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Legal Update

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Avoiding Foreclosure

Foreclosure properties are an undeniable part of the real estate landscape and there are signs that their numbers may soon increase. Late payments and foreclosures are likely to increase as more groups of adjustable-rate mortgages reach the point when the interest rates are adjusted and reset at higher rates, according to the Mortgage Bankers Association. Some estimate that approximately 9 million adjustable rate mortgages will undergo rate adjustments in 2007. The National Association of REALTORS® (NAR) is very concerned with the escalating number of foreclosures and has counseled consumers to work with REALTORS® for help in impending foreclosure situations and for referrals to home-buying counselors and classes before buying a home.

Many REALTORS® frequently encounter properties that have been foreclosed, or REO (real estate owned) properties. Some brokers list them for various lenders and government agencies while others work with buyers interested in purchasing them. Other brokers encounter homeowners who are on the brink of foreclosure and anxious to sell or find other avenues for avoiding an ultimate foreclosure. This *Legal Update* focuses on these homeowners who are, for various reasons, unable to make the payments on their mortgage loans, and offers assistance and guidance that REALTORS® may give to them.

This *Update* overviews the causes for homeowners' financial struggles with their mortgages and some strategies for avoiding foreclosure that

may be employed if the homeowner faces the financial problems early on. Alternatives to the last resort of selling the home or filing bankruptcy are examined, and tips for REALTORS® working with short sales are provided. The *Update* concludes with a mortgage foreclosure case law update and a section of Legal Hotline questions and answers relating to foreclosure issues.

Why Homeowners Miss Mortgage Payments

Many consumers used creative-financing tools to buy homes during the recent housing boom. It was not uncommon to see home buyers buying their homes by taking out two-year Adjustable Rate Mortgages (ARMs), option ARMs with negative amortization, and interest-only or adjustable-rate hybrid loans with lower initial payments. ARM loans account for about 24 percent of all mortgage loans in America.

Typically, ARMs offer a lower fixed rate in the early stages of the loan, and then adjust or "reset" to a rate in line with current market conditions. The problem for many owners with ARMs is that the higher interest rates are starting to kick in, raising monthly payments, sometimes by hundreds of dollars. That's putting a lot of pressure on what is in many cases a very fragile household budget that operates from paycheck to paycheck. Some find that they just can't handle the higher payment. For others, a large unanticipated expense or an emergency situation can throw the budget off track and the homeowners end up missing a mortgage payment

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or two. Some homeowners also fall victim to basic hard luck – one spouse becomes ill or loses a job – and the household cash flow runs amuck.

These owners are at risk of losing their homes to foreclosure when they cannot afford the refinancing fee or higher monthly payments. Some believe that homeowners with second mortgages are more likely to become delinquent and end up in foreclosure, while others think that the real risk comes with those owners who put little or nothing down, were put in subprime financing, and now can't make ends meet.

Homeowners with ARMs should review the mortgage and promissory note. The note should clearly spell out the terms under which the loan will adjust, and when to expect that adjustment. Lenders also must give advance notice before the interest rates adjust and the payment amounts change, but this may not allow enough time for constructive action. Homeowners should ask the lender for the details of when the loan will adjust and how much more they will be paying each month. Owners should know what to expect and be prepared.

Strategies for Avoiding Foreclosure

Depending upon the individual circumstances, there may be ways to try to bail these homeowners out of the mess they find themselves in, but some may still wind up in a short sale transaction or a sheriff's sale despite everyone's best efforts. While it is not the job of REALTORS® to counsel homeowners with cash flow problems, they may be approached by homeowners who know they are in trouble or who are thinking they may need to sell. Some of the following information may be helpful.

The first thing that a homeowner who finds that making monthly mortgage payments is becoming difficult or

impossible should do is to immediately call his lender. The owner's options for retaining the home are most effective when they are only one or two payments behind. Too many people in financial trouble wait until the last minute to call their lender. The longer they wait, the greater the chance of them losing their homes. Some hear that they will be able to stay in their homes for free during the foreclosure process and make the short-term decision to pay other bills and let the mortgage payment go. This is a serious mistake for most because the long-term damage to their credit rating may result in increased interest rates for consumer credit and the inability to buy another property for many years to come. Skipping mortgage payments is a mistake in most cases unless, of course, there is no other choice. Looking for help right away can produce the most beneficial result possible.

If at all possible, a homeowner should strive to avoid missing any mortgage payments!

So long as the homeowner's credit is good, the homeowner may be able to take out a second mortgage or do a cash-out refinance on the first mortgage. Once the homeowner misses payments on the first mortgage, however, the homeowner loses this option. No lender wants to make a second mortgage to someone who can't make the payment on the first.

It is human nature to want to avoid unpleasant situations and a wound to one's pride to admit that he or she is facing financial problems or needs help, but the sooner the situation can be confronted and assessed, the better the result may be. Homeowners with delinquent mortgage payments should:

1. **Take assessment of what is owed.** The homeowner must open bills and letters from the lender and other creditors. If a mortgage payment has

been missed, no doubt the lender is trying to contact the homeowner. Don't ignore the lender. Avoiding the situation may cause the homeowner to lose the home and damage his or her credit. The owner should determine whether his or her budget can handle the monthly payments and if there is a problem, he or she should get help.

2. Contact the lender ASAP. Homeowners should call their lenders for help. They can call or write the lender's Loss Mitigation Department or look for contact information on the monthly statement. If the new payment is more than the owner can or wants to handle, or even if the owner has already missed some payments, the owner should work with the lender to determine what the options are. The homeowner should be prepared to explain his financial situation in detail so that the lender can offer viable options. The lender may be able to help the owner refinance the loan, offer a manageable repayment plan, or take other steps to help the owner continue to make payments.
3. Work with a foreclosure prevention counselor. The homeowner should seek foreclosure prevention counseling. If the homeowner doesn't feel comfortable calling the lender, one good option is to call the Homeownership Preservation Foundation at 888-995-HOPE to receive free advice from counselors who work for HUD- nonprofit agencies certified by the U.S. Department of Housing and Urban Development (HUD). The Homeownership Preservation Foundation (HPF) is a Minneapolis-based IRS § 501(c)(3) nonprofit dedicated to reducing foreclosures and preserving homeownership for American homeowners. For more information about the Homeownership Preservation Foundation visit www.hpfonline.org.

4. Address root problems with housing or other counselors and agencies. The homeowner should contact a HUD-approved housing counseling agency. He or she may call (800) 569-4287 or TDD (800) 877-8339, or go online to www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=WI for a listing of HUD-approved housing counseling agencies in Wisconsin. These agencies are valuable resources and frequently have information on local services and programs that provide financial, legal, medical or other support that can help address any root problems as well as the mortgage default. The housing counseling agency may also offer credit counseling. These services are usually free. BEWARE of phony counseling agencies (deal only with HUD-certified agencies), as well as offers in the mail or by phone that seem too good to be true.

Why Lenders Will Deal

In general, banks are not playing hardball with strapped homeowners. Many lenders recognize that giving people a six-month vacation from payments, stretching out the term on the loan,

reducing the rate, etc., is more profitable than going through a foreclosure.

Lenders don't like foreclosures because a typical single-family foreclosure may cost a lender \$40,000 to \$50,000 per property, as much as \$33,000 in direct costs to the borrower's local municipality, and thousands of dollars in depreciating property values to the neighborhood affected by a foreclosed property. If the borrower has no or little equity in the property, the lender who forecloses may not be reimbursed for lost interest, foreclosure expenses or real estate sale commissions. Therefore, lenders typically are interested in alternatives to foreclosure that will cost them less in the long run. In addition, the foreclosure process can be lengthy, ranging from a month to more than a year, depending on state law.

On the other hand, homeowners who do still have substantial equity in their homes may not get the expected reaction from their lenders. Some lenders will respond positively and help find a solution, but others won't. They may not be interested in changing anything until the homeowner's default

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exceeds his or her equity in the property. An owner with substantial equity in his house when his income drops is in conflict with the lender. Borrowers who are current on their mortgage can try to stay current by borrowing against their equity with a home equity line of credit. This doesn't solve the owner's problem, but it buys time while he searches for a solution.

Alternatives for Avoiding Foreclosure

Lenders may be able to help cash-strapped home owners refinance into fixed-rate loans, work out a repayment plan for past-due amounts, restructure the interest rate or other loan terms, postpone payments for a specified period, or permit the homeowners to unload the home for less than the mortgage amount and call it even, in other words, a short sale.

Forbearance

The most attractive solution for the lender is forbearance. Forbearance is an agreement to temporarily let the homeowners pay less than the full amount of the mortgage payment, or pay nothing at all during the forbearance period, which is typically less than six months. The suspended payments are made up with a repayment plan where the homeowner typically must make the regular payment plus an additional agreed-upon amount that will cover all the payments that were not made during the forbearance period. The repayment period is usually no longer than a year.

If the forbearance works, the homeowner will be brought current and it costs the lender nothing. On the other hand, if it doesn't work, delaying the foreclosure will raise the cost. For this reason, a lender will only consider forbearance if convinced that the owner's problem is temporary or when the owner can show that funds from a bonus, tax refund, or other source will let them bring the mortgage current at a specific time in the future.

Loan Modification

If the homeowner's problem is not temporary the lender may still be receptive to alternatives that are less costly than foreclosure. The most attractive of these to a homeowner – because it allows the owner to remain in the house – is a loan modification that reduces the payment. This could entail a lower interest rate, a different loan type, a refinancing or any combination of these. Unpaid interest may be added to the loan balance. Other common loan modifications include adding missed payments to the existing loan balance, making an adjustable-rate mortgage into a fixed-rate mortgage, or extending the number of years the owner has to repay (a longer term).

Loan modification might be acceptable to a lender if the homeowner's income has been reduced to the point where the current payment is not affordable but a smaller payment is. A lender is likely to be most receptive to a loan modification if convinced that the owner's inability to pay is completely involuntary, and that modification would be less costly than foreclosure.

FHA Option

Homeowners with FHA loans may have an additional solution available. Their lenders may be able to work with them to obtain a one-time payment from the FHA Insurance Fund to bring the mortgage current. Homeowners may qualify if their loan is at least four months delinquent, but no more than 12 months delinquent, and if they are able to begin making full mortgage payments. When the lender files a partial claim, HUD will pay the lender the amount necessary to bring the mortgage current. The homeowner must execute a promissory note, and a lien will be placed on the property until the promissory note is paid in full. The promissory note is interest-free and is due when the owner pays off the first mortgage or sells the property.

Foreclosure

Foreclosure is the legal process that a mortgage lender can use to repossess (take over) properties. When a homeowner does not make his mortgage payments, the lender may have the right to repossess the home. For a detailed discussion of the mortgage foreclosure process and procedures in Wisconsin, see *Legal Update* 99.05, "Mortgage Foreclosures," online at www.wra.org/LU9905.

If the property is worth less than the total amount owed on the mortgage loan, a deficiency judgment could be pursued. Accordingly, homeowners are at risk of not only losing their homes but also facing litigation for the balance owed. Both foreclosures and deficiency judgments could seriously affect an owner's ability to qualify for credit in the future. Clearly, foreclosure should be avoided at all costs.

Scams and Predatory Lending

Homeowners in financial difficulty must beware of scams, and realize that solutions that sound too simple or too good to be true usually are. These homeowners should be alert to:

- ◆ **Equity skimming:** In this type of scam, a "buyer" approaches the owner and offers to get them out of financial trouble by promising to pay off the mortgage or give the owner a sum of money when the property is sold. This "buyer" may suggest that the owner move out quickly (or even remain as a "lease to own" tenant), and deed the property to him or her. The "buyer" then collects rent for a time, does not make any mortgage payments, and allows the lender to foreclose. Clearly deeding the property to someone else does not necessarily make the mortgage obligation go away.
- ◆ **Phony counseling agencies:** Some groups calling themselves "counseling agencies" may approach homeowners and offer to perform certain services for a fee. These often may be services a homeowner can do him

or herself for free, such as negotiating a new payment plan with the lender or pursuing a pre-foreclosure sale. Phony credit counseling agencies may charge high fees for financial counseling services that are available for little or no charge through non-profit agencies. Homeowners should always first investigate other agencies and comparison shop. They can call (800) 569-4287 or TDD (800) 877-8339, or go online to www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=WI for a listing of HUD-certified housing counseling agencies in Wisconsin. Do this before you pay anyone or sign anything.

Predatory lenders often target people in financial distress. They try to panic them into high cost mortgages, making financial problems worse and increasing their risk of losing their home. Predatory lenders usually offer loans with

- ◆ High interest rates
- ◆ Broker fees
- ◆ Unnecessary costs like pre-paid life insurance
- ◆ Unaffordable repayment terms

Caution homeowners in financial distress to protect themselves from predatory lenders:

1. Be suspicious of anyone who offers “bargain loans,” whether they mail, fax or e-mail an offer, call on the phone or come to the door.
2. Beware of promises of “No Credit? Bad Credit? No Problem!” and offers that are only “good for a very short time.”
3. Avoid lenders who encourage them to borrow more than they need or more than the value of the home.
4. Beware of terms that change at the last minute or offer next-day approval based on prepayments or up-front fees.

5. They should not sign anything they do not understand. It is their right and duty to ask questions.

☞ **REALTOR® Resources Page – Mortgage Loan Assistance.** For additional information about predatory lending, visit the WRA REALTOR® Resource page for Mortgage Loan Assistance online at www.wra.org/LoanAssist. Also see *Legal Update* 03.05, “Predatory Lending,” online at www.wra.org/LU0305.

Selling to Avoid Foreclosure

Homeowners with no prospects of a turnaround in their fortunes and who are unable to pay even with a loan modification generally must resign themselves to giving up their houses. Homeowners who can no longer afford to keep their home may be able to work with their lender to avoid foreclosure, particularly if the lender believes that the owner is operating in good faith. This can help reduce the negative effect on his or her credit reputation. There are several different ways this might occur depending upon the homeowner’s financial circumstances.

1. Workout Assumption

If the owner can find a qualified purchaser who will take title in exchange for assuming the mortgage, the lender is likely to allow this “workout assumption.” The assumption permits a qualified buyer to take over the mortgage debt and pay the mortgage payments, even if the mortgage is non-assumable. As a result, the homeowner may be able to sell the property and avoid foreclosure.

2. Deed-in-Lieu of Foreclosure

As a last resort, a homeowner may be able to voluntarily “give back” the property to the lender. This is not as damaging to the owner’s credit rating as a foreclosure. The lender may agree to a deed-in-lieu of foreclosure if the owner agrees to voluntarily transfer

title to the property to the lender in exchange for the cancellation of the mortgage debt. In most cases, the homeowner must try to sell the home for its fair market value for at least 90 days before a lender will consider this option. This option may be ruled out if there are judgments from other creditors, second mortgages, tax liens or other liens on the home.

Lenders are averse to making such deals with borrowers who have negative equity – their loan balance is larger than their house value – and who have the capacity to continue making payments but would like to stop. Such a borrower may decide that making payments on, say, a \$350,000 mortgage secured by a house worth only \$300,000 is simply throwing his money away. He may try to rid himself of his negative equity through short sale or deed-in-lieu. Lenders, however, may not wish to cooperate with home buyers who are simply trying to bail on their misguided decision, as opposed to homeowners who find themselves incapable of paying their mortgage payment and other creditors.

Short Sales

A “short sale” is the term most commonly used in the real estate industry to refer to a situation where the proceeds from the sale will not be enough to satisfy all of the liens on the property and to pay all of the closing expenses, possibly including the broker’s commission. The seller lacks sufficient equity to close the sale, so the seller must contribute additional funds or ask the lender to accept a reduced payment, which is less than the full loan balance, as payment in full on the mortgage loan. The seller is asking the lender to not pursue any deficiency, in other words, to just write it off as a loss.

These transactions may involve scenarios where the seller is filing bankruptcy or where the mortgagee is foreclosing on the property. Other times the total of all of the liens on

the property exceeds the value of the property or what the property can bring on the market. When there are many liens on the property, the different lien holders sometimes will negotiate with the owner and agree to take an amount less than the full amount owed rather than suffer the expense and delay of a foreclosure or other litigation. When there is no more room to negotiate with lien holders, either the seller must bring cash to the table or ask others, like the real estate brokers, to accept reduced compensation for their services.

Short sales often occur in flat or declining markets, when large numbers of buyers have purchased with a 100 percent financing, no money down loan, or when buyers with ARMs face interest rate adjustments that push the monthly payment amount beyond what they can afford. These owners may become delinquent in their mortgage payments and may be facing eventual foreclosure.

Most sellers in this situation will want to try to sell. Assuming a six percent commission and two percent for title work, transfer fees and other additional closing costs, the sellers of a \$200,000 property would have to come up with \$16,000 in closing costs. If these homeowners were unable to come up with a down payment, the odds are extremely high that they will be unable to come up with enough money to close the sale.

When REALTORS® Work with Short Sales

Dealing with short sale situations is precarious because there are many pitfalls that may result in no closing or a closing that does not include the payment of the real estate commission. If the seller cannot negotiate reduced payoffs with lien holders, the parties may ask the real estate agents to reduce or postpone their commissions in order to reduce the seller's

shortage. REALTORS® may be surprised in later stages of the transaction to learn of additional liens that the owner had not originally disclosed, or new liens may appear for the first time. REALTORS® also may be confronted with sticky decisions regarding when certain facts must be disclosed to the parties as materials adverse facts.

The best thing that REALTORS® can do for the sake of their clients and themselves when facing a listing where the numbers may be tight – a possible short sale – is to take the time to do their homework regarding the homeowner, the mortgage and title to the property. This will help the REALTOR® and the homeowner choose the best course of action and help save them unpleasant surprises and from wasting their time and energy on fruitless strategies.

1. Check for liens and loan balances

The seller and listing broker should be familiar with whatever potential liens and encumbrances may exist on the listed property as early as possible in any listing where the seller is encountering financial concerns. If the broker assumes that the sale of the seller's home will be routine and later discovers there are "surprise liens" of record, substantial delays may ensue and the ability to sell may be impeded. If negotiations with the lender or the IRS will be needed before the seller can give clear title, this may take three to four months.

When the broker knows he or she is dealing with a short sale, it is critical to know what liens are outstanding and how much money will be needed to clear those liens from title. To this end, listing brokers may wish to use the "Listing Questionnaire Regarding Title Issues" when listing properties to prompt the seller to identify potential title issues that would not be evident from simply examining recorded documents. This questionnaire appears

on page 13 of *Legal Update 03.09*, "Warranties in the Offer to Purchase," online at www.wra.org/LU0309.

In addition, the listing broker may also want to order a search and hold from the title company to see what liens appear of record. While this certainly is not within a real estate broker's job description, it is better to try to get a full picture of what the broker is dealing with up front and try to head off disaster down the line. While the "Listing Questionnaire Regarding Title Issues" and the title search may come up with the same list of liens, they may be very different. Sellers in financial straits may not reveal or remember all that is going on and thus may overlook disclosing one or more liens. The seller also may be unaware of some items in the title report like procedural glitches in court proceedings affecting title or information appearing on an official map. Some of the property conditions in the questionnaire, such as unrecorded easements or burial grounds, will likely not appear of record.

The seller may have delinquent property taxes or IRS tax liens that may not show up on the title report. IRS tax liens are especially problematic because the IRS usually takes months to release a tax lien. Such an extended delay may make it hard to carry off the short sale because by the time the IRS lien is released, it may be too late to sell or additional liens may have attached to the seller's title.

2. Mortgage due-on-sale clauses and prepayment penalties

The seller should review the seller's mortgage to make sure that the procedures for obtaining lender consent to the sale are being followed and that there is not any prepayment penalty that will need to be included when calculating the amount the seller must pay to release the mortgage lien.

3. Have good statistics and market data to help persuade the lender to agree to short sale

The broker should stand ready to show the lender whether the market is increasing or decreasing, what is the current inventory of homes on the market, and whether home prices are going up, staying flat, or declining. When there is a decline, the lender will probably get even less for the property by waiting for the sheriff's sale instead of agreeing to an immediate short sale. The broker can emphasize the benefits of accepting a known quantity versus taking their chances with an uncertain and arguably risky future market. This same information may also be useful when trying to convince the lender to allow payment of commission.

4. Lender's decision-maker

In today's world, where mortgages are bought and sold on the secondary market and shifted about the country in multiple assignments, it may be challenging to find out who actually has the authority to say yes or no to a short sale. It is wise to obtain some indication from the lender that a short sale will be approved so that efforts geared towards a short sale do not become a waste of time. It is foolish to invest time and money putting the property on the market without at least some assurance that the lender will work with the seller and the broker to make the short sale come together. The lender may not agree to a short sale. Accordingly, any offers considered for acceptance should include a lender approval contingency.

5. Seller's mortgage payments

While homeowners are encouraged to not miss any mortgage payments to preserve their ability to structure a work-out arrangement or loan modification with the lender, if all other options have failed and a short sale is the only remaining viable alterna-

tive, then it may be necessary for the seller to stop making the payments. Unfortunately, lenders may not consider a short sale unless the seller is delinquent. Stopping payments will have a negative affect on the homeowner's credit rating, but they may be necessary to preserve the opportunity for a short sale. Licensees should encourage sellers to consult with their legal, tax and other advisors before taking this step.

6. Tax consequences of a short sale

The lender will probably notify the IRS regarding the short sale debt relief, which will be taxable to the homeowner. The IRS will consider the amount that the lender forgives the homeowners as income, so the homeowners could face a huge tax bill the following April 15. The seller must be urged to confer with his or her CPA or tax attorney for advice on the best course of action and how to best minimize any tax liability. In most cases, the forgiven amount is taxable. However, if the seller has little or no income, there may not be any additional tax liability. Only a tax professional can make this determination. Failure to report the forgiveness of debt as income may have devastating consequences, such as charges of fraud and/or tax evasion.

7. Licensee disclosure obligations

In transactions where foreclosure is imminent, the listing broker may need to decide if and when it will be necessary to disclose these circumstances to the other parties. Whether the possibility of foreclosure constitutes a fact the broker needs to disclose as a material adverse fact is a judgment that only the broker can make after considering all of the facts and circumstances in the situation.

For example, a sale can still close after the sheriff's sale, as long as it closes before the court confirms the sheriff's sale. Accordingly, a foreclosure may

not need to be disclosed if the buyer can close before judicial confirmation of the sheriff's sale. Although disclosure may not initially need to be made based on the information available at the commencement of the transaction, facts and circumstances may change resulting in the broker's obligation to make prompt written disclosures. If the broker comes to the point when he or she knows that the sellers will not be able to meet his obligations under the contract, then the issue constitutes an adverse material fact. Wis. Admin. Code § RL 24.07(2) requires brokers to promptly disclose material adverse facts in writing to all parties to the transaction, even if the broker's client would direct the broker not to disclose. Failing to disclose these circumstances may lead to broker liability.

Bankruptcy

Bankruptcy sometimes provides options for homeowners having problems meeting their mortgage payments, if the homeowner is in the right circumstances.

Filing for bankruptcy does not mean that homeowners necessarily can save their homes. Generally, it is just a temporary stall tactic. Homeowners can stop a foreclosure by filing for Chapter 7 bankruptcy, but the lender soon gets released from the stay and proceeds with the foreclosure.

Homeowners have to file for Chapter 13 bankruptcy to save their house. Homeowners with equity in their homes who are unable to pay their mortgage because of other debt may benefit from a Chapter 13 bankruptcy. Under Chapter 13, a homeowner follows a debt reorganization and payment plan approved by a court. The plan eliminates interest payments and schedules affordable principal payments to eliminate all non-mortgage debts within three to five years. Homeowners make one monthly payment to a court-appointed trustee, who in turn pays

the various creditors, and must continue making mortgage payments.

Any arrearages in mortgage payments when a homeowner goes into Chapter 13 will be added to the other debts that are consolidated. This is so even if the lender is foreclosing, as long as the house has not been sold. Entering Chapter 13 stops the foreclosure process, but the homeowner must make regular mortgage payments.

The Bankruptcy Abuse Prevention and Consumer Protection Act (Pub. L. 109-8), which went into effect Oct. 17, 2005, was intended to lessen bankruptcy abuse by some financially troubled debtors. There was a huge rush of bankruptcy filings before the new law took effect because the new law imposes additional requirements for getting a bankruptcy discharge. In addition, homeowners who are behind with their mortgage payments can't wait until the last minute to file for bankruptcy and stop foreclosure, as many did in the past. Now people filing for bankruptcy must undergo credit counseling before or within five days after filing their bankruptcy petition and must file a certificate documenting completion of an approved credit-counseling course.

Mortgage Foreclosure

Case Law

Owner's Right to Sell Property and Pay Off Mortgage Continues until Judicial Confirmation of the Sheriff's Sale: *Security State Bank v. Sechen*, 2005 WI App 253.

The Security State bank foreclosed on the Sechens' 355 acres of farmland and a judgment of foreclosure was given on October 22, 2003. The sheriff's sale was held on November 9, 2004. Two days prior to the hearing to confirm the sale, the Sechens notified the bank that they were redeeming the property. On December 14, the day before the judicial confirmation hearing, the Sechens closed

on a sale of the property and wired the payment owed to the bank.

At the judicial confirmation hearing on December 15, the circuit court denied the Sechens' right of redemption. The court interpreted the statutes and case law as requiring redemption prior to the sheriff's sale. The Sechens appealed to the court of appeals, where the sole issue was whether the Sechens had a right to redeem the foreclosed property after the sheriff's sale but before the judicial confirmation of the sale.

The court observed that Wis. Stat. § 846.13 provides that after a foreclosure judgment is entered, a property owner "may redeem the mortgaged premises at any time before the sale by paying to the clerk of the court in which the judgment was rendered, or to the plaintiff ... the amount of such judgment." Wisconsin Stat. § 846.17 directs the sheriff, after the foreclosure sale, to "make and execute to the purchaser ... a deed of the premises sold." The statute also indicates that only upon judicial confirmation of the sale does the deed vest "all the right, title and interest of the mortgagor" in the purchaser and bar all further claims, including the right of equity of redemption. Therefore, the court opined, a property owner has the right to redeem foreclosed property any time prior to sale, and the "sale" occurs upon judicial confirmation. Thus, the property owner's right of redemption continues until the court's confirmation of the sale because only upon confirmation does title vest in the sheriff's sale purchaser.

Owner May Redeem Property Before Judicial Confirmation of Sheriff's Sale and Bidder at Sheriff's Sale Loses Property: *Osterberg v. Lincoln State Bank*, 2006 WI App 237.

Osterberg appealed from an order vacating his purchase of foreclosed property. Due to miscommunication between the seller, Lincoln

State Bank, and its attorney, the bank had proceeded with the confirmation hearing after the sheriff's sale despite having received payment from the mortgagor. When the bank realized the error, it brought the matter to the circuit court, and the court found that the owner of the property had redeemed the mortgage. Because the owner redeemed the mortgage before the sale's confirmation, it remained the property's owner.

In July 2004, the Lincoln State Bank filed an action for foreclosure on a \$60,000 mortgage because it had not received payments totaling over \$1,500. In February 2005, the circuit court entered a judgment of foreclosure. The sheriff's sale occurred on September 26, 2005, and Osterberg was the winning bidder. A hearing to confirm the sale was scheduled for October 17.

Meanwhile, the property owner obtained a loan that it used to pay off the Lincoln State Bank on October 7. Lincoln State Bank's attorney was apparently unaware that the judgment had been paid, and the owners did not attend the hearing because they had paid the mortgage foreclosure judgment. Osterberg did appear, and the court confirmed the sheriff's sale.

The bank's attorney learned of the owners' payment on October 27, and on November 1, the bank moved the circuit court to determine whether the owners or Osterberg had the right to the property. The circuit determined that the owners had properly redeemed the mortgage and were therefore the rightful owners of the property. Accordingly, the court voided the sheriff's sale, discharged the mortgage, and ordered that Osterberg's payment be returned to him. The court also ordered the bank to pay his financing costs, property insurance and part of his attorney fees related to the voided purchase. Osterberg appealed to the Wisconsin Court of Appeals.

Osterberg claims that Wis. Stat. § 846.13 establishes that a mortgagor must pay the judgment, interest and costs and notify the court that payment has been made. The owners contend that the entire procedure for redemption is that the mortgagor must simply pay either the clerk of court or the plaintiff, and upon payment, the mortgage is redeemed.

In this case, the court observed, the bank obviously should have notified the court of the redemption and presumably would have done so had it not failed to communicate with its attorney. Public policy is served when redemption allows creditors to be paid in full and landowners to remain in possession of their lands. A purchaser at a sheriff's sale must always account for the possibility that he or she might not end up with the property, since the court must confirm the sale and redemption may occur at any time before judicial confirmation.

Judicial Confirmation of Price at Sheriff's Sale: *Green Lake State Bank v. Price Court, LLC*, (Ct. App. 2005, AP1432).

Green Lake State Bank (the bank) foreclosed on property owned by Price Court, LLC (PC) after PC defaulted on its loans. The foreclosed property consisted of several vacant residential lots located in a subdivision. The foreclosure sale price per lot, with adjustments for outstanding real estate taxes and assessments, was \$48,400. PC appealed the judicial confirmation of that sale.

Whether to confirm a foreclosure sale is within the discretion of the circuit court. A court may decline to confirm if "the bid price was so inadequate so as to shock the conscience of the court." The bank's appraiser testified that he placed a market value of \$65,000 on each lot. PC's expert, a local real estate broker, testified that he had previously sold lots for amounts in excess of \$90,000.

However, no lot had sold in the last two years, and therefore the previous sales in excess of \$90,000 carried less weight. The court concluded that the sale price was reasonable given the market conditions, the sale history of the lots in the subdivision, and the outstanding taxes and special assessments against the lots, which would have to be satisfied to gain marketable title to the lots. These factors reduced the value of the lots to \$48,400 each, or roughly seventy-five percent of the market value of \$65,000.

Condominium Bylaws Cannot Preclude Sale to Non-Occupant Purchaser: *Bankers Trust Company of California v. Bregant*, 2003 WI App 86.

On April 10, 1997, Dan Bregant executed a mortgage in favor of Bankers Trust Company of California, N.A. to finance the purchase of a condominium at Woodlands. Effective May 1, 2001, however, the bylaws were amended to add "Ownership Limitations of Use," which required that the sale of units on or after May 1, 2001 only be to owners "who will reside in the unit" purchased. On June 29, 2001, Bankers Trust filed a mortgage foreclosure action against Bregant, and on March 14, 2002, the court granted Bankers Trust a judgment of foreclosure for \$29,207.68. At the sheriff's sale, Steven Green, d/b/a Atlas Holding (Green), submitted the highest bid for \$8,600, which was accepted. The trial court confirmed the sale and Woodlands appealed to the Wisconsin Court of Appeals.

Woodlands claims the trial court erroneously exercised its discretion by confirming a foreclosure sale where title would pass to a person who would not be an owner-occupant, contrary to the bylaws. The circuit court had noted that Green said he was not going to live there, and observed that Woodlands would have a good chance to keep him out, but in a separate lawsuit.

All the parties clearly recognized the bylaw restriction of owner-occupancy was enforceable if Green did not move into the unit he purchased. At the time of the judicial confirmation hearing, however, the failure to occupy had not occurred. Title did not pass to Green until confirmation, which then vested him with the right of possession.

In addition, Wis. Stat. § 706.10(6) clearly indicates that the provisions of bylaws cannot render a title unmarketable. A title that is encumbered by an easement is not a good title. Covenants, restrictions, and charges affecting the property involved, unless removed or released, will constitute an encumbrance entitling the purchaser to refuse to take title as a bad or unmarketable title. The clear language of § 703.10(6) dictates that no bylaw restriction whatsoever can render a title to a condominium unit unmarketable or "otherwise affect [it]."

Legal Hotline Mortgage Foreclosure Questions and Answers

The following are some recent Legal Hotline questions regarding transactions involving properties in foreclosure.

Strategies for Avoiding Foreclosures

A broker is thinking about taking a listing where the seller may go into foreclosure. How should the broker proceed?

Before entering into the listing, a prudent broker will encourage the seller to determine whether it is in his or her best interest to list the property for sale or negotiate a workout with the lender. The seller should consult with his or her attorney for advice on whether a sale or a deed in lieu of foreclosure might be best. Depending on the financial position of the seller, bankruptcy might also be considered. The broker may do a search and hold, and evaluate whether

there will be enough funds to close the transaction and pay commission.

The seller has deeded the listed home back to the lender in lieu of foreclosure. The listing broker had listing protection for a buyer. Does it apply now to the lender?

In cases where the seller provides the lender with a deed in lieu of foreclosure, the lender becomes the new seller. The listing protection between the listing broker and the owner is terminated. The listing broker would need to enter into either a listing with the lender or a buyer agency with the buyer to provide real estate brokerage services for a transaction between the interested buyer and the lender. *Legal Update* 99.05, "Mortgage Foreclosures" (www.wra.org/LU9905), contains additional information about foreclosures and the effect on real estate transactions.

Short Sales – Broker Duties

After taking a listing, the broker finds out that the seller is in foreclosure. Can the broker walk away from the transaction? What can be done if the closing is set and there are not enough funds to close the deal and pay commission?

Once the listing is entered into, the broker has a contractual and a fiduciary duty to the seller to provide brokerage services for the duration of the transaction. The listing broker should do whatever he or she can to help the seller meet the terms and conditions of the offer. If the seller has enough funds to meet the contract obligations and provide a clear title, the closing should proceed. If the funds fall short, the seller may work with legal counsel and try to borrow needed funds, convince lien holders to accept less than the full amount due and find other ways to meet the seller's closing obligations.

A broker cannot put his or her interest in commission ahead of the broker's duty to help the parties complete

the transaction. Although the listing contract provides that the broker's commission is due at closing, the broker cannot stop the closing just because there is not enough money to pay the full commission at that time. The listing broker may consider renegotiating the commission, creating a payment plan for the seller, having the seller give a promissory note, taking a lien on other property owned by the seller or going to court to obtain a judgment for the commission. In residential transactions, there are no broker commission liens.

Short sale. The broker has a listing where the property owner is in default on his mortgage. In fact, the seller has never made a payment. The bank has agreed to do a short sale and the broker has received authority from the seller to talk to the bank. The broker has received two offers and the bank has told her to have the seller do nothing because they want to counter both of the offers. The title is not in the bank's name, so shouldn't the seller be signing any counter-offers?

The seller may be referred to private legal counsel to review the offers, the mortgage and any correspondence from the lender. Although the seller may negotiate with the lender for a short sale and the bank may have approval authority in a short sale situation, the bank is not a party to the transaction and cannot itself counter the offers. The seller may direct that any offers be drafted contingent upon the lender's approval and may need to counter the present offers to include that provision.

If the seller had provided the lender with a deed in lieu of foreclosure, the lender would then become the new seller. In that case, the broker would be required to enter into a new listing contract to provide brokerage services to the lender.

Regardless of the bank's directions, the broker is required to make timely

presentation of the offers to the seller. Although a licensee may attempt to assist in negotiations between the seller and lender, this activity is arguably outside the scope of real estate brokerage services. The broker may not provide legal advice to the seller regarding his rights and obligations to the lender.

In working with foreclosure companies and VA properties, what kind of concerns should agents have when they want to negotiate verbally until an acceptable offer is agreed upon?

The agent should point out to the buyers that verbal agreements are not binding; a written offer signed by both buyer and seller is needed.

Short Sales – Commission Issues

When the listing broker for a property had the title company run a search and hold, he learned that unless the house is sold at list price or more, the seller will not have enough money to cover closing costs, including commission. If the seller receives an accepted offer at less than list price, is the listing broker legally obligated to pay the co-broke commission to the cooperating broker?

Unless there is a prior agreement with the cooperating broker, the listing broker will remain responsible to pay the full amount of the co-broke commission upon a successful closing of the transaction. The listing broker and the cooperating broker may try to negotiate a written agreement for a reduced commission, but the cooperating broker is not obligated to agree to such a decrease.

The seller is having financial problems and there is not enough money for closing. The seller has negotiated settlements with the IRS and the Wisconsin Department of Revenue. The second mortgage holder is demanding \$5,000 before he will sign off. The seller does not have \$5,000 and is looking at the real estate commission to cover it. Are real estate bro-

kers obligated under law to proceed with a closing where the brokers are not being paid? Are brokers obligated to cut their commissions to get the transaction to close?

The listing broker's right to commission is based upon the terms and conditions of the listing contract, and is due and payable in full at the earlier of closing or the date set for closing, unless otherwise agreed to in writing. See lines 60-61 of the WB-1 Residential Listing Contract – Exclusive Right to Sell.

Broker commissions generally are included on the closing statement, but there is no legal requirement for the payment of commission at closing or for commissions to appear on the closing statement. If the seller fails to pay the listing broker's commission at the time of closing, the seller will be in breach of contract but may still proceed to consummate the sale with the buyer.

The listing broker cannot obstruct the closing because the commission will not be paid. Licensees cannot put their personal interests ahead of the parties' interest in closing the transaction in disregard of their fiduciary duties to the seller/client. Although the seller may try to renegotiate the amount or timing of the listing broker's commission, the listing broker is not required to comply. The broker must proceed with the closing but is not required to reduce his commission in order to make the transaction close.

The cooperating broker's right to commission is determined by the terms of the MLS offer of compensation. The listing broker may not unilaterally change the amount of the cooperating broker's commission. The MLS rules do allow, under certain circumstances, for a listing broker to be excused from paying the cooperating broker in cases where commission cannot be collected from the seller. This is a determination made by an arbitration hearing panel after hearing all the facts and circumstances in the case.

A seller has just informed the listing agent that he is facing foreclosure. The seller has not paid the mortgage for

months and has asked the broker to get the pay-off amount. Anything short of a full-price sale would not be enough to pay the lender and pay commission. What is the listing broker's liability if there are not enough funds at closing to pay the MLS cooperating commission?

The listing broker may discuss commissions with the seller and consider reducing the commission offered in the MLS before a cooperating broker submits an offer. Because the MLS offer of compensation is unconditional, a listing broker is relieved of the obligation to pay the cooperating broker the commission offered in the MLS only in very limited circumstances. Unless it is impossible or financially unfeasible for the broker to collect the commission from the seller, the broker must pay the offered co-broke.

An agent showed a condominium unit listed by another agency. After the showing, the agent could not reach the listing agent. The listing agent called a few days later as the cooperating agent was writing the offer. The listing agent then told her that the property is in foreclosure and the bank has to do a short sale. The cooperating agent wrote a full price offer for the buyer. The seller countered, saying it is contingent on a short sale. The buyer countered back, agreeing that the offer is contingent on bank approval, but also requiring an answer for the buyer by a certain date. The offer was accepted. Now the listing agent called and said that if the bank is going to agree to do this, the cooperating broker will need to reduce her commission. The cooperating agent feels the listing broker needs to take a cut, not the cooperating broker. Is that correct?

Once an offer to purchase is produced, a listing broker may not unilaterally reduce the cooperative commission offered in the MLS. The REALTOR® Code of Ethics, Standard of Practice 3-2, provides, "REALTORS® shall, with respect to offers of compensation to another REALTOR®, timely communicate any change of compensation for cooperative services to the other REALTOR®"

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prior to the time such REALTOR[®] produces an offer to purchase/lease the property. (Amended 1/94).”

The listing broker will be obligated to pay the MLS offer of compensation regardless if the listing broker chose to negotiate a reduced commission with the seller. It is the listing broker’s prerogative to reduce the listing commission, however, the listing broker may not reduce the cooperating broker’s commission without the consent of the cooperating broker. Note, a listing broker’s obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. See the "Handbook on Multiple Listing Policy 2006 Commission/Cooperative Compensation Offers Section 1" at www.realtor.org/2006mlshandbk.nsf/pages/InformationSpecifyin.

Short Sales – Disclosure Issues

The listed property is set to soon close. The listing broker had the title company do a search and hold and discovered three mortgages. Two or three additional judgments have also been found, so the sale will require an additional \$8,000 to clear title. The listing broker has prepared an amendment to increase the sale price.

The listing broker will need to disclose to the buyers that the sellers may not be able to give clear title.

This is a material adverse fact that must be promptly disclosed in writing. The buyers can then decide whether they want to sign or not sign the amendment.

If a listed property is going into foreclosure (has been advertised as a sheriff’s sale in the local papers), must the foreclosure be disclosed to the cooperating agent and the buyer?

A broker has a duty to disclose the impending foreclosure action to the parties in writing only when it becomes a material adverse fact. If the foreclosure becomes a material adverse fact is a case-by-case determination. The listing agent will need to disclose the foreclosure if it reaches the point where the seller cannot transfer a clear title or the seller will not be able to close before judicial confirmation of the sheriff’s sale.

A seller has an accepted offer on a property going into foreclosure. The bank indicated it would do a short sale, but as the closing approaches, additional judgments are appearing on the title. The seller apparently does not have enough cash to close the transaction. Where does the buyer stand?

The listing broker must disclose to the buyer if the seller may not be able to give a clear title. In addition, a seller’s statement that he or she is unwilling or unable to close can create a breach even before the closing date – this is called an “anticipatory breach.” This is a material adverse fact that must be promptly disclosed in writing. The buyer can then decide whether he or she wants to declare the offer null and void due to unacceptable title (see WB-11 Residential Offer to Purchase, lines 207-212) or proceed with the transaction.

The sellers owe \$175,000 to the first mortgagee and \$64,000 to the second mortgagee. The sellers are not making their payments and may go into bankruptcy. There is an offer for \$230,000. The second lender may take a short sale, but wants 30 days to make a decision. The seller does not want the listing broker to let the buyer know that it will be subject to a short sale. What should the listing broker do?

Whether the possibility of a short sale, foreclosure or bankruptcy needs to be disclosed by the broker as an adverse material fact is a judgment that only the broker can make after consider-

ing all of the facts and circumstances in the transaction. For example, the fact of the short sale itself may not require disclosure if the transaction is going to come together and close. On the other hand, a short sale may need to be disclosed if it appears that the seller will not be able to complete the transaction. A foreclosure may not need to be disclosed if the buyer can close before judicial confirmation of the sheriff’s sale. A bankruptcy may cause the property to come under the control of the bankruptcy trustee. Although disclosure may not need to be made initially based on the information available at the commencement of the transaction, facts and circumstances may change, resulting in the obligation of the broker to make timely written disclosures.

If the listing broker knows that the seller is not able to or does not intend to meet his or her obligations under the contract, then the short sale constitutes an adverse fact that must be promptly disclosed to the parties in writing. Alternatively, § RL 24.07(3) states that a broker will be practicing competently if the broker promptly discloses the information suggesting the possibility of a short sale, in writing, to all parties, recommends that the parties obtain expert assistance to investigate or evaluate the situation and, if directed by the parties, drafts appropriate contingencies.

The fact that the lender is demanding 30 days to review the transaction will dictate the terms and conditions under which the seller may accept an offer and may result in a contingency provision. The seller may be referred to legal counsel for advice on the most appropriate way to respond to the offer.

Short Sales – Buying a Property at a Sheriff’s Sale

A buyer wants to buy a foreclosure home at a sheriff’s auction and would like to look at the inside of the property. Can a broker be involved in this if the property is not listed?

Pursuant to real estate license law in Wisconsin, the broker must enter into an agency relationship either with the seller (and act as the listing broker) or with the buyer (and act as a buyer's agent) before providing any brokerage services. The buyer needs to do adequate research before bidding at a sheriff's sale. The buyer should conduct a physical property inspection and a comprehensive review of the title because the purchaser at a sheriff's sale takes title to the property subject to all superior liens.

Buying a property at a sheriff's sale. What is a "superior lien" vs. a regular lien?

Foreclosure is a legal process used when a borrower defaults on a debt. The creditor (usually a bank) files a civil lawsuit to obtain a judgment of foreclosure. The court then sells the encumbered property to satisfy the judgment.

The money raised at a sheriff's sale is paid out on a priority system. After back taxes, the creditor filing the foreclosure gets paid next. If any money is left over, then subsequent secured creditors get paid if their lien rights were created after the creditor who obtained the judgment of foreclosure. If there is no money to pay the subsequent creditors (which is usually the case), the liens securing those debts will be extinguished without payment. This is not true for "superior" lien-holders. Debts that were secured by liens that were in existence prior to the lien that was the subject of the foreclosure action will not be extinguished by the sheriff's sale. For example, if a property has three mortgages liens encumbering the property and the second mortgage holder commences a foreclosure action, the first mortgage holder will not be affected by the sheriff sale. The proceeds raised at the sheriff's sale will be used to pay off the second and possibly the third mortgage holders and those liens will be

extinguished. However, the purchaser has bought the property subject to the lien rights of the first mortgage holder. In other words, the superior lien holder (the first mortgage holder) maintains a lien on the property, which can be foreclosed in the future.

Sales Before Sheriff's Sale Confirmation

A seller, whose home is going to be auctioned by a sheriff's sale, contacted a broker about listing the property. The seller wanted to know if he still has time to sell. The house has not been listed yet. If the seller lists today, will an accepted offer cancel the sheriff's sale or would the independent sale have to close by the sale date?

A seller in foreclosure may list and market his or her property while the foreclosure is pending. The seller can close on an independent sale before the court confirms the sheriff's sale. The broker may suggest that the seller talk to his or her attorney for advice regarding legal rights in the foreclosure and strategy options.

A seller still owns his or her property and can still sell it up until the court has a hearing confirming the sheriff's sale (at which time the seller loses the right of redemption). Only then will the title to the property vest in the purchaser from the sheriff's sale. The time allowed for redemption depends upon the type of property, the date of the mortgage, whether the property is occupied, whether the lender is seeking a deficiency judgment and other factors. The owner and his or her attorney can determine the length of the redemption period. The listing broker may continue to market the property, giving appropriate disclosures, until the judicial confirmation hearing. See Wis. Stat. §§ 846.16-.17 and *Legal Update* 99.05 (www.wra.org/LU9905) for more information about real estate foreclosures.

An investor has purchased a foreclosure and is waiting for the confirmation hearing, which is in early

February. The people who lost the house are still living in the property. Can the new buyer collect rent before the confirmation hearing? Can the broker list and accept offers before the hearing that will close after the confirmation hearing?

Prior to court confirmation of the sheriff's sale, the current owner remains the legal title-holder. As a result, he may continue to legally occupy the property and is not obligated to pay rent. However, the investor is not without property rights. The investor has probably acquired equitable title to the property by being the highest bidder. Equitable title is defined as the right to obtain absolute ownership to a property when legal title is currently held in another's name. Equitable title rights would permit the investor to list and enter into an offer to sell the property. This offer must, however, be contingent upon the investor acquiring legal title at the confirmation hearing.

Listings with Banks Taking Back Properties

A buyer's offer did not close, but the buyer is still interested in the property. The lender took the property back and listed it with another agency. Does the first broker have listing protection for the buyer when the bank takes it over?

No. Once the property changes ownership, listing protection rights are lost. The broker may work with the buyer and the new listing broker to draft a new offer to purchase and perhaps receive commission as the cooperating broker. The first broker may consider a claim against the original owner for commission based upon the conveyance between the owner and the lender.

Listing with the bank after a foreclosure. Is a lender who has taken a property in foreclosure exempt from the seller's condition report? Also, must the lender give the lead-based paint disclosure?

All sellers subject to Chapter 709 must complete a Real Estate Condition Report (RECR) or risk rescission of the offer to purchase. There is no exemption based solely on the fact that the owner does not live in the property. An owner like a bank that has acquired a home by foreclosure can either (a) complete the RECR to the best of his or her knowledge, (b) retain a professional to provide an inspection report to be used as the basis for completing the RECR, (c) refuse to complete the RECR and sell "as is," risking buyer rescission, or (d) refuse to complete the RECR and sell "as is," refusing to accept any offers from buyers who do not waive their Chapter 709 rescission rights. Federal lead-based paint disclosure rules require disclosure for all transaction relating to target housing. If the property was built before 1978, the lender must complete a lead-based paint (LBP) disclosure such as the WRA Addendum S, and provide the EPA brochure regarding LBP.

A broker has a listing on a property that is in foreclosure. The servicing company is selling it as-is and has not filled out a condition report. The property is non-conforming as

to setbacks and square footage. How does the broker make this disclosure?

From the licensee's standpoint, Wis. Admin. Code § RL 24.07 requires that licensees perform reasonably competent and diligent property inspections and disclose potential adverse material facts to the parties in writing. This duty is not waived in "as is" sales. In fact, where the buyer is purchasing "as is" it is very important for the buyer to know the condition of the property. Generally the buyer has expert inspectors inspect the property as a condition of the offer to purchase, but this does not excuse the licensee from his or her duty to assure that all known adverse material facts are disclosed in writing to the buyer. The broker may refer to *Legal Update* 02.12, online at www.wra.org/LU0212, for a sample material adverse fact disclosure letter.

Resources

U.S. Dept. of Housing and Urban Development (HUD), "How to Avoid Foreclosure," online at www.hud.gov/foreclosure/index.cfm.

NAR Field Guide to the Foreclosure Properties: www.realtor.org/libweb.nsf/pages/fg329.

For more information about the Homeownership Preservation Foundation, visit www.hpfonline.org.

"Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners," Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest. Center for Responsible Lending, December 2006, www.responsiblelending.org/pdfs/FC-paper-12-19-new-cover-1.pdf.

NAR news release regarding concern over escalating foreclosure rates: www.realtor.org/press_room/news_releases/2006/nar_concerned_over_rapid_increase.html.

NAR brochures to help clients understand today's mortgages: www.realtor.org/housopp.nsf/pages/mortgages.

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