

# Short Sale Deadly Sins

## Broker-Manager Luncheon

PCAR Event Center  
April 14, 2010

Presented by:

John Hughes  
Guidant Realty



## Presentation:

- 🏠 About the Speaker
- 🏠 Market Overview
- 🏠 The Listing Agreement
- 🏠 MLS Comments
- 🏠 The Purchase Contract
- 🏠 Signing Multiple Contracts (or None)
- 🏠 The Negotiator
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- 🏠 The Approval Letter
- 🏠 Initiation of Full Escrow



# About John



**PRIMARY GOAL:** Representing clients' best interests at all times with professional habits, value-added tools, and strong contractual expertise

## HIGHLIGHTS:

- Director, Placer County Association of Realtors
- Broker, Guidant Realty
- Placer County Leadership Certified
- 2008 & 2009 Masters Club
- Founding member - HP Customer Experience Initiative
- Largest deal - Bid Mgr on \$3 Billion Svcs. Contract
- Contracts Mgmt - Managed Contracts up to \$460 Million
- Strategic Planning - Competitive Market Gathering and Services Improvement

**John Hughes**

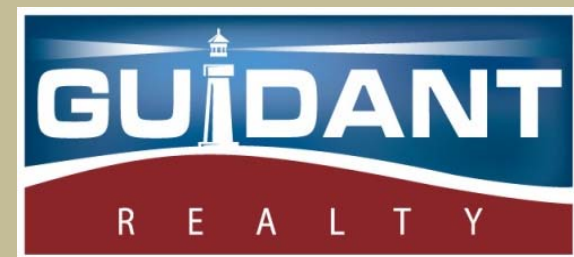
Broker / Owner

DRE License # 01726716

Phone: 916-663-5959

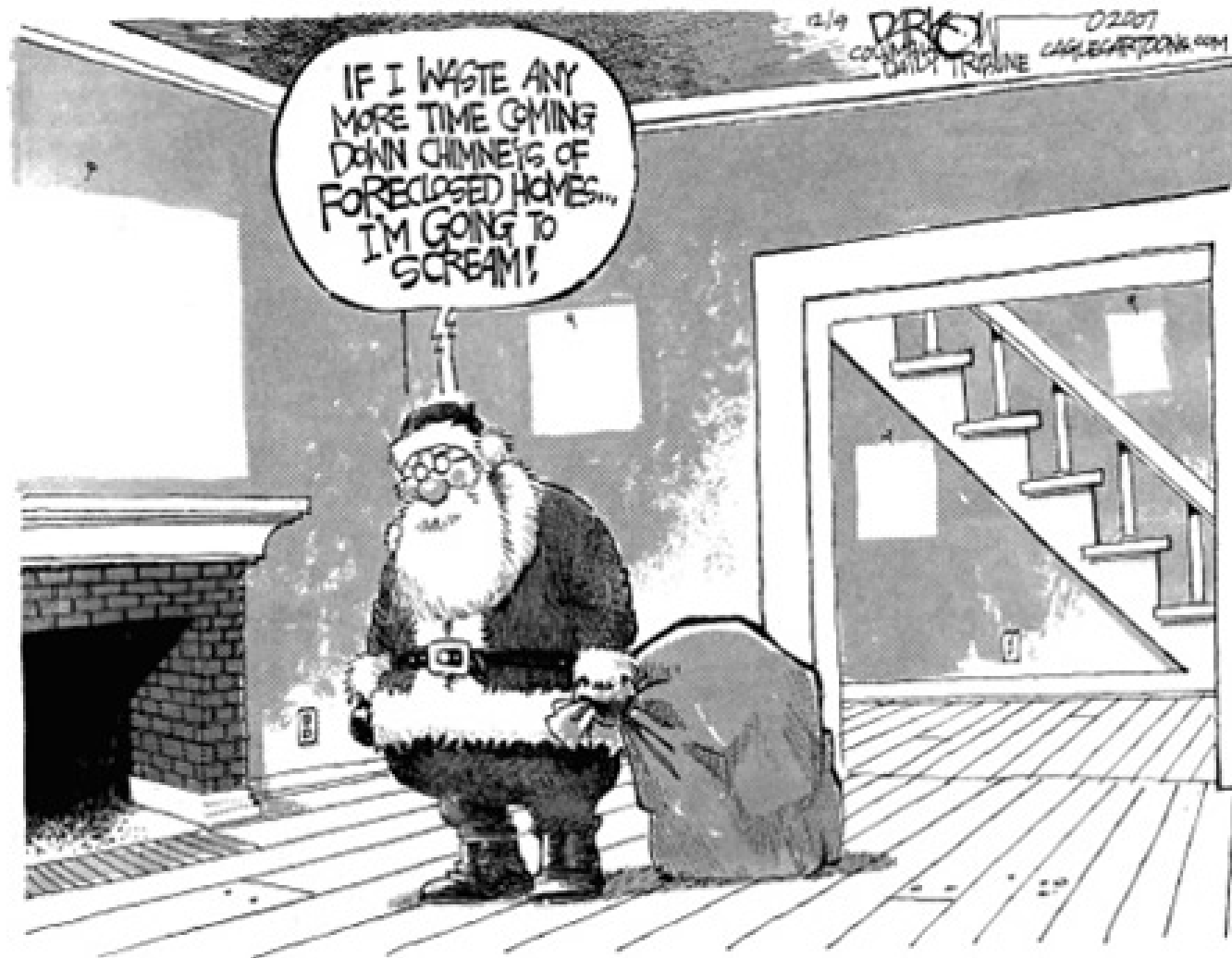
Fax: 916-237-4477

E-Mail: [John@GuidantRealty.com](mailto:John@GuidantRealty.com)



# Market Overview

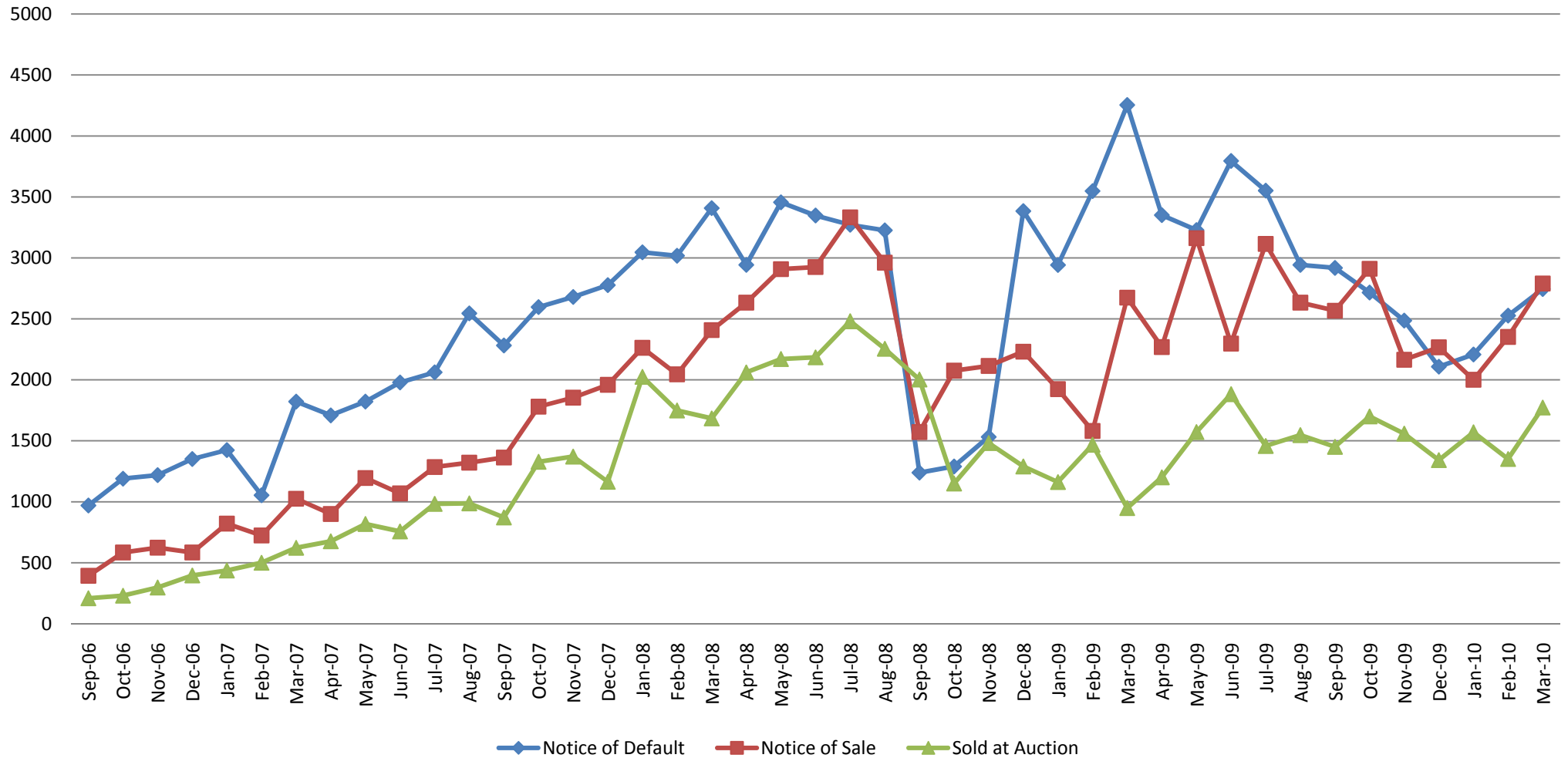
There Is Always Humor Somewhere



# Market Overview

## Foreclosure Leading Indicators

### Foreclosure Pipeline

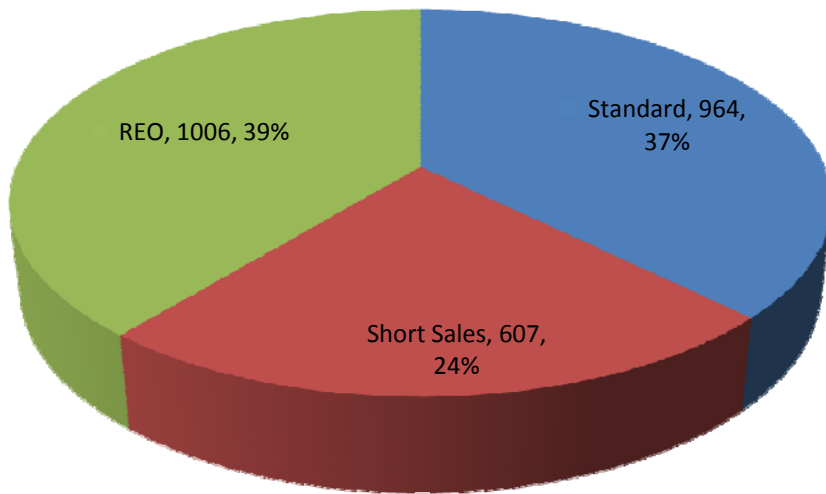


Data: ForeclosureRadar.com

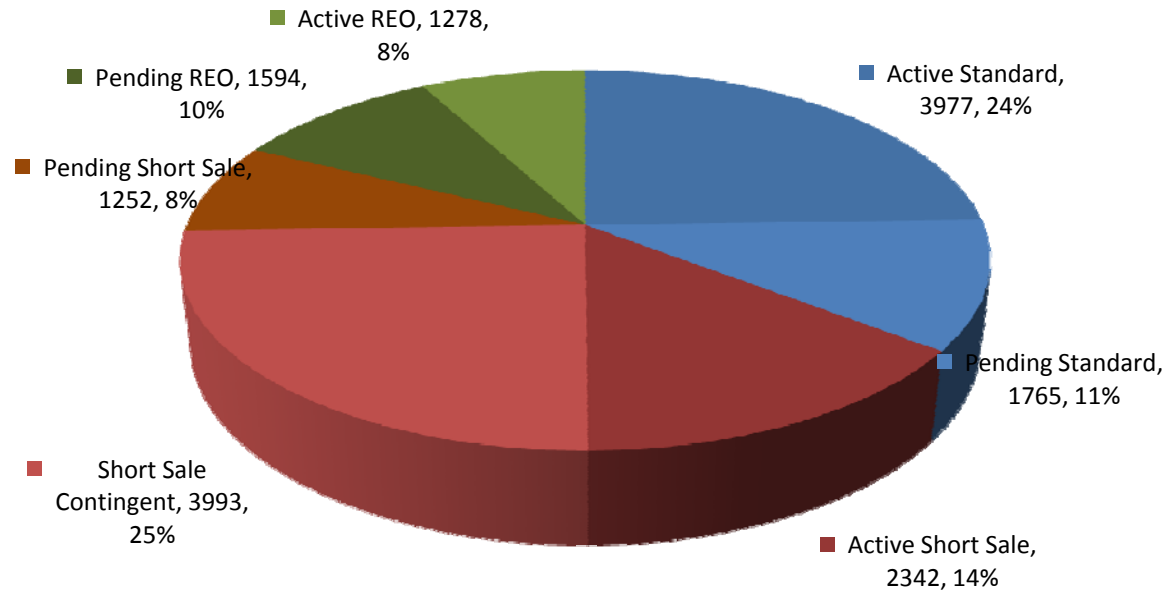
# Market Overview

## Inventory Split vs. Actual Sales Split

### Sales Split, March 2010



### Inventory Split, April 2010



Source: Metrolist MLS

# DISCLAIMER

**PRESENTER DISCLAIMER:** The opinions and positions taken by the presenter are a reflection of personal experience, published articles, and interpretation.

**HOWEVER,** reliance upon or implementation of the principles in this presentation should be conducted with independent verification with the proper authorities and legal consultation and this presentation should not be the determining basis for any legal decision.

What good presentation doesn't have a good disclaimer?





# The Listing Agreement

## Sin #1: Improper or Incomplete Terms

### Use a Short Sale Listing Addendum

- Other Options May Be More Appropriate
- Broker Authority to Work with Short Sale Lender
- No Guarantee of Success
- Tax & Credit Implications
- Agent Is Not Qualified to Give Tax & Legal Advice

### Properly Reflect Compensation

- Compensation should reflect ALL Fees & Commissions
  - RLA states “Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement”
  - SSL authorizes Broker to receive “any necessary information to negotiate with Lender”
  - Negotiation and associated activities may be an implied service covered by the RLA and, by extension, the contracted compensation

# MLS Comments

## Sin #2: Invalid Offer of Compensation

### Use Appropriate Commission Qualifiers or Rate is Set

- 7.13 – “Must specify...a percentage of the gross selling price...a definite dollar amount...may not contain any provision that varies...based on conditions precedent or subsequent”
- 7.16.2 – “Compensation...is for the amount published herein unless the Listing Broker indicates...(a) the fact that the sale is subject to lender approval, and (b) the amount or method by which any lender reduction in the gross commission shall be apportioned between listing and cooperating brokers. (Example of acceptable comments: Sale subject to lender approval. Any lender required reduction in gross commission shall be shared between listing and selling brokers, \_\_\_%/\_\_\_%.) Any provision that would modify compensation other than an apportionment of the lender required reduction shall be invalid and compensation to cooperating brokers shall be paid as originally offered in the MLS.”



# The Purchase Contract

## Sin #3: Not Containing the Negotiation

### Critical Negotiation Elements

- 🏠 Net Price
- 🏠 Deficiency Removal
- 🏠 Borrower Contribution

### Terms to Avoid Trouble Later

- 🏠 Use a Short Sale Addendum – be sure to fill it out!
- 🏠 Do not ask for more than 3% Buyer credit
- 🏠 Do not include a Home Warranty
- 🏠 Do not include a Pest Inspection
- 🏠 Push Title and Escrow 100% to Seller (to offset Warranty & Pest costs  
Buyer may now incur separately)

# Signing Multiple Contracts (or None)

## Sin #4: Treating the Contract as an Offer

### If Counter-Signed by Seller, it is a Contract!

- Short Sale Lender approval is a “Seller Contingency” (see SSA par A), they are not a party to the contract
- If multiple offers are signed, “backups” must be used (PAA, par 1) or Seller may be subject to non-delivery damages
- Presenting an unsigned offer to the Short Sale Lender is:
  - Potentially misleading the Lender because the offer expired after 3 days
  - Potentially misleading the Buyer by marketing a home where the intent is to use their offer as a tool rather than contract for a sale – unless the offer period is explicitly extended to cover the anticipated Lender consideration period

# The Negotiator

## Sin #5: Treating the Negotiator as a Decision Maker

### Negotiators are “Gatekeepers”

- Negotiators hold the keys to the process, not the answer itself
- They are driven by metrics and criteria
- Clean, well-documented files improve their numbers faster
- Never attack the negotiator, only the process!
- Like a doctor, negotiators get people at their most stressed and worst behavior, a smile in your voice can easily set you apart

# Non-HUD Payments

## Sin #6: Undisclosed Payments/Contributions

### Make Sure To:

- 🏠 Clearly disclose to primary lender any additional payments to subordinate lenders over and above amount offered by primary lender
  - 🏠 Properly reflect the amount and source on the HUD
  - 🏠 Press primary lender for acknowledgement of additional payment on the approval letter or:
    - 🏠 Get an acknowledgment via email from the negotiator
    - 🏠 Get a HUD approval from the primary lender that clearly shows the contribution
- 🏠 Do not allow agreements on real property (the house, not the refrigerator) that include payments outside of escrow

### Mortgage Fraud on a Federal Loan is Subject to:

- 🏠 Loss of License
- 🏠 Financial Penalties
- 🏠 Significant Jail Time...is one deal worth it?

# The Approval Letter

## Sin #7: Giving Advice on the Approval or Ignoring It Altogether

### The Approval Has 4 Key Elements:

- ➊ Net Price / Distribution of Allowable Costs
- ➋ Close Date
- ➌ Release of Lien
- ➍ Disposition of the Account (i.e. Deficiency)

### Your Job:

- ➊ Review and ensure the first 2 may be met
- ➋ Acknowledge the dangers of a deficiency balance and advise the Seller to obtain legal advice – you are not qualified to give legal advice, but your general knowledge should prompt you to review the potential implications

# Initiation of Full Escrow

## Sin #8: Having Unprotected Escrow

### Address Critical Factors:

- ➊ Provide a copy of the approval letters to the Buyer's agent (SSA, par A)
- ➋ Draft an appropriate addendum addressing any changed terms
  - ➌ Price
  - ➍ Distribution of costs
  - ➎ Close date
- ➏ Address failure to perform
  - ➐ Closing late
  - ➑ Per diem or other additional fees
  - ➒ Obligation to close
- ➓ Emotions run high at close of escrow (as do the corresponding threats of legal action) do not leave this to chance!



“Be Winners, Not Sinners!”

