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CARLSON LAW GROUP, INC

Third Party Short Sale Negotiators Must Be Licensed

Some Realtors recognize that they may not have the negotiating skills that are necessary to obtain lender approval on a short sale transaction and that using a third-party negotiator may be in the best interests of their clients. However, Realtors must make sure that the third -party negotiator and/or any assistants that may contact the lender or the parties also hold a real estate license. Otherwise, the referring Realtor could be subject to discipline by the DRE for being involved in unlicensed conduct or an illegal payment of commissions.

The DRE takes the position that, because a mortgage loan is "secured directly or collaterally by liens on real property," negotiating a short sale is an act that requires a license under Business and Professions Code Sections 10131 (a) and (d).

When a complaint is received concerning a short-sale transaction the DRE will ask the Realtors involved for letters, emails or telephone logs to or from a lender. The DRE will then attempt to identify the individuals who had any communication with the lender or who received payments for negotiating the short sale. If the DRE finds that someone without a license communicated with the lender all of the Realtors involved in the transaction could be subject to discipline for referring a principal to an unlicensed individual or for paying an illegal commission. Therefore, it is critical to know who will be negotiating a short sale and to confirm that person is licensed before making a client referral.

Speaking Engagements

Mark Carlson will give a seminar on Termite Operator liability claims to American Safety Insurance Company in May.

Roger Honey presented a mock trial to class at Menlo college in April emphasizing opening argument techniques

Mark Carlson will also give a presentation regarding Appraiser's liability to another insurance group in May

Contact us to schedule a Risk Management Seminar for your office

Appellate News

CLG has been "in the sheets" this quarter. The following is a list of recent appellate decisions that were decided in favor of CLG's clients:

Cyr v. McGovern 204 Cal.App.4th 1471

Glen Oaks Estates HOA v. Re/Max Premier 203 Cal.App4th 913

3118 LLC v. CBD Inv. B234706

Sanchez v. Keller Williams B222606

Signing a False Loan Application Could Mean Jail

Your signature could be a symbol of regret rather than identity. A seldom discussed aspect of the mortgage industry meltdown is the number of loan applications containing false information that were signed by borrowers. Every loan application contains language where the borrower swears that the information within the loan application is true and correct. Some require the borrower make this promise under penalty of perjury.

Now that lenders and the FDIC are trying to recoup losses on defaulted loans, loan applications are being revisited to determine if they contained any false information. When false information is discovered, borrowers and loan brokers are being sued based upon the false verification of accuracy.

The excuse that the borrower did not read the loan application before it was signed has been rejected by several courts. Similarly, a claim that borrower was told by the loan broker that the loan application was accurate is not a valid defense.

The law presumes that when someone signs a document, he or she understands its contents and intended to be bound by its contents. A borrower is precluded from saying that he or she did not read a signed document or that the contents of the document were different from his or her understanding. *Larsen v. Johannes* (1970) 7 Cal.App.3d 49.

The potential exposure to a borrower or loan broker includes criminal penalties as well. In 2009, the California Legislature enacted Penal Code Section 532f. Under Section 532f, it is a felony to make "any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process." Under Federal law, it is a felony to provide any false information by "wire" or through the mail. As such, exaggerating income or claiming a house will be owner-occupied when it is not, is not a white lie – it is a felony.

Internet Scam on Realtors

There is a scam that is going around directed to Realtors who have websites with listing information. The scam begins with an email to a Realtor asking to make a cash offer with a one or two week escrow and either no inspection or an inspection just prior to close.

The "buyer" will explain that because he is travelling outside of his home country he cannot arrange a wire transfer but can have a CPA send a large deposit check. The Realtor will be asked to find a local attorney to accept the deposit check to be deposited into the attorney's trust account. The local attorney will then be asked to draw the deposit check from the funds held in trust.

If the Realtor and local attorney do as asked, the "buyer" will cancel the transaction as soon as the attorney's check is deposited into escrow and will demand the return the deposit back to the "buyer." Meanwhile the check sent to the attorney will be returned as having insufficient funds or for a stop payment order. The "buyer" will time the transfer of funds so that the refund check from escrow gets sent out before the local attorney gets notice that the "buyer's" check has been returned resulting in funds being stolen from the local attorney's trust account.

Securing an REO Property

Realtors who are not familiar with landlord tenant issues may step into trouble when they obtain a listing on an REO property where the former owner has not completely moved out after the foreclosure sale.

There is no specific legal status for a former owner who is still living in a foreclosed property. We have successfully argued in Federal Court that a former owner does not become a tenant or receive the protections due a tenant just because he or she refuses to move out after a foreclosure sale. Unfortunately, most State Court judges do not accept this argument.

Therefore, in order to prevent a lawsuit by a former owner for unlawful eviction or converting personal property left in the foreclosed property, a Realtor with a REO listing should post a Notice of Belief of Abandonment as provided for in Section 1951.3 of the California Civil Code. If the Notice of Belief of Abandonment form is posted on the property and mailed to the former owner's last known address, the property will be deemed to have been abandoned if the former owner does not make contact within 18 days. Contact us for more details or if you do not have a copy of this form.