

May, 2016

Our 29th Year

There is concern about a section of Dodd-Frank that we can clear up. It was first mentioned to me by Dave Franecki, president of Capstone Capital USA. He wrote, "*Bill, It was brought*

to my attention that if a note is sold in the first 3 years of origination, and it was a one off for the seller the one off exemption may be void:

CFPB Dodd Frank 1026.43 (e) (5) (i) C (ii)

(ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i)immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the qualified mortgage is sold, assigned, or

otherwise transferred to another person except when:(A) The qualified mortgage is sold, assigned, orotherwise transferred to another person three years ormore after consummation of the qualified mortgage;(B) The qualified mortgage is sold, assigned, orotherwise transferred to a creditor that satisfies therequirements of paragraph (e)(5)(i)(D) of this section;

"If the above is true, it changes the entire way brokering one off deals are viewed."

I asked my go-to guy on Dodd-Frank, Ric Thom, about this. He replied, "That section only applies to Small Creditors. Those that do five or less installment sales in a 12 month period are not considered Creditors and therefore don't fall under this rule.

"So, buying a debt instrument that is secured by a dwelling from a seller that did just one sale is not impacted by this 3 year holding

period."



Ric Thom is president of Security Escrow, Albuquerque, New Mexico: securityescrow.com function intelligently and prosper you need to understand monetary theory, particularly how monetary policy creates booms and busts, inflation and deflation, recessions and depressions. The place to begin is Murray Rothbard's short book,

What Has Government Done to Our Money? Download it for free here: mises.org/money.asp

Second, read Dr. Gary North's mini-book *Mises on Money*, free at **tinyurl.com/mises-north**

9 was asked to write a letter of recommendation for a student applying for a Daughters of the American Revolution Good Citizenship

Award, so I looked up the program. This is from the DAR website (tinyurl.com/dar-citizen):

"Only one student per year may be honored as a school's DAR Good Citizen...

"United States citizenship is not required."

A "good citizen" doesn't have to be a citizen??! What's next? You don't have to be good?



W. J. Mencarow

"No society ever thrived because it had a large and growing class of parasites living off those who produce." — Thomas Sowell.

"For every one job created by the private sector under Obama, 75 people went on food stamps." — Neil Boortz

Obama has hired 101 new federal employees for every day he has been in office. — investors.com





They're risky and full of tricks, but they can bring a lot of reward Discover Divorce Liens By Lorelei Stevens

Over the past 35 years my firm has bought many divorce liens. These notes are also called marital liens.*

They're risky and full of tricks, but a knowledgeable investor can make a handsome profit by carefully selecting only the decent divorce liens.

A divorce lien is based upon four things: first, the divorcing parties own a home in which they have substantial equity. The other three things are: a deed, a note, and a deed of trust (or mortgage). The departing spouse deeds the property over to the remaining spouse, who continues to live in the house. The remaining spouse signs a note payable to the order of the departing spouse and gives a deed of trust (or mortgage) secured by the property. This arrangement, if properly structured, results in a note which is a valuable asset that can be sold.

First and foremost, you have to make sure the note is salable. There are so many potential problems with buying divorce liens that only a sophisticated note buyer should attempt it.

Here are some common problems and how to deal with them.

Where's the note?

The problem that you'll encounter most frequently with divorce liens is that the seller can't find the note. For some reason, missing notes

* In Texas they are called "owelty of partition" liens.

are more of a problem with divorce liens than with other notes. I believe this is because the lien holding spouse has been through the emotional chaos of a divorce and hasn't paid much attention to the divorce lien. The departing spouse is the note owner. He or she has new surroundings and is more likely to have misplaced things during a move. Worst of all, he or she usually doesn't understand that delivery and possession of the original note is required to sell it – a copy won't do. I've run into many divorce lien sellers that assume everything they needed was in the divorce decree, and that's rarely true.

My firm has a checklist of places to look for lost notes, but it's more useful for the ordinary note transaction. A divorce lien note is often in one of the divorce attorneys' offices, being held to protect a client's interests. I've also seen lawyers holding the note because their fees have not been paid.

If the seller can't find the original note, there is nothing to buy, and the prudent note buyer will end the negotiations promptly and courteously.

What about the legal description?

If the note seller can produce the original note, you should check for the next most common problem: a large number of divorce liens have incorrect legal descriptions of the property being pledged as security. Without the correct legal description, you have no way of knowing whether or not you have proper security. Therefore, it's essential to check the legal description of the property.

I've often wondered why divorce liens are so prone to wrong legal descriptions. My guess is that because divorce lawyers are not real estate experts, and because divorcing people normally don't want to pay for title insurance, the actual legal description has never been checked. So don't assume your divorce lien note seller has the correct legal description. Check it yourself by comparing it with other documents, such as former deeds on the same property, which you can often find at the county recorder's office, or an old title insurance policy.

Can we talk?

The next problem can be the worst: you should talk not only to the note seller, but also to the other spouse, the note payor. You're going to encounter all types of former spouses, from cheerful to middle of the road to downright vicious. Some payors will be very cooperative and others won't. You have to be on guard against payors who try to take out all their emotions on you, almost like you were the departing spouse.

How do you deal with this unpleasant duty? First, you have to be psychologically prepared to listen to both sides, which can give you a lot of stress. You have to be very understanding to each party. Their feelings are very touchy. You have to sincerely look at things from both

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Who's On First?

reported in THE PAPER SOURCE JOURNAL when it occurred, the Nevada Supreme Court has ruled that homeowner's associations can foreclose and wipe out first lien holders.

20 other states grant "super-lien" status to HOA liens, and the precedent set in Nevada will be felt throughout the country. Here are three steps note owners and lenders can take:

1. Know when HOA liens are in place.

Are you aware of HOA liens in place or that an HOA is involved with your collateral?

2. Properly name the associations in the foreclosure documents.

This is vital to qualify for any type of state statute of limitations (such as Florida's Safe Harbor law). This is also a requirement in the servicing guidelines for FHA (2012-11).

3. Take action before an HOA forecloses.

You need to be forewarned about past due assessments, interest charges, and other fees in order to make the best decisions when foreclosing on properties with HOA liens.

All of these crucial steps require robust data gathering and monitoring capabilities. Investigate the services of companies such as Trustee Corps (trusteecorps.com, phone 800-367-8939) and Richmond Monroe (richmondmonroe.com, phone 800-999-6120).

Based upon an article that originally appeared on housingwire.com

Lorelei Stevens

people's viewpoints. That's not easy, but it's the only way to maneuver through the emotional minefields of buying a divorce lien.

In practice, we have found a range of divorced parties from easy to impossible. Both ends of the emotional spectrum are bad for the note buyer. If the divorced parties are amicable, the note-holding spouse might sell to the note-paying spouse, which cuts you out of the deal altogether. If note-paying spouses really hate their ex, they may take out their emotions on you, which can get serious. My firm has bought divorce liens that resulted in stalking by the note paying-spouse, and even one that brought on a lawsuit by a former spouse claiming that she only owed us the amount we paid for the note, not the total face value of the note. We won the case, but it required going to court and paying the costs of a good defense lawyer.

Middle of the road exspouses are usually the best ones.

Details, details

Another often-overlooked problem can be the homeowner's insurance. What usually happens is that both of the divorcing parties are still the insured on the property policy. Nobody has told the insurance company to make the remaining spouse the sole insured and the departing spouse a mortgagee. Sometimes it can get sticky trying to convince both of the spouses to make the change, even though it usually costs nothing – emotions run high. Some companies will heed an angry note-payor spouse who instructs them not to make the departing spouse – or you – the mortgagee on the policy.

Most divorce liens are written with a lump sum payment due at the end of the note's term. That means most don't have a cash flow – no monthly payments. You have to have other finances ready to compensate for the lack of monthly payments while waiting for the lump sum. It's a problem that could sink an inexperienced divorce lien note buyer.

These are some common problems in buying divorce liens, but not all of them by any means. We'll deal with more of them in a future article. ©2016 Lorelei Stevens All rights reserved

Lorelei Stevens is always looking to buy divorce liens. If a person's "ex" owes them money on the family home, chances are they have a divorce lien. If you know someone who wants to sell their divorce lien, or if you want to learn more about divorce liens, contact Lorelei personally. And check out her companion website: divorceliens.com

Lorelei Stevens, President Wall Street Brokers, Inc. Phone: 206-448-1160 Email: lorelei.stevens@gmail.com wallstreetbrokers.com



Investor Spotlight

What does AmeriFunds do?

AmeriFunds purchases private seller financed mortgage notes secured by residential and commercial real estate.

What unique benefits do you provide?

AmeriFunds strives to provide the very best in customer service through our processes, systems and people. This philosophy has enabled AmeriFunds to become, and will continue to be, a leader in the mortgage note buying industry. We offer aggressive pricing, common sense underwriting and are seasoned professionals who know the business.

Also, we LOVE our brokers. We are a broker-based business that strives to help our brokers be successful by offering personalized boutique service to that broker. The broker has one contact for all deals during the entire underwriting process, all the way to closing. No waiting for someone in another department to get back to you on the status of your closing. And, unlike some of the larger investment firms, the broker never has to worry that someone with our company will contact their seller in an attempt to close that deal with the seller direct, thereby eliminating the broker's chance of ever getting that deal under contract. A successful broker with a growing business only means our business grows along with that broker.

How do your brokers find notes?

Although we do not ask our brokers to disclose their lead sources, we do know a lot of brokers use the Internet for marketing purposes, as

AmeriFunds

We were told there were no guarantees that all live landmines had been removed!

well as networking with attorneys, CPAs and local real estate agents.

Do you see more or less seller notes than a year or two ago?

The number of deals we are seeing has remained consistent for the last two years.

What are the characteristics of a successful note broker?

Brokers must understand the importance of doing their due diligence with the seller before requesting quotes from investors. That way the broker can give full disclosure of their findings and receive a firm offer from the investor. A successful broker is also one who knows the value of the deal they are marketing.

What should a note broker do to make a good impression on you?

We appreciate brokers who give us feedback on our pricing. This allows AmeriFunds the opportunity to reconsider offers to make sure our pricing is competitive with other investors.

The best transactions are the ones we are able to close quickly. We are only able to do this if we have a broker who provides a complete submission package as early as possible in the process (i.e. verifiable pay history; necessary items for clear title if applicable). The goal is to have the file completely ready for funding at the time the BPO comes in. Most brokers wait for approval of the value before working on the stips, but if the stips are being worked on while we wait for the value the deal can feasibly close within 10 days.

What were some of your unusual note transactions?

We have come across some pretty entertaining situations on deals. To name a few:

We had a land note go into default only to discover that there were possible landmines left behind by the U.S. Army in training operations conducted on the land in the 1950's. And the title company exception noted that although every effort had been made to make sure all live landmines had been removed, there were no guarantees. We are seeking a buyer for the parcel who may be in the implosion business! (Just kidding.)

Another land note had an exception on title that there were believed to be Indian burial grounds on the parcel and if developers unearthed anything that looked like human bones, they had to immediately stop development to allow an investigation by the U.S. Government. This same parcel was located next to a U.S. Air Force base and included another exception on title that there were no guarantees that plane parts would not drop from the sky.

One recent acquisition was a Thai Restaurant in a small rural Alaska town where winter weather was so extreme that the restaurant was open only a few months out of the (Continued on page 5)

The Dirty Little Secret Of Non-Performing Notes by Don Konipol, MBA

For investors considering investing in nonperforming notes (NPNs), a.k.a. nonperforming loans (NPLs), that are residential and owner-occupied, here is how a typical situation plays out.

A bank, bank holding company or asset management and disposition company puts together a package of, say, 1,000 NPNs and asks for bids.

The qualified bidders are the major hedge funds, private investment partnerships and private equity funds able to pay \$25M cash and more. Their analysts are usually MBAs in finance who graduated at top of their class and have been trained to use and understand the most sophisticated financial modeling theories and techniques. The winning bidder pays for and gets ownership of these 1,000 NPNs. Their analysts then drill down and do a deeper and more thorough analysis of each note to determine which ones will yield a risk-adjusted profit above their particular profit threshold.

This leaves 45 notes from a package of 1000 that are offered to the individual investor.

Say they determine that they will keep 800 notes. The next step is to offer the 200 notes they do not want to another hedge fund or private equity fund with a different risk return profile. The high bidder in this second round buys the 200 remaining notes. After their expert analysts examine each one, let's say they determine that 150 notes meet their risk-adjusted return criteria.

This fund now asks for bids from retail asset disposers. The winning bidder purchases the last 50 notes and does their analysis to determine if ANY of those leftover notes are worth holding. Say they find five notes that happened to be overlooked or misanalysed by the



previous two funds. They then take those notes and package them with others from similar purchases and sell them along with their analysis to private investment funds.

This leaves 45 notes from a package of 1000 that three professional investment funds, doing intensive analysis by highly trained MBAs, have determined cannot yield even a minimal investment return. These are then offered to the individual investor, who according to those in the industry "with something to sell" (the leftover NPNs and/or "training") can profit enormously by (1) making them re-performing notes or (2) foreclosing and selling the property for large profits.

The pitch from those "with something to sell" is twofold. (1) "There is plenty of meat left on the bone" (actual quote), and (2) if you send the borrower a complete package of all docs, weighing, say, five pounds you will "shock and awe"

(Continued on page 6)

Amerifunds

year. Average temperatures in the winter were 49 degrees **below** zero. Forget finding a restaurant open in this little town! Hot chocolate anyone?

What do you see for the future of your business?

We will continue to purchase private seller financed mortgage

notes secured residential units; however, with the limitations placed by the Dodd-Frank legislation on the seller-financed residential notes industry, you will see an increased appetite by AmeriFunds for notes secured by commercial properties.

Responses by: Randy J. Story, President & CEO, AmeriFunds Diversified Funding, LLC Vanessa Britt, Director of Acquisitions

Traci Reed, Sr. Underwriter

Phone: 888-309-7455, ext. 1138 Fax: 480-296-0136

e-mail: Vanessa@amerifunds.us

website: www.Amerifunds.us



The Importance Of Marketing Materials

by Jeff Armstrong

Choosee language that compels the reader. Choosing the right words to promote your note business is as important as creating the right graphics. If you are writing a one page direct mail letter, for example, you will want to think about the key points that best highlight, differentiate and promote your note business.

- What sets you apart from your peers?
- What makes you better than the competition?
- Why do note holders like to work with you?

Don Konipol

(Continued from page 5) him into paying on the note.

I highly doubt either of these claims have even a micron of validity.

The parties with a financial interest in you buying into this will cite isolated instances of great success, never mentioning the allmore-frequent instances of total failure.

So at the end of the day the training promoters have collected up to \$30,000 per person for their NPN mentoring program, the retail asset disposer has made 50 to 100% profit on their inventory, private middlemen have turned a \$2500 investment in a note into \$16,000, and my sister-inlaw who purchased 5 NPNs over three years ago and has spent large

Part II of II

Try recording yourself explaining your services to an imaginary prospect, and then use your spoken word to help write your copy.

Printed materials are still essential marketing tools. They have the staying power not found in electronic communication, where information can be easily overlooked or deleted. With business cards, brochures, flyers and postcards, you can convey your note business's message long after your first contact. That's because, in print, first impressions last. Remember,

amounts on attorneys, taxes, and brokers has yet to see a penny in return.

To paraphrase, if you don't know who the sucker is in any ultrahigh profit promise situation, it's you.

Don Konipol holds an MBA in Finance from the University of Michigan and a B.S. in Economics from the City University of New York. Upon receiving his MBA in 1975, Mr. Konipol went to work for Societe General De Survalliance S.A., Geneva, Switzerland in investment banking. He left in 1978 to come back to the United States and went to work as a commercial Realtor for First Equity Company in Houston, Texas. In 1984 Mr. Konipol formed the Investment *Realty Group to purchase distressed* real estate at auction.

success demands action! Keep on marketing, it's going to work! TWITA! (That's What I'm Talking About!)

Jeff Armstrong of Armstrong Capital has been a note broker and investor specializing in the seller financed note industry since 1991. He can be reached by email at info@armstrongcapital.com. For more updated and current information on how he can help you with your note business, your note investments or to request a quote on a note you currently have visit armstrongcapital.com

He has successfully invested in numerous real estate deals, operating businesses, high yield commercial mortgages, and REITs. In 2002 he formed the Managed Mortgage Investment Fund LP as a high yield real estate mortgage fund, and serves in the capacity of General Partner. The fund invests in a diversified portfolio of short term, high interest real estate mortgages secured by investment real estate.

He currently invests his capital and client/investors' capital in real estate, real estate debt and real estate securities. Email: don@pmfpartners.com

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The Power Of The Power of Sale Clause by Christopher Winkler

we purchased in Alabama about the power of the power of sale clause.

The power of sale clause is one of many clauses written into most mortgages that will allow the lender or owner of the mortgage the power to sell the property in the event of a default by the homeowner, in order to pay off the mortgage debt. It is for all purposes the equivalent of a foreclosure, without having to foreclose judicially in non-judicial States.

In our case, the power of sale clause was not included in the deed, so we are not able to easily "evict" the occupants non-judicially as we expected. It is causing us to file for a judicial foreclosure, resulting in more time and money to remove the nonpaying occupants. We are offering them a "Cash for Keys" option to help motivate them to leave quickly.

The clause pre-authorizes the sale of the property when the homeowner defaults, and each state has its own procedures for this. They typically call for a limited notice of foreclosure such as mailing, posting the notice on the property, or publishing it in the newspaper. Then the trustee can sell the property at a foreclosure sale. The process must follow the timeline and waiting periods set by the State when completing the power of sale foreclosure. The power of sale clause was not in the deed, so we cannot easily "evict" the occupants non-judicially as we expected.

As of today, 30 states allow for a foreclosure by the power of sale, and for the borrowers it has some advantages. The first is that the note holder cannot seek a deficiency judgment in some states. This means that if they owe \$100,000, and the house sells for \$80,000, there is still \$20,000 owed.

Lenders typically file a deficiency judgment against the person, which is an unsecured lien that needs to be taken care of before they can finance anything in the future like a car or new home. Also, if the borrower files a lawsuit, it will need to be reviewed judicially, or in court.

The disadvantage for the homeowner is that the process is much faster and less costly to the lender than foreclosing on the property. So they can lose their house quicker. Foreclosures in New York or New Jersey could last five to seven years and cost \$5,000 to \$10,000 or more. Also, there is no judicial review unless they file a lawsuit. They can not plead their case to a judge unless they file a lawsuit, which includes paying the court and attorney fees; difficult if they are not even able to pay the loan.

And even with the power of sale clause, some lenders decide to pursue a judicial foreclosure if there are some title issues, flaws in the document, as we found out, or if they want to pursue the deficiency judgment since some states will not let them have the deficiency judgment unless they judicially foreclose.

When buying defaulted mortgages and trust deeds, always remember to review the documents for the power of sale clause. As we have discovered, it's a very important clause that should be in there.

Christopher Winkler is the Manager of Silverwood Capital, LLC, a Texas based real estate investment firm specializing in buying heavily discounted residential and commercial distressed and toxic assets. His focus is on occupied nonperforming notes secured by the property. Contact him at silverwoodllc.com



The Synergy Of Notes & Real Estate

by John Schaub Interview by Bill Mencarow — Part II

You buy notes, but you only buy single family houses. Why those?

I do specialize in houses. I've been in the land business and I've been in the commercial business, but I prefer houses as my long-term investment, simply because, first, they're easier to manage, and second, we make more money at it. There's more profit in it. For the last 35 years, it's been houses.

Don't multifamily properties provide a better cash flow?

The cash flow sometimes is related to the amount of work you have to do. I know a man that owns 5,000 units. He collects rent with a gun and a dog. I'm sure he has a lot more cash flow than I have, but he works a lot more than I do. My approach to real estate investing is this: I want to be an investor. I don't want to be in an active business.

I've owned apartments, I've owned motels, I've owned a bunch of duplexes, and all of those crossed the line into almost a business, because it takes a lot more management. You have to spend a lot of time and effort to collect the rent, to keep those properties full, to keep them operating at a profit, to keep them maintained. Years ago we decided that we wanted to invest in something that gave us a good investment return but didn't require me to work 24/7. Know what you want. It may be notes. It may be real estate. I think you should be open to both.

How do you manage your rentals?

I'm not on-call seven days a week or 24 hours a day. I check my email a couple times a day. If something exciting happens, I take care of it. I use email to communicate with my tenants. We look for long-term people who maintain their own properties and can manage themselves. That's just the opposite of an apartment tenant who wants a lot of attention.

Is this a good time to get started buying single-family houses?

It's a good time to learn the business. Obviously, there are cycles in this business, and we're in a boom cycle right now. Nobody knows how long it will continue. Everybody will predict the end, but they'll predict it over and over again until it actually ends. If you cut your teeth in this market where it's really hard to buy, when it gets easy to buy, you'll be ready. 2016 is a year where you buy one house, maybe two, but you're not going to go out and buy five or ten, because prices are going up so aggressively that there's a lot of competition.

Your competition is often paying too much for these properties. You just have to understand what part of the cycle you're in. It's always a good time to buy if you're buying a good deal. There are still opportunities out there.

What's the best way to get started?

The key to getting started is, first of all, knowing what you want to buy. It may be notes. It may be real estate. I think you should be open to both at all times.

If you don't understand the note business you need to know somebody in your town who likes to buy notes. When you find a potential note deal, you can partner up with somebody who knows the business. You can go in with them and they'll split profits with you or pay a finder's fee. The same thing is true with real estate. If you don't understand much about either notes or real estate, you have to jump in and learn it. Read all you can, take home study courses and classes when you can, then go out and talk to people who have properties that they need to sell.

Most of the notes I find are because somebody had some kind of financial problem. It's already related to houses for sale, and we end up buying the note. Sometimes we buy the note and the house. You get both sides of it, so it depends on what your focus is.

John Schaub

You have to get out there, shake the bushes and talk to a number of people. Then have folks who understand what business you're in, such as real estate brokers, note brokers, accountants, attorneys, people in your town that every day seek transactions. That's how you generate business. If you talk to 10 people a week, once a year one of those people might send you a deal. It's a numbers game. You just have to talk to lots of people and make sure they understand what you're looking for so they can send deals to you.

Unfortunately, a lot of people just jump into either buying notes or real estate with very little information. They learn some very expensive lessons. It's not hard to make a \$5,000 or \$10,000 mistake. Those are big mistakes. If you do that early on, it may discourage you from continuing to invest.

Early on you want to be very conservative, you want to buy things that you understand. You should be able to explain to your spouse how this deal is going to make you a profit. (If you're not married, you should be able to explain it to a friend.) Do this before you get involved.

Too many people get into deals that they don't quite understand. They're just anxious to do something. They buy something they don't understand, and they don't make a profit. Keep it simple going in.

You don't want to get involved in a deal that's a big deal to you, because that puts you in a weak negotiating position. If \$30,000 is a big deal to you, you want to back off of that and say, "What can I afford to lose if I make a mistake here? \$5,000, \$10,000, what is the right number?" Hopefully, you won't make a mistake and lose that money, but you need to be thinking that way.

You need to be thinking that whatever the size of this deal is, it shouldn't be scary, because that puts you in a better negotiating position if something does go wrong. Find something that makes sense to you, that just resonates with you and find an instructor.

You won't do what everybody's doing, because we all have a different approach, but you'll find one approach that works for you. Then you just hone your skills. You move forward one step at a time and don't take big chances.

What return do you expect from house investments?

When I started I was buying properties that were not good longterm investments, but they made me money short-term. I was able to buy something at a low enough price that I could either bring in a partner and have part of the cash flow, and use their money to pay the debt down, or I could get some great owner financing where I would have cash flow from day one.

Today, I look for returns of about 10% unleveraged.

I think that the opportunity of the decade is still being able to borrow long-term money at very low rates. I just cleaned out some files and threw out some notes and mortgages where we owed some money not that long ago, and the rate was eight and a half percent. People think now that three and a half, four and a half percent are normal interest rates for long-term loans. I don't see that.

I think we're going to see six, seven and eight percent rates again. Maybe not next year, but sometime in the next few years, because we do have inflation. With the federal government as far in debt as they are, I don't see any way they can pay this debt back other than raising taxes, which is not politically acceptable, or printing money. I think we're going to go the inflation route.

Continued next month

John Schaub earned his B.A. from the University of Florida College of Business Administration. In his 35 years of investing, John has prospered during three recessions, four tax law changes and interest rates ranging from 3-16%. His bestselling book, "Building Wealth One House at a Time," has assisted more than 100,000 people on their way to successful investing. John and his partner Jack Miller were the first to teach seminars on investing in single family houses.

John buys, sells and manages his own properties and notes and enjoys providing quality housing for working families in his community who cannot afford to buy a home. John has served for more than 20 years on the board of Sarasota Habitat For Humanity, 7 years on Habitat's International Board and currently serves as the chairman of the board of the Fuller Center for Housing.

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