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Office? What Office? Staying Home—and Loving It!

By Jan Matthew Tamanini

One of a solo's biggest concerns is office space. How do we find a convenient, work-friendly environment that won't break the bank? Working from home may be a big plus for anyone starting out with limited capital or with an existing practice affected by the down economy.

Many solo practitioners (including me) use a post office box as an official office address and meet clients at remote locations. All it takes is a bit of

forethought into the mechanics of your work and how you market yourself. And there are lots of plusses:

No set office hours

Most solos with outside offices keep regular hours there. With a home-based practice, there's no need to advertise specific times, a huge advantage for anyone with family issues requiring availability on short notice. Want to take an afternoon movie break? Go ahead! No one will come looking for you and find your office empty.

Total scheduling freedom

Set client meetings at your convenience, with flexibility to accommodate those who may need evening times. Also, I routinely set aside at least one day a week where I do no client appointments, just work on existing projects and take care of my practice management.

Your practice is eminently portable

For meetings, just drop your laptop into your briefcase and go. If you keep most things digital rather than in hard copies, you should be able to take almost anything with you. With limited exceptions, my entire filing system is on my MacBook (with redundant backups.) Need a document or record? Pull it up instantly! Get a stick scanner to scan client docs, or ask the client to fax them to you. With an Internet-based fax service, you'll have electronic copies ready to drag and drop into the appropriate file.

See clients in their environment

If you're interested in learning about your clients, you can find out more in a few minutes in their spaces than through hours of meetings elsewhere. Going to their location also means there's immediate access to most relevant information.

Free or low-cost meeting space is readily available

It's amazing how many meeting spaces are available either free or for a pittance. From a private room at a restaurant to the community room at your local public library, venue options are plentiful. Some groups, such as a Chamber of Commerce, provide free meeting space to any member upon request. Local libraries or other public buildings also have rooms you may reserve in advance at no charge or for a nominal fee. And restaurants are always good for working lunches or dinners. For those who want something more traditional, there are businesses that provide virtual office space, some local, some national. Two examples are Regus and Intelligent Office; both are continuously expanding their locations.

Save on support staff

No clients in your office? No need for a physically present receptionist and the burdens that an employee presents (payroll, taxes, HR issues). Handle your phone through a voicemail "receptionist" (no cost), or hire a virtual receptionist to manage your calls (low cost). Google "virtual receptionist" and you'll find a plethora of companies to do your work. The ABA Solosez archives have many threads on this topic. (See http://new.abanet.org/divisions/genpractice/solosez/Pages/default.aspx).

Better focus for both you and your clients

Consider scheduling all of your client meetings/phone calls in advance; no walk-ins (or phone-ins) allowed. Tell prospects up front that both their time and yours is too important to waste playing phone tag. You can set your appointments (live and phone) via e-mail. Most clients appreciate the concept; virtually everyone is a fan after the first call or two. Build in prep time, asking each prospective client to complete a questionnaire developed for the specific type of legal service and return it at least a day before the scheduled appointment. If the client doesn't follow through, send a reminder asking for the information by the end of the day, and if there's no follow-through, you'll have to reschedule for a later date after you get the completed questionnaire. Completing the questionnaire helps the prospect determine what's relevant; getting it in advance allows you to learn a good deal about your prospect before the initial meeting. It may also help

determine whether this is someone you'd want to engage, or whether you may want to decline politely and send the prospect to your bar's lawyer referral service. If a prospect can't adequately complete a questionnaire, or provides irrelevant or ranting answers, it's a good indication that this is what you'd face in an attorney-client relationship.

Easy-to-manage client communications (and expectations)

Answer e-mails any time, day or night—just keep the message in your "drafts" folder to be sent during standard business hours. Feel you're on a roll at 1 a.m.—or even 8 p.m.? Go for it! Then put your work product in your drafts folder and set a calendar alert to send it during the next business day. Using your drafts folder as a management tool helps give the impression that you're not working all hours (even when you are). And that helps maintain client expectations at a reasonable level.

A comfortable environment

There's something to be said for dressing as you wish without having to maintain third-party expectations, and for having your pets with you as you work. My two fantastic greyhounds are the best support staff I can imagine, providing everything from stress relief (check the medical studies that show stroking a pet is good for you) to entertainment value. Plus they force me to take at least a couple of breaks a day for walks. Personally, I can't imagine going back to a traditional work environment having tasted the good life of working as I do now. Though it may not be for everyone, if this sounds like something you'd enjoy, you might want to give it a try!

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Reverse Mortgages: A Golden Ticket or Mistake for Your Client?

By Paul M. Crisalli

Several decades ago, a French attorney, Andre-Francois Raffray, had a bright idea: He offered to pay 90-year-old Jeanne Calment the equivalent of $500 a month in return for the gift of Calment's apartment upon her death. Calment lived to 122, outlasting Raffray, who died at the age of 77. She was still paid the $500 a month until her death in 1997, receiving a total of about $180,000, which was two to three times the value of the apartment.

The agreement between Calment and Raffray can be seen as a crude predecessor to today's reverse mortgages. Like that agreement, a reverse mortgage allows a person to borrow against the equity of his or her house for either a lump sum or monthly payments. In turn, at the borrower's death, the lender—usually a bank or the federal government—gets the amount of loan, plus interest and costs, up to the full value of the house. Unlike the simple agreement between Calment and Raffray, reverse mortgages can have high fees and might not work out as well for the borrower or his or her heirs as it did for Calment. To determine whether a reverse mortgage might be appropriate for a client, it is helpful to understand how reverse mortgages work, their benefits, and their disadvantages.

What Are Reverse Mortgages?
In a reverse mortgage, a person borrows against the equity of his or her home, or in some cases, other dwellings owned by the borrower, for a lump sum amount, monthly payments, or a combination of the two. The payment is not taxable as income, but might be considered a liquid asset, and thus included in calculations relating to Medicaid, if the funds are kept in an account past the month received. There are two types of reverse mortgages.

Ninety-five percent fall into the category of Home Equity Conversion Mortgages (HECMs), which are administered by the Department of Housing and Urban Development and insured by the Federal Housing Administration. The remaining 5 percent are proprietary reverse mortgages, which are offered by banks, credit unions, or other financial institutions for people with very high-value homes. To qualify for either type of reverse mortgage, the borrower typically has to be at least 62 years old. The older the person, the higher amount available to borrow. The current lending limit for HECM loans is $625,000. The borrower must have sufficient equity in the home, though the loan can be used to pay off the borrower's existing mortgage. The lender will have to confirm that the house is in sufficient repair. For HECM loans, the borrower will have to attend counseling with a HUD approved counselor to ensure the borrower knows the risks and costs of the loan.

After obtaining the loan, the borrower will be required to keep current on the taxes and insurance for the house. The loan becomes due when the borrower dies or no longer lives at the house. At that point, the borrower (if still alive) can pay back the loan, an heir can pay back the loan, or the house will be sold with the proceeds first going to the bank to cover the loan.

What Are the Advantages to Reverse Mortgages?

- The loan is limited to the value of the home if the borrower dies or decides to move away, even if the home decreases in value.
- As long as the borrower stays current on the taxes and insurance and keeps the house in good repair, he or she will not be forced to move.
- If there is an existing mortgage on the property, the proceeds of the reverse mortgage can be used to pay the first mortgage off. Then, the borrower will have more available cash each month. The borrower can stay in the home even if he or she would not otherwise have enough money to pay for the mortgage.
- Interest rates are usually lower than for a standard home equity mortgage.
- The buyer will not need to show that he or she has sufficient wages to get the loan.

What Are the Disadvantages to Reverse Mortgages?

- While the costs can be financed into the loan, the costs are rather expensive compared to a standard home equity loan. While the fees can vary, they usually include: (1) a mortgage insurance fee (2 percent of home's value); (2) origination fee (capped at 2 percent for the first $100,000, and 1 percent thereafter, with an overall cap of $6,000); (3) title insurance; (4) a monthly service fee to maintain the loan (usually $25-$35 a month); (4) title, attorney, accounting, and recording fees; (5) the cost of the appraisal; and (6) a survey (if needed).
- The borrower can use up all of the equity in the home, which decreases the amount of inheritance or the amount of assets available to the borrower if he or she needs to be moved into assisted living or a nursing home.
- If the borrower lives in a nursing home or assisted living for more than a year, he or she will have to repay the entire loan.
- If family members live in the house with the borrower, but are not on title, then they will have to pay the loan or be forced to move.
- The interest rates can be adjustable, and thus alter the amount of equity borrowed.

While reverse mortgages likely will not be as lucrative for today's borrowers as the agreement was for Jeanne Calment, they can be an optimal way for many clients to continue living in their homes while also affording the increasing costs of care, food, and other daily expenses. On the other hand, reverse mortgages can place an unnecessary financial burden on the borrower and his or her heirs. Given the costs and risks, careful consideration, planning, and discussion with family members should occur before signing the papers.

Additional information on reverse mortgages can be found online at:

- http://www.reversemortgage.org/
- http://www.aarp.org/money/credit-loans-debt/reverse_mortgages/ (AARP's website)

- http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm (HUD's Top Ten Things to Know If You're Interested in a Reverse Mortgage)
- http://www.ncoa.org/news-ncoa-publications/publications/ncoa_reverse_mortgage_booklet_073109.pdf (National Coalition of Aging pamphlet explains various options for senior care and housing.)

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Attract Clients by Addressing Basic Human Needs

By Allison C. Shields

My assignment for this article was to write about novel ideas for attracting clients, but everywhere you look, there seems to be an article about using social media or other "new" tools to market a law practice. The problem is that there is too much focus on the marketing tool *du jour*, whether that happens to be Martindale-Hubble listings, rating sites such as AVVO, Yellow Pages listings, blogs, websites, etc., and not enough on the strategy behind using those tools.

The truth is that it really doesn't matter what method you use to market your practice. If you don't have the underlying principles and concepts in place and you don't apply those concepts, no marketing method will be effective. The golden rule of marketing and business development success is that it isn't necessarily *what* you do that counts—it's *how* you do it that's important.

Lawyers make marketing much more complicated than it has to be. Regardless of the technological advances made in the last 20 years or the changes in communication and transportation, human wants and desires haven't changed. Law is a relationship business. Whether your practice is business-to-business or business-to-consumer, you are dealing with human beings. Human beings want to feel *heard* and *understood*. They want to have an opportunity to tell their stories. They want a sympathetic ear. They want someone to pay attention to them. They want to feel in control of their lives and businesses.

Don't most legal matters arise as a result of one of these basic human needs? Whether the legal matter is a divorce, business dispute, criminal action, immigration issue or an estate plan, the protection, loss, or violation of one of these basic human needs is at play. The same needs drive the lawyer-client relationship. Clients want to know that their lawyer is not only technically competent and experienced enough to handle the legal issues involved in the case, but that the lawyer cares about the *client*, and not just the *outcome* (or the fee).

Of course, these needs must be addressed during the engagement. But this article is about *attracting* clients. Your marketing activities and message must demonstrate your understanding of and commitment to these principles, not just pay lip service to them. How do you demonstrate that?

Be transparent. When you feel as if someone is hiding something from you, you get suspicious. Clients do, too. You need your clients to trust you, not only so they will rely on and respect your advice, but also so that they are open and honest with you. Be open about what you are doing, how you are doing it, and what costs are involved.

Follow up. Again, it isn't news, but so few lawyers bother with follow-up that if you do it, you'll be among the minority. When you meet a prospect or referral source, send an immediate acknowledgement or thank you, and diary your next follow-up or meeting right away. Consistency is key.

Speak your clients' language. The trust relationship begins before the client ever walks into your office. To attract clients, demonstrate that you can relate to clients by taking complex issues and communicating them in ways clients can understand in your marketing materials and on your website.

Be empathic. Most legal matters include an emotional component. Acknowledge the emotions involved and demonstrate empathy for the client's position, not by *saying* that you empathize with them, but by putting yourself in your clients' shoes and speaking about their issues from their perspective. Your message must communicate that your clients are businesses and people that you care about, not just cases or files.

Focus on the process. Clients come to lawyers with two levels of anxiety: substantive anxiety and process anxiety. Most lawyers are ready and able to address substantive issues about the case itself, the legal issues and potential outcomes. But most lawyers ignore the process anxiety—what will happen and when, what to expect, how the matter will be conducted, etc. If you can acknowledge and address a client's process anxiety up front—even in your marketing efforts—you will attract more clients.

Recognize clients' basic human needs and address them in your marketing materials to attract clients. Then follow up by fulfilling the expectations created by your marketing and watch your practice grow.

Allison C. Shields, a lawyer and president of Legal Ease Consulting, Inc., provides practice management and business development coaching and consulting services to lawyers seeking to make their practices more productive, profitable, and enjoyable. Contact her at Allison@LegalEaseConsulting.com. Visit her website at www.LawyerMeltdown.com or her blog at www.LegalEaseConsulting.com.

What Makes Up Your Credit Score?

By Michael P. Hurley

It's that mysterious number that can make or break the deal on your mortgage and your car loan and even determine how good a package your cell phone company will offer you. So where did it all begin?

In 1956 Bill Fair, an engineer, and Earl Isaac, a mathematician, founded the Fair Isaac Corporation, which developed FICO scores, a measure of credit risk that is the most used credit scoring system in the world. FICO scores are used by all the three major consumer reporting agencies in the United States and Canada—Equifax, Experian, and Trans Union—and available to the public from all but Experian.

But what elements does the Fair Isaac Corporation use to create a credit score, which ranges from 300 to 850? One would think that bill payment performance would be the basis for a credit score; however, paying bills on time comprises only about one-third of the formula that determines a credit score. The remaining two-thirds of the formula can make or break a FICO score.

According to Fair Isaac, payment history counts for 35 percent of the FICO score; available credit used comprises 30 percent; length of credit history counts for 15 percent; types of credit used accounts for 10 percent; and new credit applications comprises 10 percent. While paying your bills on time is simple to understand, what about the rest?

Available credit. The percentage of available credit used is measured by looking at the total credit available to the card holder (based on all of the credit cards issued) compared to the amount of credit actually being used at the moment that the FICO score is computed. For example, if a card holder

has $10,000 in available credit and used $5,000 worth of credit, the credit utilization percentage would be 50 percent. The lower the credit utilization percentage, the better the FICO score. There appears to be no advantage to paying off a credit card each month over carrying a revolving balance when determining the credit utilization percentage. Thus, one would be better off not carrying any balance and not making any charges surrounding a credit application event such as purchasing a new car or major appliance that is intended to be financed.

Credit history. The length of credit history pertains to the age of credit accounts. The older the credit account the better, providing that one is paying on time and not using more that 10-15 percent of the available credit. Closing older and less used credit accounts is not wise when it comes to maintaining a good FICO score.

Type of credit. Fair Isaac Corporation is looking for diverse credit usage currently and in the past to determine the type of credit used. A FICO score will improve if one has credit cards, retail cards, gas cards, auto loans, home loans, student loans, and personal loans, currently or in the past that meet the other FICO considerations. However, going for the six- or 12-months same-as-cash deals that many retailers offer can jeopardize a FICO score even if the account is paid in full without interest because retailers often place these credit deals with companies that finance high-risk credit consumers. Even if you pay the bill off on time, the terms and rates of these secondary companies raise a red flag to FICO scorers.

It appears that applying for *any* type of credit may harm a credit score. The Fair Isaac Corporation looks at the number of credit applications a consumer has made during the 12 months prior to the credit check. A credit application is considered any transaction that is subject to a credit check, and, unfortunately, today just about every consumer transaction can involve a credit check. Applying for an apartment lease, applying for a job, buying a cell phone, ordering utility service, purchasing automobile insurance, purchasing life insurance, obtaining a surety bond, and myriad other necessary consumer transactions may generate a credit check. Obviously, individuals who are using credit wisely should have no trouble getting credit even though there are several credit checks, but they will likely be disheartened to find out that their FICO scores are less that stellar because they were involved in several credit reporting transactions.

To obtain a credit score, go to www.myfico.com. (There is a fee.) For more information about Fair Isaac Corporation go online to www.fairisaac.com.

Michael P. Hurley is a partner in the law firm of Nelson, Sweet & Hurley, Painesville, OH. He is an active member of the ABA's GPSolo Division, including past-chair of its Business and Financial Planning Committee. This article is adapted from one that appeared in the Ohio State Bar's Solo, Small Firms, and General Practice News*. Contact him at mikeh@mailbag.net.*

Is a Short Sale Really an Alternative to Foreclosure?

By Lynn Arends

I am both an attorney and managing broker. Most of my law practice involves negotiating debt and advising borrowers on foreclosure, deed-in-lieu, bankruptcy, short sales, and loan modifications. As a Managing Broker, I am predominantly a listing agent and most of my listings are short sales. I start with a thorough, two-hour consultation. No one gets to see me as a real estate agent until they first see me as a lawyer. This is very important because more often than not, a short sale is not the answer.

Short Sale Basics
A short sale occurs when a bank agrees to accept less than what is owed on a mortgage or deed of trust to release its lien. Negotiated correctly, a short sale can be an excellent alternative to foreclosure to both sellers and

buyers. And banks will consider a short sale because it allows them to recoup some of their investment without the work and expense of selling the home themselves.

New initiatives from President Obama's administration, such as the Home Affordable Foreclosure Alternatives Program (HAFA) and recent changes to HUD's Pre-Foreclosure Sales Program (PFS) for FHA loans, have made short sales an ever more viable option in today's current economic state. But before signing up for a short sale, here are some issues to consider:

Who Qualifies?
Assuming the property is underwater (more is owed than what it's worth), here are the necessary criteria to be considered for a short sale.

• **The mortgage is in default or default is foreseeable.**
Yes, borrowers can be current on their payments and still be considered for a short sale.

• **The seller has experienced a true hardship**.
Basically, this is the "what has changed since you took out the loan that you could afford it then but can't now" test. Examples of a hardship are unemployment, job relocation, divorce, bankruptcy, illness, or disability.

• **The seller has no assets.**
Before accepting a short sale, a lender will require the seller to submit a short sale package. This includes the seller's tax returns, financial statements, bank and credit card statements, hardship letter, and schedule of assets. If there are assets, the lender may not approve the short sale because the seller has the ability to bring cash to the closing or the seller may still be granted a short sale but be expected to pay back the deficiency.

Deficiency Judgmen**ts**
A deficiency is the difference between the amount received and the amount owed. Although a promissory note makes the seller personally liable for the debt, whether the bank can pursue a deficiency judgment after a foreclosure or short sale depends in part on the security instrument used and that state's deficiency statute.

Most lenders foreclose through a trustee's sale. In some states, that extinguishes the debt and usually does not give the lender the right to pursue a deficiency judgment. However, when a senior lienholder nonjudicially forecloses and the second lienholder is wiped out during a foreclosure under a trustee's sale, the junior security interest is extinguished but the obligation on the note is not—possibly giving the junior lienholder the right to pursue a judgment on the debt.

And yes, a lender can issue a 1099 to a borrower and still attempt to collect the remaining debt. The mere issuance of the Form 1099 does not alter the creditor's legal right to attempt to collect the debt and it does not act as an admission that the debt is no longer due (although the creditor will need to amend the 1099 issued to the borrower upon collection).

Junior Lienholder**s**
The property may be encumbered by more than one lien. If so, all junior lienholders (and any mortgage insurer) must agree to accept a short sale. This is where good negotiation skills and playing well with others kicks in. In today's typical short sale, it is often the only the first lienholder who is receiving any money. Generally, it is up to that first lender to give some of its proceeds to the junior lienholders. This encourages the junior lienholder to agree to the short sale and release its lien. That amount, whether it is $3,000 or $5,000, is negotiated between the senior and junior lienholders.

But lately some junior lienholders have been demanding outrageous sums of money to approve the short sale and requiring contributions from the buyer, seller, and/or real estate agents. Often, all of this occurs without any disclosure to the first lender. Monies not disclosed or paid outside of closing? That's called mortgage fraud.

To me this is a case of the junior lender cutting off its nose to spite its face. In the event that the short sale fails, the first lender will most likely get the property back in the foreclosure, thus eliminating the second lien entirely.

It's All About the Debt!

Even if a client is a perfect short sale candidate, I spend a lot of time walking people through what nonjudicial foreclosure looks like. To me, this is the "what if I wake up tomorrow and do nothing" option. That's the baseline. Everything else—short sale, deed-in-lieu, loan modification, or bankruptcy—requires some action and needs to yield a better result. What that means is that I need to negotiate a better settlement in a short sale than any of the other options, especially with respect to the remaining debt.

For example, when my office receives the standard short sale letter of consent from a certain lender on a first mortgage, it always says that the lender is not waiving its right to a deficiency. If the client is delinquent in its payments, and facing a nonjudicial foreclosure on the first, given that the Washington Non-Judicial Foreclosure Statute prohibits the lender from obtaining a deficiency (except against a guarantor, which does not apply in virtually all residential sales), the client is better off simply allowing the property to go to foreclosure rather than allowing it to go to short sale. So the question is: Why does the lender not recognize this reality and waive its deficiency in transactions involving a pending nonjudicial foreclosure? Or if the mortgage insurer is calling the shots, why is it not able to convince the mortgage insurer to pay the claim without proceeding to foreclosure?

So who is the perfect short sale candidate? Three scenarios immediately come to mind.

• There is only one loan and there is a program for dealing with the deficiency. HAFA, HUD's PFS, and the VA's Compromise Sale Program are all attempts to waive deficiencies in short sales and deeds-in-lieu.

• Two loans and the first is being fully paid off in the short sale. Foreclosure does not benefit the borrower in any way. It's all about the second lien and I can negotiate that debt as part of the short sale.

• Borrowers who are able and desire to remain current on their payments. Obviously, being current never triggers the foreclosure. And if credit is important, clearly the biggest hit to credit is every month a borrower doesn't make a payment. Again, this is debt I can negotiate.

In the end, it's all about the debt.

Beware of Condominiums and Any Super-Priority Liens
Unless the former owner of the unit files bankruptcy, he or she remains liable for the preforeclosure assessments on the foreclosed unit. But in states such as Washington, the association may also have a six-month preference for association dues owed prior to a foreclosure sale. What that means is that HOAs are a force to be reckoned with in any short sale transaction because if an HOA can collect six months of dues from the lender or new buyer in a foreclosure, they will need to be offered more than that amount to accept a short sale and release its lien. So it's important to do the math when dealing with an HOA. But the good news is that when an HOA approves a short sale, it is usually for satisfaction of debt and the seller is not liable for any additional preforeclosure or short sale assessments.

Buying Again After a Foreclosure or a Short Sale
At the time of this writing, the dust has not yet settled on the requisite waiting period after a short sale or foreclosure. Not long ago, Fannie Mae came out with new guidelines. Unless the foreclosure was the result of documented extenuating circumstances, which only requires a three-year waiting period (with additional requirements), all borrowers will now be required to meet a seven-year waiting period after a prior foreclosure to be eligible for a new mortgage loan eligible for sale to Fannie Mae. Contrast that to the waiting period after a short sale, which can be as little as two years depending on the loan-to-value ratio and other factors.

Final Short Sale Thoughts: Seller Beware!
A short sale is nothing more than a voluntary agreement on the part of a lender to release its security interest. Unless an express written term of the short sale approval is the waiver of any right to a deficiency, that lender, or the lender's assignee, will have the right to seek recovery of the deficiency, and may pursue an action up to the expiration of the statute of limitations for collection of a note. In my opinion, any attorney advising a borrower otherwise is committing malpractice. Finally, always seek legal counsel before attempting to pursue a short sale. A real estate agent cannot give legal advice.

Lynn Arends, concentrates her Seattle practice at Lynn Arends Law Group PLLC, on short sale and foreclosure issues. She is a frequent speaker for the Washington State Bar and the King County Bar and an instructor for Washington Association of Realtors. Contact her at lynn@lynnarends.com or visit her blog and website at www.lynnarends.com.

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