

GUIDANCE FROM THE WASHINGTON DEPARTMENT OF LICENSING

For Real Estate Brokers and Managing Brokers

DOL is charged with administering RCW 18.85, RCW 18.86.030 and RCW 18.235 (the "License Law"), pertaining to real estate brokerage services.

An owner may market his or her own property for sale without having to obtain a real estate license. However, if a person obtains an interest in real property from the owner with the intent of finding another buyer before completing the transaction with the original property owner, the person is putting transactions together *for others* and DOL will consider taking action against the perpetrators for the unlicensed practice of real estate activities. Although the unlicensed person may purport to fit within an exemption to the licensing requirement, DOL would consider this the misuse of the exemption in order to evade the License Law.

A broker representing an owner in a short sale owes the owner the same duties as any other owner under the License Law. A broker should advise a short sale seller to seek appropriate tax, legal and other professional advice or counsel. In addition, brokers have a duty to all parties to disclose material facts, deal with honesty and in good faith, and to exercise reasonable skill and care. For example, a broker may not prepare and present a "phantom offer" to a lender to start the short sale process, when in fact there is no legitimate offer to purchase the property. That practice is dishonest and fraudulent and DOL will pursue disciplinary or administrative action against brokers engaged in such practice.

DOL has received complaints about an improper short sale transaction where a real estate broker makes an offer on a distressed property and then negotiates a short sale payoff with the seller's lender. When the broker knows the amount that the lender will accept, the broker – as the seller – begins marketing the property at a higher price. The planned "flip" is not disclosed to either the seller's lender or the potential buyer. If the broker can find a buyer who will pay more than the short sale payoff, the broker arranges a simultaneous closing. If the broker does not find a new buyer, the broker lets the property go into foreclosure. In other words, the broker only intended to close the original purchase transaction if the broker could make money on the "flip." DOL will pursue disciplinary or administrative action against those brokers engaged in such practice.

It is important for real estate brokers to keep their designated brokers, branch manager or managing broker informed about all transactions and report any questionable activity. DOL is available as a resource, although it cannot approve or recommend any specific business models.

To follow the best practices when a broker is buying a short sale property for the broker's own account, a broker should:

- Buy the property from the competitive market and allow the seller's lender to consider all offers.
- Close the transaction and take possession of the property. What occurs thereafter is not subject to DOL scrutiny. For example, a broker can close, make improvements to the property, and then list the property for sale. There is risk in marketing the property for resale before the broker closes.

- Disclose all material facts, in writing, and explain to all parties and the lender, the details of the transaction and your intentions. By doing so, you ensure that the parties and the lender will have made an informed decision. Remember that a broker must deal honestly and in good faith, present all bona fide written offers, and disclose all material facts.