

# FloridaRealtors®

## Licensure requirement for short sale negotiations

Since the passage of SB 2226, which implements federal requirements of The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, many have asked if a real estate sales associate or broker may negotiate a short sale for a fee without having to be licensed as a mortgage broker through the Office of Financial Regulation under Ch. 494, F.S. Following are general guidelines:

**May a real estate licensee negotiate a short sale?** On July 31, 2009, Gregg Morton, Chief Counsel for the Office of Financial Regulation, issued an opinion regarding whether a real estate licensee who is engaged in short sale transactions must comply with section 494.00296, F.S. Morton assumed the following facts: *A real estate licensee is asked by a client to list a house for sale. The licensee ascertains that the fair market value of the house is less than the amount owed. The licensee enters into dialogue with the client's lender to see if a short sale is acceptable. The only remuneration sought by the licensee is a commission on the sale. No additional fees are sought by the real estate licensee for the negotiation or dialogue with the lender.*

**May a real estate licensee receive an upfront fee for the negotiation of the short sale?** Morton stated that he is assuming the *licensee is not paid upfront and does not receive an advance fee*, and that the commission would not be set higher or be split more favorably with another real estate licensee based on the additional work involved in negotiating with the mortgage holder. Morton added that as long as the only remuneration sought is the commission for the sale of the property and *no other fees are collected* for the dialogue with the lender, the activity mentioned would not fall under the section 494.00296, F.S. Note this is the opinion of Morton, chief counsel, and not the opinion of the Office of Financial Regulation as a regulatory body.

**Do I need a mortgage broker's license to continue to list and sell short sales?** No. If you enter into a dialogue with the lender to see if a short sale is acceptable, and if you do not charge an additional or upfront fee or increased commission for such a dialogue, you would not be required to get a mortgage broker license, according to Morton. Read his letter [here](#).

**I have created a separate company which charges additional fees for the negotiation of short sales. There is so much additional work with these transactions. Why am I unable to charge for it?** If you act outside of the parameters described above (i.e., charge an upfront fee, additional fee or additional commission; create a separate company to negotiate short sales; give advice on deficiency or tax liability; or give advice on the best solution for a distressed owner of property) you could be engaging in mortgage brokering services or tax consulting services without having a valid license, or you may be engaging in unauthorized practice of law.

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