



LOAN PROCESSING ASSISTANT CHECKLIST

Please submit this checklist along with all the items below to processing@pmccanhelp.com 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 W4 Form, signed (For FHA commissions)
- 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 LPA Agreement, signed
- PMC LPA Compliance Addendum
- PMC Mutual Non-Disclosure Agreement
- PMC Compensation Schedule, signed
- PMC Code of Conduct Form, signed
- PMC Zero Tolerance Policy, 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
- IP Address of Internet Service used for credit report access _____ . _____ . _____
(use www.whatsmyip.com to find your IP address)

NAME OF YOUR RECRUITER: _____

Corporate Office: 915 Highland Pointe Dr. Ste. 250, Roseville, CA 95678
Premier Mortgage & Real Estate Brokerage Serving CA, OR & WA Since 1989
Off: 800-385-3657 | Fax: 866-598-9987 | Email: info@pmccanhelp.com
Real Estate www.pmcrealty.net | Blog www.pmccanhelp.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 <input type="checkbox"/> NO <input type="checkbox"/>			
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 <input type="checkbox"/> NO <input type="checkbox"/>			
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 <input type="checkbox"/> NO <input type="checkbox"/>			

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



INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is entered into between Platinum Mortgage Company, a California Corporation ("Company"), and _____ ("Loan Processing Assistant").

Recitals

- A. Company is engaged in the business of arranging real estate financing and real estate marketing for its clients.
- B. Company desires to engage Agent to act on its behalf in arranging real estate financing and/or real estate marketing for Company's borrowers.
- C. Agent desires to arrange real estate financing 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 _____/_____/_____, 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 financing and real estate marketing, 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. Agent's failure to remain licensed or duly qualified to engage in mortgage loan origination at any time during the term of this Agreement shall constitute a material breach of this Agreement.

2.3 Location. Agent shall only perform the services contemplated under this Agreement at Agent's own location.

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 loans. Company loan processing can be done in-house or may be contracted to a loan processing 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 loans, and all activities performed by Agent under this Agreement, shall be completed in the name of Company, unless Agent has received the express written consent of Company to close the loan in another



name.

2.8 Payments. All loan fees, commissions, broker rebates, reimbursements and/or other income relative to mortgage loans 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 HUD-1 prior to the close of escrow on all loans. 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, will be made through escrow.

2.11 Private Money Loans. Absent Company's prior written consent, Agent agrees during the term of this Agreement not to make or arrange any mortgage loan except through a lender with whom Company has an established business relationship. Agent further agrees, during the term of this Agreement, not to extend or make any mortgage loans in which Agent is acting as a lender or in which Agent funds the loan(s). Agent also agrees, during the term of this Agreement, not to arrange any mortgage loan wherein the lender is an individual.

Article 3. Compensation

3.1 Commissions. Company agrees to pay Agent a commission on mortgage loans arranged by Agent on behalf of Company's borrowers, which thereafter close. Agent shall be compensated in accordance with the compensation schedule at Exhibit "A" hereto. Such commissions shall be deemed earned by Agent only as and when the applicable fees and/or charges in connection with any such loans 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 loan origination activity on a particular loan 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 a 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 Loan Fraud. In the event that Company, in its sole discretion, determines that Agent has violated its policy against Loan Fraud, as set forth at Exhibit "B" hereto, Agent agrees that he/she will not receive any commission in connection with that loan. 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 policy against Loan 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 Loan Officer's compensation hereunder, including estimated taxes, and shall provide the Company with proof of such payments upon demand. Agent hereby authorizes Company to collect and file any and all taxes on behalf of Agent in order to satisfy proof of such payments. Any agent losses, costs, fees, liabilities, damages or injuries suffered by the Agent arising out of Agent's breach of this section shall be the sole responsibility of the Agent.

3.9 Agent acknowledges that each lender has established its own policies with respect to early payoff, early default and fraud issue time frames for forfeiture of compensation or repurchases. Agent agrees to cooperate in these policies by allowing company to withhold compensation on files where lender has guidelines which may result in the forfeiture of fees and compensation or repurchase of a loan until the expiration of any time frame requiring such forfeiture or repurchase.

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 W2 wages in order to comply with lender program or approval requirements. Such payment of commissions, taxes and fees will be paid entirely out of Agents portion of commission unless designate under other written agreement. Under no circumstances shall Agent look to the Company as Loan Officer's employer, partner, Contractor or principal. 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 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 mortgage loan brokerage services on behalf of any other mortgage broker, 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, Loan

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 Borrowers. 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 non-competition 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 Loan Files. Upon termination of this Agreement by either party for any reason, all loan files, 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 Loans in Process. Loan 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, 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 affected 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
Attn: Anna Ryan
915 Highland Pointe, #250
Roseville, CA 95678

Agent: _____

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 a 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.

Agent

Signature:

Date:

Name (Print):

Platinum Mortgage Company ("Company") (Officer Use Only)

Signature:

Date:

Name:

Title:



LPA AGREEMENT COMPLIANCE ADDENDUM

This addendum is incorporated into and will be made a part of the Independent Contractor Agreement between Platinum Mortgage Company aka PMC "Broker" and _____ "Loan Processing Assistant."

FNMA Initiatives

- a) Platinum Mortgage Company acknowledges and is confirming that we do not employ, have contract with, and that no employee involved in the individual loan transactions submitted to PMC involves an individual or entity that appears on the Federal Home Loan Mortgage Corporation's Exclusionary List, the Department of Housing and Urban Development's Limited Denial of Participation List (LDP List), General Services Administration (GSA), Excluded Party List (EPL), or is under debarment or suspension.
- b) Our company is not involved in a current legal action by any regulatory body nor has previous action been taken.
- c) Platinum Mortgage Company will conduct a search prior to employment for each new hire thru the following sites:
 - LDP https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp
 - GSA <https://www.epls.gov/> (search using True name or multiple names if you have more than one)

FACTA Red Flag Rules & Privacy of Information

- a) As a third-party loan originator (TOP), all employees of PMC are responsible for the safety, protection and proper handling of any Non-Public Information (NPI) or Personally Identifiable Information (PII) that the Broker, his/her employees or agents may receive from them or have access to, intentionally or inadvertently.
- b) Every employee of PMC acknowledges that s/he is also responsible for meeting all compliance requirements, both state and federal, associated with the possession of or access to that information.
- c) Every employee of PMC acknowledges that s/he has reviewed the requirements of the Red Flags Rules associated with the Fair and Accurate Credit Transaction Act (FACTA) or 2003, the Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (Regulation P) and all other federal and state laws and regulations as may be appropriate, and have implemented appropriate policy and procedural changes in accordance with said requirements including, but not limited to:
 - a. Implementation of a privacy and identity theft prevention program inclusive of approved policy and procedures and training program for all current and new employees,
 - b. Incorporating appropriate Red Flags that detect indicators of potentially fraudulent activities on every transaction, and
 - c. Procedures for the notification of data owners of any perceived fraudulent activity.

RESPA Compliance Attestation

- a) All employees of PMC acknowledge and hereby certify that for all submissions to PMC, Broker and/or staff will conduct an analysis of the fees charged by the Broker, LO, lender, escrow company, title company, closing attorney and all third parties and will accurately account for those fees when completing the Good Faith Estimate (GFE).
- b) All employees of PMC acknowledge and accept that failure to accurately collect and disclose all required fees may result in a requirement for broker or his/her employee(s) to contribute funds for closing and said funds payable to borrower and/or lender for fees that may have been under disclosed, omitted or not disclosed properly. The closing instructions or additional instructions from PMC will indicate when this is required.



- c) All employees of PMC acknowledge that fees cannot be changed unless there is a qualified “Changed Circumstance,” as defined under RESPA. Some fees are subject to a 10% variance only and appropriate training with all staff members has been given.
- d) All employees of PMC further acknowledge that s/he/they and/or staff members will not issue any GFE’s other than those which s/he/they are submitting to USA; that loan submissions will contain the initial and any/all subsequently issued GFE’s provided to the customer due to any changed circumstances and USA will be provided with a history of any changed circumstances for each GFE that has/may have been issued including an analysis of what the changed circumstance was and a breakdown of any/all fees that were modified as a result of the changed circumstance.
- e) All employees of PMC acknowledge that the she/he and/or staff members will not issue any GFE’s after the loan has been submitted to PMC.
- f) All employees of PMC certify that all initial and any subsequent GFE’s issued to the customer were issued within 3 business days of receipt of the loan application or knowledge of a changed circumstance as defined under RESPA.

S.A.F.E. Act

- a) The employee assigned to submitting information to the NMLS on behalf of our company and our employees is not a Mortgage Loan Originator (MLO) (Applies to companies with 10 or more employees).
- b) Our employee records will be audited at least annually to ensure all employees’ conduction of MLO activities are properly licensed within the NMLS system by our company or outside auditor, as our S.A.F.E Act policies and procedures dictate.
- c) All employees who are defined as MLOs (per broker and the S.A.F.E. Act) must be licensed with the system designed by the federal banking regulators.
- d) Newly hired MLOs cannot act as an MLO on a loan application until properly licensed.
- e) MLOs will provide their assigned Unique Identifier to applicants as required, following our procedures.
- f) Annual training program to be delivered to all MLOs and annually thereafter. Training will be required for all newly hired MLOs as part of orientation and will also be conducted when any changes are made to the law or when audits or reviews identify issues.
- g) Employees who do not comply with our policies and procedures designed to comply with the S.A.F.E. Act requirement will be disciplined up to and including termination of employment. Newly hired employees whose background check is found to have a criminal background or other actions that would prevent them from acting as an MLO may not act as an MLO and are subject to disciplinary action up to and including termination of employment. Signature below acknowledges and represents that Broker has read the foregoing, understands it and is signing it voluntarily. No oral representations, statement or inducements apart from the foregoing written agreement, have been made. The signature below is an authorized signer for the broker as per the appropriate resolution, licensing or current broker agreement on file with PMC.

Agent

Platinum Mortgage Company (“Company”) (Officer Use Only)

Signature:

Signature:

Date:

Date:

Name (Print):

Name (Print):

Title:



MUTUAL NON-DISCLOSURE 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, Ste. 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 Agreements 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.

Agent

Platinum Mortgage Company ("Company") (Officer Use Only)

Signature:

Signature:

Date:

Date:

Name (Print):

Name (Print):

Title:



COMPENSATION SCHEDULE FOR THIRD PARTY LOAN PROCESSING ASSISTANTS

NMLS Third Party Loan Processing Assistants will be responsible for the loan set up, submission and funding of all mortgage loan files. NMLS Third Party Loan Processing Assistants are paid out 100% of loan processing fee mins a \$50 broker fee plus any incoming / outgoing wire fees per file for third party loans independently contracted on. Funding needs to be sent by wire (wire info can be requested) or mailed to Platinum Mortgage Company directly at 15821 SW Mason Ct, Tigard, OR, 97224).

Pay period for Loan Processing Assistants will be every Friday via W2 Payroll. The broker funds need to be received by Tuesday in PMC's office to be included in that week's payroll. As independent contractors, NMLS Third Party Loan Processing Assistants are also responsible for their own employee withholding for federal and state payroll taxes.

Please note that this compensation agreement is subject to change at the company's discretion.

Agent

Platinum Mortgage Company ("Company") (Officer Use Only)

Signature:

Signature:

Date:

Date:

Name (Print):

Name (Print):

NMLS:

Title:



CODE OF CONDUCT

Platinum Mortgage 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.

Signature:

Date:

Printed Name:



ZERO TOLERANCE POLICY

Types of Loan Fraud

1. Submission of inaccurate information, including false statements on loan application(s) and falsification of documents purporting to substantiate credit, employment, deposit and asset information, personal information including identity, ownership/non-ownership of real property, etc.
2. Forgery of partial or predominately accurate information.
3. Incorrect statements regarding the occupancy or intent to maintain minimum continuing occupancy as stated in the security instrument.
4. Lack of due diligence including failure to obtain all information required by the application and failure to request further information as dictated by the borrower's response to questions.
5. Unquestioned acceptance of information or documentation that is known, should be known, or should be suspected to be inaccurate.
 - a. Simultaneous or consecutive processing of multiple owner-occupied loans from one applicant supplying different information on each application.
 - b. Allowing one applicant or interested party to "assist with the processing of the loan."
6. Non-Disclosure of relevant information.

Impact of Loan Fraud

The effects of loan fraud are costly to all parties involved. Platinum Mortgage Company stands behind the quality of its loan production. Fraudulent loans cannot be sold into the secondary market and, if sold, will require repurchase by Platinum Mortgage Company. Fraudulent loans damage our reputation with our investors, mortgage providers and the industry as a whole. The price paid by those that participate in loan fraud is even more costly. The following is a list of a few of the potential consequences that may be incurred:

1. Criminal prosecution.
2. Loss of License.
3. Loss of lender access due to exchange of information between lenders, mortgage insurance companies including submission of information to investors (i.e.; Freddie Mac/Fannie Mae), police agencies, and the state licensing agencies.
4. Negative reporting to MARI.
5. Civil action by those that were victimized (applicant, borrower, lender, etc.). Platinum Mortgage Company reserves the right to take any lawful action against Agent upon finding fraud in any loan submitted to Platinum Mortgage Company or arranged on its behalf.

I have read and understand Platinum Mortgage Company's "Zero Tolerance Policy" regarding loan fraud and understand that here may be action taken against me should fraud be found in any of the loan files I submit to Platinum Mortgage Corporation or which I arrange on its behalf.

Signature:

Date:

Printed Name:



Anti-Money Laundering Program Requirements for Loan Processing Assistants

On February 7, 2012, the Financial Crimes Enforcement Network (FinCEN), which is a department of the U.S. Department of the Treasury, issued the Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lenders and Originators (SAR Rule). The Final Rule includes Residential Mortgage Lenders and Residential Mortgage Originators in the definition of a loan or finance company and requires these companies to comply with the anti-money laundering programs (AML) and report suspicious activities (SAR) under the Bank Secrecy Act (BSA). Effective Date - The SAR Rule went into effect on April 16, 2012. Compliance with the SAR Rule is required by August 13, 2012.

AML Program Requirements

At a minimum, an AML Program should include the following:

- Written policies and procedures
- Internal controls that are company specific
- Designation of an AML Compliance Officer
- Ongoing AML training
- Independent program testing
- Filing SARs in a timely fashion

Why require Mortgage Lenders and Mortgage Brokers to comply?

FinCEN has issued studies over the last several years, which analyzed SARs reporting suspected mortgage fraud and money laundering. These SARs, which were filed by depository institutions, included mortgage lenders and/or mortgage brokers. FinCEN believes that these companies “are in a unique position to assess and identify money laundering risks and fraud while directly assisting consumers with their financial needs and protecting the sector from the abuses of financial crime”.

SAR Requirements

Mortgage lenders and mortgage brokers are now required to file a report to FinCEN of any suspicious transaction relevant to a possible violation of law or regulation. In addition, they may also file a report of any suspicious transaction that they believe is relevant to the possible violation of any law or regulation, but whose reporting is not required. Below are a few of the SAR requirement elements. Under the SAR Rule, there are four categories of transactions that require reporting. Section 1029.320(2) of the SAR Rule states the following:

“A transaction requires reporting under this section if it is conducted or attempted by, at, or through a loan or finance company, it involves or aggregates funds or other assets of at least \$5,000, and the loan or finance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part”

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;



(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the loan or finance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the loan or finance company to facilitate criminal activity.”

Where to File - All SARs must be filed electronically in accordance with FinCEN’s instructions.

Timing of Filing- All SARs must be filed within 30 days of the initial detection of suspicious activity, unless a suspect was not identified with the initial detection. In that case, the SAR must be filed no later than 60 days after initial detection.

Record Retention-All SARs and supporting evidence for the SAR must be maintained for a minimum of five years from the date of filing.

There are other provisions of the SAR Rule, including those relating to:

- Confidentiality and disclosure notification requirements of SAR reports.
- Filings of reports on currency in excess of \$10,000
- Information Sharing

Resources - PMC strongly encourages everyone to review the full SAR Rule as well as some of the below references:

- [SAR Rule](#)
- [FinCEN’s website for mortgage lender and brokers](#)
- [FinCEN’s BSA E-Filing System](#)
- [FFIEC’s BSA/AML Examination Manual](#)
<http://www.stopfraud.gov/>

Signature:

Date:

Printed Name:



**DIRECT DEPOSIT
Employee Authorization**

Company Name	
Platinum Mortgage Company	
Employee Name	Employee Number

I authorize Platinum Mortgage Company 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	Amount or %	Account Number
		Checking Savings		
		Checking Savings		
		Checking Savings		

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:

Printed Name:



Short Sales -- An Overview and Warning to Real Estate Licensees Re: Fraud, and Legal and Ethical Minefields¹

By Wayne Bell, Chief Counsel
Mark Tutera, 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

¹ 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.

II. Fraud, and Questionable Conduct and Activities.

In addition to seeing unlicensed activities in the market with respect to short sales, the California Bureau of Real Estate (hereinafter "BRE") 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.

A. 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.

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

1. 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.

2. 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.

3. 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.

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

a. 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?

b. Your legal obligations under the California real estate law regarding disclosures, including agency relationships, and the prohibitions against fraud and secret profits.

c. 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.

d. 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.

e. 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.

f. 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 a

“distressed” property value, and the other a “non-distressed” property value, an issue regarding fraud is presented.

g. 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.

III. 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.

Licensees 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. 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.

Signature:

Date:

Printed Name: