



FINANCIAL SERVICES
COMMISSION

CHARLIE CRIST
GOVERNOR

BILL MCCOLLUM
ATTORNEY GENERAL

ALEX SINK
CHIEF FINANCIAL OFFICER

CHARLES BRONSON
COMMISSIONER OF
AGRICULTURE

OFFICE OF FINANCIAL REGULATION

LINDA B. CHARITY
ACTING COMMISSIONER

July 31, 2009

Mr. Trey Goldman, Legislative Counsel
Florida Association of Realtors Office of Public Policy
200 S. Monroe Street
Tallahassee, FL 32301-1824

RE: Request for opinion regarding section 494.00296, Fla. Stat.;
Administrative Proceeding No.: 2550-F-07/09

Dear Mr. Goldman:

The Office of Financial Regulation (“the Office”) is in receipt of your request for an informal interpretation of the newly enacted section 494.00296, Florida Statutes.¹ Specifically, you are requesting an opinion as to whether that section applies to real estate licensees engaged in short sales transactions. As part of your request, the Office was provided a copy of the November 20, 2008 letter from Attorney General Bill McCollum asking for a similar interpretation with regard to section 501.1377, Florida Statutes.

For the purpose of addressing your request, the Office has assumed the same circumstances reflected in the Attorney General’s November 20, 2008 letter:

A real estate licensee is asked by a client to list a house for sale. The licensee ascertains the fair market value of the house is less than the amount owed on the mortgage and lists it for that fair market amount. If a buyer is obtained who is willing to pay a price less than the amount owed, the real estate licensee would then enter into a dialogue with the lender to see if a short sale would be acceptable, thereby avoiding a possible foreclosure situation. The only remuneration sought by the licensee is the commission on the sale. No additional fee is sought by the real estate licensee for the negotiation or dialogue with the lender.

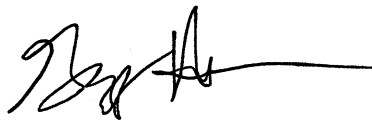
Under these circumstances, the Office agrees with the Attorney General’s opinion that the conversations between the real estate licensee and the lender on behalf of an existing client appear

¹ Section 494.00296, Florida Statutes, deals with mortgage loan modifications and was included in Senate Bill SB2226 (2009). It becomes effective January 1, 2010.

to be ancillary to services provided by a real estate licensee in the sale of his or her client's property. The Attorney General's opinion also notes that there would be no upfront or other fees for the negotiating service. Therefore, it is the Office's understanding that none of the compensation paid to the real estate licensee will be paid in advance or in any way tied to the negotiations with the lender. For example, in addition to not collecting an upfront or advance fee, a real estate licensee's commission must be the standard commission for the area. The commission could 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 or its representative. In short, as long as the only remuneration sought is the standard commission for the area on the sale of the property and no other fees are collected for the dialogue with the lender, the activity mentioned above does not appear to fall under the provisions of section 494.00296, Florida Statutes.

This opinion is limited to the facts set out above. Changes in the fact pattern could impact the interpretation of the applicability of section 494.00296, Florida Statutes. Additionally, please note that this response is the opinion of the undersigned, and is not legally binding on the Office. If you would like to request an opinion that would be legally binding upon this Office, please review section 120.565, Florida Statutes, and the applicable rules from the Florida Administrative Code for the procedures to request a declaratory statement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregg Morton', with a long horizontal line extending to the right.

Gregg Morton
Chief Counsel

cc: Terry Straub
Andy Grosmaire