

MINUTES OF AGENT SECTION CONFERENCE CALL OF

MAY 5, 2011

Shelley Stewart gave us an update on the Allied Industry Committee. This is a very important committee because any legislative initiative we make in the future will most likely catch the eye of our related industries being the realtors, mortgage lenders and mortgage brokers. This committee will work with the related industries on a state level to forge relationships and offer our commitment where possible to their legislative initiatives in hopes that we can depend on their support for ours. Shelley, Lisa and Paula were in Tallahassee last month for the Realtor Days to lend their support. It was a great beginning but we need more people to work with Shelley at the state level. In addition, we need our members that are involved with local realtors' boards or MBA or FAMB chapters to work on creating a similar relationship at the city or county level. Please let Shelley Stewart [sstewart@stitle.com](mailto:sstewart@stitle.com) or Beverly McReynolds [bmcreeynolds@nat.com](mailto:bmcreeynolds@nat.com) know if you are able to help.

We have three Zone meetings currently scheduled as follows:

May 11<sup>th</sup> – Jacksonville - details attached

May 17<sup>th</sup> – Orlando – details attached

June 14<sup>th</sup> – Miami – notice to follow

We are excited to see the FLTA's outreach growing. Our agents have asked for this and we are responding! We will be expanding this service in the months to come. Please let us know what topics are of interest to you.

Alan Fields presented an update on the various pieces of legislation from the 2011 Session that effect our industry. The most important piece for us is HB 1007 which has now passed both Houses and is on its way to the Governor. Alan and I are both pleased with this outcome because it would prevent the cancellation of the National Title policies which would be a black eye for our industry in my opinion. However, not all underwriters are satisfied with the language and we will have to wait and see if they prevail upon the Governor to veto the Bill. I have attached a copy of the summary Alan circulated yesterday on this Bill. He will be forwarding comments on several other Bills to all members in a day or so. (I just learned this morning that the other part of our title insurance bill is not dead yet. This is the language that would require the DFS to perform a study to see if all of the title insurance industry should be under the supervision of one regulator creating a more level playing field....stay tuned!)

Alan also brought us up to date on the newly formed Education Committee. The purpose of this committee is to provide materials for the courses that will be taught at the various FLTA Zone seminars that we are planning in the coming months and years. We would like to see agents look to the FLTA as resource and a primary source of CE Credits. We believe this will drive membership in the coming years.

There was a discussion on the FLTA dues structure. While the amount was not questioned, it is generally felt that some small agencies could benefit from a payment plan. It was suggested that the dues be divided into four equal payments of \$100.00 and made during the months of January, February, March and April so that the Association can know what revenue it has to work with by the end of April.

The UPL Committee of the Florida Bar has its next meeting on June 24<sup>th</sup> in Orlando during the annual convention. The topic of whether handling a short sale constitutes the unauthorized practice of law is on the agenda for that meeting. Obviously, the inability of a title agent to close and insure any short sale transactions would be a tremendous detriment to agents and direct shops. Alan Fields and I spoke at the February hearing on behalf of the FLTA explaining that as long as the "negotiation" with the lender is not done by the title agent, the title and escrow portion of the transaction does not constitute the unauthorized practice of law. Copies of the letter submitted by the FLTA are attached together with a couple of others for your reference. While no one will be allowed to speak at the next meeting, the comment period remains open until May 23, 2011. If you wish to submit a letter, please address it to Mr. Jeffrey T. Picker, Esq. at the address on the attached letters.

Alan informed us that a working group has been formed to meet with the OIR and the DFS for the purpose of updating the title insurance Rules so that they match the Statutes. Beverly McReynolds and Vice Cassidy have been asked to join the group and represent the title agents.

Please mark your calendars for Thursday, June 2<sup>nd</sup> at 9:30AM for our next call.



**Gail Hinson**  
**FLTA Zone II Vice President**  
Westcor Land Title Insurance Co  
412 Tahitian Terrace  
Jacksonville, FL 32216  
904-742-9741 · ghinson@wltic.com

**PLEASE MARK THE DATE**  
**MAY 11, 2011 - 6:00 P.M. til 8:00 P.M.**  
**FLTA ZONE II – AGENCY MEETING**

**Dear Fellow Title Agents:**

As the Zone II VP for the Florida Land Title Association this year, I encourage all of you and your staff to attend the agency meeting to be held on Wednesday, May 11, 2011. It has been a busy legislative session for the title industry. For more information, please visit the Florida Land Title Association's website at [www.flta.org](http://www.flta.org) and read the Governmental Affairs Report found in the 2011 Newsletter – First Edition. During the meeting on May 11<sup>th</sup>, we will have a speaker to bring us current on this legislative session and how it will affect our industry and the way we do business.

Keeping our members informed of matters that impact the title insurance industry is a primary focus of our Association. You do not have to be a member to attend this meeting. If you are not yet a member of our association who could benefit from the value FLTA delivers, please visit [www.flta.org/index.aspx](http://www.flta.org/index.aspx) for a membership application. The meeting will be free to all attendees.

**AGENDA**

- 6:00 P.M. – 6:30 P.M. - Registration and Networking
- 6:30 P.M. – 7:00 P.M. - The Latest Happenings with Fraud & How to Avoid
- 7:00 P.M. – 8:00 P.M. - Legislative Update / Q&A Session

The seminar will be held in the auditorium at:

Fidelity National Financial  
601 Riverside Avenue, Building 2  
Jacksonville, FL 32204

Refreshments provided

Please RSVP to Gail Hinson @ [ghinson@wltic.com](mailto:ghinson@wltic.com)



## You're Invited & bring a Realtor!!

**FLTA is hosting a Zone 3 meeting on TUESDAY\*, May 17, 2011**

\*We are clarifying the DAY of this event. All other information is the same.

Dear Fellow Title Agents:

Topic: **the significant changes in the 2010 Florida Residential FR/BAR Contract; AS/IS Contract, and Comprehensive Riders**

The speakers will be:

**Attorney Frederick W. Jones, Florida Bar Board Certified in Real Estate Law and Marcia Tabak, Associate General Counsel for Florida Realtors**

**Title Agents - bring a Realtor friend with you! FLTA members and FR members may attend at no cost. The fee for non-FLTA members and non-FR members is \$25 per attendee. Checks should be made payable to FTLA and mailed to 249 E Virginia St., Tallahassee, FL 32301**

**Seating is limited to the first 50 attendees, so all attendees must register no later than Wednesday, May 11, by contacting Linda Martin via email at [linda@flta.org](mailto:linda@flta.org) or by phone at 850-681-6422.**

**Light refreshments will be served.**

**8:30 a.m. - Registration and Networking**

**9:00 a.m. - Presentations by Fred Jones and Marcia Tabak**

**11:30 a.m. - Q&A**

**Noon - Close**

**The meeting will be held at: Florida Realtors  
7025 Augusta National Drive  
Orlando, FL 32822**

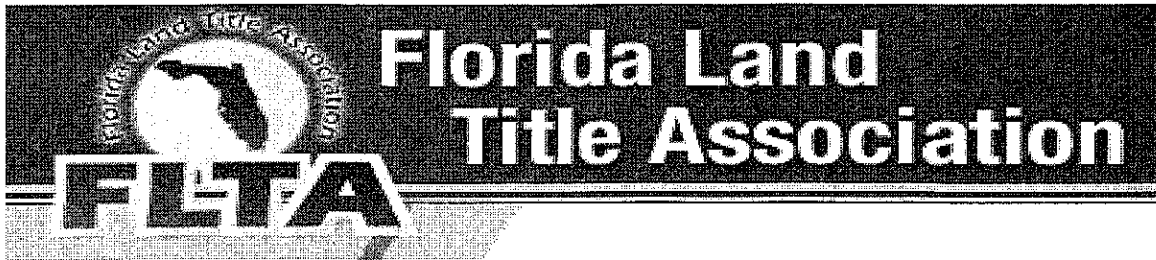
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## Title Insurer Liquidation Bill Passes

May 4, 2011

**On Monday, May 2, 2011, the Florida Senate joined the Florida House of Representatives in unanimously passing HB 1007. This bill adopts many of the operating concepts recommended by the FLTA and the RPPTL Section of the Florida Bar and avoids the threatened cancellation of the outstanding policies issued by National Title Insurance Company.**

**At the depths of the financial market crash, Miami-based National Title Insurance Company was placed into receivership. Since that time, the receivers regularly indicated that once National's reserves had been exhausted through claims payments, administrative costs and receivers fees, Florida law required them to terminate all outstanding policies, leaving those policy holders with no title insurance coverage whatsoever.**

**HB 1007 changes that. It requires that all policies covering Florida properties, of a failed title insurer which is placed into a receivership by the State of Florida will remain in effect indefinitely. It pays for this through an assessment of each title insurer on a market share basis to cover unpaid claims, claims administration expenses and certain administration costs. The assessments are limited to 3% of policyholder surplus in any year, and 10% over any consecutive 5 year period**

**The Bill then empowers the receiver to use the assessment funds to procure reinsurance or contract for the assumption of the failed insurer's policy liabilities. Any assessments paid by the insurers will be recovered through a per policy surcharge on future policies. These surcharges are treated as a separate government assessment (not lumped into line 1101 of your HUD), and will be collected by each agent or direct office and remitted to the underwriter along with the policy and premium within 60 days. There will be an order by the Office of Insurance Regulation setting the amount of the per policy surcharge and the date on which its collection should begin.**

**Agents SHOULD NOT begin collecting this assessment until the final amount has been set by OIR and you have been advised by your underwriters.**

**While various industry experts had expressed concern about specific provisions of this bill, all agree that this should prevent the termination of National Title Insurance Company's outstanding policies.**

**FLTA will provide additional detail as this develops**

**The bill will now proceed to the Governor for his consideration.**

**Forward email**

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Florida Land Title Association | 249 E. Virginia Street | Tallahassee | FL | 32301



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**FLTA Chair, Agents' Section**  
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Jeffrey T. Picker, Esq.  
Assistant UPL Counsel  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399

**VIA HAND DELIVERY**

Re: FAO #2011-1; Nonlawyer Assistance in Short Sale Transactions

Dear Mr. Picker:

My name is Beverly McReynolds and I am the President of North American Title Agency, located in Miami, Florida. I am writing this letter in my role as Chairman of The Agents Section, Florida Land Title Association (FLTA), to address the issues of "short sales" and the Unauthorized Practice of Law.

The Agents Section of the FLTA is the title industry's voice for over 5,000 licensed title agents in Florida. Each title agency is licensed by the State Department of Insurance. Our Section is comprised of individual licensees, corporate-owned agencies, and attorney-owned agencies.

For the past sixty (60) years, title agents have been at the forefront of the real estate closing industry. In addition to examining title, determining insurability, clearing defects in the title, then issuing the title policies, title agents in Florida also act as settlement agents. In that role, we prepare closing figures, and we constantly communicate about these figures among: buyers, sellers, real estate agents, homeowner and condominium associations, new mortgage lenders, and lenders who are being paid off. During the last three year, with the large volume of short sales having been processed in Florida, our title agents have been receiving and transmitting significantly more terms and figures to communicate among these parties.

Our title agents understand that, unless they are licensed as Florida attorneys, they do not provide legal advice. They understand that there is an important distinction between transmitting information among the myriad parties involved, and telling any party the legal consequences of acting on the information.

The FLTA Agents Section fully supports the conclusions set forth in the letter to you dated February 4, 2011 from Florida Bar Real Property Probate and Trust Law Section President Brian Felcoski. We recommend the following guidelines for the UPL Committee's consideration:

Jeffrey T. Picker  
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February 9, 2011

- A non-lawyer who assists a property owner in performing the following in connections with a short sale transaction is not practicing law: fact finding, information and document gathering and transmittal of the information and documentation to the property owner's lender(s) to facilitate the approval of the short sale transaction.
- A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is practicing law: evaluating and/or giving an opinion as to the legal significance of any document, including, without limitation, documents submitted by the property owner to the lender or documents from the lender relating to the terms of the short sale approval or deficiency, providing advice regarding the legal ramifications of a short sale (with or without deficiency waiver), foreclosure, bankruptcy, or any other legal recourse.
- A non-lawyer who assists a property owner in negotiating the terms of a short sale approval may or may not be practicing law depending on the the particular facts. Generally, if the negotiating involves evaluating, advising, or giving a legal opinion, then such negotiation is practicing law. Generally, if the negotiation is simply the transmittal of information from one party to the other, without evaluating, advising, or opining, then the negotiating is not the practice of law.

I will be available for questioning at the hearing scheduled on February 11, 2011 on this issue. Thank you.

Very truly yours

Beverly McReynolds, CLC  
Chair, FLTA Agents Section  
cc: Alan Fields, Executive Director  
Patricia Hancock, Esq., President FLTA

Alan Fields  
FLTA Executive Director  
727-773-6664 · alan@flta.org

February 11, 2011

HAND DELIVERED

Jeffrey T. Picker, Esq.  
Assistant UPL Counsel  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300

RE: Public hearing on February 11, 2011 regarding the topic: "Whether a non-lawyer who assists a property owner in a short payoff transaction is engaged in the unlicensed practice of law? Would the answer be different if the non-lawyer was a real estate licensee regulated under Chapter 475, Fla. Stat., a title insurance agency/agent regulated under Chapter 626, Fla. Stat., or a mortgage broker or other individual regulated under Chapter 494, Fla. Stat.?" ("Hearing Topic")

Dear Mr. Picker:

The Florida Land Title Association represents the Title Industry in Florida. Our members include title insurers, title agents licensed through the Department of Financial Services and Attorney-agents licensed by the Florida Bar. As such, we have a significant interest in this discussion and in the long-standing body of UPL jurisprudence around which an entire industry has evolved over the last sixty years. .

**What is Involved in a Short Sale?**

In the current economy, short sales have become an increasingly common part of the lexicon – and as is so often the case, we hear mostly about the “bad actors” and the frauds perpetrated using short sales as a vehicle. Before the real estate market collapsed, the press was filled with stories of fraudulent appraisals and price-manipulating “flips.” And in this forum, we must be cautious to avoid tainting a legitimate and socially desirable tool for clearing the real estate market with isolated stories of bad actors.

From the standpoint of the functions performed by a title agent or insurer, these transactions can be better described as “Short Payoffs.” They are little different than any other transaction. But due to declines in market value, the contracted sale price is simply not enough to satisfy all of the liens encumbering the property and to pay the transaction costs. The title agent is not involved in locating a buyer, negotiating a purchase price, preparing the contract or with other aspects of

the "Short Sale." Those are functions usually performed by the Realtor<sup>®</sup> or the parties themselves.

The role played by a title insurer or title agent in connection with these transactions is either ministerial, or within the specialized skill set of title agencies and insurers. These functions generally include:

1. Searching the title and identifying superior and subordinate liens,
2. Gathering information and preparing the forms required by the lender to obtain a payoff statement and transmitting that information and documentation to the lender and other lienholders, Lenders understandably require more information when being asked to accept a short payoff.
3. Obtaining estoppel letters from each lienholder in which they commit to release their lien upon payment of an amount certain and/or satisfaction of other conditions.
4. Creating pro-forma HUD-1 closing statements;
5. Communicating information among the lender, the homeowner and other relevant parties; and
6. Upon obtaining payoff amounts which "work" for the transaction; actually completing the closing, and issuing the requisite title insurance.

While a short payoff might require more iterations of these functions before the economics of a transaction will work and (owing to the financial condition of the seller) will often require dealing with a greater number of creditors and lienholders than a "normal" sale; the functions themselves are substantially identical to the services provided by title agents and insurers in connection with a traditional real estate sales transaction.

**The Florida Supreme Court has held that this is not UPL**

The Florida Supreme Court has long recognized that these functions do not constitute the unlicensed practice of law when performed by a non-attorney title agent or insurer in connection with transactions (1) in which title insurance commitments and policies are to be issued; and (2) the services are necessary to the determination of insurability or are incident to fulfilling conditions contained in the title insurance. *Cooperman v. West Coast Title Co.*, 75 So.2d 818 (Fla., 1954) and *The Florida Bar v. McPhee*, 195 So.2d 552 (Fla., 1967).

In both of these cases, the Florida Supreme Court expressly upheld the preparation of deeds, mortgages, and other documents, and the handling of real estate closings and other functions by title agents when "incident to fulfilling conditions in title insurance commitments which [the agency or insurer] has issued." *McPhee* at 554. Yet when NOT conducted incident to fulfilling conditions of a title commitment or where no title insurance was contemplated, those same functions, unless performed by a member of the Florida Bar, would have constituted the

unlicensed practice of law. *The Florida Bar v. Columbia Title of Florida*, 197 So.2d 3 (Fla., 1967)

Absent an agreement to assume certain liens, the standard purchase contract always calls for a title insurance policy insuring the property to be free of all liens and encumbrances. Obtaining releases of the short-payoff mortgage and other liens is a necessary condition of the title commitment. Under *McPhee* and *Cooperman*, the activities necessary to obtain binding estoppel letters and payoffs on economically workable terms so as to satisfy the conditions of the commitment, simply does not constitute the unlicensed practice of law when performed by a title insurer, title agent or agency – even if those same activities otherwise would constitute UPL.

A multi-million dollar industry has developed around this understanding of the permissible scope of title agent and title insurer activities. Great care should be exercised so as to not inadvertently recede from the current scope of activities permitted under *Cooperman* and *McPhee*.<sup>1</sup>

### **The Appropriate Boundaries**

Certain activities – even in furtherance of satisfying conditions of a title insurance commitment – would cross the line into the unlicensed practice of law when performed by a non-attorney title agent. Those include, but are certainly not limited to:

- a. Holding oneself out, by words or conduct, as having legal expertise in real property transactions or other legal matters;
- b. Giving an opinion or explaining the legal significance to the customer<sup>2</sup> of any documents (other than the title policy and endorsements)<sup>3</sup> involved in the transaction.<sup>4</sup>

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<sup>1</sup> Please note that when *McPhee* was decided, the statutory term "regular title insurance premiums" was defined to include both the risk premium and a reasonable charge for services rendered to the insured as part of the title insurance transaction. See *Preferred Title Services, Inc. v. Seven Seas Resort Condo., Inc.*, 458 So. 2d 884, 886 (Fla. 5th DCA 1984). Under current Florida Statutes, the applicable terminology is "premium" and "closing services fee." §627.7711 Fla. Stat. (2010). To avoid confusion, we recommend the current statutory nomenclature be used in any UPL guidance.

<sup>2</sup> There are two subtle points here. First that it is necessary for a title agent to evaluate the legal significance of certain documents for purposes of insuring the title. For example, the title agent must determine that the estoppel letter by which the lender commits to satisfy the mortgage is unconditional and that the deed and other instruments of conveyance are sufficient to convey an insurable title.

Secondly, while a non-attorney title agent may not "counsel" a customer on the legal significance or legal effect of deed, mortgage and other documents (other than their own title commitment and policies of title insurance), the courts have consistently found a duty for a title agent to identify the documents and at least superficially describe what they do -- "This is a deed, if you sign this, you are selling your property." See *Charles v. Foreclosure Placement Center*, 988 So.2d 1157 (Fla. App., 2008); This distinction is based on the underlying duty of a title agent to supervise a closing in a reasonably prudent manner. See *Land Title of Cent. Fla., LLC v. Jimenez*, 946 So.2d 90, 93 (Fla. 5th DCA 2006); *Sommers v. Smith & Berman, P.A.*, 637 So.2d 60, 61 (Fla. 4th DCA 1994); *Askew v. Allstate Title & Abstract Co.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992); *Fla. S. Abstract & Title Co. v. Bjellos*, 346 So.2d 635, 636 (Fla. 2d DCA 1977).

In order to avoid confusion, each of these distinctions should be reflected in any final UPL opinion.

- c. Counseling the homeowner as to the possibilities or legal ramifications of deficiency judgments and the impact of the proposed short payoff on those issues.
- d. Counseling the homeowner as to strategy of negotiating a short payoff as it might affect pending or future foreclosure and the implications of legal enforcement actions or other legal rights and remedies.
- e. Counseling the homeowner on the impact of filing for bankruptcy protection generally, or as it relates to a short payoff and/or foreclosure.

The courts have recognized that these functions are separate and distinct from permitted title services. For example, the Florida Supreme Court in *The Florida Bar v. McPhee*, 195 So.2d 552 (Fla., 1967) allowed the preparation of documents incident to title insurance, but enjoined the rendering legal opinions or giving advice, concerning the legal effect of documents. In *The Florida Bar v. Coastal Bonded Title Co.*, 323 So.2d 562, 563 (Fla. 1975), the Florida Supreme Court approved an agreement permitting continued practice consistent with *McPhee*, but specified that the title company "shall not hold themselves out by words or conduct as having legal expertise in real property transactions or other legal matters and, ... when questioned as to legal rights and/or duties ... shall affirmatively represent that they do not represent their legal rights and that only a licensed attorney-at-law can perform that function on their behalf."

Recognizing that these functions are separate and distinct and the potential for even the best intentioned title agent to inadvertently brush up against the boundaries, we would offer to work with the Real Property, Probate and Trust Law Section of the Florida Bar in developing an appropriate brochure that generically explains some of the legal issues a consumer might consider in connection with a short sale transaction and recommending they consult legal counsel with any legal questions or concerns.

The most difficult question in the legal analysis is also a product of misleading common jargon – "Negotiating a Short Sale." The term itself implies a complex negotiation of legal terms and rights. And when "negotiating" the underlying contract for sale of the land, that may be a valid description.

The function of a title insurer or agent in a short payoff situation is much more limited. After gathering the amounts demanded by all lienholders for releases of their liens and adding costs, our "negotiation" -- such as it is -- consists of advising the stakeholders that "there isn't enough money to pay everyone," and asking (sometimes over several iterations) "will you accept something less?" or "will you accept \$X?" While not always phrased as such, this communication (if it constitutes the practice of law in the first instance) is nothing more than a permitted attempt to meet the requirements of the title commitment requiring all liens to be released, and thus subject to the limited privilege of *McPhee* and *Cooperman*.

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<sup>3</sup> It is appropriate for the title agent to explain the coverages and limitations of the title insurance policy and of any available endorsements.

<sup>4</sup> We agree with the RPPTL section that this would include, without limitation, documents submitted by the property owner to the lender or documents from the lender relating to the terms of short payoff approval or deficiency.

**Public Policy Considerations**

This issue has significant public policy implications beyond protecting the public from the unlicensed practice of law.

Good public policy should favor short payoff transactions where otherwise appropriate. A successful short payoff benefits the homeowner. The lender will generally realize a higher price. Neighborhoods and local governments avoid the problems associated with empty, poorly maintained homes in foreclosure and bank REO pools. Condominium & homeowners' associations benefit by an earlier payment of assessments undiminished by the limitations on pre-foreclosure liability contained in §718.16 and §720.3085, Florida Statutes. These homes move immediately into the stream of commerce, stimulating the economy, and need never enter an already strained judicial foreclosure system.

The uncertainty as to what functions in a short payoff transaction may be performed by a non-attorney has had a chilling effect on the title industry. Because of the UPL uncertainty, many qualified title professionals have been hesitant to perform these functions, regardless of how beneficial they might be to society.

For that reason, we encourage a clear statement that consistent with *McPhee* and *Cooperman*, that the title functions described above (as distinguished from the legal "counseling functions") do not constitute the unlicensed practice of law when performed incident to fulfilling conditions contained in the title insurance.

Sincerely,

Alan B. Fields  
Executive Director

**REAL PROPERTY,  
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SECTION**



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February 4, 2011

VIA EMAIL and US MAIL

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651 East Jefferson Street  
Tallahassee, Florida 32399-2300

RE: FAO #2011-1; Nonlawyer Assistance in Short Sale Transactions

Dear Mr. Picker:

In response to your request for comment presented in your December 14, 2010 correspondence to the undersigned, a subcommittee of the pertinent committees within the Real Property, Probate and Trust Law Section ("RPPTL") of the Florida Bar was created to study the issues raised and provide a practical and coherent approach to address the concerns. The subcommittee was comprised of members of the following RPPTL committees: Mortgages and Other Encumbrances Committee, Residential Real Estate & Industry Liaison Committee, Real Property Problems Study Committee and Professionalism and Ethics Committee.

The subcommittee members were real property attorneys from throughout Florida with both positive and negative experiences involving nonlawyers assisting property owners in short sale transactions. The subcommittee members included counsel who represent the nonlawyer categories under consideration by the UPL Committee, namely real estate agents and brokers and mortgage brokers, as well as counsel with years of experience representing property owners in short sale transactions.

The subcommittee members extensively discussed the benefits and detriments of having a nonlawyer participate in a short sale with the property owner's lender(s) and other creditors, with the concern being at what point the nonlawyer crossed the line into the unlicensed practice of law. Based upon the consensus of the subcommittee, the RPPTL Section offers the following guidelines for the UPL Committee's consideration regarding a nonlawyer assisting a property owner in a short sale transaction:

--- A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is not practicing law: fact finding, information and documentation gathering and transmittal of the information and documentation to the property owner's lender(s) to facilitate the approval of the short sale transaction.

--- A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is practicing law: evaluating and/or giving an opinion as to the legal significance of any document, including, without limitation, documents submitted by the property owner to the lender or documents from the lender relating to the terms of the short sale approval or deficiency; providing advice regarding the legal ramifications of a short sale (with or without deficiency waiver), foreclosure, bankruptcy or any other legal recourse.

--- A non-lawyer who assists a property owner in negotiating the terms of a short sale approval may or may not be practicing law depending on the particular facts. Generally, if the negotiating involves evaluating, advising or giving a legal opinion, then such negotiating is practicing law. Generally, if the negotiating is simply the transmittal of information from one party to the other without evaluating, advising or opining, then the negotiating is not the practice of law.

Because the unlicensed practice of law can inadvertently or deliberately occur when a nonlawyer assists a property owner in a short sale transaction, the UPL Committee may consider legislation requiring disclosure by any nonlawyer assisting a property owner in processing a short sale transaction. The RPPTL Section appreciates the opportunity to provide the above information to the UPL Committee and remains available to offer further assistance.

Very truly yours,

Brian J. Felcoski

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