



## REAL ESTATE AGENT APPLICATION CHECKLIST

Please submit this checklist along with all the items below to [careers@pmcrealty.net](mailto:careers@pmcrealty.net) or fax to 866-598-9987.

- PMC Checklist with Name of Recruiter and IP address listed
- PMC Personal Information Disclosure
- PMC Employment Application Form, signed
- IRS W9 Form, signed (must be independent; soc sec # needs to be listed)
- INS I-9 Form for work eligibility
- Copy of Driver's License or State ID (required) and Copy of Social Security Card (required)
- PMC MLO Agreement, signed
- PMC MLO Compliance Addendum
- PMC Mutual Non-Disclosure Agreement
- PMC Compensation Schedule, signed
- PMC Code of Conduct Form, signed
- PMC Anti Money Laundering, signed
- PMC Direct Deposit Form and copy of Voided Check
- Department of Real Estate Short Sale Rules, signed and dated bottom of last page
- Resume

NAME OF YOUR RECRUITER: \_\_\_\_\_

Corporate Office: 915 Highland Pointe Dr. Ste. 250, Roseville, CA 95678

Premier Mortgage & Real Estate Brokerage Serving CA & WA

Off: 800-385-3657 | Fax: 866-598-9987 | Email: [info@pmccanhelp.com](mailto:info@pmccanhelp.com)

Real Estate [www.pmcrealty.net](http://www.pmcrealty.net) | PMC Careers [www.pmccareers.com](http://www.pmccareers.com) | Blog [www.pmcmortgageloans.wordpress.com](http://www.pmcmortgageloans.wordpress.com)

**Conventional - Jumbo - FHA - VA - USDA - Lite Doc - Hard Money - Commercial - Superior Customer Service**



## PERSONAL INFORMATION DISCLOSURE

### Personal Information

Full Name: \_\_\_\_\_  
*Last* *First* *M.I.*

Address: \_\_\_\_\_  
*Street Address* *Apartment/Unit #*

\_\_\_\_\_  
*City* *State* *ZIP Code*

Home Phone: ( ) \_\_\_\_\_ Alternate Phone: ( ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Social Security Number or Government ID: \_\_\_\_\_

Birth Date: \_\_\_\_\_ Marital Status: \_\_\_\_\_

Spouse's Name: \_\_\_\_\_

Spouse's Employer: \_\_\_\_\_ Spouse's Work Phone: ( ) \_\_\_\_\_

### Job Information

Title: \_\_\_\_\_ Employee ID: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Department: \_\_\_\_\_

Work Location: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Work Phone: ( ) \_\_\_\_\_ Cell Phone: ( ) \_\_\_\_\_

Start Date: \_\_\_\_\_

### Emergency Contact Information

Full Name: \_\_\_\_\_  
*Last* *First* *M.I.*

Address: \_\_\_\_\_  
*Street Address* *Apartment/Unit #*

\_\_\_\_\_  
*City* *State* *ZIP Code*

Primary Phone: ( ) \_\_\_\_\_ Alternate Phone: ( ) \_\_\_\_\_

Relationship: \_\_\_\_\_



**EMPLOYMENT APPLICATION**

APPLICANT INFORMATION			
Last Name	First	M.I.	Date
Street Address		Apartment/Unit #	
City	State	ZIP	
Phone	E-mail Address		
Start Date	Social Security No.	W2 or 1099	
Position Applied for			
Are you a citizen of the United States?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If no, are you authorized to work in the U.S.? YES <input type="checkbox"/> NO <input type="checkbox"/>
Have you ever worked for this company?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If so, when?
Have you ever been convicted of a felony?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, explain

EDUCATION			
High School		Address	
From	To	Did you graduate? YES <input type="checkbox"/> NO <input type="checkbox"/>	Degree
College		Address	
From	To	Did you graduate? YES <input type="checkbox"/> NO <input type="checkbox"/>	Degree
Other		Address	
From	To	Did you graduate? YES <input type="checkbox"/> NO <input type="checkbox"/>	Degree

REFERENCES	
<i>Please list three professional references.</i>	
Full Name	Relationship
Company	Phone ( )
Address	
Full Name	Relationship
Company	Phone ( )
Address	
Full Name	Relationship
Company	Phone ( )
Address	

**PREVIOUS EMPLOYMENT**

Company				Phone ( )	
Address				Supervisor	
Job Title		Starting Salary	\$	Ending Salary	\$
Responsibilities					
From	To	Reason for Leaving			
May we contact your previous supervisor for a reference?		YES	NO		
Company				Phone ( )	
Address				Supervisor	
Job Title		Starting Salary	\$	Ending Salary	\$
Responsibilities					
From	To	Reason for Leaving			
May we contact your previous supervisor for a reference?		YES	NO		
Company				Phone ( )	
Address				Supervisor	
Job Title		Starting Salary	\$	Ending Salary	\$
Responsibilities					
From	To	Reason for Leaving			
May we contact your previous supervisor for a reference?		YES	NO		

**MILITARY SERVICE**

Branch		From	To
Rank at Discharge		Type of Discharge	
If other than honorable, explain			

**DISCLAIMER AND SIGNATURE**

I certify that my answers are true and complete to the best of my knowledge.

If this application leads to employment, I understand that false or misleading information in my application or interview may result in my release.

Signature	Date
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**I-9 Form Read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work- authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.**

**Section 1. Employee Information and Verification** *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address <i>(Street Name and Number)</i>		Apt. #	Date of Birth <i>(month/day/year)</i>
City	State	Zip Code	Social Security #

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following): A citizen

of the United States

A noncitizen national of the United States (see instructions)

A lawful permanent resident (Alien #) \_\_\_\_\_

An alien authorized to work (Alien # or Admission#) \_\_\_\_\_ until (expiration date, if applicable -month/day/year)

Employee's Signature	Date <i>(month/day/year)</i>
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**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature	Print Name
Address <i>(Street Name and Number, City, State, Zip Code)</i>	
Date <i>(month/day/year)</i>	

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

<b>List A</b>	<b>OR</b>	<b>List B</b>	<b>AND</b>	<b>List C</b>
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date <i>(if any)</i> : _____		_____		_____
Document #: _____		_____		_____
Expiration Date <i>(if any)</i> : _____		_____		_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employmenton *(month/day/year)* and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address <i>(Street Name and Number, City, State, Zip Code)</i>		Date <i>(month/day/year)</i>

**Section 3. Updating and Reverification** *(To be completed and signed by employer.)*

A. New Name <i>(if applicable)</i>	B. Date of Rehire <i>(month/day/year)</i> <i>(if applicable)</i>	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.		
Document Title: _____	Document #: _____	Expiration Date <i>(if any)</i> : _____
Signature of Employer or Authorized Representative		Date <i>(month/day/year)</i>



## LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

### LIST A

**Documents that Establish Both  
Identity and Employment  
Authorization**

### LIST B

**Documents that Establish  
Identity**

### LIST C

**Documents that Establish  
Employment Authorization**

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	5. Native American tribal document
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	6. U.S. Citizen ID Card (Form I-197)
	9. Driver's license issued by a Canadian government authority	
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	<b>For persons under age 18 who are unable to present a document listed above:</b>	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	10. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	



Form **W-9**  
(Rev. December 2011)  
Department of the Treasury  
Internal Revenue Service

### Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ ..... <input type="checkbox"/> Other (see instructions) ▶	
<input type="checkbox"/> Exempt payee	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>									
				-			-		
<b>Employer identification number</b>									
				-					

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶



## Direct Deposit Employee Authorization

Company Name: Platinum Mortgage Company	
Employee Name:	Employee Number:

I authorize you and the financial institution(s) listed below to deposit my pay automatically to the indicated account(s) and to make adjusting entries as may be required.

Bank/Credit Union	State	Type: Select One	Account Number
		Ckg Sav	
		Ckg Sav	
		Ckg Sav	

**Please Check One:**

	New or Additional Direct Deposit		
	Change the Bank or Account Number on an Existing Direct Deposit	Account Number to be replaced:	
	Change the Amount of an Existing Direct Deposit	Amount was:	Amount changed to:
	Other, Please Explain:		

**PLEASE ATTACH A VOIDED CHECK FOR EACH DIRECT DEPOSIT REQUEST- DEPOSIT SLIP IS NOT ACCEPTABLE**

It is my responsibility to verify deposits on a per pay period basis before writing checks against these funds. This Authorization can take up to three pay periods to activate. I understand that neither my employer nor Payroll Ready is responsible for bank errors or fees. I may cancel this Direct Deposit(s) at any time.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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## INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (“Agreement”) is entered into between **Platinum Mortgage Company DBA Platinum Realty**, a California Corporation (“Company”), and Platinum Realty “Agent” \_\_\_\_\_).

### Recitals:

- A. Company is engaged in the business of arranging real estate financing and real estate sales for its clients.
- B. Company desires to engage Agent to act on its behalf in arranging real estate sales for Company’s clients.
- C. Agent desires to arrange real estate sales for Company’s clients pursuant to the terms and conditions set forth in this Agreement or as may be required by Company from time to time. NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth below, Company and Agent agree as follows:

### Article 1 / Term:

This Agreement shall become effective on \_\_\_\_\_ (Date), or at such time as the last party to sign this Agreement has delivered a fully executed copy thereof to the other party, whichever is the last to occur (the “Effective Date”), and shall thereafter continue in effect on a month-to-month basis unless terminated earlier pursuant to the terms of section 7.1 herein

### Article 2 / Duties of Agent:

2.1 Compliance with Law. Agent agrees to arrange financing and/or real estate transactions on behalf of Company’s Clients and to perform such related duties as are customary in the mortgage brokerage and real estate business or as may reasonably be required by Company from time to time. Agent agrees during the term of this Agreement to remain apprised of and to comply with all applicable federal, state and local laws, regulations and ordinances pertaining to real estate sales, including, without limitation, those of the state(s) in which such transactions are arranged or where the real property securing the loan is located. A violation of this paragraph shall constitute a material breach of this Agreement.

2.2 License. Agent represents that he/she holds all licenses required by state and/or federal law to perform the services contemplated under this Agreement at the location set forth at paragraph 2.3 below, or that he/she is otherwise duly qualified to perform these services at said location of subject property for said service. Agent covenants to remain duly licensed and/or qualified to engage in mortgage loan origination in the state(s) in which he/she performs services under this Agreement at all times during the term of this Agreement.

2.3 Location. Agent shall only perform the services contemplated under this Agreement at Company’s office located at 915 Highland Pointe Drive, Ste. 250, Roseville, CA 95678 or Agent’s registered branch.

2.4 Company Forms and Instructions. Agent agrees to utilize all forms supplied by Company which Company determines, in its sole discretion, are necessary for the provision of the services to be performed by Agent under this Agreement. Agent further agrees to provide the services described herein in accordance with any manual and/or training materials provided by Company and in accordance with any Company advertising or promotional material then in effect.

2.5 Markups. Agent acknowledges and agrees that he/she will comply with Company’s policy of never adding a surcharge or mark-up to the cost of any third party settlement service when performing services under this Agreement.



2.6 Processing. As of the Effective Date of this Agreement, Company shall direct processing of all real estate transactions. Company real estate processing can be done in-house or may be contracted to a Transaction Coordination company approved by company. Company reserves the right to set the amount of this processing fee at any time, without notice.

2.7 Company's Name. All activities performed by Agent under this Agreement, shall be completed in the name of Company.

2.8 Payments. All commissions, broker rebates, reimbursements and/or other income relative to real estate arranged by Agent shall be made payable to Company.

2.9 Documents. Agent acknowledges that all documents received or prepared by Agent pertaining to the business of Company are, and shall remain, the sole property of Company.

2.10 Third Party Fees. Agent agrees to review the escrow closing documents and HUD-1 prior to the close of escrow on transactions. He/she agrees to confirm that payment of all third party fees including, without limitation, payment for any appraisal performed in connection with the loan.

### **Article 3 / Compensation:**

3.1 Commissions. Company agrees to pay Agent a commission on real estate transactions arranged by Agent on behalf of Company's borrowers which thereafter close. Field Agents shall be compensated 90% commission minus \$300 broker fee and \$125 E&O fees. In house Office Agents shall be compensated 75% commission minus \$300 broker fee and \$125 E&O fees. Any transaction referred from PMC Realty to a PMC Agent will be compensated at 75% commission minus \$300 broker fee and \$125 E&O Fees unless otherwise noted in an executed addendum. Such commissions shall be deemed earned by Agent only as and when the applicable fees and/or charges in connection with any such real estate transactions are actually received by Company and all quality control functions have been completed and cleared.

3.2 Modification of Compensation Schedule. The compensation schedule at Exhibit "A" may be changed from time to time at the sole discretion of Company. Any such changes shall be in writing and signed by Company and Agent. Any such changes shall not affect any other terms and/or conditions of this Agreement.

3.3 Split Commissions. In the event Agent jointly participates in real estate transaction activity on a particular property (s) with another Agent of Company, Agent's share of the commission on such loan shall be divided with the participating Agent according to the agreement between them. All such agreements should be in writing. Any dispute with respect to any such arrangement shall be resolved pursuant to the terms of Article 9 herein.

3.4 Company's Anti-Churning Policies. The term "churning" generally describes a practice wherein an agent arranges a mortgage loan for a borrower, the arranger of that loan is compensated through the lender's payment of a broker rebate, and then that same agent arranges another loan for that same borrower, refinancing the first loan, all within a prohibited period of time set by the lender. In such an event, the lender may require a refund of any previously paid Company rebate or compensation. Agent acknowledges that each lender has established its own policies with respect to "churning" and agrees to remain apprised of, and to comply with, each such anti-churning policy. Failure to do so shall constitute a material breach of this Agreement or, as applicable, the termination of Agent's employment and forfeiture of any compensation due.

3.5 Pre-payment. If any loan submitted by Agent to Company shall be prepaid in full before the receipt of six (6) scheduled monthly payments as a result of a refinance or sale transaction in which Agent is involved, then Agent



shall promptly refund to Company, the amount of any "service release premium" and/or "yield spread premium fee" and/or other compensation (as those terms are defined for federal disclosure purposes) previously paid to Agent by Broker with respect to such loan. The obligation of Agent set forth in this Article 3 Paragraph 3.5 shall apply regardless of whether Company is involved in the subsequent transaction. Company may elect to withhold compensation on transactions originated by Agent with lenders or investors which require return of premiums or compensation for periods of time after closing the closing of the transaction. The period of time to withhold will be determined by the individual contract held by Company with that lender or investor.

3.6 Non-Waiver of Remedies; Right of Offset. Company is not required to demand and purchase within any particular period of time. Any delay or passage of time before making such demand shall not constitute a waiver by Company. Amounts owed by Agent to Company under this Agreement may, at Companies option and in its sole discretion, be offset by Company against any payments then or thereafter owed by Company to Agent. Any such offset shall not constitute an accord and satisfaction unless agreed to in writing by the parties. If Agent collects any funds in connection with any loan submitted to Company, Agent shall immediately forward such funds to Company and nothing contained in this Paragraph 3.6 shall limit Company's rights to any remedy, legal or equitable; all such legal and equitable remedies, including those provided for herein, being in addition to and not in lieu of any other remedy.

3.7 Fraud. In the event that Company, in its sole discretion, determines that Agent has violated its policy against Any Fraud, Agent agrees that he/she will not receive any commission in connection with that real estate transaction. Agent further agrees that Company may exercise any rights it has under this Agreement or at law against Agent in the event Agent violates Company's Zero Tolerance policy against Any Fraud, including, without limitation, the immediate termination of this Agreement and/or the immediate termination of Agent's employment with Company.

3.8 Authorization and Payment of Taxes. Contractor shall be responsible to pay, when and as due, any and all taxes incurred as a result of Real Estate Agent's compensation hereunder.

#### **Article 4 / Authority**

4.1 Agent acknowledges and agrees that he/she has no right or authority to bind Company to any agreement, contract or undertaking without the prior written approval of Company. Agent further acknowledges and agrees that all documents received or prepared by Agent pertaining to the business of Company are, and shall remain, the property of Company. Agent shall have no authority to: (i) pledge the credit of Company or any of its employees; (ii) release or discharge any debt owing to Company; or, (iii) sell, mortgage, transfer, hypothecate or otherwise dispose of any non-inventory assets of Company having a cumulative fair market value in excess of \$100.00.

4.2 Independent Contractor Status. Agent enters into this Agreement as, and shall continue to be, an independent contractor. Payment of commissions may from time to time and at the sole digression of the Company, be paid as 1099. Agent shall not be entitled to any benefits accorded to the Company's employees including without limitation, disability insurance, vacation or sick pay. Agent shall be responsible for providing, at the Agent's expense, and in Agent 's name, disability or other insurance as well as licenses and permits usual or necessary for conducting the services hereunder. Agent agrees that Agent shall not represent to any third party that Agent acts as an employee, Contractor, partner or joint venture of the Company.

#### **Article 5 / Advertising and Telemarketing:**

5.1 Advertising. Agent shall not publish, or caused to be published, any advertisement in any medium related to



the services contemplated under this Agreement without the prior approval of Company. Agent agrees that any advertising which is thereafter circulated or distributed by Agent, or at the direction or instigation of Agent, shall comply with all applicable federal, state and local advertising laws, and any regulations or ordinances related thereto.

5.2 Telemarketing. Agent shall not engage in any telemarketing related to the services contemplated under this Agreement without the prior approval of Company. Agent agrees that any telemarketing which is thereafter performed by Agent, or at the direction or instigation of Agent, shall comply with all applicable federal, state and local telemarketing laws, and any regulations or ordinances related thereto.

5.3 Violation. Agent acknowledges and agrees that any violation by Agent of this Article shall constitute a material breach of this Agreement.

#### **Article 6 / Non-Competition:**

6.1 Best Efforts. Agent shall at all times faithfully and industriously perform all services, acts and other things necessary to perform his/her obligations under this Agreement, using his/her best efforts consistent with good industry practices, the long-term best interests and reputation of Company and the policies and procedures set by the management of Company. Agent agrees that he/she shall not enter into a similar contract for services with any other company, or perform any real estate services on behalf of any other Real Estate Company, during the term of this Agreement, or be employed by any real estate related company without the prior written consent of an officer of Company.

6.2 Confidential Information. Agent acknowledges that Company owns proprietary Confidential Information which constitutes a valuable, special and unique asset of Company. This Confidential Information has been compiled and developed by Company over time at considerable expense and effort, has not been divulged to third parties, and is not known to Company's competitors who could obtain economic value from such information if it were known. As used herein, the term "Confidential Information" includes all information and materials belonging to, used by, or in the possession of Company relating to its products, processes, services, technology, inventions, patents, contracts, forms, records, data, processes, ideas, financial information, business strategies, pricing, marketing plans, customer lists, and trade secrets of every kind and character, but shall not include (i) information that was already within the public domain at the time the information was acquired by Agent, or, (ii) information that subsequently becomes public through no act or omission of Agent. Agent agrees that all Confidential Information is and shall continue to be the exclusive property of Company, whether or not prepared in whole or in part by Agent and whether or not disclosed to or entrusted to Agent's custody. Agent's obligation to preserve the secrecy of Confidential Information shall survive the termination of this Agreement. Upon termination of this Agreement, Agent agrees to return to Company all files, papers, prospect cards and materials of any kind containing or relating to Confidential Information, including all copies thereof.

6.3 Non-Solicitation of Employees. Agent agrees that for a period of two (2) years following the termination of this Agreement, he/she shall not induce or attempt to induce any employee of Company, or any independent contractor providing services to Company, to discontinue his/her employment or association with Company for the purpose of obtaining employment with or providing services to a competitor of Company, including Agent.

6.4 Non-Solicitation of clients. After termination of this Agreement, Agent shall not solicit Company's customers or prospective customers if the name(s) of said customers was obtained through, or made known to Agent by, a Company supplied lead. 6.5 Prior Agreements. Agent represents and covenants that he/she is not bound by any noncompetition or non-solicitation agreement in effect with a prior employer which would preclude, limit or in any manner restrict the performance of his/her duties under this Agreement. Without limiting the foregoing,



Agent expressly acknowledges and agrees that the performance of his/her duties under this Agreement will not violate the terms and conditions of any agreement with respect to the use, or misappropriation, of proprietary information or trade secrets.

6.6 Violation. A violation of this Article shall constitute a material breach of this Agreement.

## **Article 7 / Termination**

7.1 Immediate Termination. This Agreement shall terminate without notice immediately upon the occurrence of any of the following events, unless the parties agree in writing that the Agreement shall continue:

- a. a material breach of this Agreement;
- b. the insolvency, bankruptcy or receivership of Agent; or,
- c. Company's determination, in its sole discretion, that Agent has engaged in loan fraud; and,
- d. If Agent is an employee, upon the termination of his/her employment with the Company.
- e. Termination Upon Notice. Either party hereto may terminate this Agreement at any time by giving the other party fifteen (15) days written notice.

7.2 Transactions files. Upon termination of this Agreement by either party for any reason, all real estate transactions, whether pending or closed, shall remain with, or be returned to, Company.

7.3 Computers/Equipment. Immediately upon the termination of this Agreement by either party for any reason, all computer hardware and other equipment loaned to Agent by Company shall be returned to Company.

7.4 Transactions in Process. Real Estate Transactions initiated by Agent prior to the termination of this Agreement which have not yet closed will be assigned by Company to another of its Agents who will perform the services necessary to complete the loan transaction. Compensation paid to this Agent, will be set at 50% of the net commissions, if any, on such loans shall be deducted from Agent's share of the commission(s).

## **Article 8 / Notice**

Any notice given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the parties at the following addresses:

**Platinum Mortgage Company DBA Platinum Realty**  
**Attn: Anna Darrett**  
**915 Highland Pointe Drive, Ste. 250, Roseville, CA 95678**

Notices delivered personally shall be deemed communicated as of the actual date of receipt; mailed notices shall be deemed communicated as of three (3) business days after deposit in the United States mail.

## **Article 9 / Arbitration**

Every dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this arbitration provision, shall be resolved by binding arbitration. Arbitration shall be conducted in the City and County of San Diego, California, or at any other location which is mutually acceptable to the parties or as may be required state law, before a sole arbitrator, in accordance with the laws of the State of California for agreements made in



and to be performed in California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The provisions of this Article may be enforced by any court having jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

#### **Article 10 / Miscellaneous Provisions**

10.1 Integration. This Agreement supersedes any and all other agreements, either oral or in writing, between Company and Agent with respect to Agent's performance of services as an agent of Company, and contains all the covenants and agreements between the parties with respect to such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any parties which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

10.2 Assignment. This Agreement may not be assigned by Agent, but shall inure to the benefit of and be binding upon the successors and assigns of Company.

10.3 Receipt of Agreement. Each of the parties acknowledges that he, she or it has read this Agreement in its entirety and hereby acknowledges receipt of a fully-executed copy thereof.

10.4 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of California

10.5 Captions and Section Headings. Captions and section headings used herein are for convenience only and are not part of this Agreement and shall not be used in construing it.

10.6 Amendments and Waiver. This Agreement may be amended from time to time only by a writing signed by Company. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other provision, nor shall any waiver constitute a continuing waiver or commit a party to providing a waiver in the future.

10.7 Survival. The covenants, agreements, representations and warranties made herein shall survive the termination of this Agreement, unless the context clearly provides otherwise.

10.8 Severability. If a court or arbitrator of competent jurisdiction finds any provision in this Agreement to be invalid, illegal, or otherwise unenforceable, that determination will not affect any other provision of this Agreement. The invalid provision will be severed from this Agreement and all remaining provisions will continue to be enforceable by their terms and of full force and effect.

10.9 General Interpretation. This Agreement is the product of negotiation and preparation by Company and Agent. Each acknowledges and agrees that this Agreement shall not be deemed to have been prepared or drafted by one party or another, and shall be construed accordingly.

10.10 Third Party Beneficiary. This Agreement has been made by, and is made solely for the benefit of Company, its successors and assigns, and Agent. Nothing in this Agreement is intended to confer any rights or remedies under or because of this Agreement on any persons or entities other than the parties to it and Company's successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons or entities to any party to this Agreement.



10.11 Signatures. The undersigned persons represent that they are authorized and have the legal capacity to enter into this Agreement.

**Real Estate Agent**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Full Name (Print):** \_\_\_\_\_

**DRE Lic #** \_\_\_\_\_ **/ Exp Date** \_\_\_\_\_

**Platinum Mortgage Company DBA Platinum Realty ("Company") (Officer Use Only)**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



## CODE OF CONDUCT

**Platinum Mortgage Company DBA Platinum Realty** employees will:

1. Conduct business with honesty and integrity;
2. Act so that the company is received and viewed in a positive manner;
3. Respond to customers and fellow staff with courteous, business-like behavior;
4. Treat other employees without malice, gossip, hearsay, or other negative communications;
5. Avoid any activity that can be construed as harassment whether sexual, physical, emotional, racial, or any other type of demeaning activity;
6. Follow the problem resolution procedures outlined in the Policies and Procedures Manual in the event of a conflict;
7. Not participate in theft, fraud, breaking of confidentiality (with regard to clients or company personnel), or any other damaging event that would put the company, employees, or clients at risk;
8. Conform to dress codes that are intended to enhance the company's image in the public eye;
9. Respect company facilities and functions as a drug-free environment) including all categories of illegal or controlled substances that would be adverse for an individual or the company); and
10. Support the work and visions of the company while employed by Platinum Mortgage Company DBA Platinum Realty.

### **Real Estate Agent**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Full Name (Print):** \_\_\_\_\_





## MUTUAL NONDISCLOSURE AGREEMENT

This Confidentiality Agreement (the "Agreement"), made and entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between Platinum Mortgage Company with its corporate offices at 915 Highland Pointe, #250, Roseville, CA 95678, and (agent) \_\_\_\_\_.

WITNESSETH: WHEREAS, the parties hereto wish to explore the possibility of entering into certain business transactions. In the course of negotiation, the parties will provide confidential information relating to their business, including, without limitation, technical information, financial information, competitive information, customer information, contractual information, know-how, business methods and processes; and WHEREAS, the parties have agreed to receive such information on a confidential basis and shall disclose it only as provided for in this Agreement. NOW, THEREFORE, in exchange for mutual covenants contained herein and in order to protect the Confidential Information, both during the term of the relationship and after the expiration or termination thereof, the parties hereby agree as follows:

1. The term "Confidential Information" shall mean all information disclosed to one party to this Agreement (the "Receiving Party") by the other party to this Agreement (the "Disclosing Party") in written, graphic, recorded, photographic, or any machine-readable form (including information disclosed orally and subsequently reduced to writing) about such Disclosing Party (including its subsidiaries and corporate affiliates) and its business, including without limitation business plans, the terms of any pending transactions or acquisitions, financial statements or projections, trades secrets, customer information, intellectual property rights, products, research and development, operations, marketing, sales, pricing and trade know-how, whether or not such information is marked or labeled "Confidential" or "Proprietary."

2. The Receiving Party will use Confidential Information for internal purposes only, and only to the extent necessary: i) for negotiation, discussions and consultations with the Disclosing Party; ii) to consummate the transactions contemplated by such negotiations, discussions and consultations; and iii) for any other purpose the Disclosing Party may hereafter authorize in writing. The receiving Party will provide such Confidential Information only to those of its employees or agents who have a need to know the same.

3. The Receiving Party will not disclose Confidential Information to any third party, to any parent or subsidiary or affiliated companies, or to any of its divisions or operating units other than those working directly with the Disclosing Party on the business transactions contemplated herein. The Receiving Party shall use the same degree of care to protect and safeguard the confidentiality of Confidential Information as it uses to protect and safeguard the confidentiality of its own proprietary information.

The Receiving Party represents and covenants that such degree of care is reasonably designed to protect the confidentiality of Confidential Information.

4. Each party agrees that the term "Confidential Information" does not include information which:

- (a) has been or becomes published or is now or is in the future in the public domain through no action of the Receiving Party;
- (b) prior to disclosure hereunder, is within the legitimate possession of the Receiving Party, as evidenced by competent written proof;
- (c) subsequent to disclosure hereunder, is lawfully received from a third party having rights therein without restriction of the third party having rights therein without restriction of the third party's rights to disseminate the information and without notice of any restriction against its further disclosure;
- (d) is independently developed or acquired by the Receiving Party without reference to the Confidential Information;
- (e) is disclosed with the prior written approval of the Disclosing Party;
- (f) is obligated to be produced under order of a court of competent jurisdiction or a valid administrative or



congressional subpoena; or

(g) is disclosed by the Receiving Party after three years from the date of receipt, provided that in any action to enforce or remedy a breach of this Agreement, the Receiving Party shall have the burden of establishing the applicability of the subsection on which it relies.

5. All copies of Confidential Information received by the Receiving Party shall be returned to the Disclosing Party immediately upon such party's request or, upon such party's request, destroyed.

6. Nothing in this Agreement shall be construed as granting or conferring any rights by license or otherwise for any invention, discovery, or improvement made, conceived, or acquired prior to or subsequent to the date of this Agreement.

7. The Receiving Party shall inform all of its agents and employees to whom Confidential Information is revealed of the existence of this Agreement and of the limitations placed on the use and disclosure of Confidential Information and shall be responsible for any breach of this Agreement by any of such employees or agents.

8. In the event of a breach or threatened breach of the terms of this Confidentiality Agreement, each party shall be entitled to an injunction prohibiting revelation of the Confidential Information and any and all other appropriate equitable remedies. Any such relief shall be in addition to and not in lieu of appropriate relief in money damages. Each party acknowledges that Confidential Information is valuable and unique and that disclosure in violation of this Confidentiality Agreement will result in irreparable injury to the other party.

9. Either party may terminate the working relationship contemplated by this Confidentiality Agreement by written notice to the other party. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

10. This Confidentiality Agreement supersedes any prior such agreement, may not be amended or modified except in a writing signed by both parties, and shall be governed by and construed in accordance with the laws of the state of California without regard to California's choice of law provisions. If any provision of this Confidentiality Agreement is found to be unenforceable, the remaining provisions shall be enforced as fully as possible and the unenforceable provisions shall be deemed modified to the limited extent required to permit enforcement in a manner most closely approximating the intention of the parties as expressed herein.

**Real Estate Agent**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Full Name (Print):** \_\_\_\_\_



**Update to DRE Issued Consumer and Industry Alert(s) Regarding Short Sales Fraud, and Related Issues**

Several months ago, the California Department of Real Estate ("DRE") issued a publication on residential Short Sales which provided an overview of the practice area, and a warning to the real estate industry about legal and ethical minefields and the growing fraud in this area. The publication also discussed and pointed out certain egregious and unlawful practices of short sale flippers, and it was followed by a DRE Consumer Alert on Short Sale transactions.

Unfortunately, Short Sale fraud is growing, and it too often seems that licensees and those counseling licensees may wrongly conclude that unlawful or questionable practices "cannot be bad" because "everyone is doing it." Licensees must understand that fraudulent and unlawful practices will invite disciplinary action by the DRE and possible civil and criminal liability.

**This DRE Short Sales update is written on the growing, questionable, and sometimes unlawful practice of short sale negotiators ("SSN") requiring/compelling Buyers to pay the SSN's fee.**

The DRE will publish and disseminate additional updates as necessary and appropriate to protect the public and to inform its licensees of practices that are problematic, questionable and/or unlawful.

Discussion

Many brokers have noticed and reported a sharp increase in the number of Listing Agents and SSNs who are requiring that Buyers pay the SSN's fee. The Buyer's agents are sometimes told (either in the Remarks Section of the MLS and/or in a pre-sale instruction sheet) that Buyers must sign a special Addendum created by the SSN in which the Buyers agree to pay the SSN's fee if they intend to present an offer.

Buyer's Agents may also be told that their clients' offer will not be presented if the Buyer does not agree to sign that SSN Addendum and include it with the offer. If the requirement for the Buyer to pay the SSN fee is being driven by the Listing Agent and/or the SSN<sup>1</sup>, and is really not a requirement of the Seller, there is potentially an ethics violation and a breach of the Listing Agent's fiduciary duty to the Seller by stifling and limiting the presentation of legitimate offers.

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<sup>1</sup> The SSN is (or must be), unless exempt under very narrow statutory exemptions, a California licensed real estate broker. See sections 10130 et seq. of the California Business and Professions Code, for the licensing requirements and the exemptions. Also, see the discussion in paragraph (c) below.



One version of this scenario is where the Buyer is told that he or she “must” request a credit for non-recurring closing costs ("NRCC") (the NRCC is typically 3%) as part of the Buyer's offer with the understanding that the Buyer will use that money to pay the SSN's fee as well as any other party who is not satisfied with the amount authorized by the Short Sale Lender (such as a second Lender). The NRCC will or may be shown on the HUD1 and if the fee is paid through escrow it would appear on a late-escrow HUD-1. However, these additional fees are often paid outside of escrow since the Lenders may not approve the same. Remember, in Short Sales, the Seller's Lender may require, and in many cases makes it clear, that the Seller is not to receive money or any other benefit from the sale.

The SSN Addenda that have been created to shift the payment responsibility for the SSN's fee to the Buyers may raise significant legal concerns for Brokers. In some instances the Listing Agent is trying to get paid extra money to serve as both the Listing Agent and the SSN. In other cases, the Listing Agent has hired an outside SSN because that agent is not able or willing to provide short sale negotiation services to their clients, but at the same time the Listing Agent does not want to share his or her commission earnings with the outside SSN that has been hired to do that work.

**To better understand the pitfalls and perils involved in these types of arrangements, we offer the following:**

(a) Although the SSN Addendum is a contract document, the primary reason that these terms and conditions are on a separate Addendum may be to better enable the Listing Agent and/or SSN to conceal this information from the Seller's Lender and, in some instances, the Buyer's Lender. Based upon anecdotal reports from lawyers and real estate practitioners, it appears that unscrupulous SSNs are purposely not sending these Addenda to the Lenders as part of the package of information requesting Short Sale approval from the Seller's Lender. This practice of intentional concealment would support and/or may lead to a finding of Lender Fraud. If the SSN Addendum is not sent to the Seller's Lender, the Lender may not be aware that the Buyer (whether or not they are approved to get the NRCC credit) is being required to direct funds to others in the transaction including, but not limited to, the SSN. It is noted that in addition to paying for the SSN, Buyers may be asked to pay off the Seller's credit card debt, the Seller's moving expenses, to buy the Seller's furniture at an inflated price, and to otherwise provide funds for the direct benefit of the Seller. If those funds/payments are not expressly approved by the Seller's Lender, those “additional” payments could be extremely problematic from a legal standpoint.

(b) Including the payment of the SSN's fee on a HUD-1 is arguably not sufficient to qualify as a realistic, timely disclosure to the Seller's Lender that such a payment will be made. The Seller's Lender's Term Sheet usually specifies the total amount of commission compensation that is to be paid to the Listing and Selling Brokers in the transaction. That Term Sheet may constitute escrow instructions from the Lender, and the Lender might not approve a payment to an SSN that is to be added to the amount



authorized as payment for the Listing and Selling Brokers. Lenders may consider any fee charged by a SSN to be a commission payment because the SSN is performing California real estate licensee activity. When the Buyer's separate payment of the SSN's fee appears on the final HUD-1 and that payment had not been authorized in the Lender's Term Sheet (*i.e.*, when added to commission that the Listing and Selling Brokers are receiving it may exceed the limit authorized by the Lender), Lenders may take the position that this constitutes a violation of the Lender's Escrow Instructions, and that may constitute Lender Fraud. Recently, a Northern California Title Company (that had also served as the escrow holder) settled a case by paying the Lender the entire amount of the forgiven loan (plus attorneys' fees and costs) simply because the escrow holder authorized a minor payment that was not approved by the Lender.

(c) The SSN Addenda may contain provisions which purport to establish that the SSN (who is negotiating with the Seller's Lender on behalf of the Seller) is also representing the interests of the Buyer in order to support the rationale given as to why the Buyer is to pay the SSN fee. The muddled and unsettled issue of who the SSN is actually representing can be used, depending on the facts and circumstances, as the basis to allege undisclosed dual agency which could lead to a rescission of the transaction, disgorgement of all commissions earned by all Brokers and sales associates involved in the transaction, and ultimately to the revocation or discipline of some of the real estate licenses. It is possible that an SSN might fall entirely outside the scope of the statutory agency disclosure law which generally pertains to Listing Agents (defined under California Civil Code section 2079.13(f) as "a person who has obtained a listing of real property to act as an agent for compensation") and Selling Agents (defined under California Civil Code section 2079.13(n) to generally be an agent "who sells or finds and obtains a buyer for the real property"). For example, California lawyers performing legal work and rendering services in the course of their legal practice are not included in the above-identified disclosure law. An ill-conceived creation of a dual agency relationship might not be properly confirmed in the Purchase Contract or the Addenda (as required by California Civil Code sections 2079.13et seq.) and the SSNs might not provide the Seller with the Agency Disclosure form in a timely fashion (if they provide it at all). Nor does the SSN generally bother to give the Buyer an Agency Disclosure form, although the same would be required in the event there is an agency ("Selling Agent") relationship between the SSN and the Buyer. Failure to provide a timely Agency Disclosure can invalidate the obligation to pay commission under the terms of a Listing Agreement (please see Huijers v. DeMarrais, 11 Cal.App.4th 676 (1992)). That same reasoning and analysis may form a legitimate basis to negate the SSN fee.

(d) While much of the written documentation with reference to the Short Sale transaction will refer to a sale for fair market value ("FMV"), the SSN and Listing Agents may orally emphasize the payment of less than the FMV as part of a scheme to induce the Buyer to want to pay the SSN fee. Unfortunately, if the Buyer acknowledges that he or she is paying less than the actual FMV of the property, then he or she is acting in direct contravention of what Buyers and Sellers may be required to certify to secure the



Seller's Lender's approval of the Short Sale. In the past, Sellers have been required to certify under penalty of perjury that the property is being sold for FMV. More and more Lenders are now requiring that the Buyers also execute comparable certification documents. Misrepresentations, perjury, and/or the subornation or perjury, have serious legal, criminal and/or disciplinary consequences. Also, any "artificially lowered" purchase price would not prevent the taxing authorities from assessing the taxable value of the property at FMV. If that occurs, additional liability exposure may be created for the Brokers, depending on their involvement in a fraudulent scheme.

(e) As discussed above, the SSN's fee that is charged to the Buyer might not be part of the "negotiations" between the principals. Rather, it may be a requirement of the sale according to the Listing Agents' comments in the MLS and/or on any pre-sale "terms of the sale" sheet distributed by the Listing Agent or SSN to prospective Buyers' Agents. The latter may be effectively told that their clients' offers will not even be considered (*i.e.*, at times not even presented) unless the offer contains the required terms, including the credit and/or the requirement that the Buyers and their Agents must sign the SSN Addendum. Since the SSN is a service provider that should be paid through escrow, if no real or added services are actually performed for the Buyer, requiring the Buyer to pay that "extra" fee(s) also appears to constitute an unlawful "junk" fee under the federal law known as RESPA.

(f) If the SSN's fee is paid outside of escrow, so that the fee is not disclosed on the HUD-1, the concealment may be in violation of federal law. In addition, depending on their involvement, all of the parties to that transaction (Sellers, Agents, Buyers and Escrow holders) could be alleged and be found to have participated in a conspiracy to violate federal law by agreeing to structure the deal to include "hidden" payments outside of escrow.

(g) The SSNs may claim that the Buyers are not really paying them a fee because the SSN's fee is coming out of the 3% credit from the Seller to the Buyer for NRCC. Negotiators are often able to have the Lender approve such a credit on their "Term Sheet". As discussed above, there may be Lender fraud issues involved in the redirection/misdirection of the credit, and this could also be the basis for a deceptive and unfair business practice lawsuit. If the Buyer is authorized by the Seller's Lender to receive the credit as specified in the Purchase Contract with the Seller, but the Buyer is compelled to and must give up some or all of the credit to pay the SSN (or others), then the SSNs may be involved in a "shell" game. If that occurs, the Buyers' interests might not be properly protected by either the SSN who may owe them fiduciary duties (as discussed above) or their own Agent who has those same fiduciary obligations. Breaches of fiduciary duties have consequences in terms of civil liability and license discipline.

(h) Finally, it must be noted that many of the Addenda or other documents used to require payments to SSNs may contain hold harmless language that may give real estate licensees a false sense of security as to the propriety of such transactions. It should be noted that because there is usually no separate consideration paid for the hold harmless language, the enforceability of the obligation to hold the signers harmless is problematic.

### Conclusion

There are many complexities in the area of Short Sales transactions. As noted above, fraud in this



area is growing. The varieties of fraud continue to evolve. While examples of fraud and questionable and unlawful practices are discussed above, the discussion is not exhaustive, as fraud purveyors continue to modify their schemes and methods of operation.

When dealing with the myriad issues arising with respect to Buyers being compelled to pay a “junk” fee(s) to an SSN, real estate licensees must understand how truly unsafe and problematic this practice is in terms of potential license discipline and civil and criminal liability.

Agent has read, understands and agrees to the foregoing information.

Agent's Signature: \_\_\_\_\_ Date: \_\_\_\_\_





# Short Sales -- An Overview and Warning to Real Estate Licensees Re: Fraud, and Legal and Ethical Minefields<sup>1</sup>

By Wayne Bell, Chief Counsel  
Mark Tuter, Senior Deputy Commissioner

## I. Introduction.

In the current distressed California residential real estate environment, where many mortgage loan borrowers owe more on their homes than their properties are worth and some have opted to simply walk away from their homes and mail in their keys, so-called short sales have become favored transactions. For a long time, loan modifications were the primary strategy of the day for financially distressed homeowners. However, the results for loan modifications have been anemic at best.

In April of 2010, the federal government will offer financial incentives to push short sales through a program called Home Affordable Foreclosure Alternatives. The program is designed to spur home sales, and it specifically imposes new requirements on lien holders, including requiring certain debt forgiveness, an abbreviated time frame to respond to short sale offers, and provides government payments to homeowners (for moving and/or relocation expenses), servicers, and lien holders.

### A. What is a Short Sale?

Because not all real estate professionals are aware of the mechanics of short sale transactions, the following overview is offered as a quick primer.

A short sale is a pre-foreclosure residential real estate transaction where the owner of the mortgage loan, the lender or lien holder (hereinafter sometimes "Lender"), agrees to (i) allow the home owner to sell his or her property for less than -- or "short" of -- the outstanding amount owed on the mortgage loan, and to (ii) release the property from the mortgage.

Homeowners who are "underwater" or "upside down" with respect to their mortgage loans, seek to sell their homes "short" to avoid the threat of foreclosure action and to lessen the credit damage that would accompany a foreclosure. Because of the "shortage", the transaction may involve "debt forgiveness" by the Lender. But this is often preferable to the Lender compared to a foreclosure -- which has costs and risks for

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<sup>1</sup> The authors wish to express their appreciation to Summer Bakotich, Deputy Commissioner of the California Department of Real Estate, for her insightful and helpful comments, and for her editorial review of this publication.



the Lender in terms of lost payments, eviction, property maintenance, insurance, taxes, fees, and the like - or a loan modification, with the associated lack of certainty. Also, a short sale gets the non-performing mortgage loan asset off of the Lender's financial books.

## B. Is a Real Estate License Required to Represent the Parties to a Short Sale?

The simple answer is YES, with some extremely narrow and limited exceptions and exemptions.

A real estate broker license (or a real estate salesperson license where that person is working under the supervision of his or her broker) is required under section 10131 (d) of the California Business and Professions Code (B&P Code) where a person, in a representative capacity on behalf of another, "negotiates loans...or performs services for borrowers or lenders ...in connection with loans secured directly or collaterally by liens on real property..." for or in expectation of compensation, "regardless of the form or time of payment".

In addition, under section 10131 (a) of the B&P Code, a real estate broker license (or salesperson license with appropriate supervision by the broker of record) is required of any person who, as a representative of another, "Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property..."

The exceptions and exemptions from the licensure requirement are few and narrowly drawn. For example, a California licensed lawyer is exempt when that person renders services in the course and scope of his or her practice as an attorney. Additionally, if a person is acting solely on behalf of himself or herself, or itself in the case of an entity, there is no need for a real estate license since the person or entity is not acting on behalf of another or others.

Because there is or may be mortgage loan "debt forgiveness" in a short sale, some people and entities argue that they can, and attempt to, consummate short sales on behalf of others without a real estate license by asserting that they are "debt negotiators", "debt resolution experts", "loss mitigation practitioners", "foreclosure rescue negotiators", "short sale processors", "short sale facilitators", "short sale coordinators", "short sale expeditors", or some other type of unlicensed short sale or debt specialist.

Yet it is because the loan debt is "secured directly or collaterally by liens on real property" that brings into play the legal mandate for a real estate broker license under California law.

If a real estate licensee wants to take a short sale listing and not conduct the short sale negotiations with the homeowner's lender, then the licensee must seek to ensure that an unlicensed third party is not performing the negotiations on behalf of the seller.

Criminal Penalties for Those Who Participate in Unlicensed Activities. Those who engage in short sale transactions, including the related "negotiations", and who are unlicensed (and do not have the benefit of an exception/exemption), are in violation of California law. The penalties include fines and/or imprisonment under section 10139 of the B&P Code.

C. Fraud, and Questionable Conduct and Activities.

In addition to seeing unlicensed activities in the market with respect to short sales, the California Department of Real Estate (hereinafter "DRE") has also been alerted to fraudulent short sale transactions. Before discussing an example of short sale fraud that is becoming prevalent, it must be noted that the types and varieties of fraud (some quite elaborate) are many and are limited only by the imaginations of those who commit fraud. Thus, this segment and the succeeding discussion on scenario/scheme variations and legal and ethical minefields, is intended to raise concerns and issues for real estate licensees in California. But it is not intended to be comprehensive in scope.

i. Short Sale Fraud -- Flipping by Unlicensed Entities Using Straw Buyers.

In some cases, unlicensed "short sale facilitators" hone in on homes that are on the verge of foreclosure and persuade the lenders to accept "lowball" purchase offers, often times by using "straw buyers", questionable or self-interested broker price opinions or appraisals, and by failing to disclose that a sale at a higher price has previously been put on the table or negotiated.

In this case example, ABC Short Sale Services (hereinafter "ABC" -- the name has been changed for the purposes of this example), an unlicensed "short sale facilitator", contacts a distressed homeowner and tells him that ABC will facilitate the sale of underwater property with the best possible economic outcome to the homeowner. Payments to the homeowner may even be promised to entice interest.

ABC then contacts a licensed California real estate broker (hereinafter "Broker") with little or no knowledge about short sale transactions, and offers to refer a short sale listing to the Broker. For the business, the Broker pays a referral fee to ABC. Once ABC has a Broker on board, ABC requires that the homeowner/seller sign a contract with ABC, in which the homeowner/seller agrees to permit ABC to serve as the homeowner/seller's "short sale negotiator". The contract has language like the following: "Seller agrees that he will no longer market the property and grants to ABC all necessary rights to market, negotiate, and enter into an agreement to sell the property to an unrelated third party".

For its services, ABC charges the homeowner/seller a \$395 upfront fee and then a second \$195 fee for the negotiation services.

In this case, \$480,000 is owed on the mortgage loan to the Lender, a federally insured financial institution, and the fair market value has fallen to \$410,000. The property is listed by the Broker for \$410,000, and the Broker takes no part in the "negotiations". Because lenders and lien holders do not always require the listing brokers to present to them every single offer made for the short sale property, ABC only presents to the Lender the offer(s) it so chooses. Because ABC controls all of the information provided to the Lender, ABC also decides to withhold legitimate offers from the Lender and convinces the Lender that the home is overpriced at \$410,000.

ABC presents its own \$340,000 offer to the Lender, in the name of a fictitious buyer or "straw person" (hereinafter "SP 1"). Because ABC has controlled all of the information to the Lender during the

listing period, and has withheld legitimate higher offers, the Lender is led to conclude that SP 1's \$340,000 offer is the highest and best, and the Lender accepts SP 1's offer.

Following acceptance of SP 1's \$340,000 offer, and once escrow is open, ABC will focus on the primary objective of its scam by finding a second, legitimate buyer for more money as a "flip". To accomplish this, ABC, through SP 1, will offer the soon to be newly purchased property for sale via the Multiple Listing Service. ABC will also contact the various buyers' agents who presented offers higher than \$340,000 during the short sale listing process, but whose offers were not presented to and withheld by ABC from the Lender.

ABC will inform all prospective buyers' agents that "the short sale property is already in escrow", but that it will be available for immediate sale after the close of escrow.

Buyer 1 is extremely interested in the property, and is willing to pay the fair market value of \$410,000. Buyer 1 then agrees to participate in a double or simultaneous escrow and offers \$410,000. ABC, through SP 1 (ABC's confederate), concurrently enters into a \$410,000 purchase contract for the property with Buyer 1, conditioned upon SP 1 obtaining title, and that the "second" sale to Buyer 1 go through ABC's handpicked lender.

After the closing of the second sale, ABC makes over \$70,000, including referral fees from the Broker and fees from the original distressed homeowner/seller.

#### Brief Analysis of Short Sale Flipping Fraud Example.

In the case above, ABC has violated the California B&P Code by engaging in real estate licensed activities without a license. Also, they have collected advance fees in violation of California law. Then, they have made a large profit through false pretenses at the expense of a federally insured financial institution, by misrepresenting the value of the home to the Lender. This may constitute federal loan fraud, which is a serious felony offense which is punishable by imprisonment and fines.

The Federal Bureau of Investigation lists variations of short sale flipping as real estate fraud.

#### i. Short Sale Fraud – Scenario/Scheme Variations and Warnings re: Legal and Ethical Minefields.

##### a. Multiple Lenders and Lien Holders, and Payments Outside of Escrow.

Where more than one Lender or lien holder is involved, the negotiations are complicated. Second and other subordinate lien holders often hold up the short sale transaction, and seek to extract the largest possible payment in consideration for releasing their lien.

Often times there are monies secretly paid outside of escrow, without the knowledge of the senior lien holder. This is a sure sign of fraud. Such undisclosed payments are likely illegal. The economic substance of and all payments in the short sale transaction should be disclosed on the HUD 1 statement. There should never be dual or multiple contracts, only one of which shows the true purchase price.

Added Twist re: Payments Outside of Escrow – some short sale listing contracts have a provision in an addendum for payments outside of escrow for some amount of money (usually

\$1,000 up to 1 percent of the sales price) to a third party short sale negotiator, processor, or facilitator, for some unknown or unspecified service. The money is sometimes to be paid by the seller, and other times by the buyer. These may be payments to a confederate of the real estate broker, some affiliate of the broker, and/or an unlicensed short sale entity. It is not known from a review of the addendum whether these fees are paid for a real service, or whether they are “junk” fees paid to increase the monies payable to the real estate licensee. If they are paid for a legitimate purpose, they must be disclosed to all parties to the transaction, including the senior Lender. If they are “junk” fees, or fees paid to an unlicensed entity, they are problematic from a legal perspective.

All such payments may violate RESPA, the Real Estate Law, and other federal and/or State laws.

b. Sometimes the End or Retail Buyer is the Only One Putting Money into the Short Sale Transaction.

Here the end buyer’s money is used to close the transaction, without any or proper disclosure.

c. The Ownership of the Underwater Property is Transferred to Some Sort of Trust.

This may be done to keep the chain of title intact and to hide the true owner of the property. In many cases, the homeowner seller is listed as the beneficiary of the trust.

d. Additional Things to Consider (A Word to the Wise):

- i. Your fiduciary duties are to your principal(s), which cannot be signed away. The duties include honesty, loyalty, confidentiality, full disclosure of all material and relevant facts, skill, care, and diligence, and placing your client’s interests ahead of yours. For a more complete discussion of fiduciary duties that are imposed on California real estate licensees, please see DRE’s Real Estate Bulletin of Summer 2007.

If you are the listing agent, you have a number of fiduciary duties to the seller imposed on you. You certainly cannot delegate your real estate license and fiduciary duties to an unlicensed third party who shuts you off from communication with the short sale Lender.

Dual Agency Considerations. Consider also if you are an agent of the third-party investor/short sale facilitator. You may have a dual agency situation which raises a whole host of issues. If you are a dual agent, you may have an irrevocable conflict that a dual agency disclosure cannot remedy.

By getting the best price for the first buyer/investor, you most assuredly cannot get the best sales price for the seller. If you have listed the home for the seller, your duty should run to that seller. How can it also run to the third party?

- ii. Your legal obligations under the California real estate law regarding disclosures, including agency relationships, and the prohibitions against fraud and secret profits.
- iii. Real estate licensees wishing to collect an advance fee in connection with performing short sales must first submit an advance fee contract to the DRE for review and then

receive from the DRE the issuance of a no-objection letter relative to that contract. All advance fees collected thereafter under the terms of that contract must be placed in a trust account and handled as client trust funds under the California Real Estate Law and Regulations of the Real Estate Commissioner.

- iv. By entering into an agreement with a person who is engaged in mortgage fraud (even unwittingly or innocently), you can be held liable both civilly and criminally, and may be the subject of administrative discipline by the DRE.
- v. RESPA's anti-kickback and unearned fee provisions. The U.S. Department of Housing and Urban Development has many informative materials on RESPA and the prohibitions against giving or receiving any fee, kickback, or anything of value for the referral of settlement service business.

By participating in a short sale fraud, with artificially deflated offers for the short sale property, you may be defrauding the new lender on the retail sale – in addition to the fraud committed against the short sale Lender. In a typical simultaneous sale transaction, a property is stated as having two different values to two separate lenders – the short sale Lender, and the new retail lender. While one of the values may represent the “distressed” property value, and the other a “non-distressed” property value, an issue regarding fraud is presented.

- vi. There is potential harm to the short sale home seller. In addition to not obtaining the highest price for the seller, which is or may be a violation of the law and or your fiduciary duty, the Lender may still require the seller (the original borrower) to pay off the remaining debt. In this case, there is no debt forgiveness. Even where the holder of the first lien allows for debt forgiveness, the holder of the second or subordinate liens might not forgive that debt. A deficiency judgment may then be pursued and obtained by the lien holder(s) for the deficiency. Moreover, the greater the debt forgiveness, the greater the potential tax liability. While the federal government has imposed a freeze on taxing the forgiven amount, State tax law may not do the same. Thus, if the short sale property is sold for the most amount of money that the market will bear, the potential tax consequence to the seller is diminished. Conversely, by accepting an artificially deflated offer, the seller's potential tax liability is increased.

#### D. Conclusion.

Real estate and mortgage fraud is escalating and is never acceptable. It hurts everyone. Those who engage in short sale flipping fraud through the use of misrepresented valuations and/or manipulated prices make profits at the expense of lenders, which often times means at the expense of taxpayers. This takes money out of the system that is designed to assist homeowners and lenders. Furthermore, it manipulates the value of the real estate market, harms communities, innocent buyers, sellers, and lenders, and may ultimately scare off lenders from doing short sales, or from lending to purchasers of short sale properties.

While this publication addresses one particular type of short sale flipping transaction, and some varying related and other scenarios, California real estate licensees would be well-advised to be completely transparent and to fully disclose, and document the disclosure of, all material information, side-deals, and concurrent and related transactions to all parties to short sale transactions, including, without limitation, all involved third party participants and payments.

Licenseses would also be wise to advise their clients to contact and consult with a qualified attorney or tax professional regarding the potential tax consequences of a short sale transaction. Further, if you are considering engaging in short sale transactions, you should fully educate yourself about the mechanics of the process and the related legal and ethical issues, and work only with legitimate professionals.

Finally, if you become aware of information about fraudulent short sale activity, please contact the DRE's Enforcement section in Sacramento or at the office closest to you, or via the Internet at [http://www.dre.ca.gov/cons\\_complaint.html](http://www.dre.ca.gov/cons_complaint.html). In addition, you may want to contact the California Attorney General's Office, the U.S. Department of Housing and Urban Development, and the Federal Bureau of Investigation.

Agent has read, understands and agrees to the foregoing information.

Agent's Signature: \_\_\_\_\_ Date: \_\_\_\_\_