

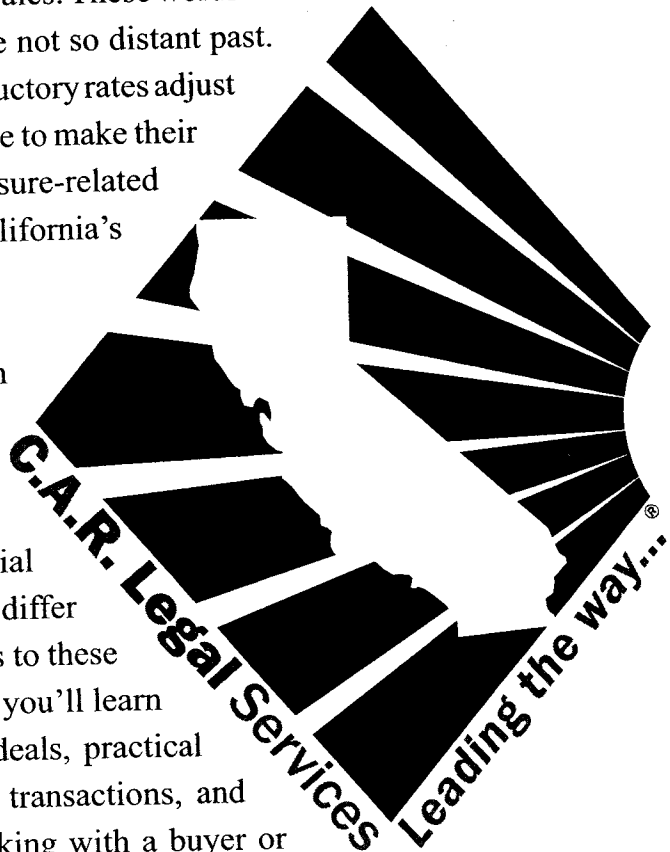
CALIFORNIA REAL ESTATE SPECIAL REPORT

**Legal Guide to
Foreclosure-related
Transactions**



Short sales, foreclosures, home equity sales: These words were rarely uttered by REALTORS® in the not so distant past. But as subprime loans with low introductory rates adjust higher and more homeowners struggle to make their mortgage payments, these foreclosure-related transactions have become more prominent in California's real estate industry.

As C.A.R.'s Member Legal Hotline attorneys can attest, working foreclosure-related deals raises many legal questions for REALTORS®. How much time does an agent have to sell a property to save it from foreclosure? Are there any special disclosure requirements? How does a short sale differ from a trustee's sale? Read on to find the answers to these questions and more. Through this special report, you'll learn the legal underpinnings of foreclosure-related deals, practical tips for avoiding the common pitfalls of such transactions, and other legal issues you should know before working with a buyer or seller on a property in default.



For a thorough, no-nonsense approach to learning about foreclosures and short sales, check out *Foreclosures: C.A.R.'s Comprehensive Guide*, available for \$19.95 at www.rebs.com. This 30-page reference manual trains members how to best serve their clients' interests in the current market and details C.A.R. standard forms and other resources concerning foreclosure-related transactions.

Why Do It?

Many REALTORS® wonder: Are foreclosure-related transactions viable business opportunities? The answer depends on you. Foreclosure-related transactions are worthwhile endeavors for REALTORS® who can surmount the high learning curve necessary to master the art of closing these types of transactions. If that describes you, here are some good reasons to go for it:

- **Significant Opportunities:** In the first quarter of 2007, mortgage lenders sent out 46,760 default notices to California homeowners—the highest level in a decade—according to Data-Quick Information Systems. With so many properties in default, there's a strong demand to hire agents who work foreclosure-related deals. Owners facing foreclosure and lenders with bank-owned real estate properties (REOs) are looking for listing agents with those specialized skills, whereas prospective buyers are zooming in on agents who can hunt down great bargains.
- **Homeowners in Need:** Unfortunately, notices of default often can work as a beacon to scam artists and predatory lenders offering fraudulent rescue loans, phony credit counseling, and other shams. Agents can use their real estate expertise to help protect homeowners from those who prey upon owners in foreclosure.
- **Compensation and Referrals:** At their core, foreclosure-related transactions are very similar to the other

WHAT IS FORECLOSURE?

Foreclosure is the legal process of selling property to satisfy a defaulting borrower's debt secured by that property. Most foreclosures in California are private trustee's sales, rather than judicial foreclosures. A trustee's sale is a public auction for selling property to the highest bidder—a quick and cost-effective process for the lender. However, if the foreclosure sales price is not enough to pay off the loan being foreclosed upon, the foreclosing lender cannot recover that shortage (also known as a deficiency judgment) from the borrower.

FORECLOSURE SCAM

From 2003 to 2005, Martha Rodriguez and others located homeowners using computerized foreclosure lists and promised to help them refinance their loans. What Rodriguez really did, however, was arrange for straw buyers—buyers who are offered a payment, often several thousand dollars, for the use of their name and credit information to make a false purchase—to obtain new loans to pay off the loans in default, with Rodriguez pocketing the excess. By the time Rodriguez was finally caught, she had victimized more than 100 homeowners in Southern California and amassed \$12 million. On February 22, 2007, Rodriguez pleaded guilty to two counts of fraud. She faces a possible sentence of 40 years imprisonment.

transactions agents handle. Foreclosure-related transactions can generate commissions, develop your customer base, and bring you referral business from the people you help. For instance, a seller you help now may later ask you to help his parents buy a home, or a lender you work with on a short sale may later hire you to list its REO properties. Some agents even create a new niche for themselves by specializing in foreclosures, short sales, or REOs.

- **Helping the Community:** Saving a homeowner from foreclosure also can protect their community from the adverse effects of foreclosure, such as abandoned properties and vandalism. Not only do such homes become an eyesore, but they also may drive down home values in the neighborhood. A study in Philadelphia showed that for every foreclosure, the value of other homes within a block fell by 1 percent in one year.

Listing Properties in Foreclosure

Deciding whether to list a property in foreclosure is not something to take lightly. Once you accept an agency relationship, you owe your client a fiduciary duty of utmost care, integrity, honesty, and loyalty to do what is in your client's best interest. Moreover, the stakes are high for a homeowner in foreclosure. If you fail to sell the property, the owner may be out of time to make other arrangements, and your prospects of collecting a commission for the work you've done decrease.