



**Save Your Deal. Save Your Client.**  
**Realtor's Distressed Property Guide**

*Revised January 2017*

# HERE'S YOUR *Lifeline.* GRAB IT!

If your deal is in danger of getting pulled under. If your deal is already underwater and sinking fast. If your deal is about to become a statistic - Take Action, get help and get a lawyer on your side.

This toolkit from Florida ARECS will give you legal and ethical options available to you. You can save your client and your deal. You don't have to fight the current alone.

## KNOW THE CODE



SAFE SWIM, SURF'S UP



CAUTION, STORM AHEAD



ALERT, DANGEROUS WATERS

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# DANGEROUS WATERS

## YOUR JOB DESCRIPTION HAS CHANGED DRAMATICALLY...



In 2016, 7 years after the Great Recession began, 20% of Florida home sales still involved distressed property.



One in every 300 housing units in Florida received a foreclosure filing in January 2013.



Florida alone accounts for 16% of the nation's "shadow inventory".

Now it involves dealing with clients in fear of losing their homes. You find yourself talking to their lender or even multiple lenders. You review their bank statements and ask them about their personal finances and income tax returns.

## LIFESAVING TIP:



Going into a state of shock is common. So is a full recovery.

What does this have to do with marketing and selling real estate?



## SHARK *or* DOLPHIN?

### KNOW YOUR ALLIES

#### REAL ESTATE ATTORNEY (DOLPHIN)



With your best interests in mind, only a real estate attorney is qualified to provide legal advice to Realtors® regarding distressed homeowners. No other resource available to both you and the homeowner has such broad ability to guide you through the maze of possibilities.

#### LIFESAVING TIP:



Stay Alert! Conditions change rapidly.

#### TAX SPECIALIST (DOLPHIN)



Short sales are a great way out of distress for many homeowners, but they don't come without risk. Refer your client to a tax attorney or Certified Public Accountant to advise them on the financial implications of their decisions.

#### LENDER (SHARK)



...or maybe a whale. The lender is too big to ignore. The good news is that more lenders are realizing that short sales are in their best interest too. Properties sold through short sale sell for 20% more on average than foreclosed properties. Make it easy for the lender to approve your short sale by being organized and prepared.

## DON'T GET PULLED UNDER

### UNLICENSED PRACTICE OF LAW (UPL) RULES

You want to help your client but don't let them draw you into dangerous waters. Real estate professionals must be wary of Florida's Unlicensed Practice of Law rules. Stay in the Safe Zone.

#### WHERE IS THE LINE?

**Safe Zone.** The following is NOT considered the practice of law:

- Fact finding
- Information and documentation gathering
- Transmitting information and documentation to the lender to facilitate approval of the short sale

**Riptide.** The following is considered practice of law:

- Counseling a Seller on whether or not to participate in a short sale
- Giving legal advice to a seller on a Short Sale Approval Letter from the lender

#### LIFESAVING TIP:



If your deal is struggling - Don't Panic! Channel your energy into staying calm until help arrives. You will survive.

# SHORT SALES

## EVERYBODY CAN WIN

Short sales typically provide the best financial outcome for borrowers, lenders and communities. The Federal Government's Homes Affordable Foreclosure Alternatives (HAFA) short sale program requires that borrowers be fully released from liability! HAFA was set to expire at the end of 2016 so check with your tax adviser.

### To qualify for HAFA:

- No occupancy requirement as of March 2012
- Have documented financial hardship
- Have not purchased another house in last 12 months
- Existing mortgage balance must be less than \$729,750
- Loan must have been originated on or before January 1, 2009
- Delinquency or Default is reasonably foreseeable

### LIFESAVING TIP:



Your client may qualify for a short sale even if they don't meet the HAFA requirements since each lender has their own program. Visit <http://flarecs.com/real-estate-professional> for more information.

## WHAT REAL ESTATE PROFESSIONALS NEED TO KNOW ABOUT SHORT SALES

### MINIMUM REQUIREMENTS

- It must be an arms-length transaction. In other words, your client cannot short sale their home to their brother-in-law and then buy it back a month later.
- The Seller cannot receive any money at closing – except for relocation assistance from the lender.
- Seller cannot re-buy or rent property from the buyer.
- Buyer typically cannot re-sell the property for 90 days.

## DEFICIENCIES

- Homeowner can remain liable for difference between the amount salvaged by lender through short sale or foreclosure.
- HAFA requires the borrower be released from liability but independent lender programs do not. However, the release from liability may result in a tax burden to the homeowner (see below). Be careful not to lead your client into a deal that inadvertently leaves them holding the bag. They may hold you liable. Make sure they see an independent advisor.

## TAX IMPLICATIONS FOR DISTRESSED HOMEOWNERS

### MORTGAGE FORGIVENESS DEBT RELIEF ACT OF 2007

Eliminates tax on “qualified debt” used to buy, build or substantially improve principal residence, or to refinance debt for those purposes, which is secured by a first mortgage on a principal residence.

- Set to expire at the end of 2016 so check with your tax advisor.
- Here's an example where the homeowner finds themselves potentially owing a significant amount of money to the IRS:

Tax Implications Can Be Considerable	
2001 Purchase Price	\$150,000
2005 Cash Out Refinance	\$350,000
2007 HELOC	\$100,000
<b>Total Owed Today</b>	<b>\$450,000</b>
2012 Short Sale Price	\$200,000
<b>Non-Qualified Deficiency</b>	<b>\$250,000</b>

- Assuming a marginal rate of 15%, that's a tax bill of \$37,500!

### FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

Affects property owners who are neither U.S. citizens nor permanent residents and those who buy from them.

- Requires 15% of the “amount realized” from a property sold by a foreign seller be withheld from that seller and sent to the IRS to satisfy tax obligations, if any.
- Buyer becomes liable for tax liability (up to the 15%) if the Buyer does not cause this money to be withheld at closing!

Foreign sellers can avoid last minute snags by filing for a FIRPTA withholding certificate as soon as possible. An accountant or attorney can help with this filing.



# MATCH RACE

## SHORT SELLING DURING FORECLOSURE

Sometimes you find yourself in a real race against time. Successfully closing a short sale while the property is simultaneously going through foreclosure is enough to send anyone overboard. Follow these hints and stay dry!

- Make sure Seller has an attorney representing them in the foreclosure – and get to know them so you can work as a team.

- Ask Seller's attorney to provide you regular updates on status of the foreclosure.

- Communicate sales activities with Seller's attorney so they can leverage that information and defend the client.

### You have two deadlines to beat:

- **Final Judgment.** This is a big deal and is rarely overturned. Judgments live in the public records for 20 years so they have a lasting impact on the Seller.

- **Foreclosure Sale.** If the property is sold and barring errors, then the race is over.

## SHORT SALE DOCUMENTATION CHECKLIST

Submitting a complete and comprehensive short sale approval request will increase the likelihood of a quick approval and prompt closing.

### FROM YOUR CLIENT:

- ☐ Original Loan Application
- ☐ Signed Authorization Letters
- ☐ Current Financial Statement
- ☐ Signed Hardship Letter with Backup
- ☐ Tax Records
  - 2 Years Tax Returns, or
  - IRS 4506-T Request for Transcript of Tax Return
- ☐ 2 Months Bank/Investment Statements
- ☐ 2 Most Recent Pay Stubs
- ☐ Proof of Occupancy
- ☐ Any documents received from Lender's attorney

### WHAT YOU CAN PROVIDE:

- ☐ Comparative Market Analysis
- ☐ Property Inspection (especially if property needs work)
- ☐ MLS History (illustrates price reductions)
- ☐ Damage/Repair Estimates & Photos
- ☐ Fully Executed Contract & Addenda
- ☐ Buyer's Pre-Qualification Letter

### LET THE REAL ESTATE ATTORNEY:

- ☐ Obtain Preliminary Title Search
- ☐ Prepare Preliminary Closing Disclosure
- ☐ Provide Court Docket (if in foreclosure)
- ☐ Prepare Request for Short Sale Approval
- ☐ Submit Short Sale Request to Lender
- ☐ Negotiate Terms of Short Sale
- ☐ Review Short Sale Letter with Seller
- ☐ Close the Deal
- ☐ Address Post-Closing Issues:
  - Disburse Funds per Approval Letter
  - Tax Reporting
  - Dismissal of Foreclosure
  - Obtain Satisfaction of Mortgage(s)
  - Issue Clear Title Policy to Buyer

# BUYING REOs

## REO OR “REAL ESTATE OWNED”

REO or “Real Estate Owned” describes properties that have been fore-closed on by the lender, but did not sell to a third party at the foreclosure sale. Your client can get a bargain when buying an REO but the waters are treacherous.

## HERE ARE SOME THINGS YOU NEED TO CONSIDER:

- Property may have been vacant for some time. So some or all of the home's equipment may not be in working order due to lack of maintenance or vandalism.
- Power may not have been kept on so the property may suffer from adverse effects of excessive heat and humidity - mold for example.
- An in depth home inspection is a must and is recommended before submitting an offer, since these properties are sold “As Is”.

## GENERALLY, AN REO PURCHASE

makes sense for a seasoned real estate investor, who can take the risk that the deal will not ultimately close, or that necessary repairs are within their budget. However, if your client has a limited budget or needs to move into the house within a certain amount of time, an REO may not be an appropriate property for them.

## MORE TO CONSIDER:

- You may write up the offer on the standard local form contract, however, the lender will likely respond with a rider that essentially deletes and replaces all of the terms of the contract you presented. Have a knowledgeable real estate attorney review the rider and explain the new terms to you and your client.
- If there is any damage to the property between the date of the contract and closing the seller is not responsible to make repairs. If it turns out that repairs are required the buyer can choose to pay for the repairs themselves or walk away – typically with a refund of their deposit.

**“HAVE A KNOWLEDGEABLE  
REAL ESTATE ATTORNEY  
REVIEW THE RIDER  
AND EXPLAIN THE NEW TERMS...”**





# LISTING INTERVIEW

**Seller:** \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Co-Seller:** \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

1. Are you now or have you recently gone through a divorce or separation proceeding?

☐ No ☐ Yes, explain \_\_\_\_\_

2. Have you ever filed bankruptcy?

☐ No ☐ Yes, when \_\_\_\_\_

3. Are you now or have you ever been a party to a foreclosure proceeding?

☐ No ☐ Yes, explain \_\_\_\_\_

4. Have you recently been married?

☐ No ☐ Yes

5. Are you aware of any liens or judgments against you?

☐ No ☐ Yes, explain \_\_\_\_\_

6. Do you plan to attend closing in person?

☐ No ☐ Yes

7. Will a Power of Attorney be used in this transaction?

☐ No ☐ Yes

8. Do you hold title to this property in a trust?

☐ No ☐ Yes

9. You can save money on title insurance if you have your Owner's Title Insurance Policy. Do you have a copy?

☐ No ☐ Yes

10. Are you a U.S. Citizen or legal permanent resident?

☐ No ☐ Yes

11. Do you have a copy of your survey?

☐ No ☐ Yes, explain \_\_\_\_\_

12. Is this a short sale?

☐ No ☐ Yes

13. Please identify any mortgages that will be paid off at closing:

Lender: \_\_\_\_\_ Loan #: \_\_\_\_\_

Lender: \_\_\_\_\_ Loan #: \_\_\_\_\_

Lender: \_\_\_\_\_ Loan #: \_\_\_\_\_

14. Please provide a contact for your Homeowners' or Condominium Association:

Contact: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# MARKERS

## TIPS TO NAVIGATE YOUR WAY TO A SUCCESSFUL CLOSING

### CHANNEL MARKER 1: PROFESSIONAL DEVELOPMENT

- [Request a seminar](#)

### CHANNEL MARKER 2: THE LISTING

- [Use our Listing Interview Form](#)
- Provide your client with information from this toolkit

### CHANNEL MARKER 3: THE CONTRACT

- [Order our Florida Realtors/Florida Bar Contract Preparation Manual](#)
- Use a short sale documentation checklist

### CHANNEL MARKER 4: CONTRACT TO CLOSING

- [Use our Find an Attorney Service](#) to ask them questions
- Have an attorney negotiate short sale

### SAFELY TO HARBOR: AFTER CLOSING

- Follow Florida ARECs
- You'll receive updates on new services and resources
- [Sign-up for our Newsletter](#)

## TAKE ACTION! GET AN ATTORNEY ON YOUR TEAM.

Distressed homeowners who are already struggling financially think they may not be able to afford legal representation. The truth is they cannot afford NOT to have an attorney and you cannot afford the risk.

Florida ARECS is a statewide umbrella organization representing more than 20 Real Estate Councils throughout Florida. We represent a network of nearly 1,000 real estate attorneys dedicated to helping save Florida real estate professionals and homeowners from the worst of this market.

The best source for easy to work with and expert attorneys is your local Attorneys' [Real Estate Council](#).



### LIFESAVING TIP:



Don't take your foreclosure lying down!

**Let us help you save your deal and your client.  
It's what we do.**

Go to <http://flarecs.com/directory/> to talk to an attorney in your community.



# NOTES

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This pamphlet contains general information. It is not specific legal advice. While this pamphlet gives general guidance, if you need legal advice directly related to your situation, you should consult with an attorney.