

Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

Short Sales

Industry Expert Article

By: Michelle Rawn
Borders & Borders Attorneys

Background

It is impossible to turn on the TV or look at a newspaper without running into an article about the mortgage crisis that the country is currently experiencing. Due to lax lending practices, consumer spending practices and fluctuations in the housing market, there are many homeowners who need to sell their home but can't sell it for enough to pay off their loans. In addition, there are some homeowners who have fallen behind on their payments for a variety of reasons and are in various stages of foreclosure. When they find a buyer, most of these homeowners must either bring funds to closing or negotiate with their lender to accept less than the full amount due on the loan. If their lender does agree to accept less than a total payoff, this is called a "short sale."

The Process

The process of obtaining lender approval for a short sale is a laborious one. The seller usually must provide financial documentation of

his or her income and budget to show the lender that the seller cannot afford to pay the full amount due. It can take many phone calls and faxes over weeks (and months) to get the correct information to the correct person at the lender to consider the offer. Usually, lenders will not discuss a short sale unless the borrower/seller is behind on his or her payments. In addition, lenders will not discuss the borrowers' situation with anyone (such as attorneys and realtors) other than the borrower without express written permission signed by the borrowers and on record with the lender.

One of the items that the Seller will need to provide, further along in the negotiation process, is an Estimated HUD. Oftentimes the first item on the HUD that the lender will cut is the commission. Lenders say "If we are taking less, the agents will take less." This can be particularly frustrating for agents because they will usually spend far more time on a short sale than on a typical sale; if anything, they deserve a higher commission.

It is critical to begin this process as soon as possible. When you are aware that a short sale may be required, you should obtain the seller's permission to indicate on the

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Comments from the Chair

**by: Lois Ann Disponett,
Chair**



RECENT RULINGS:

We recently received a ruling from the Kentucky Court of Appeals regarding the Commission's interpretation of KRS 324.160(4)(f) and KRS 324.020(4), as they pertain to factoring companies that advance commissions to agents. The Court of Appeals and the Jefferson Circuit Court have both found that factoring does not, in fact, violate license laws. The Commission voted to let this decision stand and not to appeal to the Kentucky Supreme Court for Discretionary Review. Therefore, if you are a principal broker and you have agents who want to use a commission-advance service, this service is considered legal under license laws.

The Commission also recently looked at a case in which the licensees indicated that they were dual agents, even though they only represented the buyers of the property. The reason, they explained, was that the house was owned by HUD and the brokerage had previously done Broker Price Opinions for HUD. The Commission determined that this is not dual agency and should not be reflected as such on the Agency Disclosure Statement.

At our February meeting, the Commission looked at the issue of an agent closing down the business of a deceased broker, as allowed by KRS 324.425. This statute indi-

cates that the agent may only close an existing business but may not take on new clients or customers. (To do that, the brokerage would need to hire a new principal broker.) However, the Commission determined that referring clients to other brokers is acceptable under the law, since that act does not constitute taking on new clients or customers.

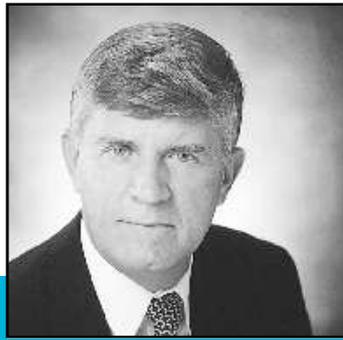
Finally, we looked at the issue of an agent going into escrow and then being entered into a bonus drawing for selling a particular listing. The Commission determined that, so long as the contract was created prior to the agent going into escrow, the agent may still be entered into the bonus drawing and receive payment from his or her previous principal broker, should the agent be lucky enough to win.

We look at license law issues each month. So, if you run into a novel or unique situation, please feel free to send it to the Legal Staff. The Commission will apply the facts to the law and give you an opinion.

When engaging in property management, be sure to retain your receipts for payments to vendors.

From the Director's Desk

by: Norman E. Brown,
Executive Director



In this ever-changing real estate market, buyers and sellers are structuring their deals differently in many cases. For example, lease options are becoming more prevalent than they have been in the past few years. Along with these different types of sales, commission structures may be different as well. The Commission has received several complaints lately from consumers who did not understand the commission structure or payments in their particular transactions.

It is important for you, as a licensee, to clearly set out, in writing, exactly how the payments will be made. For example, if a partial payment is due at the time of the lease and another payment is due at the time of the closing, make sure this is clearly set out in the listing or compensation agreement. If the commission is still going to be due whether the buyer ultimately closes or not, make sure this fact is also clearly spelled out between the broker and the seller.

As you can see from the list of forms and documents in the right-hand column of this page, we have an abundance of information available to you on our website. Please

feel free to use these forms and documents in your daily transactions. Among the items we have recently added are forms translated into Spanish, commercial documents, landlord-tenant documents and interactive contracts and listing agreements. There are also several documents that allow you to better explain the short-sale process to your clients and customers. In addition, there is an explanation of how to measure square footage using ANSI Standards. These forms are restricted to licensees. The user name and password are below.

Licensee-Restricted Forms & Contracts

User Name & Password

Below are the User Name and Password you need in order to access forms on the Commission's website (www.krec.ky.gov). The link is under General Information.

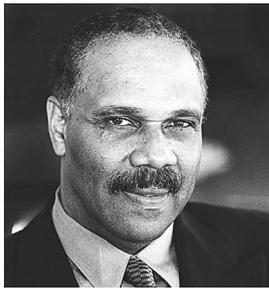
User Name: *get* (lower case)

Password: *forms* (lower case)

Be sure to check the box that says, "remember my password."

WEB-BASED RESTRICTED FORMS & DOCUMENTS

Explanation of New Agency Forms
Seller Disclosure of Property Condition Form
Exclusive Right to Sell Agency Contract
Exclusive Right to Sell Agency Contract - Español
Instructions for completing the Exclusive Right to Sell Agency Contract
Real Estate Purchase Offer/Contract
Real Estate Purchase Offer/Contract - Español
Instructions for completing the Real Estate Purchase Offer/Contract
Property Management Agreement
Exclusive Buyer Agency Contract
Exclusive Buyer Agency Contract - Español
Release of Earnest Money Deposit
Vacant Land Disclosure Statement
Consumer Guide to Agency Relationships – Model Policy/Dual Agency
Consumer Guide to Agency Relationships – Model Policy/Designated Agency
Agency Disclosure Statement-Buyer
Agency Disclosure Statement-Seller
Agency Disclosure - Español
Residential One-Time Showing Agreement
Consent to Advertise - Pursuant to 201 KAR 11:105
Commercial One-Time Showing Agreement
Sample Tenant Move In - Move Out Inspection Report
Sample Residential Lease
Blank Lease
Confidentiality Agreement
Liability Escrow Release
Binding Listing Contract
Commercial Offer to Purchase Agreement
How to Successfully Manage Rental Houses in Kentucky
An Explanation of Short Sales
Short Sale Listing Addendum to Purchase Contract
Short Sale Listing Addendum



Ron Smith



Lois Ann Disponett



Ken Perry



F. M. Sponcil



James H. Huff

Guidance for Unique Legal Situations

By: *Lee Harris, General Counsel & Denise Payne Wade, Staff Attorney*

WHAT ARE LICENSEES TO DO?

On a daily basis, the Commission's Legal Staff speaks with many licensees and consumers regarding issues that arise during real estate transactions. At times, these issues create considerable confusion, leading to the inevitable question: What is a licensee to do?

The purpose of this article is to provide guidance to licensees in areas of concern that have been brought to the Commission's attention. These areas involve: (1) identifying boundary lines; (2) advertising or promoting a licensee's participation in a sale under 201 KAR 11:105, Section 1; (3) advertising production levels of agents; (4) terminating contracts; and (5) using one-time showing agreements.

IDENTIFYING BOUNDARY LINES

Q: What should a buyer's agent do if his or her buyer-client seeks the agent's assistance in writing an offer on property that has been viewed by the buyer-client but not by the buyer's agent?

A: A buyer's agent should view the property prior to assisting the buyer with writing an offer on it. The buyer's agent should also verify or ask about the boundaries of the listed property, especially if the seller or the seller's agent has not affirmatively identified the boundaries of the property on the ground-by word, deed, or writing. If there is no confirmation of the boundaries, the buyer's agent should recommend that his or her buyer-client, before signing a contract to purchase, receive a survey from which the buyer-client can clearly identify the boundaries of the property on the ground. In the absence of such affirmative representations or such a survey, the buyer's agent should

advise the buyer-client that he or she bears the risk that the property purchased is not the actual property on the ground that the buyer-client assumes is being purchased.

ADVERTISING OR PROMOTING PARTICIPATION IN A SALE UNDER 201 KAR 11:105 (1)

Q: What should a licensee do if the licensee has participated in the sale of property that is subsequently placed back on the market for sale?

A: If a licensee advertises properties that he or she has sold over a period of several years, the advertisements should be clear to the public. If, for example, one of these properties is, at the time of the advertisement, listed by another agent, the advertisement might lead to the mistaken belief that the property has already been sold. To avoid such confusion, the licensee should include the time frame for his or her participation as a buyer's agent in a sale of that particular piece of property, whenever he or she advertises or promotes his or her participation in the sale, pursuant to 201 KAR 11:105, Section 1, with notice that the property has, thereafter, been placed back on the market.

ADVERTISING PRODUCTION LEVELS OF AGENTS

Q: What should a principal broker do if he or she wants to advertise the production levels of the agents in his or her real estate company?

A: To be clear, and to avoid possible violations of KRS 324.117, the principal broker should identify the coverage period for the volume of sales being published and state the source (MLS or non-MLS) for each published sales volume.

New E & O Group Carrier - Williams Underwriting Group

As you probably have already heard, Williams Underwriting Group is the **NEW** program administrator for real estate group errors and omissions insurance for license year 2008/2009. The new carrier for the program is National Union Fire Insurance Company of Pittsburgh, PA. Inc. (a member company of AIG)".

There was a lot of confusion this year regarding the errors and omissions insurance group program. There was a protest filed in February shortly after the contract was awarded and the Commission had to wait for a decision to be made by the Finance and Administration Cabinet. As soon as the protest was denied, the contract was awarded and the Commission began sending out information and renewal packages to principal brokers. We apologize for the delay and the lack of information; however, the Commission had to wait until the protest was over before renewals could be mailed. If you still have questions regarding the group program or new group carrier, please do not hesitate to contact Shelly Saffran at our office, extension #15.

As always, this is a guaranteed issue program. Under the basic group plan, licensees have a \$100,000 limit of liability, a \$0 deductible, and a \$1,000,000 annual aggregate. Also included in the basic policy will be lockbox coverage with a \$5,000 limit and a \$10,000 aggregate. The franchise grantor is also automatically included as

an additional insured for vicarious liability under the basic policy.

Williams Underwriting Group is also offering several endorsements and enhancements to the basic policy. The following endorsements are being offered to licensees at a rate of \$10.00 in addition to the basic policy: Fair Housing/Discrimination, Regulatory Complaints, Pollution Exclusions Amendatory. Licensees can also purchase a Personal Identity Coverage endorsement for \$13.50. Williams Underwriting Group is also offering higher limits of liability up to \$500,000 on a guaranteed issue basis and firm excess coverage of up to \$1,000,000. Remember, any endorsements or higher limits of liability must be purchased directly from Williams Underwriting Group. Licensees can purchase these at any time throughout the year.

The contact information for the new administrator is listed below. We encourage licensees to become familiar with the basic policy as well as any endorsements and enhancements that are offered.

Williams Underwriting Group

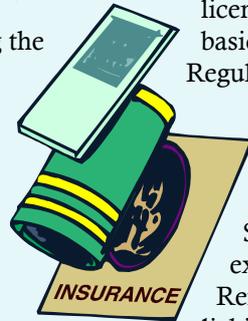
P.O. Box 769

Jeffersonville, IN 47131-0769

Phone: 812-284-2321 or Toll Free: 1-800-222-4035

Fax 812-284-3252

www.wugioe.com & email: wug@wugioe.com



Short Sales

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listing that the sale will be "subject to approval by the seller's lender(s)." In addition, the contract should contain a contingency for the approval by the seller's lender. Also, keep in mind that if the seller is in foreclosure, you also must be aware of when the property is scheduled to be sold at the Commissioner's sale.

If you have a client who is buying a property under a short sale, make sure they know to fasten their seat belts. The good news is that they are usually walking into some equity. The bad news is

that it will be a bumpy road. It is not unusual for a short sale negotiation to take months, which almost always puts the parties outside their contract timeframe. If the buyer is in a position of needing possession soon, it can be a bad experience for all involved. Be sure to have these discussions with your buyer as early as possible.

What happens to the deficiency?

When a lender takes a loss on the payoff, it has two options. It can require the borrower/seller to pay back the remaining amount. This will come in the form of a note,

or a promise to pay; however, it is not secured by the property since it has been sold. Believe it or not, lenders seldom choose this option.

In the alternative, lenders can "forgive" the difference. In that case, the amount of debt that was forgiven may be considered as income for the borrower and may be taxable. Congress passed the Mortgage Forgiveness Debt Relief Act of 2007, allowing in certain circumstances, for forgiven debt not to be taxable to the borrower, thus giving the borrower some relief. Your client should check with his or her tax preparer to see if he or she may qualify under the Act.



Disciplinary Actions



Archie Nealy

(Bowling Green) Case Nos. 07-0082, 07-0163 and 07-0232

Violation: Mr. Nealy agreed to stipulate to violations of KRS 324.160(4)(b),(c),(d),(h),(v) and (w) and KRS 324.160(4)(u), specifically 201 KAR 11:121, for failing to remit investor client funds.

Disposition: Mr. Nealy voluntarily surrendered his license, and he may not reapply for licensure for a minimum of five (5) years. The Commission awarded fifty thousand dollars (\$50,000.00) to be paid out of the Education, Research, and Recovery Fund to the complainants in this matter.

Joanna L. Gnau

(Louisville) Case No. 07-0078

Violation: Ms. Gnau agreed to stipulate to an unintentional breach of KRS 324.160(4)(u) for violating 201 KAR 11:121 by failing to provide to a repair person her buyer-customer's detailed written request for repairs, which was in her possession.

Disposition: Ms. Gnau agreed to pay eight thousand dollars (\$8,000.00) to the complainants in this matter, representing a portion of the cost to repair the plumbing in question. Ms. Gnau agreed to attend six (6) hours of continuing education in law, in addition to any hours already required by law.

Barbara D. Campbell

(Murray) Case Nos. 05-0097 & 05-0098

Violation: Ms. Campbell agreed to stipulate to an unintentional and inadvertent violation of KRS 324.160(4)(v), resulting from her mistaken, but good-faith, belief that she properly completed a one-time showing agreement.

Disposition: Ms. Campbell agreed to pay a fine in the amount of one

thousand dollars (\$1,000.00) and to successfully complete six (6) hours of continuing education in a Commission-approved law course, in addition to any hours already required by law.

Brent L. Hoffmeier

(Louisville) Case No. 06-0234

Violation: Mr. Hoffmeier agreed to stipulate to a violation of KRS 324.160(4)(h), for failing to properly account for, or remit, money belonging to others, in a timely manner.

Disposition: Mr. Hoffmeier agreed to pay a fine in the amount of one thousand dollars (\$1,000.00) and to attend six (6) hours of continuing education in law. Mr. Hoffmeier agreed to accept a formal reprimand. Mr. Hoffmeier is currently in escrow and agreed to have his license placed on probation for twelve (12) months if he reactivates his license.

Paul M. Grisanti

(Louisville) Case No.07-0376

Violation: Mr. Grisanti agreed to stipulate to a violation of KRS 324.160(4)(u), specifically 201 KAR 11:110, for unintentionally and inadvertently inducing parties to two listing contracts to break the contracts for the purpose of substituting in lieu thereof new contracts with them. These violations resulted from reliance upon dates in the original listings rather than dates in the signed extensions to them, which were overlooked during a review that took place during Respondents' transition from Sperry Van Ness Ward Commercial Group to Grisanti-Head Commercial Real Estate.

Disposition: Mr. Grisanti agreed to pay a fine in the amount of one thousand dollars (\$1,000.00) and to successfully complete twelve (12)

hours of continuing education in Commission-approved law courses.

Herbert T. Head

(LaGrange) Case No.07-0376

Violation: Mr. Head agreed to stipulate to a violation of KRS 324.160(4)(u), specifically 201 KAR 11:110 for unintentionally and inadvertently inducing parties to two listing contracts to break the contracts for the purpose of substituting in lieu thereof new contracts with them. These violations resulted from reliance upon dates in the original listings rather than dates in the signed extensions to them, which were overlooked during a review that took place during Respondents' transition from Sperry Van Ness Ward Commercial Group to Grisanti-Head Commercial Real Estate.

Disposition: Mr. Head agreed to pay a fine in the amount of one thousand dollars (\$1,000.00) and to successfully complete twelve (12) hours of continuing education in Commission-approved law courses.

Barbara J. Barnett

(Murray) Case No. 07-0124)

Violation: Ms. Barnett agreed to stipulate to a violation of KRS 324.160(4)(u) for violating 201 KAR 11:121, resulting from her failure to timely initiate the earnest-money release process that her seller-client required, due to the incapacity and subsequent death of Ms. Barnett's principal broker.

Disposition: Ms. Barnett agreed to pay a fine in the amount of seven hundred fifty dollars (\$750.00) and to attend and successfully complete six (6) hours of continuing education in law, in addition to any hours already required by law.

Disciplinary Actions

Continued from Page 6

Kenneth C. Klumb

(Bowling Green) Case No. 07--150

Violation: Mr. Klumb agreed to stipulate to a violation of KRS 324.160(4)(u)p; specifically 201 KAR 11:400, resulting from his failure to provide an agency disclosure form to the buyer of the property in question.

Disposition: Mr. Klumb agreed to pay a five hundred dollar (\$500.00) fine and to accept a formal reprimand.

Paul F. Mik, Jr.

(Ekron) Case No. 07-0129

Violation: Mr. Mik agreed to stipulate to a violation of KRS 324.111 for using his escrow account for personal use and maintaining a negative balance in that account.

Disposition: Mr. Mik agreed to attend six (6) hours of continuing education in law in addition to any hours already required by law. Mr. Mik also agreed to pay a fine in the amount of five hundred dollars (\$500.00) and receive a formal reprimand from the Commission.

Billy M. Hudson

(Boston) Case No. 07-0323

Violation: Mr. Hudson agreed to stipulate to a violation of KRS 324.160(4)(e) for failing to disclose his status as a licensee and as a buyer in the purchase contract.

Disposition: Mr. Hudson agreed to pay a fine in the amount of five hundred dollars (\$500.00).

Joseph N. Cochran

(Prospect) Case No. 07-0214

Violation: Mr. Cochran agreed to stipulate to a violation of KRS 324.160(4)(u), for violating KRS 324.020, for practicing while not actively licensed by the Commission.

Disposition: Mr. Cochran agreed to pay a fine in the amount of five hundred dollars (\$500.00) and to

complete three (3) hours of continuing education in law, in addition to any hours already required by law.

Darrell B. Karnes

(Columbia) Case No. 06-0277

Violation: Mr. Karnes agreed to stipulate to unintentional violations of KRS 324.160(4)(u), specifically 201 KAR 11:350 and 201 KAR 11:400. These violations resulted from the failure to present agency disclosure forms and a seller's disclosure form, neither of which caused any actual damages.

Disposition: Mr. Karnes agreed to a five hundred dollar (\$500.00) fine and to successfully complete six (6) hours of continuing education in law, in addition to any hours already required by law. Mr. Karnes also agreed to accept a formal reprimand.

William B. Schuler

(Burnside) Case No. 07-0216

Violation: Mr. Schuler agreed to stipulate to a violation of KRS 324.020 for advertising as a licensee while his license was still in escrow.

Disposition: Mr. Schuler agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00) and to attend six (6) hours of continuing education, in addition to any hours already required by law.

Cynthia M. Brouillette

(Villa Hills) Case No. 07-0236

Violation: Ms. Brouillette agreed to stipulate to a violation of KRS 324.160(4)(u) for violating 201 KAR 11:250 for failing to have the signature of all owners on a listing contract.

Disposition: Ms. Brouillette agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00) and to attend three (3) hours of continuing education in law, in addition to any hours already required by law.

Joseph P. Bryant

(Breeding) Case No. 06-0277

Violation: Mr. Bryant agreed to stipulate to unintentional violations of KRS 324.160(4)(u), specifically 201 KAR 11:350 and 201 KAR 11:400. These violations resulted from the failure to present agency disclosure forms and a seller's disclosure form, neither of which caused any actual damages.

Disposition: Mr. Bryant agreed to a two hundred fifty dollar (\$250.00) fine and to complete six (6) hours of continuing education in law, in addition to any hours already required by law. Mr. Bryant also agreed to accept a formal reprimand.

Tammye Osborne

(Elizabethtown) Case No. 07-0335

Violation: Ms. Osborne agreed to stipulate to a violation of KRS 324.160(4)(s) for failing to timely respond to a formal Commission complaint.

Disposition: Ms. Osborne agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00).

Jennifer Robertson

(Atlanta, GA) Case No. 07-0272

Violation: Ms. Robertson agreed to stipulate to a violation of KRS 324.160(4)(u) for using the incorrect seller's disclosure form on her listings.

Disposition: Ms. Robertson agreed to pay a fine in the amount of two hundred fifty dollars (\$250.00).

Danita E. Toll

(Lawrenceburg) Case #07-0110

Violation: Ms. Toll agreed to stipulate to a violation of KRS 324.160(4)(u) for violating 201 KAR 11:121 by failing to include a contingency in a purchase contract, which led to the buyers ultimately losing their good-faith money.

Disposition: Ms. Toll agreed to pay a fine in the amount of two hundred dollars (\$200.00) and to attend three (3) hours of continuing education in law, in addition to any hours already required by law.

Do's and Don'ts For Real Estate Licensees Under The Real Estate Settlement Procedures Act

By: Phillip L. Schulman
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Washington, D.C. 20006
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Real estate brokers and agents must comply with the Real Estate Settlement Procedures Act, or RESPA. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. While the enforcement of RESPA by the U.S. Department of Housing and Urban Development, or HUD, has been dormant in the past, HUD has stepped up its efforts in this area in the past eighteen months. HUD hired new staff and entered into a contract with an investigation firm in Arlington, Virginia to conduct on-site reviews to monitor conformity with RESPA. Now, more than ever, real estate brokers and agents must ensure they are complying with RESPA.

1. Entities Subject to RESPA

Services that occur at or prior to the purchase of a home are typically considered "settlement services." These services include title insurance, mortgage loans, appraisals, abstracts, and home inspections. Services that occur after closing generally are not considered "settlement services."

RESPA covers, among others:

- *Real Estate Brokers and Agents
- *Mortgage Bankers and Mortgage Brokers
- *Title Companies and Title Agents
- *Home Warranty Companies
- *Hazard Insurance Agents
- *Appraisers
- *Flood and Tax Service Providers
- *Home and Pest Inspectors

RESPA, however, does not apply to:

- *Moving Companies
- *Gardeners
- *Painters
- *Decorating Companies
- *Home Improvement Contractors

2. RESPA Prohibitions

RESPA prohibits a real estate broker or agent from

receiving a "thing of value" for referring business to a settlement service provider, or "SSP," such as a mortgage banker, mortgage broker, title company or title agent.

RESPA also prohibits SSP's from splitting fees received for settlement services, unless the fee is for a service actually performed.

3. Exceptions to RESPA's Prohibitions

Not all referral arrangements fall under RESPA's referral restriction. In fact, RESPA and its regulation feature a number of exceptions. Two examples are:

Promotional and Educational Activities

Settlement service providers, such as mortgage bankers, mortgage brokers, title insurance companies, and title agents, can provide normal promotional and educational activities under RESPA.

These activities must not defray the expenses that the real estate broker/agent otherwise would have had to pay. The activity cannot be in exchange for or tied in any way to referrals.

Payments in Return for Goods Provided or Services Performed

A real estate broker or agent must provide goods, facilities, and services that are actual, necessary, and distinct from what they already provide.

The amount paid to a real estate broker or agent must be commensurate with the value of those goods and services. If the payment exceeds market value, the excess will be considered a kickback and violates RESPA.

The payments should not be "transactionally based." A payment for services rendered is transactionally based if the amount of the payment is determined by whether the real estate broker/agent's services resulted in a successful transaction. Payments may not be tied to the success of the real estate broker/agent's efforts, but must be a flat fee that represents fair market value.

Affiliated Business Arrangements

Real estate brokers and agents are permitted to own an interest in a settlement service company, such as a mort-



Real Estate Settlement Procedures Act
Continued from Page 8

gage brokerage or title company, so long as the real estate broker/agent:

*Discloses its relationship with the joint venture company when it refers a customer to the mortgage broker or title company;

*Does not require the customer to use the joint venture mortgage broker or title company as a condition for the sale or purchase of a home; and

*Does not receive any payments from the joint venture company other than a return on its ownership interest in the company. These payments cannot vary based on the volume of referrals to the joint venture company.

The joint venture mortgage broker or title company must be a bona fide, stand-alone business with sufficient capital, employees, separate office space, and must perform core services associated with that industry.

4. Examples of Permissible Activities and Payments

The following are permissible:

A title agent provides a food tray for an open house, posts a sign in a prominent location indicating that the event was sponsored by the title agent, and distributes brochures about its services.

A mortgage lender sponsors an educational lunch for real estate agents where employees of the lender are invited to speak. If, however, the mortgage lender subsidizes the costs of continuing education credits, this activity may be seen as defraying costs the agent would otherwise incur, and may be characterized as an unallowable referral fee.

A title company hosts an event that various individuals, including real estate agents, will attend and posts a sign identifying the title company's contribution to the event in a prominent location for all attending to see and distributes brochures regarding the title company's services.

A hazard insurance company provides notepads, pens, or other office materials reflecting the hazard insurance company's name.

A mortgage brokerage sponsors the hole-in-one contest at a golf tournament and prominently displays a sign reflecting the brokerage's name and involvement in the tournament.

A real estate agent and mortgage broker jointly advertise their services in a real estate magazine, provided that each individual pays a share of the costs in proportion with his or her prominence in the advertisement.

A lender pays a real estate agent fair market value to rent

a desk, copy machine, and phone line in the real estate agent's office for a loan officer to prequalify applicants.

A title agent pays for dinner for a real estate agent during which business is discussed, provided that such dinners are not a regular or expected occurrence.

A lender pays a real estate agent fair market value to take a loan application and collect credit documents (if allowed in the real estate agent's state).

5. Examples of Prohibited Activities and Payments

The following are prohibited:

A title company hosts a monthly dinner and reception for real estate agents.

A mortgage broker pays for a lock-box without including any information identifying the mortgage broker on the lock-box.

A mortgage lender provides lunch at an open house, but does not distribute brochures or display any marketing materials.

A hazard insurance company hosts a "happy hour" and dinner outing for real estate agents.

A home inspector pays for a real estate agent to go to dinner, but does not attend the dinner.

A title company makes a lump-sum payment toward a function hosted by the real estate agent, but does not provide advertising materials or make a presentation at the function.

A mortgage broker buys tickets to a sporting event for a real estate agent, or pays for the real estate agent to play a round of golf.

A title company sponsors a "get away" in a tropical location, during which only an hour or two is dedicated to education and the remainder of the event is directed toward recreation.

A mortgage lender only pays a real estate agent for taking the loan application and collecting credit documents if the activity results in a loan.

Before you undertake any activity with a SSP or accept any payments, goods or services from a SSP, you should speak with an attorney familiar with RESPA and make sure the activity complies with local and state laws, which may prohibit activities that are otherwise permissible under RESPA.

Property Located in Historic Districts

By: Shelly Saffran

Director of Administration

Owners of property located within local historic preservation districts in Kentucky may be required to follow certain guidelines when doing exterior renovations such as remodeling, rehabilitating or adding on to buildings designated as historic.

Sometimes, owners are not aware that their property is located in a historic district. Buyers can also be surprised to find out that the property they purchased has restrictions on what can and cannot be done to the property.

Recently, the Commission has seen cases involving these types of properties and the problems that can arise when owners and buyers are not aware of historic district designation and obligations that come with ownership.

Historic properties may either be listed in the National Register of Historic Places ("Historic Register") or located within a local district that governs historic properties. National Register listing is honorary and does not place any restrictions or obligations on property owners, and in fact it offers benefits such as making buildings potentially eligible for federal and state historic rehabilitation tax credits and other incentives. Listing property in the National Register does offer a measure of protection for it from federally funded projects such as a proposed highway, which may trigger a project review. For more information, see www.nps.gov/history/nr/.

Listing property in the National Register should not be confused with the local historic district designation. Local preservation ordinances contain provisions for designating resources as either an individual historic resource or part of a district. Many Kentucky communities have a local preservation ordinance which creates a local review board and establishes a process for review of proposed exterior changes. It is important to note that local historic district designation occurs only when requested



by a majority of homeowners in a neighborhood; designation is not imposed by local government. Citizens are directly involved in the development of local district guidelines and determining acceptable standards for any building alterations. Notably, numerous studies have shown that historic designation increases property values more than comparable neighborhoods with no such protections.

Owners of properties in locally-designated areas may be required to seek approval for exterior changes, additions, new construction (both residential and com-

mercial), and relocation or demolition, so that changes complement the historic appearance of the building and the area. Other examples of guidelines may include what the property can be used for and what types of materials can be used in repairing or rehabilitating the property.

Enactment of a preservation ordinance may allow a community to participate in the Certified Local Government (CLG) program, a grants program administered by the National Park Service and the state. For more information about historic preservation ordinances and CLGs, see <http://www.nps.gov/history/hps/workingtonthepast/> and <http://www.nps.gov/history/hps/clg/>.

Recently, there was a question added to the Seller's Disclosure of Property Condition Form asking sellers to disclose if the property being sold is in a historic district. If you are representing the seller, we recommend that you make sure the question is answered properly and that the seller contacts the local governing body, if there is any doubt. If you are representing a buyer, and if the seller has checked "yes" to this question, make sure that your buyer understands that there may be guidelines governing exterior changes to that property due to its location within a local historic district. Advise your buyer-client to contact the local governing body to see what they can and cannot do to the property. You do not want your buyers in a situation where they make an after-

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Property Located in Historic Districts *Continued from Page 10*

the-fact discovery that their improvements or repairs to the property does not comply with local ordinances. This could be very costly to the homeowner. An example would be:

A consumer purchases a home from a seller who did not know the property was in a local historic preservation district with design guidelines that prohibit the use of vinyl siding. The buyer starts making improvements to the home, one of which is replacing the wood siding with a newer, cheaper vinyl material. The buyer is notified that the vinyl siding will have to be removed and the wood siding restored in order to preserve the historic nature of the home. The homeowner would not only have incurred the expense of new vinyl siding, but would also have to incur the expense of removing it and either replacing or making repairs to any remaining wood siding. You can imagine the costs involved in this scenario, which could have been avoided if the homeowner had first consulted the city or local preservation board and inquired about the historic district status and any applicable guidelines concerning the property.

In closing, please become familiar with your local historic districts and make sure that your buyers and sellers are also informed. For more information, see the Kentucky Heritage Council Web site at www.heritage.ky.gov. For an on-line directory of preservation districts in the United States go to www.preservationdirectory.com.

Guidance for Unique Legal Situations *Continued from Page 4*

TERMINATING CONTRACTS

Q: What should a licensee do if: (1) his or her buyer-clients verbally state that their loan application has been canceled by them; (2) the buyer-clients' loan officer notifies the licensee, verbally and in writing, that the loan application has been canceled and will not be revived; and (3) the licensee has a different prospective buyer for the property?

A: A licensee should make his or her best efforts to obtain a written release of a purchase contract before entering into a second purchase contract with a different buyer. If there is no release signed, the original buyers could file a complaint or a lawsuit, claiming that their contract is still in full force and effect. The best practice is to obtain written releases from all parties to a contract to purchase real estate when the contract has been canceled or terminated.

USING ONE-TIME SHOWING AGREEMENTS

Q: What should a licensee do if he or she wants to enter into a one-time showing agreement with a prospective client?

A: A licensee should make sure that the agreement is not a one-time showing agreement in name only. In other words, if a "one-time showing agreement" is structured as a listing agreement, it must comply with the mandates of 201 KAR 11:250 because it will be deemed to be a listing agreement rather than a one-time showing agreement.

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**May 26, 2008
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&
July 4, 2008
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