



Analyzing legal and business trends for the real estate industry

Aug. 3, 2009 Volume 3, Issue 16

IN THIS ISSUE

Welcome to REI **Page 2**

S.C. real estate agent sues MLS **Page 5**

National home price decline slows **Page 6**

Existing homes sales up again **Page 7**

Woman's silence on refusal to sign deed haunts her **Page 8**

RE agents learn to work with title agents **Page 10**

HUD taps director for anticipated office **Page 11**

In Closing: news briefs **Page 12**

“MLS rules prevented innovative brokers from joining MLS and gaining access to MLS listings database, which would have allowed them to effectively compete with MLS members.”

— from “S.C. real estate agent sues MLS” — Page 5

Jury to decide federal case questioning fault in undisclosed zoning rule

In an 11th Circuit Federal Court case, the court said there were too many facts in dispute regarding whether or not a home's sellers knew about a restriction limiting the home's square footage and failed to mention it. All parties involved requested summary judgment, but the court had a different idea.

The dispute between buyers and sellers in Florida about whether or not a zoning restriction was intentionally not disclosed will go to jury trial.

In the 11th Circuit Court of Appeals case of *Warfield v. Stewart*, the court said there were too many facts in dispute to grant any of the parties the summary judgment they requested.

Zoning restriction disclosure

James and Terrill Stewart bought the home from **Pamela Whitney** in 1998 with the help of **Robin Humphrey**, a real estate agent from VIP Realty. Whitney wrote in a seller's disclosure statement that she was aware of “zoning, land use or administrative regulations which are in conflict with existing or intended use of the property.” Whitney also explained in the form that the lower level was constructed without permits.



Whitney did not disclose that the property was limited by a restriction that the enclosed living area could not be expanded to be larger than 2,000 square feet. She explained in her affidavit that she was not aware prior to the lawsuit that the house was bound by that variance. She said she was aware that the lot had particular limitations, though she didn't understand them to be in the form of a variance.

She indicated in her disclosure statement that she believed the property was subject to “restrictions affecting additions, improvements, or replacement of the property.” She was referring to her belief that any expansion of the house would be limited by permeable coverage limitations as well as its distance from the water.

Continued on Page 3

COMING SOON

The world of multicultural transactions

The changing face of the country will reflect upon your clients, if it hasn't already. Are you prepared to deal with clients who speak a different language? We'll help you be ready for any client.

Non agent defends right to finder's fee

A California man who was denied a finder's fee when it was revealed he wasn't a licensed real estate agent defended his supposed right to receive damages in appeals court. Did the court agree with his thinking?



Real Estate Insider
 PO Box 370
 Richfield, OH 44286
 Tel: (330) 659-6101
 Fax: (330) 659-6101
 www.REInsiderOnline.com

Publisher & CEO
 Barbara Casa

Associate Publisher
 Bobbie Macy

Editorial & Publishing

Editorial Director
 Syndie Eardly

Editors

Heather Taylor, Kelly McCarel
 David Napuk, Andrea Golby
 Jennifer Kovacs

e-commerce

Rick Harris, *Director*
 Michael Cook

Customer Service & Circulation

Michelle Guyot, Jennifer Cannon

Business Offices

Chief Operating Officer
 Chris Casa

Finance & Accounting

Mary Ellen Leidy, CPA
 Jim Leiken, CPA

Sales & Advertising

Matthew Hydrew

Seminars

Scott Gebler

Legal Services

Eric Hoffman, Esq.

In Memoriam

Founder & Publisher
 Joe Casa

Volume 3, Number 16

Real Estate Insider is a
 production of the October Research Corp.
 and is published 24 times a year.

Copyright © 2009 October Research Corporation. All Rights Reserved.

Any copying or republication without the express written or verbal consent of the publisher is a violation of federal copyright laws and the publisher will enforce its rights in Federal court. The publisher offers a **\$500 reward** for information proving a federal copyright violation with regard to this publication. To obtain permission to redistribute material or to report a violation of federal copyright laws, please call 330-659-6101, or e-mail: htaylor@octoberresearch.com. To obtain reprints, e-mail: jcannon@octoberresearch.com.

Editor's Note

Dear reader,

You're not seeing things. Your biweekly real estate information source has taken on a completely new look. It's the same square footage, but *Real Law Central* has been renovated. It's now *Real Estate Insider*.

For three years now, real estate agents and brokers have valued our unmatched leg/reg coverage to find out what legislation or decisions might affect the way they do business.

We realize several other factors also come into play in your daily dealings. That's why we've been enriching the print and online content in the past few months with all the other news that matters to you, including business news and market conditions, as well as emerging trends such as sustainability and social media. And to support our newly expanded coverage, we recently increased the size of the newsletter from eight to 12 pages.

To make sure we better position the content of the publication, we renamed the publication *Real Estate Insider* and gave everything a fresh, new look to go with it. Don't be fooled — our in-depth analysis of the latest legal news, industry trends and business issues stays; it's just re-focused in a way that gets to the heart of your need for data, information and education to maintain your competitive and professional edge in the marketplace.

So enjoy the inaugural issue of *Real Estate Insider*. Some of the highlights include a recent federal case deciding the validity of buyers blaming the seller for not disclosing a zoning restriction, coverage of a recent panel discussing the relationship between title agents and real estate agents, and the latest home sale numbers.

One housekeeping note. We're taking our usual summer break after this issue, but we'll be back in your mailbox Aug. 31. We hope this will tide you over during the break. Plus, we'll continue our daily coverage online during that time, so check us out at www.REInsiderOnline.com.

Enjoy our newly renovated space! Don't hesitate to contact me with any comments about the publication or topics you'd like to see covered.

Editor

htaylor@octoberresearch.com

ONLY @ REINSIDERONLINE.COM

80 – Percentage of respondents to our recent social media poll who use Facebook. 66 percent said they use LinkedIn, followed by nearly 47 percent using Twitter. Blogs and forums are used by 33 and 16 percent of respondents, respectively. Only 3 percent said they're on MySpace.

Go to www.REInsiderOnline.com to answer our latest poll, which asks about your experience with multicultural closings.



Continued from Page 1

The Stewarts signed Whitney's disclosure statement. However, during his deposition, James Stewart denied that he received a written disclosure from Whitney. He indicated that neither Whitney nor any other individual disclosed that the home was subject to the restriction when the Stewarts purchased the home. Terrill Stewart said Whitney disclosed that portions of the ground floor were constructed in violation of the city of Sanibel's regulations. The Stewarts removed the parts that were in violation in an effort to comply with the law.

Terrill Stewart said they never considered expanding or adding onto the home and never hired an architect, engineer or builder while they owned the home in an effort to expand. She also said she and her husband never became aware of the restriction during the time that they owned the home.

Warfield/Stewart transaction

The Stewarts listed the house for sale with VIP Realty in August 2005. Humphrey served as the listing agent. The next month, **James Hall**, another independent contractor from VIP Realty, showed **Kennard** and **Mary Ellen Warfield** the home. They were interested; however, they felt that the home needed additional bedrooms to house their three children.

Kennard Warfield asked Hall whether it would be possible to build additional rooms onto the home, and Hall responded that he did not think it would be a problem. That same day, without consulting any architects, engineers, attorneys or other professionals, the Warfields made an offer to buy the home for \$1.3 million. They ended up paying \$1.4 million. The Warfields said Hall misrepresented the asking price of the home to Kennard Warfield and that caused the Warfields to bid against themselves when they made an offer. In addition, the Warfields alleged that Hall

represented to the Stewarts that the Warfields' offer was \$1.4 million, rather than \$1.3 million. Last, the Warfields said that either Hall or the Stewarts surreptitiously added the words "as is" into the contract for the purchase of the home without the Warfields' agreement.

Terrill Stewart said she and her husband "never had any discussions with the Warfields either before or after the sale." The Stewarts contended that they did not disclose the restriction to the Warfields because the Stewarts didn't know the restriction existed. Likewise, Hall and VIP Realty's agents testified that they did not disclose the restriction because they did not know about it.

Warfields' real estate knowledge

The court made note of the fact that the Warfields are no strangers to real estate transactions. The couple testified during their respective depositions that they have real estate holdings throughout the eastern United States. Kennard Warfield is the owner of Warfield Brothers, an interstate agricultural business that owns more than 8,000 acres of land.

Further, he holds a general contractor's license and is one of two shareholders, along with his wife, in construction company Farm Tech Inc. He is also a professional developer and has completed 15-20 residential developments ranging from four to 1,500 units per development. Plus, he is the managing member of Waverly Woods Development Corp. and Ten Oaks Properties. He testified that he maintains a full time attorney on staff and has accessible a group of other professionals such as engineers, architects, earth movers and building consultants. Despite his level of sophistication, he testified that he was relying upon Hall to research the property, including zoning restrictions, the court added. Kennard Warfield testified that, in April 2007, he and his wife learned through an architect that a planned addition onto the home

Continued on Page 4



"The court made note of the fact that the Warfields are no strangers to real estate transactions. The couple testified during their respective depositions that they have real estate holdings throughout the eastern United States."

Warfield v. Stewart
11th Circuit Court of
Appeals
No. 2:07-cv-332-FtM-33SPC

Continued from Page 3

could be problematic due to the variance and/or restriction. However, during the depositions of both the architect and the Stewarts' expert witness, both testified that a 1,000-square-foot addition could reasonably be added.

Although the Warfields claimed they would not have purchased the home if they had known of the restriction, Kennard Warfield testified that the Warfields had not applied for a variance to remodel the home to include the extra bedrooms. He testified that requesting a variance to build the additional rooms would be too expensive, would take too long and was too uncertain. The Warfields never requested permission to remodel and, thus, have never been denied permission to remodel.

The complaint

The Warfields filed their complaint against the Stewarts, Hall, VIP Realty and John Does 1-10 in May 2007, with an amended complaint filed on Feb. 20, 2009. The complaint contained 12 counts. The following were charged against the Stewarts: **Count one** for fraudulent inducement; **count two** for negligent misrepresentation; **count three** for breach of contract against the Stewarts; **count four** for breach of the implied covenant of good faith and fair dealing; **count five** for breach of the *Johnson v. Davis* duty to disclose; and **count six** for failure of contract formation.

The following counts were against Hall and VIP Realty: **Count seven** for fraudulent inducement; **count eight** for negligent misrepresentation; **count nine** for breach of contract; **count 10** for breach of the implied covenant of good faith and fair dealing; **count 11** for fraudulent misrepresentation; and **count 12** for breach of the *Johnson v. Davis* duty to disclose. (In *Johnson v. Davis*, the Florida Supreme Court said "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.")

All parties filed motions for summary judgment on at least parts of the complaint.

Court's stance

In considering the case, the court first acknowledged that the Warfields might not have practiced their due diligence. "Had the Warfields evaluated the public records prior to purchasing the home, they would likely have discovered that the home is subject to the restriction," the court said. While the Warfields said the seller and agent had a duty to

disclose the restriction, the defendants claimed they didn't know about it.

The Warfields only sought summary judgment on counts five, 11 and 12. The Stewarts sought summary judgment on all counts of the complaint against them (counts one through six). Likewise, Hall and VIP Realty sought a summary judgment on all complaint counts against them (counts seven through 12).

The court noted that in *Johnson v. Davis*, the homeowners were aware of the damage to the home's roof, but the defect wasn't open or obvious. When they sold the home, they did not disclose the defects, but only said there was once a "minor problem," which had been resolved. A few days later, after heavy rain, water gushed into the home. The trial court awarded damages to the buyers for one of the deposits they made and also awarded a smaller amount to the sellers. The appeals court found for the buyers. The Florida Supreme Court affirmed the award to the buyers, determining "the sellers made intentional fraudulent misrepresentations of fact about the roof and ceiling that materially affected the value of the home," as paraphrased by the court hearing this case. This ruling came into play with other similar Supreme Court cases in Florida as well, the court noted.

The court pointed to the Warfields' contention that the Stewarts, Hall and VIP Realty knew about the restriction as a material issue of fact, and therefore it can't grant summary judgment on counts five and 12, which provoke *Johnson v. Davis* and a failure to disclose allegation.

"A jury, rather than this court, must determine whether the Stewarts, Mr. Hall and VIP Realty knew about the variance and restriction and failed to disclose the same to the Warfields," the court said. "Likewise, if the jury determines that the Stewarts, Mr. Hall or VIP Realty failed to make a disclosure, the jury must consider the Warfields' negligence, if any, for failing to investigate the public records, particularly the zoning laws and the existence of the variance and the restriction."

The court added that at least 10 of the Warfields' 12 complaints relate to the same "failure to disclose" allegation, so they're not entitled to summary judgment. The court also denied the motions for summary judgment for the remaining counts as requested by all three parties. The court cited a conflict in the evidence, resulting in a factual dispute, as the reason for the denial in most instances. A jury trial is being scheduled for this month in U.S. District Court in Florida.

S.C. real estate agent sues MLS, citing exclusion



A real estate agent is claiming the Hilton Head, S.C., multiple listing service (MLS) is breaking the law by prohibiting certain brokers from the service in order to limit competition.

Roger Abney, with The Roger Abney Co., is suing Multiple Listing Service of Hilton Head Island Inc. in U.S. District Court in South Carolina and seeks class-action status.

The suit says the MLS system violated the Sherman Act for unjust enrichment under South Carolina law.

The suit also names John Does 1-8 as defendants. They're said to be licensed real estate brokers and professionals in a joint venture operating the MLS.

"Upon information and belief, John Does 1-8 comprise MLS's board of directors and/or executive committee and have the right and power to direct and control the manner by which MLS operates and the manner in which John Doe 1-8's employees and/or agents provide information and real estate brokerage services to plaintiffs and the class members," the suit says.

The complaint claims that the MLS unfairly restricted "innovative" brokers who would have provided customers with competitive opinions and possibly caused brokers who offer more traditional services, such as John Does 1-8, to lower their prices to remain competitive.

"MLS rules prevented these innovative brokers from joining MLS — and necessarily gaining access to MLS listings database, which would have allowed them to effectively compete with the real estate brokers who were MLS members — and, as such, defendants unreasonably restricted competition in the MLS service area, thereby depriving options and competitive pricing to customers in favor of artificially high, anti-competitive prices," the suit says.

The complaint gives examples of different types of brokers, found in other MLS markets, who are prohibited from working in the Hilton Head MLS service area, such as brokers who use technology to automate certain tasks and communicate with customers, brokers who charge only for services customers wish to purchase, brokers who

can offer reduced fees by raising capital through public ownership, and brokers who offer "exclusive-agency listings" where the seller pays no commission to the broker if the seller finds the buyer.

The brokers not permitted to use the MLS missed out on business in the area because it is the only MLS service on Hilton Head Island, the suit says.

In seeking class action status, the complaint said the class includes those who have bought John Does 1-8's brokerage services in the MLS service area from July 7, 2005 to July 7, 2009. Although a number of people weren't named, it's estimated to be in the thousands.

Hilton Head MLS CEO **Yvette Acuff** did not respond to *Real Estate Insider's* request for comments as of press time, but she released a statement to the *Hilton Head Island Packet* that read in part: "MLS intends to defend these civil claims and to ask the public jury to rule that MLS practices intended to benefit and protect local real estate purchasers and sellers did not harm them."

This isn't the first time the MLS has come under fire. The U.S. Department of Justice (DOJ) filed a complaint in October 2007 for violation of Section 1 of the

Sherman Act, which governs antitrust issues. The final judgment required that the MLS change its rules to allow low-priced and innovative real estate brokers in the service area. The DOJ brought a similar complaint against the Columbia, S.C., MLS.

National MLS rules have also been criticized. A September 2005 DOJ suit against the National Association of Realtors (NAR) said the organization's national rules governing MLSs "limited competition from real estate brokers using innovative business models and the Internet to offer better services to their customers. NAR's rules allowed its traditional real estate broker members to direct that their clients' listings not be displayed on any non-traditional brokers' Web sites, such as "virtual office Web site brokers (VOW)," according to the suit, which kept the VOW-operating brokers from competing efficiently and in ways that many customers desire.

Abney is asking the court in the current case to find the defendants in violation of Section 1 of the Sherman Act and to find them guilty of unjust enrichment.

**Roger L. Abney v.
Multiple Listing Service
of Hilton Head Island Inc.
U.S. District Court
No. 9:09-1794-SB**

National home price decline shows slowing



National housing prices fell 9.2 percent in May compared to a year ago, representing the smallest year-over-year decline recorded in 2009 and the lowest since December 2007, according to newly released data from First American CoreLogic and its LoanPerformance Home Price Index (HPI).

May's decline was a 0.5-percent improvement over the 9.7-percent decline in April.

The rate of national price declines for residential single-family detached properties peaked at 11.9 percent in January and has since improved by over 2.5 percentage points through May.

The June preview data suggests further improvements in the rate of decline.

Since U.S. home prices peaked in July 2006, national home prices have declined 20.1 percent on a cumulative basis.

Despite the improvement in the national trend, the geographic breadth of price declines has not improved. Forty-one states experienced price declines, and 16 states had double-digit declines in May, well above the number of states experiencing declines a year ago.

Nevada (-26.4 percent) remained the top-ranked state for annual price depreciation, with Florida (-25.5 percent) close behind. California's (-19.8 percent) price trends continued to improve in May and are currently more than 10 percentage points better than the peak decline of 30.3 percent set in August 2008. Arizona (-18.1 percent) and Illinois (-16.9 percent) round out the top five states for price declines.

Florida and Illinois are the only two states that are not currently showing signs of moderation or improvement in the declines among states experiencing the largest price decreases.

Over the past few months, there has been a divergence in

single-family detached residential properties as compared to single-family attached residential properties, which include condominiums and townhomes.

As of May, prices of attached properties declined 12 percent from a year ago, compared to a 9.2 percent decrease for detached properties. The gap reflects the very weak condo market, tighter underwriting guidelines for this type of property, and the faster run-up in prices for condos during the bubble market.

"Although there has been some improvement in the national HPI, collateral risk will continue to be the main driver of the housing market for the remainder of 2009," said **Mark Fleming**, chief economist for First American CoreLogic. "Until home prices and the economy stabilize, mortgage performance will continue to worsen and home sales activity will remain flat nationally through 2010."

Despite the improvement in the national trend, the geographic breadth of price declines has not improved. Forty-one states experienced price declines.

The methodology of First American CoreLogic's LoanPerformance HPI incorporates more than 30 years worth of repeat sales transactions, representing more than 45 million observations sourced from First American CoreLogic's property information database.

LoanPerformance HPI provides a multi-tier market evaluation based on price, time between sales, property type and loan type (conforming vs. nonconforming).

The LoanPerformance HPI is a repeat-sales index that tracks increases and decreases in sales prices for the same homes over time, which provides a more accurate "constant-quality" view of pricing trends than basing analysis on all home sales.

The LoanPerformance HPI provides a comprehensive set of monthly home price indices and median sales prices covering 7,668 ZIP codes, 958 Core Based Statistical Areas and 678 counties located in all 50 states and the District of Columbia.

For a breakdown on the numbers, including full-month May through mid-month June 2009 state and top CBSA-level data, visit www.loanperformance.com/products/hpi.aspx.

Market sees another jump for existing-home sales

Existing-home sales rose for the third consecutive month with inventory easing and home prices declining less sharply in June, according to the National Association of Realtors (NAR).

Existing-home sales — including single-family, townhomes, condominiums and co-ops — increased 3.6 percent to a seasonally adjusted annual rate of 4.89 million units in June from a downwardly revised pace of 4.72 million in May, but are 0.2 percent lower than the 4.90 million-unit level in June 2008.

Lawrence Yun, NAR chief economist, is hopeful about the gain. “The increase in existing-home sales occurred in all major regions of the country,” he said. “We expect a gradual uptrend in sales to continue due to tax credit incentives and historically high affordability conditions.

Despite the rise in closed transactions, many Realtors are reporting lost sales as a result of new appraisal standards that went into effect May 1 of this year.”

A June NAR member survey shows 37 percent lost at least one sale as a result of the new Home Valuation Code of Conduct, with seven out of 10 reporting an increased use of out-of-area appraisers. Seventy percent of NAR appraiser members said consumers were paying higher fees, while 85 percent report a perceived reduction in appraisal quality.

“Clearly the process needs to be revised, but the most logical approach is to use appraisers with local expertise, industry designations and access to local data, who make a physical examination of the property and use apples-to-apples comparisons with nearby home sales,” Yun said. “In many cases, normal homes are being compared with distressed homes sold at a discount, which often are in subpar condition — this is causing real harm to both buyers and sellers.”

According to Freddie Mac, the national average commitment rate for a 30-year, conventional, fixed-rate mortgage rose to 5.42 percent in June from 4.86 percent in May; the rate was 6.32 percent in June 2008. Mortgage interest rates have trended lower in recent weeks.

Total housing inventory at the end of June fell 0.7 percent to 3.82 million existing homes available for sale, which

represents a 9.4-month supply at the current sales pace, down from a 9.8-month supply in May. Raw inventory totals are 14.9 percent below a year ago.

“This is another hopeful sign — if we can keep the volume of sales above the level of new inventory, prices could stabilize in many areas around the end of the year,” Yun said.

A NAR survey in June showed first-time buyers accounted for 29 percent of transactions, unchanged from May, and that the number of buyers looking at homes is up nearly 12 percentage points from June 2008.

NAR President **Charles McMillan**, a broker with Coldwell Banker Residential Brokerage in Dallas-Fort Worth, said there are very good opportunities.

“Prices could stabilize in many areas around the end of the year.”

**— NAR
Chief Economist
Lawrence Yun**

“Despite some of the challenges, the housing market continues to demonstrate signs of recovery,” he said. “The temporary first-time buyer tax credit is clearly helping people make a decision and is contributing to the overall stimulus impact, but since it’s taking longer to close transactions, many would-be beneficiaries may not be able to take advantage of the credit before the Dec. 1 expiration date. As a consequence, consumers need the

expertise of Realtors more than ever to navigate both the obstacles and opportunities in today’s market.”

The national median existing-home price for all housing types was \$181,800 in June, which is 15.4 percent below June 2008. Distressed properties, which accounted for 31 percent of sales in June, continue to downwardly distort the median price because they generally sell at a discount relative to traditional homes.

Single-family home sales rose 2.4 percent to a seasonally adjusted annual rate of 4.32 million in June from a level of 4.22 million in May, and are 0.2 percent higher than the 4.31 million-unit pace a year ago. The median existing single-family home price was \$181,600 in June, which is 15.0 percent below June 2008.

Regionally, sales in the Northeast rose 2.5 percent to an annual pace of 820,000 in June, but are 4.7 percent below

Continued on Page 11

Woman's silence on refusal to sign deed haunts her

CASE LAW

A North Dakota woman who was to borrow from the seller some of the financing for the apartment complex she was buying may have caused additional problems for herself.

In the U.S. Bankruptcy Court case *In Re Stark*, the court disagreed with a debtor's argument to have the loan discharged from bankruptcy because the debtor wasn't upfront with

everyone involved during the transaction.

Brian Pinks put a four-plex on the market with real estate agent **Chris Irwin**. Irwin was the dual agent and signed an agreement with Pinks and the buyer, **Lois Mae Stark**.

The purchase agreement dictated that the earnest money would be refunded if the buyer is unable to obtain financing, the buyer would move in Aug. 8, 2005, and the seller would scrape and repaint the house and repair the windows and front porch.

Irwin testified that Stark was able to secure financing for a first mortgage from Washington Mutual for about 80 percent of the \$119,900 purchase price, but not the remaining 20 percent. Irwin facilitated discussions between the parties regarding how Stark was going to secure the shortfall. The plaintiff verbally agreed to loan Stark the \$23,880 needed to close in exchange for Stark executing a second mortgage in the plaintiff's favor, according to Irwin.

The closing took place on Oct. 17, 2005, when Stark signed a settlement statement detailing a purchase price of \$119,900, and an amount due of more than \$124,600. The settlement statement reflects that Pinks holds a second mortgage in the amount of \$23,880. Stark also signed a borrower's statement reflecting Pinks as the holder of a second mortgage in the amount of \$23,880.

Lastly, Stark was given a mortgage deed, which listed her as the borrower and Pinks as the lender in the amount of \$23,880 on the four-plex. The deed included special terms and conditions in handwritten notes that Irwin said she wrote. Stark initialed the terms and conditions but did not sign the mortgage deed. Stark did not inform anyone that she did not sign it.

Stark said she didn't agree with the mortgage deed because it did not reflect a number of special terms and conditions that she thought should have been included.

First, Stark testified she believed the amount of the shingling should have been included. She thought she was supposed to get bids for the job and bring them to the closing, which she did, but she didn't inform anyone. Pinks testified that it was his understanding that Stark was to get bids for the shingling after the closing and that the plaintiff would be allowed to submit his own personal bid for the shingling as the final bid.

Stark said another reason she did not sign the deed was because it did not reflect three tenant deposit checks and partial rent. Pinks testified that the two lower unit tenants had each paid a \$400 deposit and the tenant of the larger upper unit had paid a \$600 deposit. Stark testified that she expected to receive a check at the closing for the deposits and partial rent.

Pinks stated he would bring the checks to her by 8 p.m. that night because he didn't have his checkbook on him, Stark said. She added that she did not sign the second mortgage because she thought they would settle the matter that evening when the plaintiff brought over the checks. Stark also said, however, that she knew the sale would not have gone through if there was no second mortgage. Stark said she informed Irwin at the end of the closing that she would not sign the second mortgage and that the plaintiff might have already left at that point.

Pinks, on the other hand, testified that the deposits for the three rental units and the partial rent were not mentioned during the closing, nor were they part of the purchase agreement. He said that discussion happened after the closing. The plaintiff testified that he believed Stark had signed the mortgage deed and he would not have signed the warranty deed had he known that Stark had not signed the mortgage deed.

Irwin testified that Stark did not inform her or anyone else at the closing that she had a problem with the mortgage deed, that she would not sign the mortgage deed, or that she was leaving the closing without signing the mortgage deed. Had she known Stark was not going to sign the second mortgage, Irwin would have stopped the closing, and they would not have gone through with the sale, she said.

Irwin added that it was the closing agent's responsibility, not hers, to make sure all the documents were properly signed. She testified that it must have been an error on the title company's part to deliver the warranty deed when

Continued on Page 9

Continued from Page 8

Stark had not signed it because of the provisions throughout the closing statement relating to the mortgage deed.

Stark said about a week after the closing, she called Irwin and the broker to find out what to do about the deposit checks that the plaintiff owed the tenants. Stark testified that both of them told her to get the issue regarding the checks worked out with the plaintiff.

The plaintiff testified that he did not learn until months later, when he became concerned about Stark's payments on the second mortgage, that the mortgage deed had not been signed. In January 2006, the plaintiff brought the mortgage to Stark for her to sign, but she asked the plaintiff to come back the next day when her friend could be there because, she said, "He was smarter about this kind of stuff." Stark testified that the plaintiff returned the following day, agreed to make some changes to the mortgage deed and never brought it back.

The plaintiff's bid for the shingling repair was dated Jan. 26, 2006. Stark testified that she did not recall ever seeing the plaintiff's bid.

The plaintiff called Stark on Feb. 24, 2006, and the parties agreed to meet at Stark's place of employment the following day. At the meeting, the plaintiff gave her a check for two of the three rental unit deposits. Stark testified that she informed the plaintiff this was not the correct amount owed and that she would not sign the mortgage deed. The plaintiff explained that he gave Stark a check for only \$800 for the deposits owed to the two tenants from the two lower units because the tenant in the upstairs unit caused damage to the unit that far exceeded the \$600 deposit and the plaintiff did not return the deposit to that tenant.

On June 4, 2006, Stark's attorney sent a letter to Pinks' attorney at the time that said Stark's second mortgage is to be \$23,880 if the plaintiff agreed that he owed Stark the sum of \$10,322 for the partial rent and deposits, 50 percent of the shingling bid and the painting bid. Further, Stark's attorney said if the plaintiff agreed with those terms, they could get the paperwork done and the mortgage deed signed and completed.

Stark filed a Chapter 7 bankruptcy petition on Sept. 26, 2008, listing the four-plex residential apartment house as real property with a current value of \$98,000, and Starion

Bank holding a secured claim against the property in the amount of \$105,000. She listed the plaintiff as a creditor holding an unsecured nonpriority claim in the amount of \$16,600. In her petition, Stark stated, "Debtor purchased four-plex from Pinks. Pinks agreed to carry debtor for balance of selling price less cost of repairs. Debt in dispute. Pinks defaulted."

There is no evidence as to whether Stark made any payments to Pinks on the loan.

Silence isn't golden

The court said that by not telling anyone she didn't sign the mortgage deed, Stark made false representation. In considering whether Stark had the intent to deceive, it said she seemed to give every indication prior to the closing that she intended to sign the second mortgage based upon the terms in the purchase agreement. Even at the closing, she didn't let on that she disagreed with the terms, the court added. Therefore, the court said that by being silent about disagreeing with the terms, Stark intended to deceive the plaintiff at the time of closing.

As for the element of reliance, the court said reliance was established.

"The parties stipulated that plaintiff would not have signed the warranty deed had he known that defendant was not going to sign. The evidence demonstrates that plaintiff relied on the fact that defendant represented she signed the mortgage deed at the closing when she had not in fact signed," the court said.

Finally, the court determined that Pinks sustained a loss, again due to Stark's silence surrounding her refusal to sign the warranty deed. The amount of the loan, which was disputed, was determined after the court subtracted \$3,885, which represented 50 percent of a shingling estimate, the amount for which Pinks would be responsible.

Also, the court determined the amount for the rental deposit and partial rents was separate from the purchase agreement. The court then decided, "The amount of plaintiff's claim is \$23,880 minus the cost of repainting (\$4,380) minus plaintiff's half of the shingling (\$3,885) for a total of \$15,615, plus interest."

As a result, it was decided that the debt Stark owed to Pinks was not dischargeable in bankruptcy.

**U.S. Bankruptcy
Court
In re Lois Mae Stark
No. 08-30956**

RE agents, title agents interacting more

BUSINESS TRENDS

Real estate agents are moving toward learning more about the intricacies of settlement services, said **Howard “Hoby” Hanna** during a panel at the recent National Settlement Services Summit, hosted by October Research, *Real Estate Insider’s* parent company.

Hanna, head of the Ohio division of Howard Hanna Real Estate Services, was part of the panel with **Kevin Breeland**, general manager of Residential Mortgage of South Carolina and **Travis Wright**, principal of Texas-based Wright Realty Advisors. The panel discussed some of the ways title companies are getting in front of real estate agents to forge relationships.

Wright referenced a National Association of Realtors survey, which said 13 percent of Realtors have a personal assistant and 70 percent of Realtors maintain a home office. As the agents’ world becomes more virtual, members of other facets of the industry find themselves doing more to reach out to the agents and communicate their value proposition.

One of the advantages to Howard Hanna’s neighborhood approach is that it holds weekly sales meetings to get face time with its agents, Hanna said. “We do a lot as a company to stay in front of our agents and say, ‘How’s our service? What can we do better?’” He sees the business from the real estate agent side and the title agent side because his company houses both divisions.

The panel also covered how to keep real estate agents more involved and aware of the settlement process, which is often an unknown for them. “Realtors are surprised by all the moving parts and pieces that go into the settlement process,” Hanna said. “They don’t realize all the parts and pieces, and maybe they don’t want to know.” On the other hand, some agents do want to know what’s going on with the process, but title agents keep them at bay because they’re afraid it would be dangerous for the real estate agent to know what’s going on, he added.

Agents’ roles have grown somewhat in the settlement process. More and more agents are coming to the closing table with the client, Hanna said, adding he challenges employees to make the closing table resemble more of a celebration for the client rather than a fear of the unknown.

Hanna also voiced his frustration with short sales, saying

that members of the different industry factions should work together on the issue to lobby for quicker bank response on the transactions. “We in Ohio have our fair share of the short sale market today,” he said. “Some agents handle it well, but for some it’s just overwhelming.”

Hanna said he’s heard horror stories about short sales. “Somehow the government has to do something with these banks and make them negotiate on those short sales,” he said. “They should have an 800 number you can go to and say, ‘This is what the fair market value is, here’s what the comps are, they owe \$230,000 but we have an offer of \$210,000; let’s put this thing together.’”

Instead, he’s hearing that it’s taking 30 days to three months before anybody even responds. “The buyers go away and we have to get some of that inventory off the shelves, and then the agents get frustrated because it’s not what they’re accustomed to,” Hanna said. “They haven’t explained the process to the buyer, so a whole bunch of buyers out there feel these short sale deals are great deals and they go into it expecting it’s the same type of real estate experience — that the offer’s going to be responded to and they’re going to close in 30 days. It is frustrating. I’d say in Northeast Ohio, probably 20 percent of all sales we’re involved in are short sales.”

As for home sales in general, volume partly depends on the Federal Reserve’s involvement, Breeland said. He mentioned part of an address at the summit from Ginnie Mae President **Joe Murin**, who said one of the Fed’s tasks was to get interest rates below 5 percent, and he believed that would help continue to spur refinance and home purchase activity. “It would kind of flush out the market to see who’s actually going to be able to remain in their home and who won’t,” Breeland said. “I don’t disagree with (Murin’s) theory that the Federal Reserve, while they started this process, has seemed to have backed off now and aren’t as active on the market as they need to be. We need them to step in and push rates down.”

Breeland added that the Fed’s recent inaction resulted in a high concentration of refi activity in the first half of the year, which helped his company’s bottom line, but yet purchases remained slow. In 2008, overall volume was down 28 percent in the Greater Charleston, S.C., area. “We’ve had a flushing out of real estate agents, real estate companies and mortgage brokers who are no longer in business,” he said. “We’ve actually seen an increase in business. I think that trend will continue. There’s more flushing out, so to speak, to come.”

Director tapped for anticipated HUD sustainability post

TRENDS:
GREEN

Shelley Poticha was appointed senior advisor for sustainable housing and communities, the U.S. Department of Housing and Urban Development (HUD) said. HUD Secretary **Shaun Donovan** announced the appointment following efforts with Congress to propose legislation that would enact a new office at HUD.

“Shelley will help lead HUD’s effort to change the way we think about our communities,” Donovan said. “Her wealth of experience will help move us forward in creating sustainable, greener and smarter communities.”

Poticha currently serves as the president and CEO of Reconnecting America, where she has become a national leader for the reform of land use and transportation planning and policy with the goal of creating more sustainable and equitable development. Her efforts have stimulated a national conversation about the role of transit in shaping communities and the importance of building diverse and inclusive neighborhoods.

HUD is working with Senate Banking Committee chairman **Christopher Dodd**, D-Conn., on legislation to create the Office of Sustainable Housing and Communities at HUD. Poticha will direct the office if the bill becomes law.

The purpose of the new office would be to advance housing and communities that promote affordable, livable and sustainable living environments. It would provide technical and policy support for energy, green building and integrated housing and transportation programs at HUD and around the nation. Additionally, the office would manage HUD’s key relationships with other federal agencies in this arena like the departments of Transportation and Energy and the Environmental Protection Agency (EPA). “I am particularly pleased that

(Dodd) has worked with us to include several important provisions that are in line with key HUD budget proposals, including its authorization of the Office of Sustainable Housing and Communities within HUD,” Donovan said

According to Donovan, the office will be critical to advancing the goals of the Partnership for Sustainable Communities, which Donovan recently announced with Transportation Secretary **Ray LaHood** and EPA Administrator **Lisa Jackson** at a Senate Banking Committee hearing Dodd chaired.

Poticha will be joining **James Lopez**, senior advisor for sustainability issues to HUD Deputy Secretary **Ron Sims**. Lopez has been leading HUD’s interagency work with the EPA, Department of Transportation and Department of Energy. “We’re absolutely thrilled to have Shelley joining James and the rest of our first class team,” said Sims, who will be spearheading HUD’s sustainable communities initiative. “She’s a visionary and a well respected expert in growth management and urban policy and that, in turn, will help all of us focus on how to create better living environments for all Americans.”

In the San Francisco Bay Area, Poticha worked on the first regional Transit-Oriented Development (TOD) policy that conditions the allocation of new transit funds on good land use planning. She also worked in Denver with the city and transit agency on a TOD typology and strategic planning; in the Twin Cities to educate a broad coalition of community, business and government groups about the value of focusing the region’s growth in neighborhoods served by transit; and in Seattle where she helped define a funding program for construction of a new streetcar.

Prior to joining Reconnecting America, Poticha served as executive director of the Congress for the New Urbanism. She earned a master’s degree in city planning from the University of California at Berkeley and a bachelor’s degree from the University of California, Santa Cruz.

Continued from Page 7

a year ago. The median price in the Northeast was \$249,400, down 5.9 percent from June 2008.

Existing-home sales in the Midwest increased 0.9 percent in June to a level of 1.10 million but are 1.8 percent lower than June 2008. The median price in the Midwest was \$157,000, which is 9.1 percent below a year ago. In the South, sales rose 4 percent to an annual pace of 1.81

million in June but are 3.7 percent below a year ago. The median price in the South was \$163,200, down 11.9 percent from June 2008.

Existing-home sales in the West improved by 6.4 percent to an annual rate of 1.16 million in June, and are 11.5 percent higher than June 2008. The median home price in the West was \$214,800, which is 24.9 percent below a year ago.

IN CLOSING

NAR stresses that suspect in murder case is not a Realtor

The National Association of Realtors (NAR) is making efforts to clarify that a suspect connected to a high-profile murder was not one of its members.

Pamela Long Wiggins, charged as an accessory to the murders of **Byrd** and **Melanie Billings**, had been

erroneously identified as a Realtor by some news outlets, NAR said in a statement. "The National Association of Realtors can confirm that she is not a Realtor, which is a protected trademark of the National Association of Realtors, and is not synonymous with 'real estate agent.'"

The Billingses were found dead on July 9 in their home just west of Pensacola, Fla., after what police are calling a home invasion robbery. The story gained notoriety because the couple had adopted 13 special-needs children in addition to each having biological children.

Wiggins was one of eight arrested so far in the case. She was charged with being an accessory after the fact and has been released on bond. It is unknown whether Wiggins holds a Florida real estate license, NAR said.

Calif. real estate agent found stabbed to death in foreclosed property

A Westchester, Calif., real estate agent showing prospective buyers a foreclosed property found a dead real estate agent in the home. The agent was identified as **Ricardo Contreras**, a father of five, according to KABC

TV. He apparently went missing after an appointment to show a house on July 14. It wasn't until the evening of July 18, when another real estate agent was showing the house, that the body was discovered.

Family members told the news outlet that it appeared he was stabbed to death. Police, awaiting an autopsy, haven't released the official cause. Contreras had been a real estate agent for 25 years, according to the report.

RE agent indicted in fraud scheme on the run

Diane H. Frederick Atari, 42, of Ashburn, Va., is accused of fraudulently fixing clients' credit and inflating their income on financial records to place them into homes they could not afford. The total loss on these fraudulently obtained mortgages is estimated at more than \$50 million and involves more than 100 potential homeowners.

Authorities believe Atari left the country and is possibly in the country of Jordan. Local law enforcement has contacted INTERPOL to assist in locating Atari.

Atari owns and operates ACR Consulting Co. and Atari Management Co., both located in Loudoun County, Va. Atari offered "rent-to-own" services for customers, usually with bad credit, who were seeking home ownership.

Atari was indicted July 13 in Loudoun County Circuit Court on 10 counts of false statements to obtain credit, one count of money laundering and one count of racketeering.

Keep up with industry news as it happens with our e-newsletters or visit www.REInsiderOnline.com.



www.REInsiderOnline.com/CE

Agents & Brokers... Need CE Credits?

Get them at your own pace, on your own schedule,
and in the comfort of your home or office!

October Research is pleased to offer you online education options through our partnership with **McKissock, LP**, a leading provider of continuing education for more than 20 years.

**Do more than just earn re-certification...
find courses that educate,
entertain and provide practical
information you can put to
good use every day.**



OCTOBER RESEARCH CORPORATION, PO BOX 370, RICHFIELD, OH 44286 • 877.862.8523