

# Real World

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## REO and Short Sales:

### Guiding Your Customers Thru the Process

from a REALTOR that was involved in over 500 of them in 2009 alone



By Steven David, CRB, CRS, GRI, MBA, LCAM

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CEO, Florida Professional Real Estate, Inc.

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Managing member, Castelli Real Estate Services, LLC

offices in Wilton Manors, Ft. Lauderdale Resort Oceanfront and Galt Ocean Mile, FL

## LISTING AGREEMENT

Date: 12-24-09

Address: 4341 WEST MCNAB ROAD #19 POMPANO BEACH FL 33069

REO ID Number

Bank of America (hereinafter referred to as "Seller" by its Managing Agent, Integrated Asset Services, LLC ("IAS")) hereby appoints STEVEN DAVID (hereinafter referred to as "Broker") as Seller's exclusive agent for the purposes and under the terms specified herein or under other terms acceptable to Seller, and parties agree:

### Section 1. Purpose of Agency.

The purpose of this agency contract ("Listing Agreement") is to engage the best efforts of Broker to accomplish the sale of the real property (hereinafter referred to as the "Property") described by the address above.

### Section 2. Sale.

As used herein and unless the context indicates otherwise, "Sale of the Property" or "Sale" means the voluntary transfer or exchange of any interest in the Property and payment of the purchase price therefore.

### Section 3. Effect of this Listing Agreement.

By appointing Broker as Seller's exclusive agent, Seller agrees to conduct all negotiations for the Sale of the Property only through Broker, and to refer to Broker all inquiries received in any form from real estate brokers, salespersons, prospective purchasers, tenants or any other source during the time this Listing Contract is in effect. The parties intend that Broker be the exclusive agent of seller, but do not intend that Broker be granted the exclusive right to sell the Property. Seller may procure a purchaser through its efforts as provided in paragraph 19 herein. Seller authorizes Broker to disclose to any prospective purchaser(s) any facts about the Property.

### Section 4. The Listing Period.

Broker's authority shall begin 12-24-09 and shall continue through 03-24-2010. This is referred to as "The Listing Period."

### Section 5. Price.

THE LIST PRICE SHALL BE \$ 30900,0000. Earnest money should be commensurate with the sale price of the property, typically 3% of the purchase price or \$1,000, whichever is greater.

### Section 6. Title and Encumbrances.

Conveyance from the Seller to the Purchaser shall be via Special Warranty Deed or its equivalent with covenants against grantor(s) acts. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof. All monetary encumbrances such as mortgages, deeds of trust, liens, and financing statements, shall be paid by Seller and released except as Seller and purchaser may otherwise agree.

### Section 7. Occupancy.

Broker shall not permit occupancy of the Property by the prospective purchaser or any other person or entity prior to the Sale.

### Section 8. Marketing.

Broker shall use its best efforts to affect a Sale in the shortest possible time through maximum utilization of advertising, sales promotion and buyer solicitation including, without limitation, the placement of a "For Sale" sign on the Property if allowed under applicable law or ordinance. Broker shall submit the Property promptly into the appropriate local multiple listing service for the property location, and co-operate on a co-brokerage basis with all brokers who have a qualified prospect. Broker shall keep Marketing Agent informed of marketing activity via Monthly Status Reports and copies of MLS brochure and all advertising done on behalf of property.

Welcome to the most down to earth, realistic, from the street perspective program ever developed for REO and Short sales. And while this course is up to date, the potential changes in both Federal and State law will require this course to be updated as necessary. If there are updates, they will be noted as such.

## I. REO vs. Short Sale

- A. **REO** An REO is a Bank or other Lender owned property, REO is an acronym for Real Estate Owned. ***Your customer will most likely refer to it as a 'Foreclosure.'***

With an **REO** the Bank, Savings and Loan or other lender has already foreclosed on the property and most likely has already received the certificate of title from the Court. In such a situation, the former owner has been foreclosed upon and no longer has ANY interest or rights to the property.

That said, the owner may not be completely free of liability. **Everyone who is foreclosed upon, that's EVERYONE should hire a competent attorney.** There are a number of reasons, but for purposes of this course, the attorney is there to **help reduce any post foreclosure liability.** When a borrower is foreclosed upon, the lender will generally go after the property as its first source of repayment. If the money available from the asset is not sufficient to pay off the full amount of the mortgage, the lender can then go after the borrower PERSONALLY.

Generally, when one obtains a mortgage, they sign a mortgage AND a promissory note. It is the promissory note than may create additional headaches for the former property owner. If the payoff does fall short, the Lender may obtain a deficiency judgment which allows the holder of the note to pursue the personal assets of the former owner (borrowers).

The holder of the promissory note (which is likely the lender, although the note may be sold to another lender or a private firm (Collection Company)), can pursue collection for up to and possibly longer than 20 years. There are certain statutes that limit the timeframe within to pursue collection, but once the filing has taken place they have ample time to go after the former owner (borrowers)

Whether it's a foreclosure or a short sale, the fact that the Bank approved the short sale or deed in lieu of foreclosure DOES NOT automatically mean the promissory note is forgiven. A Deed in lieu of foreclosure is just that, a Deed in lieu of the legal act of foreclosing, not necessarily the cancellation of the promissory note and its monetary obligations.

That said, as the buyer of an REO property, or the Broker representing the buyer, these post collection efforts do not affect (in most instances) your purchase and sale.

Don't ever assume one can merely turn the property back over to the lender and walk away unscathed. Even in a principal residence situation, with all of the protection recent federal legislation has provided, the former owner is not relieved of the debt until all parties agree they are relieved of the debt.

## B. TAX CONSEQUENCES

Certain federal legislation does forgive the former borrower of IRS penalties. What penalties you ask? Forgiven debt is usually reported by the lender on a 1099C. That forgiven debt is treated as income to the borrower. So let alone did you lose your property, now you owe IRS income tax on the amount that was forgiven!

What about the investor borrower? Their forgiven debt, (if indeed the lender forgave the debt does not escape IRS scrutiny. The amount of forgiven debt will be taxable debt. There are certain tax strategies where this debt might be considered a business loss and if asked, you should recommend to the investor/borrower a reputable CPA or tax attorney.

### Let's look at the math of how this post foreclosure debt is arrived at:

|                                                                                                               |                  |
|---------------------------------------------------------------------------------------------------------------|------------------|
| Amount owed:                                                                                                  | \$300,000        |
| Accrued interest:                                                                                             | 18,000           |
| <i>The default rate of interest is usually well above the actual note rate, in many cases from 12% to 18%</i> |                  |
| Legal fees:                                                                                                   | 3,500            |
| Court costs:                                                                                                  | 800              |
| Costs of sale:                                                                                                | 15,000           |
| Legal expenses:                                                                                               | 1,000            |
| <i>Costs of sheriff service, mailings, copies etc.</i>                                                        |                  |
| Total debt post foreclosure sale:                                                                             | \$338,300        |
| <br>                                                                                                          |                  |
| Sales price of property (net)                                                                                 | \$200,000        |
| Deficiency:                                                                                                   | <u>\$138,300</u> |
| Potential tax liability at 35% bracket                                                                        | \$48,405         |

Contrary to what you might have heard, NO LENDER has to agree to a short sale, a deed in lieu of foreclosure, or debt forgiveness on anything that is not a principal residence. And forget the argument that the lender will recover more if they short sale, or deed in lieu instead of a foreclosure. That kind of argument is easy to make when it's not your money. Some of the other concerns for many of these borrowers are:

- Did they tell the truth on their loan application?
- Was there money paid on behalf of the buyer that were not disclosed on the HUD-1

- Were there other considerations coming back from the seller to the buyer such as improvement reimbursement that was not disclosed on the contract the lender saw with the loan application?
- Was the price changed upwards from the advertised price to accommodate closing costs, seller reimbursements to the buyer?
- Was the price increased from the contract price (and/or the MLS pending price) at the request of an appraiser or cooperating Broker

Any of these might trigger a criminal action against the parties involved.

What's your best course of action if a seller asks you what to do if they are in financial difficulties: You tell them to call a good Attorney experienced in working with foreclosures!

I wanted to clear the air on debt forgiveness, and the thought one can just walk away from debt, without some recourse, before we return to REO sales.

### **C. Back to REO sales**

The **REO** asset is owned by a lender. In some cases the actual lender may be unknown to you. It may be an Asset manager you are working with or a loan servicer. For example many Bank of America (BAC in the REO world) loans are actually owned by Bank of New York, Deutsche Bank and others. BofA is merely the loan servicer and may or may not show as the plaintiff in the foreclosure proceedings.

This is important to know because many times your buyers are upset it's taking so long to get their offer accepted. That is because the person the listing company is dealing with also has a chain of command. Let's look at a page from the website known as Equator.com (formerly REOtrans.com).

Note on this particular REO asset (one of my listings) the choice of people at BAC to contact, from eviction specialist, pre marketing specialist, Asset manager and so forth. Each has their role to play in the sale of this asset.

When you're working with a customer in a retail transaction, you normally just have sellers and buyers and both can reach fairly quick decisions. When working with customers on REO and short sales, you must educate them on the time involved. As you can see by this list from Equator, we have to work with a lot of people on the selling side, and that absorbs time

If you're a person who wants to become an REO listing agent, this site (Equator.com), and others such as RESNET will require you to join them, and likely obtain their certification.



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user: S. DAV

**Workflow**

2 Offers Need Response

38 Assigned Tasks

Messages

**My Properties & Offers**

Place A New Offer

Post A Property

Initiate Short Sale **NEW**

**BPO Posting Board**

Available BPOs

My BPOs

Change Settings

**Manage Information**

Edit Account Information

My Buyer Alerts

My Coverage Areas

**Member**

Ag

Vis

→ my account
[\(269\) Unread Message\(s\)](#)

| TYPE                         | ADDRESS                                                        | STATUS                       | LENDER          | REO ID #                       |            |                      |                          |
|------------------------------|----------------------------------------------------------------|------------------------------|-----------------|--------------------------------|------------|----------------------|--------------------------|
| LENDER                       | <a href="#">1245 NE 15TH AVENUE, FORT LAUDERDALE, FL 33304</a> | EVICTON                      | BANK OF AMERICA | <input type="text"/>           |            |                      |                          |
| <a href="#">Add Photo</a>    | ASSET MANAGER                                                  | LISTING AGENT                | LIST DT         | CLOSE DT                       | LIST PRICE | LIBRARY              | MESSAGES                 |
|                              | <input type="text"/>                                           | <a href="#">STEVEN DAVID</a> | TBD             |                                | TBD        | <a href="#">View</a> | <a href="#">View(79)</a> |
| <p><b>TASKS</b> 2 2 0 17</p> |                                                                |                              |                 | <p><b>OFFERS</b> 0 0 0 0 0</p> |            |                      |                          |

All forms must be submitted online and cannot be printed, faxed in, or saved locally.

[All Tasks](#) [Unit 1](#) [Unit 2](#) [Unit 3](#)

21 Records Found

| Task Name                                              | Role  | Lender          | Open Date             | Due/Completed Date    |
|--------------------------------------------------------|-------|-----------------|-----------------------|-----------------------|
| <a href="#">Provide Utility Invoices - Unit 2</a>      | Agent | Bank of America | 08/31/2010 04:16 (9)  | 09/10/2010 04:16 (-1) |
| <a href="#">Provide Utility Invoices - Unit 1</a>      | Agent | Bank of America | 08/31/2010 04:16 (9)  | 09/10/2010 04:16 (-1) |
| <a href="#">Secure Property - Unit 2</a>               | Agent | Bank of America | 08/09/2010 14:14 (31) | 08/12/2010 14:14 (28) |
| <a href="#">Secure Property - Unit 1</a>               | Agent | Bank of America | 08/09/2010 14:13 (31) | 08/12/2010 14:13 (28) |
| <a href="#">Personal Property Evaluation - Unit 2</a>  | Agent | Bank of America | 08/09/2010 14:14 (2)  | 08/11/2010 12:27 (0)  |
| <a href="#">Personal Property Evaluation - Unit 1</a>  | Agent | Bank of America | 08/09/2010 14:13 (2)  | 08/11/2010 12:26 (0)  |
| <a href="#">Confirm Vacant Status - Unit 2</a>         | Agent | Bank of America | 08/07/2010 04:00 (2)  | 08/09/2010 14:14 (0)  |
| <a href="#">Confirm Vacant Status - Unit 1</a>         | Agent | Bank of America | 08/07/2010 04:00 (2)  | 08/09/2010 14:13 (0)  |
| <a href="#">Offer Cash for Keys - Unit 3</a>           | Agent | Bank of America | 07/07/2010 09:15 (7)  | 07/14/2010 08:14 (5)  |
| <a href="#">Offer Cash for Keys - Unit 2</a>           | Agent | Bank of America | 07/07/2010 09:14 (2)  | 07/09/2010 11:57 (0)  |
| <a href="#">Offer Cash for Keys - Unit 1</a>           | Agent | Bank of America | 07/07/2010 09:15 (2)  | 07/09/2010 11:56 (0)  |
| <a href="#">Provide Occupant Data (Agent) - Unit 2</a> | Agent | Bank of America | 06/16/2010 13:34 (5)  | 06/21/2010 10:46 (3)  |
| <a href="#">Provide Occupant Data (Agent) - Unit 3</a> | Agent | Bank of America | 06/16/2010 13:34 (5)  | 06/21/2010 10:46 (3)  |
| <a href="#">Provide Occupant Data (Agent) - Unit 1</a> | Agent | Bank of America | 06/16/2010 13:33 (5)  | 06/21/2010 10:46 (3)  |
| <a href="#">Is There an HOA</a>                        | Agent | Bank of America | 06/15/2010 15:44 (1)  | 06/16/2010 14:33 (-1) |
| <a href="#">Provide Occupancy Status - Unit 2</a>      | Agent | Bank of America | 06/15/2010 15:44 (1)  | 06/16/2010 13:34 (-1) |
| <a href="#">Provide Occupancy Status - Unit 3</a>      | Agent | Bank of America | 06/15/2010 15:44 (1)  | 06/16/2010 13:34 (-1) |
| <a href="#">Provide Occupancy Status - Unit 1</a>      | Agent | Bank of America | 06/15/2010 15:44 (1)  | 06/16/2010 13:33 (-1) |
| <a href="#">Determine Units</a>                        | Agent | Bank of America | 06/15/2010 08:47 (0)  | 06/15/2010 15:44 (-2) |