lenders – the short sale Lender, and the new retail lender. While one of the values may represent a “distressed” property value, and the other a “non-distressed” property value, an issue regarding fraud is presented.

(g) There is potential harm to the short sale home seller. In addition to not obtaining the highest price for the seller, which is or may be a violation of the law and or your fiduciary duty, the Lender may still require the seller (the original borrower) to pay off the remaining debt. In this case, there is no debt forgiveness. Even where the holder of the first lien allows for debt forgiveness, the holder of the second or subordinate liens might not forgive that debt. A deficiency judgment may then be pursued and obtained by the lien holder(s) for the deficiency. Moreover, the greater the debt forgiveness, the greater the potential tax liability. While the federal government has imposed a freeze on taxing the forgiven amount, State tax law may not do the same. Thus, if the short sale property is sold for the most amount of money that the market will bear, the potential tax consequence to the seller is diminished. Conversely, by accepting an artificially deflated offer, the seller's potential tax liability is increased.

III. Conclusion

Real estate and mortgage fraud hurts everyone. Those who engage in short sale flipping fraud through the use of misrepresented valuations and/or manipulated prices make profits at the expense of lenders, which often times means at the expense of taxpayers. This takes money out of the system that is designed to assist home owners and lenders. Furthermore, it manipulates the value of the real estate market, harms communities, innocent buyers, sellers, and lenders, and may ultimately scare off lenders from doing short sales, or from lending to purchasers of short sale properties.

While this publication addresses one particular type of short sale flipping transaction, and some varying related and other scenarios, California real estate licensees would be well-advised to be completely transparent and to fully disclose, and document the disclosure of, all material information, side-deals, and concurrent and related transactions to all parties to short sale transactions, including, without limitation, all involved third party participants and payments.

Licensees would also be wise to advise their clients to contact and consult with a qualified attorney or tax professional regarding the potential tax consequences of a short sale transaction.

Further, if you are considering engaging in short sale transactions, you should fully educate yourself about the mechanics of the process and the related legal and ethical issues, and work only with legitimate professionals.

Finally, if you become aware of information about fraudulent short sale activity, please contact the DRE’s Enforcement section in Sacramento or at the office closest to you, or via the Internet at http://www.dre.ca.gov/cons_complaint.html. In addition, you may want to contact the California Attorney General’s Office, the U.S. Department of Housing and Urban Development, and the Federal Bureau of Investigation. 🏛
When Broker Handles Escrow Continued from page 1

Financial Code Section 17403.4 – License Disclosure Required of Person Preparing Written Instructions

This Financial Code Section requires that “All written escrow instructions and all escrow instructions transmitted electronically over the Internet executed by a buyer or seller, whether prepared by a person subject to this division or by a person exempt from this division under Section 17006, shall contain a statement in not less than 10-point type which shall include the license name and the name of the department issuing the license or authority under which the person is operating.”

Business and Professions Code Section 10086 (a) – Engaging in Prohibited Activity – Order to Desist and Refrain

“If the commissioner determines through an investigation that ... a real estate broker has engaged in or is engaging in an activity which is a violation of a provision of Division 6 (commencing with Section 17000) of the Financial Code, and which is not exempt pursuant to paragraph (4) of subdivision (a) of Section 17006, the commissioner may direct the person to desist and refrain from such activity by issuance an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.”

Real estate brokers and salespersons received trust funds in the normal course of doing business. They received these funds on behalf of others, thereby creating a fiduciary responsibility to the owners of the funds. The brokers and salespersons must handle, control, and account for the trust funds according to the requirements of the Real Estate Laws and the Commissioner's Regulations. Improper handling of trust funds is a cause for disciplinary action.

The Audit Section of the Department of Real Estate has encountered numerous broker escrow operations with inadequate record keeping and mishandling of escrow trust funds. In many cases, the audit reveals a trust fund shortage in the escrow trust account. Most shortages are due to overdrawn escrow balances, unauthorized disbursements/conversion of trust funds and bank service charges.

When handling escrows under the exemption of the Financial Code Section 17006 (a)(4), a real estate broker is required to follow the requirements of trust funds handling in accordance with the Business and Professions Code Section 10145 and the Commissioner’s Regulations 2830.1, 2831, 2831.1, 2831.2, 2832, 2832.1, 2834, 2835, and 2951.

When handling escrows, a real estate broker must ensure that the escrow receipts and disbursements are handled and accounted for properly, and they should be disclosed in the escrow instructions and the final closing statement accordingly. All escrow disbursements should be made according to the written authorization of the party or parties to the transaction. The final closing statement includes the amount of escrow receipts and disbursements and it should include the name of the person to whom the escrow disbursement is made.

Furthermore, Commissioner’s Regulation 2950 stipulates that the following acts in the handling of an escrow by a real estate broker exempt from the provisions of the Escrow Law (by Section 17006(a)(4) of the Financial Code) are prohibited and may be considered grounds for disciplinary action:

(a) Soliciting or accepting an escrow instruction (or amended or supplemental escrow instruction) containing any blank to be filled in after signing or initialing of such escrow instruction (or amended or supplemental escrow instructions).
(b) Permitting any person to make any addition to, deletion from, or alteration of an escrow instruction (or amended or supplemental escrow instruction) received by such licensee, unless such addition, deletion or alteration is signed or initialed by all persons who had signed or initialed such escrow instruction (or amended or supplemental escrow instruction) prior to such addition, deletion or alteration.
(c) Failing to deliver at the time of execution of any escrow instruction or amended or supplemental escrow instruction a copy thereof to all persons executing the same.

(d) Failing to maintain books, records and accounts in accordance with accepted principles of accounting and good business practice.
(e) Failing to maintain the office, place of books, records, accounts, safes, files and papers relating to such escrows freely accessible and available for audit, inspection and examination by the commissioner.
(f) Failing to deposit all money received as an escrow agent and as part of an escrow transaction in a bank, trust account, or escrow account on or before the close of the next full working day after receipt thereof.
(g) Withdrawing or paying out any money deposited in such trustee account or escrow account without the written instruction of the party or parties paying the money into escrow.
(h) Failing to advise all parties in writing if he has knowledge that any licensee acting as such in the transaction has any interest as a stockholder, officer, partner or owner of the agency holding the escrow.
(i) Failing upon closing of an escrow transaction to render to each principal in the transaction a written statement of all receipts and disbursements together with the name of the person to whom any such disbursement is made.
(j) Delivering or recording any instrument which purportedly transfers a party's title or interest in or to real property without first obtaining the written consent of that party to the delivery or recording.

Lastly, concerning broker supervision, a real estate broker or an officer designated by a corporate broker licensee shall be responsible for the supervision and control of the activities conducted by his or her employees and salespersons. Reasonable supervision includes, as appropriate, the establishment of policies, rules, procedures and systems to review, oversee, inspect and manage as required by the Commissioner’s Regulation 2725 and B&P Code Section 10159.2. When operating an escrow division, real estate brokers should exercise caution to ensure that they comply with all applicable provisions of the Real Estate Law and the Financial Code.
higher price, the buyer/investor will not close the transaction with the lender and simply walk away. While there are many variations on the theme, the one constant is the lack of transparency by licensees involved in facilitating these scams. There is no doubt in some cases this lack of transparency could lead to license disciplinary action.

In this edition of the bulletin, you will find an excellent discussion of the potential perils of short sales and how these perils may affect a licensee. In addition, the DRE has posted a Consumer Alert on short sales with key information for sellers considering a short sale. The alert can be found at: http://www.dre.ca.gov/cons_alerts.html.

As the market and economic environment changes, so will the schemes that take advantage consumers and harm the industry. Just as the Department shifted focus and resources to address loan modification scams, the Department will do so again to combat the emerging scams such as short sale flipping that take advantage of market aberrations. The Department intends to drum out of the business those who look to take advantage of others and breach their legal and ethical duties. Licensees who approach the ever changing market with honesty and integrity and do what is right by all those involved in the transaction will continue to thrive as the market recovers.