

Short Sale Synopsis

For The Benefit
Of:



January 28, 2011

Presented by:

John Hughes
Guidant Realty



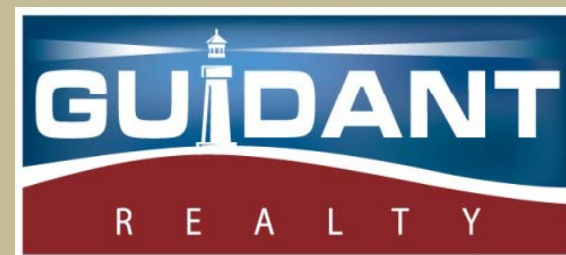
Presentation:

- 🏠 About the Speaker
- 🏠 Market Overview
- 🏠 Educating the Client
- 🏠 Marketing the Home
- 🏠 Competing the Financial Package
- 🏠 The Purchase Contract
- 🏠 Negotiating with the Lender
- 🏠 Initiating Escrow
- 🏠 Closing
- 🏠 Opportunities

John Hughes

Broker / Owner

DRE License # 01726716



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, 2010 Masters Club
- Member of Short Sale Masterminds
- Referral Partner for Distressed Market Attorneys
- Short Sale Educator for Placer County Assn of Realtors
- Largest deal – Bid Mgr on \$3 Billion Svcs. Contract
- Contracts Mgmt – Managed Contracts up to \$460 Million

John Hughes

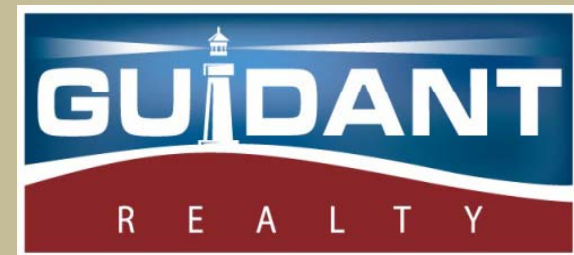
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DISCLAIMER

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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.

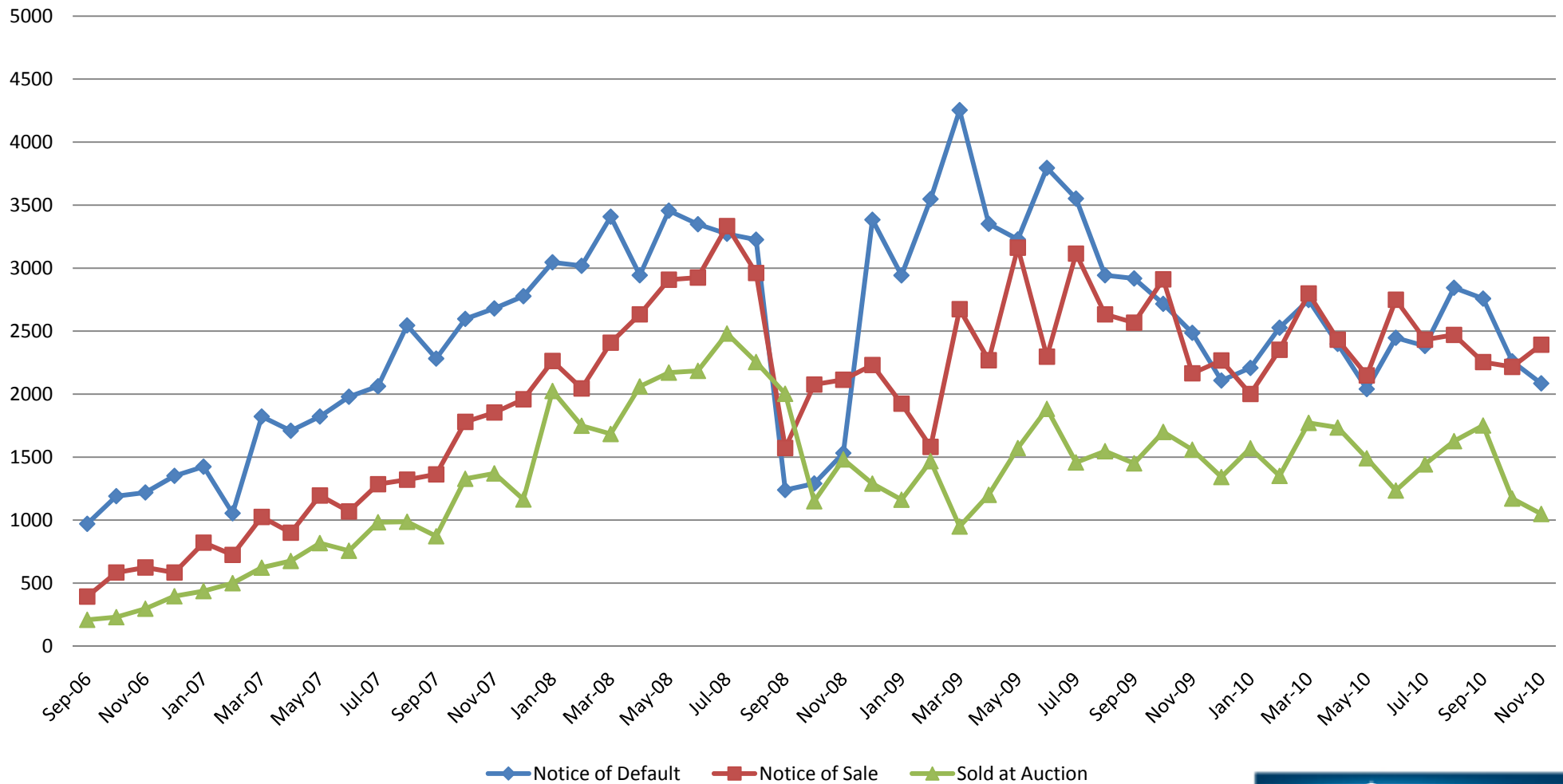
What good presentation doesn't have a good disclaimer?



Market Overview

Foreclosure Leading Indicators

Foreclosure Pipeline



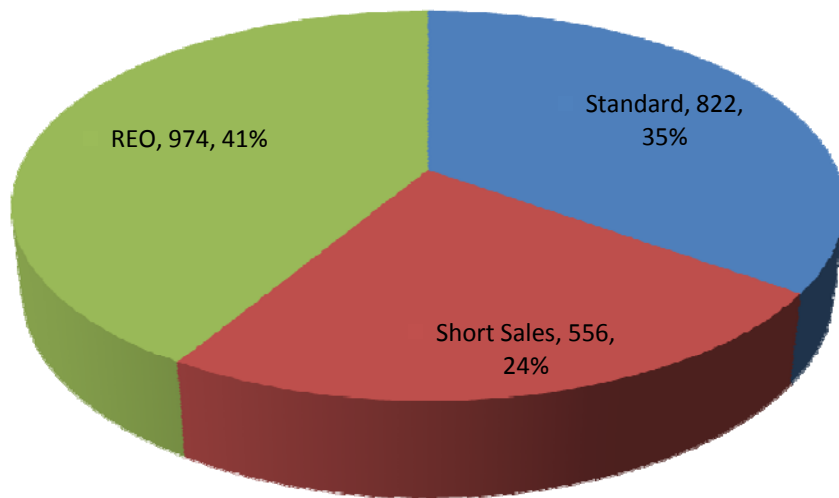
Data: ForeclosureRadar.com



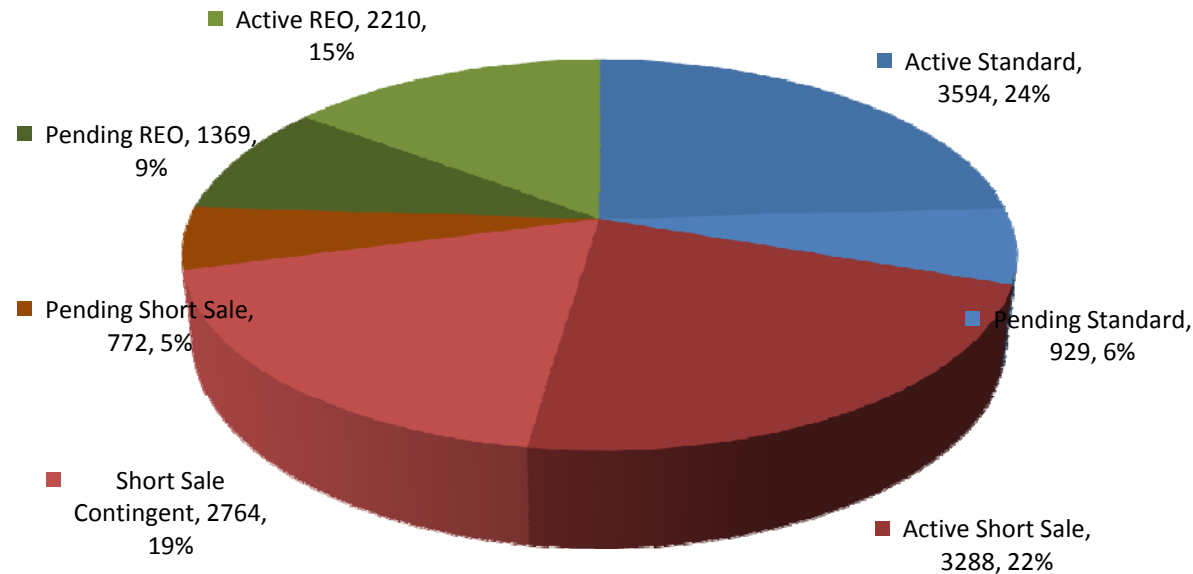
Market Overview

Inventory Split vs. Actual Sales Split (Residential)

Sales Split, December 2010



Inventory Split, January 2011



Source: Metrolist MLS

Phases of A Short Sale



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
- 🏠 Upkeep of Other Bills (HOA, Property Taxes, Etc.)
- 🏠 Timeline
- 🏠 Documents the Borrower Will Need to Provide
- 🏠 Mortgage Insurance
- 🏠 How the Agent Gets Paid

Educating the Client

Applicable Legal Code

- 726(a): No pursuit of deficiency 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*
- 337: Four Year Statute of Limitations for the collection of unpaid debt on a written contract

Educating the Client

Home Affordable Foreclosure Alternative:

- 🏠 Principal Residence
- 🏠 Loan Value Under \$729,750 (single unit)
- 🏠 Monthly Payment (1st Only, PITI) Exceeds 31% of Gross Income
- 🏠 Loan Originated on January 1, 2009 or Earlier
- 🏠 Default Is Reasonably Foreseeable
- 🏠 Provides \$3000 to Homeowner Relocation Assistance
- 🏠 Halts Foreclosure
- 🏠 HAFA Review is Slow!
- 🏠 Lenders are NOT Following the Published Process

Educating the Client

Basic Short Sale Process:

- 🏠 Options Reviewed
- 🏠 Hardship Package is Completed
- 🏠 Home is Marketed for an Offer
- 🏠 Complete Package Submitted to Lender
- 🏠 Lender Validates Package
- 🏠 Lender Values Home
- 🏠 Short Sale is Negotiated
- 🏠 Investor Reviews Decision
- 🏠 Approval Letter Issued
- 🏠 Standard Escrow Ensues

Educating the Client

HAFAs Standard Process:

- 🏠 Qualify For a HAMP Modification
- 🏠 Elect to Convert to a HAFAs Short Sale
- 🏠 Home Is Priced
- 🏠 Borrower is Given 120 Days to Market the Property

HAFAs Alternative Process:

- 🏠 Market The Property and Obtain an Offer
- 🏠 Submit Financials and Offer Package
- 🏠 Lender Reviews for Both HAMP Qualification and Value of Home

Completing The Financial Package

Critical Borrower Short Sale Documents

- 🏠 Authorization to Release Information
- 🏠 Recent Mortgage Statement for Each Lender
- 🏠 Hardship Letter
- 🏠 Financial Worksheet
- 🏠 Taxes (1040 Form)
- 🏠 Bank Statement(s)
- 🏠 Paystub(s) or Profit/Loss Statement
- 🏠 4506T

Completing The Financial Package

Review Points:

- 🏠 ALL Expenses Reflected on the Financial Worksheet
- 🏠 Rent at New Location if Already Moved or Split
- 🏠 Groceries, Insurance, Reasonable Discretionary
- 🏠 Support to Other Family Members
- 🏠 Include Retirement Funds (can't be touched)
- 🏠 Be Prepared to Explain Fund Transfers
- 🏠 Do Not Leave Blank Years on the 4506T (cross them out)

Marketing The Home

All Compensation Is In the Listing Agreement

- ➊ Agent Agrees to Complete All Short Sale Activities
- ➋ Commission Covers All Activities Unless Expressly Stated Otherwise
- ➌ Review Total Commission vs. Commission to Buyers Agent
- ➍ Buyer Can Not Be Asked to Pay for Negotiation Fees Unless in the Listing Agreement

Marketing The Home

Have A Process

- 🏠 Start Within 5% of Fair Market Value
- 🏠 Do Not Accept “Lowball” Offers
- 🏠 Drop Price Every 2 – 3 Weeks
- 🏠 Properly Qualify the Buyer and Their Agent
- 🏠 The “Best” Offer is Not Always the “Highest”
- 🏠 Share the Process With All – Transparency Creates Trust
- 🏠 Consider Showing For Backups vs. Daily Living Impact

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 – New 2-page SSL available
 - Assumes deposit check uncashed
 - Assumes time frames do not start
 - Allows Seller to cancel if bank does not approve deal as-is

The Purchase Contract

Contract or No 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 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!

Negotiating With the Bank

Negotiators are “Gatekeepers”

- 🏠 Check your ego at the door!
- 🏠 Negotiators hold the keys to the process, they are not the decision-makers
- 🏠 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

Negotiating With the Bank

Key Negotiation 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...

Initiating Full Escrow

The Approval Has 3 Key Elements:

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

Agent's 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 – agent is not qualified to give legal advice, but their general knowledge should prompt a review of the potential implications

Initiating Full Escrow

Address Seller Election to Proceed:

- ➊ Draft an appropriate Listing addendum addressing:
 - ➋ Acknowledgement of Seller review of approval letter
 - ➌ Acknowledgement of opportunity to have a legal review / not relying on advice of Broker
 - ➍ Election to proceed under the terms of the approval letter

Initiating Full Escrow

Address Critical Factors:

- ➊ Provide a copy of the approval letters to the Buyer's Agent (SSA, par A)
- ➋ Draft an appropriate Contract addendum addressing any changed terms
 - ➌ Price
 - ➍ Distribution of Costs
 - ➎ Close Date
 - ➏ Address Failure to Perform (late close, per diem, etc.)

Ensure Lender Has All Materials:

- 🏠 Funds Delivery On-Time
- 🏠 All Documents Appropriately Signed
 - 🏠 Approval Letter
 - 🏠 Assignment of Unearned Premium
 - 🏠 Arms-Length Affidavit

Where You Can Help

Opportunities:

- ➊ Mention Deficiency Rights to Sellers
- ➋ Help Set Buyer Expectations on Response Times
- ➌ Review the Purchase Contract for Supporting Terms
- ➍ Watch for Buyer-Required Payments
- ➎ Non-Refundable Deposits are Unenforceable
- ➏ Do Not Move Forward Without Seeing the Approval Letter
- ➐ Get Distressed Owners to an Advisor ASAP

Short Sales are a Delicate Process...

...The degree to which you can point your contact in the right direction will make you their champion!

