

Please read the entire Q&A document for any requirements that may apply to your business activities

Q&A - GRMA and SAFE Act Applicability to Real Estate Brokers

Q: Does the Georgia Residential Mortgage Act (GRMA), which includes certain provisions to implement the federal SAFE Act of 2008, prohibit a real estate broker or salesperson from participating in a Short Sale?

A: No, GRMA specifically exempts licensed real estate brokers and salespersons who are conducting real estate brokerage activities that are not actively engaged in the business of negotiating mortgage loans.

Q: Is there anything real estate brokers and salespersons are prohibited from doing under GRMA?

A: Yes, in order to negotiate, place or find a mortgage you must be licensed as a Mortgage Loan Originator under GRMA and be sponsored by a Georgia licensed Mortgage Broker or Lender.

Q: Can a real estate broker or salesperson advise a consumer on the benefits of a specific type of loan such as FHA, VA, Conventional, Adjustable, etc?

A: Yes, you can advise a consumer on a type of loan, however you may not direct a client to a specific loan.

Q: Some real estate firms have affiliated business arrangements with mortgage companies as authorized under RESPA. Under GRMA, can a real estate broker or salesperson recommend a mortgage company or companies to a consumer?

A: Yes, a real estate broker or salesperson can provide a list of mortgage companies to a consumer. However, a real estate broker or salesperson cannot negotiate, place or find a mortgage loan for a consumer and may not make any decisions in regards to a mortgage on behalf of a consumer.

Q: In a short sale context, can a real estate broker or salesperson provide facts and information regarding the subject property to the lender.

A: Yes. Providing facts and information to a lender for a client does not require the real estate broker to obtain and maintain a Mortgage Loan Originator License.

Q: In a short sale context, can a real estate broker or salesperson negotiate the terms of loans for their clients?

A: No. Negotiating terms of any loan and/or modifying the current loan terms for a client with a lender would require a Mortgage Loan Originator License.

Hypothetical: Bob owns a house that, in today's market is worth \$250,000. Bob purchased the house in 2004, paying 400,000. Bob's current loan balance is \$375,000, meaning that he is \$125,000 "upside down". Last year Bob lost his job as a corporate manager. He finally found work 6 months later but for a significantly reduced salary. Bob is 4 months behind on his mortgage and has received several letters from his lender threatening foreclosure. Bob has not been able to get in touch with his lender and has called you the real estate agent based on your advertising as a "short- sale specialist".

Q: Bob has not heard back from his lender's "work-out" group and his current job forces him to be away from the phone most of the day. Can Bob's real estate agent contact the lender for him?

A: If a real estate agent has a signed authorization form, acceptable to both the borrower and the lender, the real estate agent may contact the lender to obtain the necessary facts to market the property.

Q: You conduct a market analysis on Bob's property and recommend a list price of \$275,000 to allow room for negotiation with a buyer. Can you as the real estate agent provide this information to Bob's lender?

A: Yes. You can share the facts with Bob's lender.

Q: Bob's property sits on the market for a few months with no offers. Can you, as the real estate agent, contact the lender to persuade the lender to postpone foreclosure?

A: No. Again, as the real estate agent you can provide facts and information to the lender, but you cannot negotiate terms, including forbearance, with the lender without obtaining licensure as a Mortgage Loan Originator.

Q: An offer has been received on Bob's house. The offer is for \$225,000 "as-is". Can you, as the real estate agent, forward the offer to Bob's lender?

A: Yes, as the real estate agent you can provide facts and information to the lender.

Q: Can you include a letter to the lender, saying that you believe this offer of \$225,000 is the best price obtainable for Bob's property and urge the lender to approve the sale before the potential buyer moves on to another property?

A: No. Again, the real estate agent is in a position to provide facts, i.e. the subject property has been on the market for X number of months, that X number of potential buyers viewed the property, and that X number of offers have been received on the property. The lender can make its own determination as to what the best price obtainable is for the subject property.

Q: Bob's lender has approved the \$225,000 offer. However, Bob's lender says it will not allow Bob to pay you the 6% commission you negotiated with Bob. Rather it will only allow a 4% broker's commission. Can you call Bob's lender and try to explain why the 6% commission is more reasonable considering your effort to market and sale the property?

A: According to our interpretation, the answer here is yes. The real estate agent may contact the lender regarding the real estate agent's compensation. The Department is aware that HUD has received a request from the National Association of REALTORS® and perhaps others to clarify this area. Should HUD provide additional guidance surrounding the issue, the Department retains the right to follow HUD's interpretation and guidance if it deviates from the current interpretation.