

Kentucky Real Estate NEWS

A Publication of the Kentucky Real Estate Commission

SHORT SALE FRAUD: ALMOST THE PERFECT CRIME BUT ALAS, PRISON AWAITS!

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A short sale transaction involves a mortgage holder or lender entering into an agreement to release his mortgage or lien on real property in exchange for payment of less than the total amount owed on the underlying debt. Many short sale transactions are legitimate.

Short sales are an important tool. They can help both the bank and the borrower. However, a prevalent scam involves a practice called "flopping." Flopping involves investors or home buyers hiring brokers to value the home for less than its market value and persuading a lender to accept the sale at that price. The buyer conceals from the lender that he or she has lined up a higher offer and then resells the property for a profit.

In one of the first prosecutions for flopping, two real estate agents pleaded guilty to bank fraud stemming from their involvement in a "short sale mortgage fraudscheme."

The two agents defrauded a lender which held two mortgages on a residential property in Connecticut. One of the agents, who was the listing agent for the property, received an offer to purchase the property for \$132,500.

The other agent communicated with the lender that the highest offer to purchase the property was just over \$102,000 by a limited liability company that the realtors controlled. The lender agreed to a short sale of the property for the lower price and released its mortgages.

Subsequently, the realtors' LLC sold the property for \$132,500 to the original bidder on the property. The real estate agents retained the difference in the two sales prices

Both real estate agents pleaded guilty to defrauding the bank in the short sale mortgage fraud scheme and are scheduled to be sentenced later this year. The maximum penalty is 30 years in jail and a fine up to \$1,000,000, along with an

order of restitution.

Fraudulent short sales are being investigated by the FBI and they are being prosecuted by the U.S. Attorney's Office. A number of states have announced the formation of mortgage fraud task forces to investigate and prosecute mortgage fraud cases and related financial crimes.

While short sales can provide homeowners with a last ditch alternative to foreclosure, the market is rife with scam artists. Homeowners and buyers, agents and lenders should be aware of short sale negotiators who operate without licenses, use straw buyers, or charge illegal fees.



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Comments from the Chair

by: **James H. Huff,**
Chair



On behalf of the Kentucky Real Estate Commission (KREC) commissioners and staff, I want to thank all real estate licensees for their cooperation and patience demonstrated during the new online license renewal process. It was a very successful renewal year with 23,235 total renewals, including: 3,092 principal brokers; 1,305 active brokers; 8,393 active sales associates; 1,272 escrow brokers; and 9,173 escrow sales associates. We received a very positive response from licensees that viewed the system as efficient and user friendly.

As expected with any new system, we did encounter certain implementation challenges, especially with regard to the newly-assigned passwords. For example, passwords were sometimes misplaced by licensees or were incorrectly entered due to overly technical and complicated initial passwords, which were designed to ensure security of the system. Now that licensees have established their own passwords, this will not be a problem as we move forward.

The KREC staff is now working with licensees, state real estate organizations, representatives of Kentucky.Gov. and computer programming experts to evaluate the implementation of the online license renewal system in an effort to make necessary programming modifications. These efforts will result in a report submitted to the KREC which will include a comprehensive analysis of the online license renewal process and specific recommendations for system changes to be recommended for the 2012 renewal period.

I would also like to thank the KREC commissioners for their vision, support, and encouragement in developing online renewal and improving the agency's use of technology. In addition, I extend my appreciation to the tireless efforts and dedication of the KREC staff with regard to planning, designing, and implementation of the online license renewal program. Their efforts to assist licensees during the renewal period were extraordinary.

Staff developed the instructional materials and traveled the state meeting with numerous real estate organizations and conducting instructional programs to assist licensees with the renewal process. During the renewal process staff handled over 460 inquiries made through the webmaster; addressed questions and issues of over 525 walk-in visitors to the KREC office; and answered over 25,400 telephone inquiries.

Finally, as staff works to evaluate and improve the online renewal process, they have already begun working to develop and make available other technologies for the online system. These include utilization of the system for address changes; releasing licenses; transferring licenses from active status to escrow status; and other practical applications to enhance the efficiency of licensees in meeting their professional responsibilities and to ensure compliance with Kentucky's real estate licensing laws and regulations.

As we move forward with online license renewal and the development of other uses of the online system, we welcome your suggestions and involvement in the process.



Comments from the Executive Director

By: Michael W. Wooden,
Executive Director

This is the first time that the Commission's newsletter, the *Kentucky Real Estate News*, has been made available to licensees by electronic mail delivery. This was made possible by the passage of an amendment to KRS 324.330, in 2010, which gave the Commission the authority to require all licensees to file with the Commission, during annual license renewal, their telephone numbers and, if applicable, electronic mail addresses.

The implementation of online license renewal provided the Commission with the opportunity to gather this licensee information and communicate with licensees in a more timely and relevant manner. In addition, sending the newsletter by electronic mail rather than by regular mail will save the Commission approximately \$10,000 for printing and postage per mailed newsletter issue, resulting in more efficient utilization of licensee fees, which fund the activities of the Commission.

It is important to note that licensees without electronic mail capability will continue to receive the newsletter via the United States Postal Service. All licensees will have access to the entire newsletter on the Commission's website [www.krec.ky.gov].

In addition to licensees providing telephone numbers and e-mail addresses during the annual renewal period, it is also important that they update the information should a change occur during the year. Again, this will provide a vehicle for the Commission to effectively communicate important information to licensees.

KRS 324.330 also requires licensees to inform the Commission in writing of any change of princi-

pal location, change of firm name, sales associate's transfer from one principal broker to another or a change in surname. This statute also requires licensees to notify the Commission in writing of a change of residence address within ten days.

Based upon the large volume of undeliverable returned mail, we learned when mailing online license renewal information to licensees (including their assigned passwords) that many licensees have failed to notify the Commission of the above changes as required by KRS 324.330. Failure to notify the Commission of these changes could result in not receiving notices, bulletins, and other information of importance to licensees. Failure to comply with the provisions of KRS 324.330 could also result in disciplinary action being taken against the license held by the licensee who has violated this statute.

As the online system is developed and expanded, in the near future licensees will be able to make these change notifications by electronic mail. In the meantime, until the online program is modified, licensees can obtain the necessary and required change forms from the Commission's website or by calling the Commission's office.



Commissioner Cecil assisting a licensee in the KREC lobby during renewal



Jim Huff



Bob Roberts



Ken Perry



Glenn Thomas



Linda Gibson Cecil

Have You Moved???

Did you Update KREC?

The amount of returned mail to the KREC is becoming a huge problem. During online renewal, the KREC received 1,554 renewal notices returned due to insufficient addresses. This is a matter of great concern for many reasons.

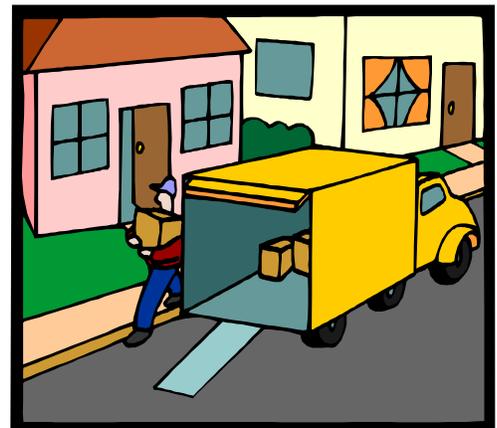
Currently, the main form of communication from the KREC is to the licensee's home address. Renewal notices, continuing education notices and many other important updates are mailed to the home address. If your address on file with the KREC is incorrect, you could be missing out on information that could not only save you money, but it could impact your license.

Oftentimes, after a penalty has been assessed or a license has been canceled, the licensee will say, "I never received anything from the KREC." This is usually the result of not notifying the KREC of a home address change.

Failing to update your home address change with the Commission is a violation of license law. KRS 324.330 (2) states, "The Commission shall be notified in writing of a change of residence address within ten (10) days." Because this law is being heavily violated, the KREC will be implementing a process to handle "returned mail." **This violation of the license law may result in the KREC filing complaints against licensees who do not notify the KREC within ten (10) days of an address change.**

Another reason it is important to update your home address is the large amount of money wasted on "returned mail." The KREC strives to stay in contact with all licensees. Currently, if mail is returned, the KREC attempts to locate the licensee and re-mail the information. This causes extra staff time and extra postage.

Updating your home address is easy and there is no charge associated with the change. Simply go the KREC website (krec.ky.gov) and click on Forms and then Form #205. This form should also be used to change your e-mail address.



A **BIG** Thank You to the Following Boards!

Eastern Kentucky Association of REALTORS®
Lexington-Bluegrass Association of REALTORS®
Madisonville Hopkins County Board of REALTORS®
Northern Kentucky Association of REALTORS®
Somerset-Lake Cumberland Board of REALTORS®

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The Kentucky Real Estate Commission appreciates these local boards for their assistance with the online renewal meetings that were held throughout the Commonwealth. The use of their facilities and equipment was appreciated and helpful as the KREC staff went on the road to assist licensees with online renewal.

Commissioner Application Deadline is August 5, 2011

Any real estate licensee wishing to be considered for a 4-year term as a Kentucky Real Estate Commissioner should contact the Kentucky Association of REALTORS®. An application and detailed requirements are available at www.kar.com and by mail. To qualify, one must have been a resident of Kentucky for 10 years and have held a Kentucky Real Estate license for 10 years. Deadline for submission is August 5, 2011 to KAR, 161 Prosperous Place, Lexington, KY 40509.

Questions may be emailed to susiehelm@kar.com or you can contact the KAR® at 1-800-264-2185.

July 21, 2011 Commission Meeting in Cave City, KY

The next Commission Meeting is on July 21, 2011 at 9:00 a.m. (CST) at the Cave City Convention Center. The meetings are always open and we especially encourage licensees to join us on July 21. There will be an open forum during the meeting and attendees will be able to voice their concerns and comments. Please mark you calendars. We look forward to seeing you there!

*Cave City Convention Center
502 Mammoth Cave Street, Cave City, KY 42127*

KENTUCKY'S UPDATED CONDOMINIUM LAW AND ITS PROTECTION OF CONDOMINIUM PURCHASERS AND SELLERS



Kentucky's updated condominium laws became effective on January 1, 2011. These laws are officially known as The Kentucky Condominium Act, which includes provisions to protect condominium purchasers and sellers. For example, a condo association must complete a certificate containing information about: restrictions, assessments or other fees, expenses, reserves for capital expenditures, and any lawsuits or unsatisfied judgments against the association. Condominium purchasers have a right to receive this certificate.

Since licensees will likely have buyer-clients and/or seller-clients who are involved in condominium transactions, a KREC-approved Condominium Seller's Certificate form has been created. It may be used to satisfy the certificate requirement in the condo law. The form can be accessed from the KREC's website (www.krec.ky.gov) at the following link: Condominium Seller's Certificate.

Licensees should become familiar with the protection that the condo laws provide for purchasers and sellers, including the certificate requirement in KRS 381.9203, which is outlined below.

I. RIGHTS OF CONDO PURCHASERS:

A. A condo purchaser has a right to receive:

1. A certificate that satisfies the requirements in KRS 381.9203;
2. A copy of the following association records:
 - a. The declaration, other than the plats and plans;
 - b. The bylaws; and
 - c. The rules or regulations;
3. A completed operating budget and any balance sheets; and
4. An insurance statement/summary that describes any insurance coverage provided for the benefit of unit owners.

B. If an association fails to provide a completed certificate or if it is provided later than ten (10) days after the condo seller requests it, then the condo purchaser's contract to buy will be voidable "until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs."

II. CONDO SELLERS' RESPONSIBILITY & PROTECTION:

A. A condo seller must furnish the above-listed documents to a condo purchaser, "before execution of any contract for sale of a unit, or otherwise before conveyance." (Emphasis added.)

B. A condo seller is not liable to a condo purchaser:

1. if the association fails or delays to provide the required certificate; or
2. if the association provides a certificate that includes any incorrect information.

III. THE ASSOCIATION'S RIGHT & RESPONSIBILITIES:

A. An association has a right to charge a reasonable fee to prepare the certificate required in KRS 381.9203; and

B. An association must:

1. Furnish the required certificate within ten (10) days after a condo seller requests it;
2. Keep sufficient details in its financial records to enable it to satisfy the certificate requirements; and
3. Make all financial and other records reasonably available for examination by condo sellers or their authorized agents.

Kentucky's Updated Condominium Law

Continued from Page 6

Finally, if a licensee has a seller-client who does not know, or is uncertain about, whether the property to be sold is or is not "a condominium" that is subject to the requirements of the condo law, then the licensee should advise the seller-client to contact a private attorney. A private attorney can review the documents listed in I(A)(2), above-which govern the association (particularly, the declaration or master deed)-and, thereafter, provide the seller with the legal advice that he or she needs. NOTE: NEITHER A LICENSEE NOR THE COMMISSION CAN PROVIDE THIS SERVICE. Licensees are not authorized to provide it because they do not possess a license to practice law, and the Commission lacks jurisdiction over such matters.

Specifically, Kentucky's updated condominium law provisions are not included in Kentucky's real estate license laws, KRS Chapter 324. They are found in KRS Chapter 381 and can be accessed from the following website: <http://www.lrc.ky.gov/KRS/381-00/CHAPTER.HTM>

Moreover, as KRS 324.2812 states, the KREC does not have any jurisdiction over "community association managers and the management or business activities of not-for-profit community associations, which include townhouse, condominium, homeowner, or neighborhood associations." Again, if you have questions or concerns in these areas, a private attorney should be contacted.

Revised June 2011

Licensees in a Referral Company MUST Comply with ALL Active Licensee Requirements

The Commission often hears, "I am not an active licensee, I am in a referral company," or "I am in a referral company and my license is in escrow."

These statements are completely inaccurate because referring or offering to refer a potential real estate client requires an active real estate license. The referral provisions of KRS Chapter 324 are often misunderstood. The definition of real estate brokerage includes referring or offering to refer for the purpose of securing prospects for a fee, compensation or other valuable consideration. This means, to receive a fee for a referral, a licensee must be actively licensed with the Commission.

In order to avoid a license law violation, the licensee must not accept compensation for a referral from any person except his or her principal broker. All commissions and fees owed to active licensees must be paid directly to their principal brokers and then paid out by the principal brokers to the licensees who have earned them. Licensees in a referral company, as with

all licensees, must also renew their license each year by March 31.

In addition, an active licensee must carry errors and omissions insurance, either through the KREC group program or through a private carrier. An active licensee is also subject to all continuing education requirements if he or she was licensed after June 19, 1976. The continuing education requirements are six (6) hours per year with at least three (3) of these hours being in law. Also, the Kentucky Core Course must be taken according to the licensee's schedule.

Licensees in escrow are not subject to the errors and omissions insurance requirements, nor are they subject to any continuing education education requirements. However, a licensee in escrow may receive compensation for real estate brokerage activity, provided the compensation was earned when the licensee's license was in active status.

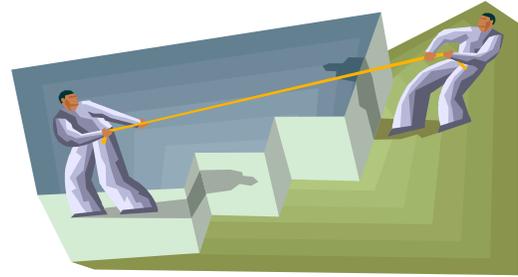
As always, please contact us if you have any questions or concerns.



The Case of the Conflicted Loyalties

the facts

Ms. Johnson was in need of a new building for her law firm. Since business was booming, she began working with a real estate firm to assist in her search. After viewing several buildings, Mrs. Smith, the real estate agent, showed Ms. Johnson a building that was available for \$275,000. Ms. Johnson was interested in purchasing the building, but wanted to know if it could be renovated for under \$325,000.



Risk Factor #1

By referring a specific contractor, the agent put herself and the agency at risk. All referrals should list multiple options and disclose that the client is responsible for the choice.

Mrs. Smith referred Ms. Johnson to a contractor, who happened to be her husband. According to Ms. Johnson, Mrs. Smith spoke with her husband and assured her the buildings and renovations could be hers for under \$600,000. Ms. Johnson purchased the building and retained Mr. Smith to complete the renovations. Mrs. Smith brought the renovation contracts to Ms. Johnson and was present during discussions with the contractor. Unfortunately, the renovation work was not completed on time or to Ms. Johnson's satisfaction.

Risk Factor #2

The agent blurred her role as a real estate agent by also acting as an intermediary for her husband's contracting firm. In doing so, she failed to provide the highest standard of service to her client.

the result

Ms. Johnson brought suit against the real estate firm, the real estate agent and the contractor for \$325,000. The case was eventually settled in Ms. Johnson's favor for \$160,000, including \$80,000 in legal expenses.

As a real estate broker, you need to be aware of both real and perceived conflicts of interest. What may look like a win/win situation, may be the biggest mistake you can make. It is important to make sure that your interests are mutually exclusive.

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This issue was sent via e-mail and does not include the current list of Disciplinary Actions. The Disciplinary Actions will appear in the next newsletter, which will be mailed in November 2011.

The Commission is beginning to utilize e-mail communication; therefore, it is very important to keep your e-mail address updated with the KREC. You can update your home address and your e-mail address by using KREC Form #205.

The Commission does not accept cash or credit cards for payments throughout the year, with the exception of online renewal. Please either remit a personal check or money order when submitting payments to the Commission.

Also, all payments must be attached to the appropriate Commission-approved form. These forms are located at krec.ky.gov under the "Forms" tab. These forms are updated, so always check the website to ensure you are using the most up-to-date form.

Only Six Months to Go!!! Do You Have Your C.E.?

The December 31, 2011 continuing education deadline will be here before you know it. Do not wait until the last minute. If you do not have your continuing education credit, sign up for a class today by contacting an approved provider from the Commission's list of providers, which can be found on our website under the continuing education tab.

All active licensees, except those licensed prior to June 19, 1976, must complete six hours, with at least three hours in law each calendar year. All licensees must also pay close attention to the year that the Kentucky Core Course is required. You can check your individual requirements on the KREC database.

***Please avoid the \$500 Fine and
Get Your C.E. Ahead of Time***