Mortgage Rescue Fraud Prevention Act ("MRFPA")

Impact on REALTORS®

What is MRFPA?
The Mortgage Rescue Fraud Prevention Act ("MRFPA") was passed by the Hawai'i State Legislature as Act 137 during the 2008 legislative session, and became effective on June 3, 2008. The Act's intent is to protect homeowners who are in financial difficulty from unscrupulous persons who essentially "steal their equity" under the guise of rescuing them from foreclosure.

When is a REALTOR® affected by the MRFPA?
A REALTOR® is affected and must follow MRFPA's various disclosures and other requirements when dealing with a residential property that is distressed and when the REALTOR®'s activities cause him or her to be designated as a distressed property consultant.

When is a Property considered to be distressed?
A residential property is distressed if the property:

1. Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;
2. Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
3. Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;
4. Secures a loan for which a notice of default has been given; or
5. Secures a loan that has been accelerated.

Can a REALTOR® be a "Distressed Property Consultant" ("DPC")?
Any one of nine acts set out in the MRFPA can make a REALTOR® a DPC. However, if the REALTOR® does not provide any of these nine services, the REALTOR® does not become a DPC.

Those nine services are:

1. Stop or postpone the foreclosure sale or loss of any distressed property due to the nonpayment of any loan that is secured by the distressed property;
2. Stop or postpone the charging of any lien or encumbrance against any distressed property or eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
3. Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
4. Assist the owner to exercise any cure of default arising under Hawai'i law;
5. Obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
6. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
7. Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
8. Avoid or ameliorate the impairment of the owner's credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
9. Save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

What if my transaction is subject to the MRFPA?
It is advisable for REALTORS® to avoid transactions that make them subject to this law as the requirements of the law are very extensive and complex. You should read the Act carefully if you believe a transaction you are working on is subject to it.

What can I do to protect myself from unknowingly becoming a DPC?
When representing residential property sellers, REALTORS® should make appropriate inquiries regarding the underlying financial history of the property in order to determine whether the property may fall within the definition of a distressed property. In addition, because it is conceivable that a property could become distressed after a REALTOR® becomes engaged to represent a property owner, a REALTOR® may choose to obtain a signed declaration requiring the property owner to disclose and/or immediately notify the REALTOR® if the property owner meets any of the distressed property criteria noted above.

If a REALTOR® sells a distressed property, what is the commission?
The Act sets a limit on the fees that can be charged by a DPC. However, as to the actual sale, which is different from the "rescue" services, we believe your commission applies.

Does a short sale transaction invoke the MRFPA?
While a short sale transaction may invoke the MRFPA, it does not do so automatically simply by virtue of it being a short sale transaction. Rather, a short sale transaction should be carefully reviewed to see whether the transaction falls within the definition of a distressed property or the REALTOR® becomes a distressed property consultant.

Hawai'i Association of REALTORS®
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