



COMMISSION COMMENT

Summer | 2012

New Seller Property Condition Disclosure Statement Effective July 1

The newly adopted Seller Property Condition Disclosure Statement (“SPCD”) has been approved by the Commission and adopted through the rule and regulation process. It goes into effect on July 1, 2012.

The form is of course to be filled out by the Seller, but licensees frequently provide the form so they need to be aware of the changes.

Seller’s filling out the form on or before June 30, 2012, should use the old form, seller’s filling out the form on or after July 1, 2012, should use the new form. If the seller becomes aware that information contained on the old form is no longer accurate after July 1, 2012, and they need to amend the statement, they should be advised to use the new form and fill it out so that it is complete and accurate to the best of the seller’s knowledge. A seller may provide the old form on a closing after July 1, as long as the form was filled out before July 1, and the information is still complete and

accurate at the time of closing.

A copy of the new form is included with this issue of the Commission Comment.

Who Must Complete the SPCD?

The requirement for who must fill out the form and when it must be provided to the buyer remains unchanged. Generally speaking it must be filled out by the seller of property used for residential purposes (up to 4 units), with certain exceptions, and provided to the buyer on or before the effective date of the purchase contract on the property. The statutes regarding the SPCD are found at Neb. Rev. Stat. §76-2,120 et seq., which can be found in your license manual or on the Commission’s website under the “Legal” tab.

Changes to the Form

The most noticeable change to the form is in the layout and format, because there are a few more questions on the form it would no longer fit front and back on one legal sized piece of paper. The form is now on four letter sized pages. Because there are separate pages which could get separated or mixed up with other SPCD’s, each page has a space at the bottom for both seller and buyer initials and the property address.

Some of the changes were for logical consistency, the “Age of Roof” question was followed by spaces for a yes or no answer on the old form, this has been eliminated on the new form.

The word “domiciled” was changed to the more simple and direct “lived on”. One of the more prevalent changes to the form allows for more detail on items that may exist in multiple numbers on the property, such as window air conditioners and ceiling fans. The form also asks for year

(Continued on page 10)

Herb Freeman Appointed to the Commission

Governor Dave Heineman has announced the appointment of Herbert Freeman as the Second Congressional District Broker Representative on the Nebraska Real Estate Commission. Mr. Freeman worked as an English instructor both at the high school and college levels before receiving his salesperson’s license in 1972 and his broker’s license in 1973. Mr. Freeman has his Masters degree in business administration from the University of Nebraska and currently works as Chief Operations Officer for NP Dodge Real Estate Sales, Inc., and he is Director of Builder Services and the designated broker for NP Dodge VII, L.L.C., in Omaha.

Further information will be published after he is sworn in at the September Commission meeting.

Commission Meeting Schedule

June 21-22Lincoln
August 23-24Lincoln
September 27-28Lincoln

On the Inside

Director’s Deskpage 2
Disciplinary Actionspage 3
Mortgage Fraudpage 4
New Seller Property Condition Formpage 5

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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.

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DIRECTOR'S DESK

Notary Law Changes

In the last issue of the Commission Comment I mentioned that there was little to report in the way of legislative changes from the last session. There was one change that does appear at first blush to be significant, but further reading of the statutes reveal that it does not have a significant impact on licensees.

New language in the notary laws (LB398, 2012) specifically states that a notary public may not perform a notarial act if they have a financial or beneficial interest in the transaction. We have received a few calls asking about that provision from licensees who are also commissioned as notaries, the obvious concern being if they are getting a commission on a real estate transaction can they still act as a notary on any of the transactional documents. The answer is that they can, as this provision of the law has a specific exemption for real estate brokers, salespersons, and employees of brokers acting on behalf of a client (see Neb. Rev. Stat. 64-211(2)).



Director Greg Lemon

Continuing Education Regulations

Amendments have been adopted to Title 299 Chapters 1 and 7 of the Commission's regulations, the minor changes to the wording simply make it possible for the Commission to continue to approve certain correspondence courses for continuing education and do not have a significant impact on licensees, merely preserving the status quo.

Credit Where Credit is Due

We had a lot of good input from the industry, Commissioners, and even a few lawyers on the revised Seller Property Condition Disclosure Statement, and I want to thank all of those who provided input in creating a better form. However, I want to specifically thank Omaha salesperson Kelly Lewis. Kelly took the initiative to reformat the form, giving it an entirely different look and feel. There was a fairly universal reaction that the revised format would be easier to read and work with, so we went with it.

Greg Lemon, Director
Nebraska Real Estate Commission

Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2011-017 – Tiffany A. Trofino vs. Jeffery Michael Rensch, Broker; Omaha, NE. Stipulation and Consent Order entered March 15, 2012. License censured; Plus a civil fine of \$500.00 to be paid by April 14, 2012; plus six (6) hours of additional continuing education with three (3) hours each in the areas of “Agency” and “Disclosures”, to be completed by July 13, 2012. [Violated Neb. Rev. Stat. § 76-2417(1) A licensee representing a seller or landlord as a seller’s agent shall be a limited agent with the following duties and obligations; (b) to exercise reasonable skill and care for the client; and (c) to promote the interests of the client with the utmost good faith, loyalty, and fidelity; for receiving buyer’s financial documents from Buyer’s Agent on January 10, 2011, and not delivering the financial documents to his seller/clients immediately following receipt.; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson. for violating Neb. Rev. Stat. § 76-2417(1) (b) and (c).]

2012-002 – Commission vs. Robert L. Hupp, Salesperson; Norfolk, NE. Stipulation and Consent Order entered March 15, 2012. License suspended for six (6) months with the first thirty (30) days served on suspension and the remainder five (5) months stayed and served on probation. The suspension period commenced on March 19, 2012, and continued through April 18, 2012. The probation period will commence on April 19, 2012 and will continue through September 19, 2012; Plus complete nine (9) hours of additional continuing education with three (3) hours each in the areas of “Agency”, “Contracts” and “Disclosures”, to be completed by July 13, 2012. [Violated Neb. Rev. Stat. § 81-885.24 (16) for violating an agency statute, specifically, 76-2418 (1), 76-2421 (1), 76-2422 (4), and 76-2425; Violated Neb. Rev. Stat. § 81-885.24 (26) for violating a rule or regulation of the Commission, specifically, Title 299 Chapter 5 Section 003.25; Violated Neb. Rev. Stat. § 76-2425 for violating any provision of sections 76-2401 to 76-2430; Violated Neb. Rev. Stat. § 76-2418 (1) (b) (c) (e) A licensee representing a buyer as a buyer’s agent shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, and (e) To comply with all requirements of sections 76-2401 to 76-2430; Hupp failed to get a pre-occupancy agreement in place during the time period when buyer occupied the property prior to closing from August 2009, to October 9, 2009; Violated Neb. Rev. Stat. § 76-2421 (1) for failing to provide an Agency Disclosure to buyer at the earliest practicable opportunity during or following the first substantial contact with buyer; Violated Neb. Rev. Stat. § 76-2422 (4) for failing to obtain written confirmation of his “dual agency status” from the Seller or POAs prior to or at the time a contract to purchase the property was entered into on August 6, 2009; Violated Title 299 Chapter 5-003.25 for providing buyer with a Seller Property Condition Disclosure Statement which contained omissions in which seller’s POAs failed to provide a response. Hupp was aware of these omissions and failed to attach a written disclosure of the omissions to the Seller Property Condition Disclosure Statement disclosing the omissions to the potential buyer and the seller; Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating Neb. Rev. Stat. §§ 76-2418 (1) (b) (c) and (e); 76-2421 (1) (a) and (b); 76-2422 (4); 76-2425; 81-885.24 (16) and (26); and Title 299 Chapter 5 Section 003.25.]

2011-015 – Patricia Sindelar vs. Terry Lee Forman, Broker; Omaha, NE. Stipulation and Consent Order entered April 19, 2012. License censured; Plus a civil fine of \$250.00 to be paid by May 19, 2012; plus three (3) hours of additional continuing education in the area of “Agency”, to be completed by August 17, 2012. [Violated Neb. Rev. Stat. § 76-2418(1) A licensee representing a buyer or tenant as a buyer’s or tenant’s agent shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the client; (c) To promote the interests of the client

(Continued on page 11)

MEET THE REAL ESTATE COMMISSION STAFF

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff, if you have comments or suggestions as to how we may better serve you, please contact our office.

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Ask for person indicated if you have questions in the following areas.

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Mortgage Fraud/Short Sale Schemes – It is Not Going Away

by Marilyn D. Glazer, GRI, M.S.Ed.

(This article, intended for real estate educators, was reprinted with Permission of the author)

I believe that we have an obligation, as real estate instructors, to familiarize ourselves with mortgage fraud and short-sale schemes in order to alert our students to these schemes.

The FBI has identified the types of mortgage-fraud schemes that they saw in 2010. See their chart below.

Backwards Application Scheme

Incomes are inflated or falsified, assets are created, credit reports are altered, and previous residences are altered to qualify the borrower for the loan.

Fraudulently Inflated Appraisals

The appraisal document is changed

Traditionally, any exchange of property occurring twice on the same day is considered highly suspect for illegal property flipping and often is accompanied by back-to-back closings where there is a purchase contract and a sales contract that are both presented to the same title company

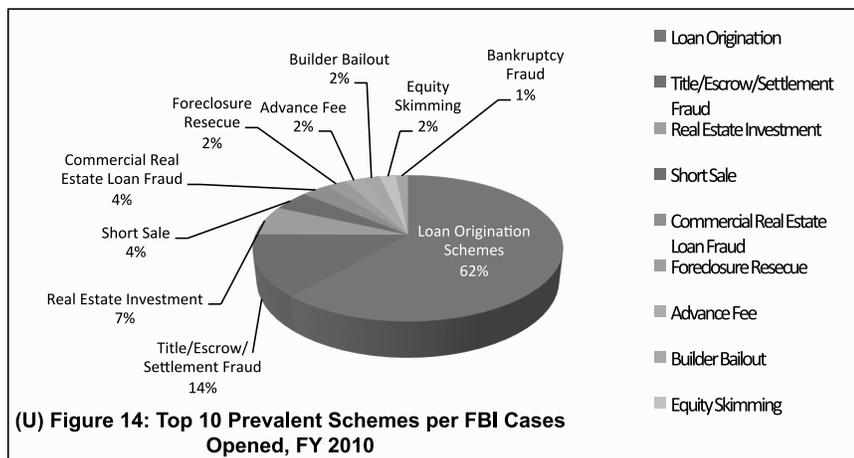
Title/Escrow/Settlement Fraud/Non-Satisfaction of Mortgage

Perpetrators diverted escrow monies intended for lenders to themselves or to entities that they controlled. In addition to embezzling escrow funds, perpetrators are also falsifying deeds, recording deeds without title insurance, and failing to record deeds and taxes.

Real Estate Investment Schemes

In a real estate investment scheme, mortgage-fraud perpetrators persuade investors or borrowers to purchase investment properties generally at fraudulently inflated values. Borrowers are persuaded to purchase rental properties or land under the guise of quick appreciation. Victim borrowers pay artificially inflated prices for these investment properties

(Continued on page 9)



Loan Origination Schemes

One type includes misrepresentations by the applicant for the purpose of purchasing a property for a primary residence. Income may be overstated and debt concealed, their intent is to repay the loan.

Another type of loan-origination scheme includes misrepresentations concerning appraisals and loan documents, and participants are frequently paid for their participation. Supplying of fictitious bank statements, W-2 forms, and tax return documents to the borrower's favor and the use of stolen identities.

Phantom rehabilitations to increase the property values.

Use of daily-money lenders' loans as proof of funds.

or a rogue appraiser will create and attest to the inflated value of the property. Fraudulent appraisals often include overstated comparable properties to increase the value of the subject property.

Illegal Property Flipping

Illegal property flipping is a complex fraud that involves the purchase and subsequent resale of property at greatly inflated prices. The key to this scheme is the fraudulent appraisal, which occurs prior to selling the property. The artificially inflated property value enables the purchaser to obtain a greater loan than would otherwise be possible. Subsequently, a buyer purchases the property at the inflated rate. The difference between what the perpetrator paid for the property and the final purchase price of the home is the perpetrator's profit.

About — Marilyn Glazer

Marilyn D. Glazer has impressive credentials in real estate education and a long record of service to real estate organizations. She is an instructor for pre-licensing, continuing education, brokerage and adult education in real estate. In addition, other instructors throughout the country are using continuing-education courses that she has written. She is an online instructor for Real Estate Express' Illinois pre-licensing and continuing-education courses. She has been recognized as the National Association of REALTORS® 1997 Educator of the Year, and the 1998 Educator of the Year for the Association of Illinois Real Estate Educators.



**NEBRASKA REAL ESTATE COMMISSION
SELLER PROPERTY CONDITION DISCLOSURE STATEMENT
Residential Real Property**

THIS DISCLOSURE STATEMENT IS BEING COMPLETED AND DELIVERED IN ACCORDANCE WITH NEBRASKA LAW. NEBRASKA LAW REQUIRES THE SELLER TO COMPLETE THIS STATEMENT (NEB. REV. STAT. §76-2,120).

How long has the seller owned the property? _____ year(s)
Is seller currently occupying the property? (Circle one) YES | NO If yes, how long has the seller occupied the property? _____ year(s)
If no, has the seller ever occupied the property? (Circle one) YES | NO If yes, when? From _____ (year) to _____ (year)

This disclosure statement concerns the real property located at _____
in the city of _____, County of _____, State of Nebraska and legally described as:

This statement is a disclosure of the condition of the real property known by the seller on the date on which this statement is signed. This statement is NOT a warranty of any kind by the seller or any agent representing a principal in the transaction, and should NOT be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain. Even though the information provided in this statement is NOT a warranty, the purchaser may rely on the information contained herein in deciding whether and on what terms to purchase the real property. Any agent representing a principal in the transaction may provide a copy of this statement to any other person in connection with any actual or possible sale of the real property. The information provided in this statement is the representation of the seller and NOT the representation of any agent, and is NOT intended to be part of any contract between the seller and purchaser.

Seller please note: you are required to complete this disclosure statement IN FULL. If any particular item or matter does not apply and there is no provision or space for indicating, insert "N/A" in the appropriate box. If age of items is unknown, write "UNK" on the blank provided. If the property has more than one item as listed below please put the numbered in the appropriate box. For example – if the home has three room air conditioners, one working, one not working, and one not included, put a "1" in each of the "Working", "Not Working", and "None/Not Included" boxes for that item, and a "3" on the line provided next to the item description to indicate total number of item. You may also provide additional explanation of any item in the comments section in PART III.

SELLER STATES THAT, TO THE BEST OF THE SELLER'S KNOWLEDGE AS OF THE DATE THIS DISCLOSURE STATEMENT IS COMPLETED AND SIGNED BY THE SELLER, THE CONDITION OF THE REAL PROPERTY IS:

PART I – If there is more than one of any item in this Part, the statement made applies to each and all of such items unless otherwise noted in the Comments section in PART III of this disclosure statement, or number separately as provided in the instructions above. If an item in this Part is not on the property, or will not be included in the sale, check only the "None/Not included" column for that item.

<u>Section A - Appliances</u>	Working	Not Working	Do Not Know If Working	None / Not Included
1. Refrigerator				
2. Clothes Dryer				
3. Clothes Washer				
4. Dishwasher				
5. Garbage Disposal				
6. Freezer				
7. Oven				
8. Range				
9. Cooktop				
10. Microwave oven				
11. Built-In vacuum system and equipment				
12. Range ventilation systems				
13. Gas grill				
14. Room air conditioner (_____ number)				
15. TV antenna / Satellite dish				
16. Trash compactor				

<u>Section B - Electrical Systems</u>	Working	Not Working	Do Not Know If Working	None / Not Included
1. Electrical service panel capacity _____ AMP Capacity (if known) _____ fuse _____ circuit breakers				
2. Ceiling fan(s) (_____ number)				
3. Garage door opener(s) (_____ number)				
4. Garage door remote(s) (_____ number)				
5. Garage door keypad(s) (_____ number)				
6. Telephone wiring and jacks				
7. Cable TV wiring and jacks				
8. Intercom or sound system wiring				
9. Built-In speakers				
10. Smoke detectors (_____ number)				
11. Fire alarm				
12. Room ventilation/exhaust fan (_____ number)				
13. 220 volt service				
14. Security System _____ Owned _____ Leased _____ Central station monitoring				
15. Have you experienced any problems with the electrical system or its components? _____ YES _____ NO				If YES, explain the condition in the comments section in PART III of this disclosure statement.

Seller's Initials _____/____ Property Address _____ Buyer's Initials _____/____

Section C - Heating and Cooling Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Air purifier				
2. Attic fan				
3. Whole house fan				
4. Central air conditioning _____ year installed (if known)				
5. Heating system _____ year installed (if known) _____ Gas _____ Electric _____ Other (specify _____)				
6. Fireplace / Fireplace Insert				
7. Gas log (fireplace)				
8. Gas starter (fireplace)				
9. Heat pump _____ year installed (if known)				
10. Humidifier				
11. Propane Tank _____ year installed (if known) _____ Rent _____ Own				
12. Wood-burning stove _____ year installed (if known)				

Section D - Water Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Hot tub / whirlpool				
2. Plumbing (water supply)				
3. Swimming pool				
4. a. Underground sprinkler system				
b. Back-flow prevention system				
5. Water heater _____ year installed (if known)				
6. Water purifier _____ year installed (if known)				
7. Water softener _____ Rent _____ Own				
8. Well system				
Section E - Sewer Systems	Working	Not Working	Do Not Know If Working	None / Not Included
1. Plumbing (water drainage)				
2. Sump pump (discharges to _____)				
3. Septic System				

PART II - In Sections A, B, C, and D if the answer to any item is "YES", explain the condition in the comments Section in PART III of this disclosure statement.

Section A. Structural Conditions - If there is more than one of any item listed in this Section, the statement made applies to each and all of such items unless otherwise noted in the comment section in PART III of this disclosure statement.

Section A - Structural Conditions	YES	NO	Do Not Know
1. Age of roof (if known) _____ year(s)	N / A	N / A	
2. Does the roof leak?			
3. Has the roof leaked?			
4. Is there presently damage to the roof?			
5. Has there been water intrusion in the basement or crawl space?			
6. Has there been any damage to the real property or any of the structures thereon due to the following occurrences including, but not limited to, wind, hail, fire, flood, wood-destroying insects, or rodents?			
7. Are there any structural problems with the structures on the real property?			
8. Is there presently damage to the chimney?			
9. Are there any windows which presently leak, or do any insulated windows have any broken seals?			

Section A - Structural Conditions	YES	NO	Do Not Know
10. Year property was built _____ (if known)	N / A	N / A	
11. Has the property experienced any moving or settling of the following:	-----	-----	-----
- Foundation			
- Floor			
- Wall			
- Sidewalk			
- Patio			
- Driveway			
- Retaining wall			
12. Any room additions or structural changes?			

Section B. Environmental Conditions - Have any of the following substances, materials, or products been on the real property? If tests have been conducted for any of the following, provide a copy of all test results, if available.

Section B - Environmental Conditions	YES	NO	Do Not Know
1. Asbestos			
2. Contaminated soil or water (including drinking water)			
3. Landfill or buried materials			
4. Lead-based paint			

Section B - Environmental Conditions	YES	NO	Do Not Know
5. Radon gas			
6. Toxic materials			
7. Underground fuel, chemical or other type of storage tank?			
8. Hazardous substances, materials or products identified by the Environmental Protection Agency or its authorized Nebraska Designee (excluding ordinary household cleaners)			

Seller's Initials ____/____ **Property Address** _____ **Buyer's Initials** ____/____

Section C. Title Conditions - Do any of the following conditions exist with regard to the real property?

Section C - Title Conditions	YES	NO	Do Not Know
1. Any features, such as walls, fences and driveways which are shared?			
2. Any easements, other than normal utility easements?			
3. Any encroachments?			
4. Any zoning violations, non-conforming uses, or violations of "setback" requirements?			
5. Any lot-line disputes?			
6. Have you been notified, or are you aware of, any work planned or to be performed by a utility or municipality close to the real property including, but not limited to sidewalks, streets, sewers, water, power, or gas lines?			
7. Any planned road or street expansions, improvements, or widening adjacent to the real property?			
8. Any condominium, homeowners', or other type of association which has any authority over the real property?			
9. Any private transfer fee obligation upon sale?			

Section C - Title Conditions	YES	NO	Do Not Know
10. Does ownership of the property entitle the owner to use any "common area" facilities such as pools, tennis courts, walkways, or other common use areas?			
11. Is there a common wall or walls? b. Is there a party wall agreement?			
12. Any lawsuits regarding this property during the ownership of the seller?			
13. Any notices from any governmental or quasi-governmental agency affecting the real property?			
14. Any unpaid bills or claims of others for labor and/or materials furnished to or for the real property?			
15. Any deed restrictions or other restrictions of record affecting the real property?			
16. Any unsatisfied judgments against the seller?			
17. Any dispute regarding a right of access to the real property?			
18. Any other title conditions which might affect the real property?			

Section D. Other Conditions - Do any of the following conditions exist with regard to the real property?

Section D - Other Conditions	YES	NO	Do Not Know
1. a. Are the dwelling(s) and the improvements connected to a public water system? b. Is the system operational?			
2. a. Are the dwelling(s) and the improvements connected to a private, community (non-public), or Sanitary Improvement District (SID) water system? b. Is the system operational?			
3. If the dwelling(s) and the improvements are connected to a private, community (non-public) or SID water system is there adequate water supply for regular household use (i.e. showers, laundry, etc.)?			
4. a. Are the dwelling(s) and the improvements connected to a public sewer system? b. Is the system operational?			
5. a. Are the dwelling(s) and the improvements connected to a community (non-public) or SID sewer system? b. Is the system operational?			
6. a. Are the dwelling(s) and the improvements connected to a septic system? b. Is the system operational?			
7. Has the main sewer line from the house ever backed up or exhibited slow drainage?			

Section D - Other Conditions	YES	NO	Do Not Know
8. a. Is the real property in a flood plain? b. Is the real property in a floodway?			
9. Is trash removal service provided to the real property? If so, are the trash services _____ public _____ private			
10. Have the structures been mitigated for radon? If yes, when? ____/____/____			
11. Is the property connected to a natural gas system?			
12. Has a pet lived on the property? Type(s) _____			
13. Are there any diseased or dead trees, or shrubs on the real property?			
14. Are there any flooding, drainage, or grading problems in connection to the real property?			
15. a. Have you made any insurance or manufacturer claims with regard to the real property? b. Were all repairs related to the above claims completed?			
16. Are you aware of any problem with the exterior wall-covering of the structure including, but not limited to, siding, synthetic stucco, masonry, or other materials?			

Section E. Cleaning / Servicing Conditions - Have you ever performed or had performed the following? (State most recent year performed)

Section E - Cleaning / Servicing Conditions	YEAR	YES	NO	Do Not Know	None / Not Included
1. Servicing of air conditioner					
2. Cleaning of fireplace, including chimney					
3. Servicing of furnace					
4. Professional inspection of furnace A/C (HVAC) System					
5. Servicing of septic system					

Section E - Cleaning / Servicing Conditions	YEAR	YES	NO	Do Not Know	None / Not Included
6. Cleaning of wood-burning stove, including chimney					
7. Treatment for wood-destroying insects or rodents					
8. Tested well water					
9. Serviced / treated well water					

Seller's Initials ____/____ **Property Address** _____ **Buyer's Initials** ____/____

(Continued from page 4)

Mortgage Fraud/Short Sale (Cont'd)

and, as a result, experience a personal financial loss when the true value is later discovered.

Short Sale Schemes

One of the most common forms of a short sale scheme occurs when the subject is alleged to be purchasing foreclosed properties via short sale, but not submitting the “best offer” to the lender and subsequently selling the property in a dual closing the same day or within a short time frame for a significant profit. Reverse staging and comparable shopping techniques are currently being used by fraud perpetrators in the commission of short sale frauds. The fraud primarily occurs in areas of the country that are experiencing high rates of foreclosure or homeowner distress.

Commercial Real Estate Loan Fraud

Same-day property flips; the falsification of financial documents, performance data, invoices, tax returns, and zoning letters during origination; the diversion of loan proceeds to personal use; the misrepresentation of assets and employment; the use of inflated appraisals; and money laundering.

Foreclosure Rescue

The perpetrator transfers the property to his name via quit claim deed and promises to make mortgage payments while allowing the former home owner to remain in the home paying rent. The perpetrator profits from the scheme by re-mortgaging the property or pocketing fees paid by desperate homeowners. Often, the original mortgage is not paid off by the perpetrator and foreclosure is only delayed.

Advance Fee Schemes

Mortgage fraud perpetrators such as rogue loan modification companies, foreclosure rescue operators,

and debt elimination companies use advance fee schemes, which involve victims paying up-front fees for services that are never rendered, to acquire thousands of dollars from victim homeowners and straw buyers.

Builder Bailout Schemes

Builders offering excessive incentives to buyers, which are not disclosed on the mortgage loan documents. The builder has difficulty selling the property and offers an incentive of a mortgage with no down payment. For example, a builder wishes to sell a property for \$200,000. He inflates the value of the property to \$240,000 and finds a buyer. The lender funds a mortgage loan of \$200,000 believing that \$40,000 was paid to the builder, thus creating home equity. However, the lender is actually funding 100 percent of the home’s value. The builder acquires \$200,000 from the sale of the home, pays off his building costs, forgives the buyer’s \$40,000 down payment, and keeps any profits.

Equity Skimming Schemes

Equity skimming schemes occur when mortgage fraud perpetrators drain all of the equity out of a property. For example, perpetrators charge inflated fees to “help” homeowners profit by refinancing their homes multiple times and thus skimming the equity from their property. A perpetrator will also help a homeowner establish a home equity line on a property. The perpetrator then encourages the homeowner to access these funds for investment in various scams.

Debt Elimination/Reduction Schemes

FBI reporting indicates a continued effort by sovereign citizen domestic extremists throughout the United States to perpetrate and train others in the use of debt elimination schemes. Victims pay advance fees to perpetrators espousing themselves as “sovereign citizens” or “tax deniers” who

promise to train them in methods to reduce or eliminate their debts. While they also target credit card debt, they are primarily targeting mortgages and commercial loans, unsecured debts, and automobile loans. They are involved in coaching people on how to file fraudulent liens, proof of claim, entitlement orders, and other documents to prevent foreclosure and forfeiture of property.

The full report is available at <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2010>

Freddie Mac also reports some interesting short-sale fraud schemes:

Downward pressure being put on the broker price opinion (BPO) value and the pressure being applied to the real estate professionals who are conducting these BPO’s. A real estate agent reported that she had received two envelopes when she went to the subject property to conduct the BPO. In one envelope was a piece of paper that said we would like the value to come in at “x” and in the other envelope were two \$100 bills.

Freddie Mac had a property that was situated on a lake. The comparables that the BPO agent provided in support of her value were, on paper, perfect matches, because they were properties that had lake access, but very different types of access. One was on an industrial pond rather than a recreational pond, one was actually on a canal that led to a pond, again a different type of market, and a different buyer appeal, and then the third was actually on the same recreational lake as the subject property. The difference in this instance was that the property had been subdivided into multiple lots and the house itself was surrounded by about 14 trailers. So the subject property was actually a trailer park in essence, obviously not comparable to Freddie Mac’s property.

Freddie Mac is also seeing anti staging which involves taking steps to make the property as unappealing as

(Continued on page 10)

(Continued from page 9)

Mortgage Fraud/Short Sale (Cont'd)

possible to the real estate professional conducting the BPO. On one property a short-sale facilitator was actually in control of the property so he had left all of the windows open on the first floor of the dwelling through the rain to cause the appearance of water damage. When the BPO was being conducted the property appeared to have significant water damage, and it was a way of anti-staging the condition of the property.

The last trend that they are seeing are related to disbursements paid outside closing or the movement of funds through the transaction. For instance, a seller's credit to the buyer for about 3% is being shown on page 1 of the HUD 1 the trick is when you look at the contract, the buyer never asked for the credit. What you then see is that on page 2 of the HUD 1, the credit is moving over to the short-sale negotiator, to the facilitator, or to the second mortgage holder. This is a means of pulling money out of the seller's bucket, or Freddie Mac's bucket, really, since they are covering the loss for this seller on a short sale, without them really knowing where that money is going to. The money often

going to an individual or an entity that Freddie Mac would not ordinarily agree to pay through the short sale process.

They also are seeing cases where a property is listed on the MLS in such a way that it appears it's being done to discourage offers from being made. And this is usually the case when there is a predetermined buyer lined up. Usually a family member or a friend of the seller. The intent is to keep the seller and the property, they're simply trying to reduce the amount that the seller owes against the property, and they're using the short sale as a vehicle by which to do.

In some instances, complaints come into Freddie Mac saying that the listing agent had refused to present an offer from another brokerage firm. After Freddie Mac has accepted the short sale offer that the listing agent has presented, they will learn that the offer that the complainant was tendering was significantly higher.

If a student feels that he/she is being asked to participate in mortgage fraud or in a short-sale scheme, they should contact Freddie Mac's fraud hotline 1-800 4-fraud-8 or 1-800 437 2838, and/or local authorities, their local real estate board, or the FBI. 🏠

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New Seller Property Conditions (Cont'd)

installed for major appliances like central air and water heaters. Please refer to the instructions on the form for further details on how to properly complete it.

One question which has arisen is how to deal with multiple unit sales, the SPCD form is required for residential sales of up to 4 living units. While the form does not provide specific spaces or instructions for multiple unit sales, sellers can provide the requested information for each unit by either filling out a separate form for each unit (123 ABC Drive Unit 1, 123 ABC Drive Unit 2, etc.) or providing additional information on multiple air conditioning units or other items in the additional comments section at the end of the form or on additional attached pages. If attaching additional page(s) you should note "additional page(s) attached" in the appropriate section on the SPCD form. 🏠



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Disciplinary Actions (Cont'd)

with the utmost good faith, loyalty, and fidelity; for failing to notify the home warranty company that a new furnace had been installed in the subject home prior to closing; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, by violating Neb. Rev. Stat. § 76-2418(1) (b) and (c).]

2011-036 – Ruth Richter vs. Craig William Horobik, Salesperson; Omaha, NE. Stipulation and Consent Order entered April 19, 2012. License censured; Plus a civil fine of \$250.00 to be paid by May 19, 2012; plus three (3) hours of additional continuing education in the area of “License Law”, to be completed by July 18, 2012. [Violated Neb. Rev. Stat. § 81-885.24(14) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of the agreement with the principal; for failing to leave a copy of the Listing Agreement with the seller.]

2012-003 – Commission vs. Leslie Sue Petersen, Salesperson; Omaha, NE. Stipulation and Consent Order entered May 2, 2012. License suspended for four (4) years with the first sixty (60) days served on suspension and the remainder three (3) years and ten (10) months stayed and served on probation.

The suspension period commenced on June 1, 2012, and continued through July 31, 2012. The probation period will commence on August 1, 2012, and continues through June 1, 2016; plus complete six (6) hours of additional continuing education with three (3) hours each in the areas of “Disclosure” and “Ethics”, to be completed by August 31, 2012. [Violated Neb. Rev. Stat. § 81-885.11(3) Any person desiring to act as a real estate broker or real estate salesperson shall file an application for a license with the commission. The application shall be in such a form and detail as the commission prescribes, setting forth the following...(3) Such other information as the commission requires: Violated Neb. Rev. Stat. § 81-885.12(4) When an applicant has made a false statement of material fact on any application, such false statement may in itself be sufficient grounds for refusal of a license; and Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker,

associate broker, or salesperson, by repeatedly and knowingly submitting materially false Renewal Applications to the Commission for the years 1999, 2001, 2002, 2003, 2004, 2007 and 2008. Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for having been convicted of four (4) counts of insurance fraud on August 25, 2011, showing that she lacks the “good reputation for honesty, trustworthiness, integrity, and competence to transact the business of broker or salesperson in such manner as to safeguard the interest of the public” as required by Neb. Rev. Stat. § 81-885.12, which reflects a demonstration of negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for engaging in repeated acts of criminal conduct that resulted in four (4) misdemeanor criminal convictions of Driving Under the Influence of Alcohol.]

2012-007 – Commission vs. Keith Eugene Morris, Broker; Lincoln, NE. Stipulation and Consent Order entered April 19, 2012. License suspended for thirty (30) days. The suspension period commenced on May 19, 2012, and continued through June 18, 2012; plus complete six (6) hours of additional continuing education with three (3) hours each in the areas of “Contracts” and “License Law” to be completed by August 17, 2012. [Violated Neb. Rev. Stat. § 81-885.24(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner of his or her authorized agent; by failing to have the consent of all owners to manage the Property; Violated Neb. Rev. Stat. § 81-885.24(14) Negotiating a sale exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract; for entering into a Management Agreement with one of the owners on

April 22, 2011, at a time when the Property was under a Management Agreement with another broker granting that broker an exclusive agency to manage the Property; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating Neb. Rev. Stat. § 81-885.24(12) and (24).]

2012-008 – Commission vs. Linda Lee Fuller, Broker; Ogallala, NE. Stipulation and Consent Order entered April 19, 2012. License censured; Plus a civil fine of \$1,000.00, to be paid by May 19, 2012; plus six (6) hours of additional continuing education with three (3) hours each in the areas of “Agency” and “Contracts”, to be completed by August 17, 2012. [Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence to act as a broker; for writing the buyer’s Offer to Purchase knowing that her husband may have an interest in purchasing the same Property, and if he had such interest, that she would have to terminate any agency relationship she had with the buyer.]

2012-012 – Commission vs. Lydia Beth Moyer, Broker; Auburn, NE. Stipulation and Consent Order entered April 19, 2012. License censured; Plus a civil fine of \$500.00 to be paid by May 19, 2012; plus six (6) hours of additional continuing education with three (3) hours each in the areas of “Agency” and “License Law”, to be completed by August 17, 2012. [Violated Neb. Rev. Stat. § 76-2421(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall: (a) Provide that person with a written copy of the current brokerage disclosure pamphlet; and (b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing; for failing to complete an Agency Disclosure with the buyers on first substantial contact; Violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentations; 1) For falsely

(Continued on page 12)

Return Service Requested

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(Continued from page 11)

Disciplinary Actions (Cont'd)

representing in the Agency Disclosure dated October 7, 2010, that she was acting as a limited Buyer's Agent instead of a limited Seller's Agent, and 2) For falsely representing in the Offer to Purchase dated October 7, 2010, that she was a limited Buyers' Agent when she was actually a limited Sellers' Agent. Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson, for violating Neb. Rev. Stat. §§ 76-2421(1) (a) (b) and 81-885.24(22).]

2011-022 – Steve and Cathy Sickler vs. Joan Elizabeth Fink-Arney; Salesperson; Omaha, NE. Stipulation and Consent Order entered May 17, 2012. License censured; Plus a civil fine of \$500.00 to be paid by June 16, 2012; plus complete three (3) hours of additional continuing education in the area of "Disclosures" by September 14, 2012. [Violated Neb. Rev. Stat. § 81-885.24(2) Intentionally using advertising which is misleading or inaccurate in any material particular or in any way misrepresents any

property, terms, values, policies, or services of the business conducted; Arney incorrectly advertised in the MLS Data Sheet that the home has 3,871 square feet and Arney incorrectly advertised in a flyer that the home has over 3,800 square feet; Violated Neb. Rev. Stat. § 81-885.24(22) Making any substantial misrepresentation; Arney falsely represented in the MLS Data Sheet that the home has 3,871 square feet and Arney falsely represented in a flyer that the home has over 3,800 square feet; Violated Neb. Rev. Stat. § 81-885.24(29) Demonstrating negligence, incompetency, or unworthiness to act as a broker, associate broker, or salesperson; for violating Neb. Rev. Stat. § 81-885.24(2) and (22), and for inaccurately measuring the square footage of the home.]

2012-010 – Commission vs. Curtis John Hart and Mark Douglas Hart; Curtis John Hart-Broker; Bellevue, NE. Stipulation and Consent Order entered May 25, 2012. Curtis John Hart's real estate broker's license is suspended for a period of six (6) months with the entire six (6) month period stayed and

served on probation. The suspension period commenced on May 25, 2012, and continues through November 25, 2012; Plus a civil fine of \$1,250.00, on or before June 24, 2012; [Violated Title 299 Chapter 5 Section 003.22 Failure by a designated or employing broker to supervise his or her associate brokers and salespersons.] **Mark Douglas Hart-Salesperson; Bellevue, NE.** Stipulation and Consent Order entered May 25, 2012. Mark Douglas Hart's real estate broker's license is suspended for a period of six (6) months with the entire six (6) month period stayed and served on probation. The suspension period commenced on May 25, 2012, and continues through November 25, 2012; Plus a civil fine of \$1,250.00, on or before June 24, 2012; [Neb. Rev. Stat. § 81-885.24(12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent.] 