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“For the Serious Real Estate Professional”

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RECENT FINANCIAL CRISIS REGULATIONS POSE NEW CHALLENGES TO REALTORS®

Those leaden thuds heard throughout “Real Estate Land” since January of this year were not our imagination; they signaled the not-so-soft landings of several giant-sized sets of rules, regulations and directives issued by the Obama Administration (and/or agencies thereof) that will likely have a significant impact on REALTORS® and consumers for years to come.

The good news is that REALTORS®' are more than capable of handling all of these new salvos and will prevail as always. More importantly, in doing so, REALTORS will bring the country's home markets and economy back to life simply by doing what they do so well: *Stimulate and breathe life back into local markets thereby restoring our economy.*

The new initiatives:

1. Effective January 31, 2011, the FTC issued its new disclosure rules under the Mortgage Assistance Relief Services rule (“MARS”) requiring those handling short sales to make certain disclosures regarding the negotiation of a consumer's loan modification (or reduction) and also imposing significant record-keeping requirements on the providers. NVAR will shortly distribute the new disclosure forms to its members Look for: K1357 and K1358)
2. Previously issued in Fall 2009 but becoming effective in this year, FHA, FNMA and FRLMC have imposed new more stringent restrictions on condominium project approvals. Among the tougher new restrictions are those requiring condo projects to be at least 50% owner-occupied; prohibitions on certain condo by-laws concerning non-rental provisions and the elimination of “spot approvals.”
3. The foreclosure mess created by the robo-signing of foreclosure notices and the use of the MERS system predictably created another logjam in the movement of the foreclosed properties. NVAR will shortly issue its guidelines and recommendations for handling foreclosure properties which may have prohibitive title defects. (New NVAR form K1356)
4. The Obama Administration sent a letter to the employees of Fannie and Freddie in February advising that the administration's plan is to reduce and eliminate both organizations over the next 5-7 years with an overall objective to further restrict the mortgage market, reduce homeownership and push the United States more towards a “rental nation.”

Where to start?

The MARS rule sadly adds yet one more heavy weight to an already over-burdened short sale process. It applies to all REALTORS handling short sales and directs that any real estate licensee who offers to help negotiate a consumer's loan modification must make certain disclosures regarding the consumers' rights to accept or reject the loan

modification terms and pay a fee for such service. Essentially the rule requires a REALTOR handling a short sale to provide the seller with a disclosure at the outset of the listing (or at the first instance of learning that the seller wants a short sale), then again at the time the REALTOR procures a lender short sale approval letter and potentially a third disclosure regarding the provision of a new loan and its terms. For detailed information, see NAR's article at <http://www.realtor.org/letterlw.nsf/pages/0211mars?OpenDocument&Login>;

These new rules and regulations are understandably reactive to the financial crisis, perhaps overly so, and it is hoped that over the course of the next few years, some of the more draconian measures will be relaxed. There is currently an effort underway by representatives of the CAI (Community Associations Institute) to meet with FHA officials to work out some early modifications given the logjam of properties which already await approval or recertification (See article at CAI On-line:

[http://www.caionline.org/govt/news/Political%20HeadsUp%20Public%20Document%20Library/CAI%20FHA%20Head%27s%20up%20\(2\).pdf](http://www.caionline.org/govt/news/Political%20HeadsUp%20Public%20Document%20Library/CAI%20FHA%20Head%27s%20up%20(2).pdf).

The net result according to the CAI, is that under the current regulatory rubric, many or most condo projects will not get FHA/Fannie or Freddie approval thereby effectively reducing them to cash-only markets. Such market restrictions promise only to further deteriorate the condo markets (e.g. prices) and cripple the condo associations' ability to maintain reserve funds and pay for maintenance. (e.g., if a condo owner can neither sell, lease nor pay for his unit, foreclosure is the only answer during which time, no COA dues are paid---that scenario multiplied many times over creates a negative economic synergy that could easily destroy entire condo projects.) Given that the condo market is frequently the only bet for first time homeowners, the potential downside on consumers is likewise traumatic.

The best advice to REALTORS® who are handling the listing or purchase of a condo?:

CONTACT THE COA representative at the outset to find out what the condo project's FHA, Fannie and Freddie approval status is—then work accordingly. The reality is that your buyer may not be able to get a loan to buy a condo and thus a seller may not be able to sell: Get this issue addressed up-front before anyone wastes time on the effort.

And last, but not least, the Obama Administration via Treasury has determined that Fannie and Freddie need to be replaced (with what is not yet clear) and served notice last month that Treasury intended to unwind both companies over a period of 5-7 years. With the overarching objective being to pull government out of the conventional mortgage market, the Treasury is proposing that the home mortgage market be largely supported by the private sector with very little government involvement (exposure). How home purchases will, in the future, be funded is yet to be seen but the early calls signal a push towards a nation of renters, not homeowners.

Whether the foregoing translates into a world of renters is anyone's guess; but the certainty is that REALTORS® are here to stay and will very likely bring around, along with the mortgage bankers and investor groups, a renewed mortgage market system which blends a healthy balance of private and public investor involvement together with meaningful financial safeguards that together continue to provide the resources for homeownership to those who are willing and capable.

REALTOR® CAVEATS & REMINDERS:

- Be sure to handle all earnest money deposits in accordance with the terms of a ratified contract and with promptness!
- Always err on the side of disclosure; when in doubt, discuss with your supervising broker or a good real estate attorney who is knowledgeable about broker licensing issues and related laws;
- Be thorough in your contract completion! Include all terms your buyer client wants including items that the buyer wants to convey.

Check out Monarch's new CE Program offerings!!

“Staying Out of REALTOR® Jail:
Avoiding the Most Common (and Costly)
REALTOR® Errors”

AND

“Buyer Agents As Heroes:
Better Serving Your Buyer Clients”

We'll bring our program to your office for 2HR or 4HR VA CE programs and/or 1, 2, 3, 4 HR Approved DC CE—or—check for our schedule of programs already scheduled.

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