

Short Sale Insights

Hosted By:



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Presented by:

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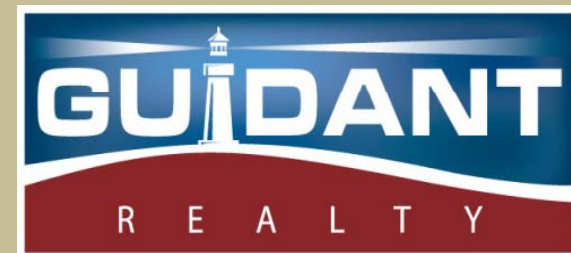
Presentation:

- 🏠 Educating the Client
- 🏠 The Listing Agreement
- 🏠 The Purchase Contract
- 🏠 Working with the Bank
- 🏠 Replacing the Buyer
- 🏠 Initiating Full Escrow

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What good presentation doesn't have a good disclaimer?



Educating the Client

Applicable Legal Code

- 726(a): No pursuit of deficiency by foreclosing entity on Non-Judicial / Statutory foreclosures (regardless of purchase money)
- 580b: Lenders of Purchase Money Loans can not pursue deficiency after a foreclosure (all mortgage lien holders regardless of position)
- 580e: First Lien Holders can not pursue a deficiency after a short sale (purchase or non-purchase money)
effective January 1, 2011

Educating the Client

Important Issues to Address:

- 🏠 Foreclosure vs. Short Sale (Implications & Process)
- 🏠 Bankruptcy
- 🏠 Credit Consequences
- 🏠 Future Loan Implications
- 🏠 Potential Tax Implications
- 🏠 The Deficiency Clause
- 🏠 Timeline
- 🏠 Documents They Will Need to Provide
- 🏠 How You Get Paid

Initiating The Listing

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

Initiating The Listing

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(a) – Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as “short sale” listings) is for the amount published therein unless the listing broker indicates in the confidential agent remarks on MLS the following: (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.
- 7.16.2(b) – The listing broker shall provide written documentation of any lender required reduction in the gross compensation within three business days of receipt from the lender, but in no case less than one business day in advance of the actual date of the close of escrow...If the listing broker fails to notify...shall be the amount stated in the commission field at the time the offer was submitted.



The Purchase Contract

A Well-Written Short Sale Offer Contains:

- Not more than 3% Buyer credit
- No Pest Inspection requirement (still do one at Buyer cost)
- No Home Warranty
- Title and Escrow 100% to Seller (to offset Warranty & Pest costs Buyer may now incur separately)
- Seller choice of Title and Escrow
- A Short Sale Addendum – be sure to fill it out!
 - Set an expiration date in Paragraph A
 - Mark Par B1 “Time Periods Shall Begin the Day After Short Sale Lender Approval”
 - Mark Par B2 as appropriate “Buyers Deposit Check Cashed/Uncashed”

The Purchase Contract

Seller Addendums & Cancellation

- ➊ Many Seller addendums for short sales attempt to “lock-in” the Buyer and unconditionally forfeit deposit with early cancellation.
- ➋ An agreement for a "nonrefundable" escrow deposit is invalid and unenforceable, according to the recent California case of *Kuish v. Smith* (2010 WL 373225).
- ➌ To be deemed valid, a liquidated damages clause in a real property purchase contract liquidating damages to a seller should reflect a "reasonable estimate" of the actual loss that the seller would suffer in the event of a buyer's breach.
- ➍ Inspection Rights Still Exist!

The Purchase Contract

Pending vs. Active Short Contingent

- ➊ No longer seeking offers – move to PS and update comments
- ➋ If the offer falls out or you want more offers – move to AS or ASC as appropriate

Per written email from Mike Padjen, MLS

Working With the Bank

Manage the Morass by:

- 🏛️ Estimate a close date 3 months out (or more) on the HUD
- 🏛️ Fax at night and fax twice
- 🏛️ Follow up 1-2 times per week no matter what they say
- 🏛️ Ask their process and where you are every call
- 🏛️ Ask when the file can be escalated
- 🏛️ Pick up your phone when it rings!
- 🏛️ Carry a file cheat-sheet
- 🏛️ Initiate the short sale with the 2nd when you reach a negotiator on the 1st

Working With the Bank

Negotiators are “Gatekeepers”

- 🏛️ Check your ego at the door!
- 🏛️ 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

Working With the Bank

Key Phrases:

- 🏠 You may not have noticed that this is a California property...
- 🏠 The bank will have to pay those costs if they take the property back...
- 🏠 I understand that your company requires that you ask for..., but if the option offered to the Borrower is not better than foreclosure then I don't know what I can do
- 🏠 The bankruptcy attorney says the borrower is better keeping their cash...
- 🏠 The Borrower would be absolved of this debt under a foreclosure, so all I can do is take the requests back and forth between lenders...
- 🏠 The Borrower has asked me for the name of an attorney and I really don't want to be drawn into a lawsuit...

Replacing The Buyer

If The Buyer Will Not Agree to Terms:

- Under SSA version 4/09:
 - Date on Paragraph A is exceeded
 - Lender rejects offer
 - Other offers may be forwarded and accepted by short sale lender
- Under SSA version 11/10
 - Date in Paragraph A is exceeded
 - Lender counters with ANY changed terms
 - Other offers may be forwarded and accepted by short sale lender



Initiating Full Escrow

Review The Approval Letter:

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

Issue Appropriate Addendums:

- ➊ Listing Addendum identifying Seller election to proceed with issued approval letter
- ➋ Contract Addendum notifying Buyer of election to proceed and any altered terms – link addendum to delivery of approvals

What We Did Not Cover

- 🏠 Market Data
- 🏠 HAFA
- 🏠 Listing Setup
- 🏠 Compensation Strategies
- 🏠 Short Sale Listing Addendum
- 🏠 Contract vs. Offers

FOR MORE:

Simplifying Short Sales

Placer County Association of Realtors

January 5, 2011, 1PM – 4PM