

# Simplifying Short Sales

Hosted By:



Paramount Equity  
November 10, 2010

Presented by:

John Hughes  
Guidant Realty



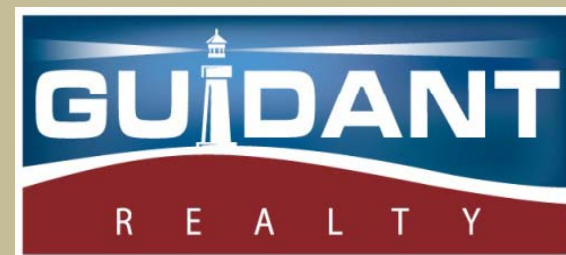
Presentation:

- 🏠 About the Speaker
- 🏠 Market Overview
- 🏠 Educating the Client
- 🏠 The Listing Agreement
- 🏠 The Purchase Contract
- 🏠 Working with the Bank
- 🏠 Initiating Full Escrow

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 qualified) Masters Club
- Member of Short Sale Masterminds
- Referral Partner for Distressed Market Attorneys
- Largest deal – Bid Mgr on \$3 Billion Svcs. Contract
- Contracts Mgmt – Managed Contracts up to \$460 Million

**John Hughes**

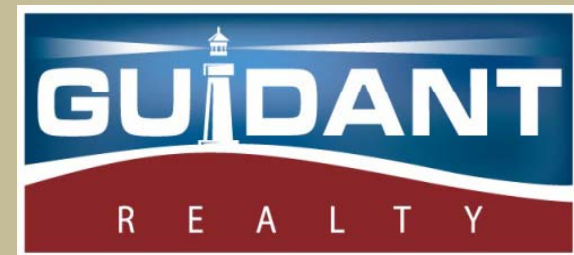
Broker / Owner

DRE License # 01726716

Phone: 916-663-5959

Fax: 916-237-4477

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



# DISCLAIMER

## PRESENTER DISCLAIMER:

The opinions and positions taken by the presenter are a reflection of personal experience, published articles, and interpretation. They do not necessarily reflect the position or opinion of the host.

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.

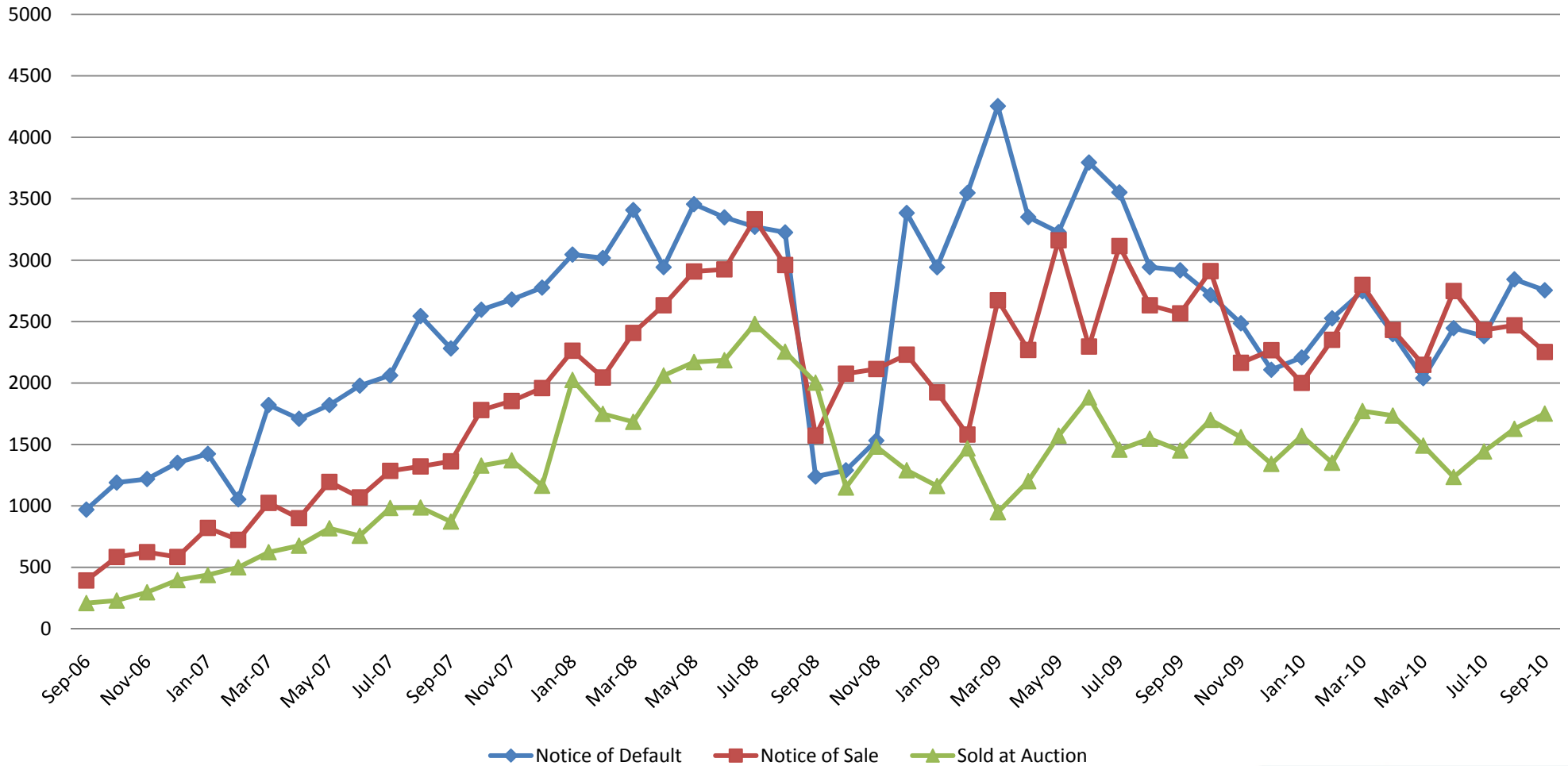
What good presentation doesn't have a good disclaimer?



# Market Overview

## Foreclosure Leading Indicators

### Foreclosure Pipeline



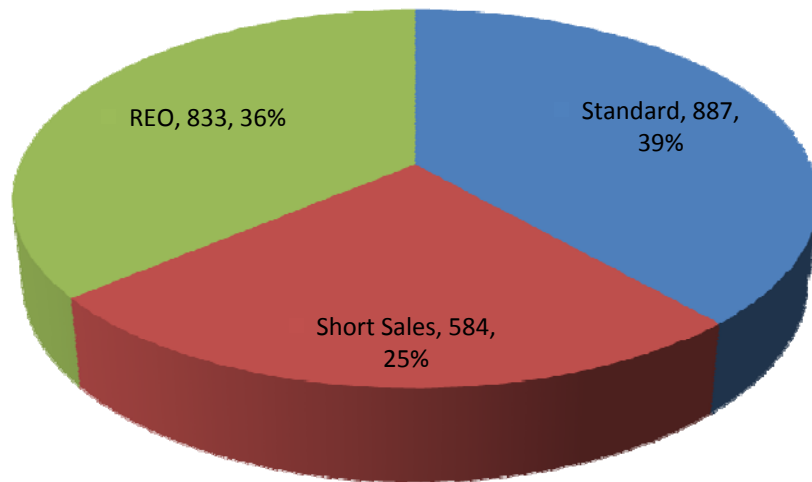
Data: ForeclosureRadar.com



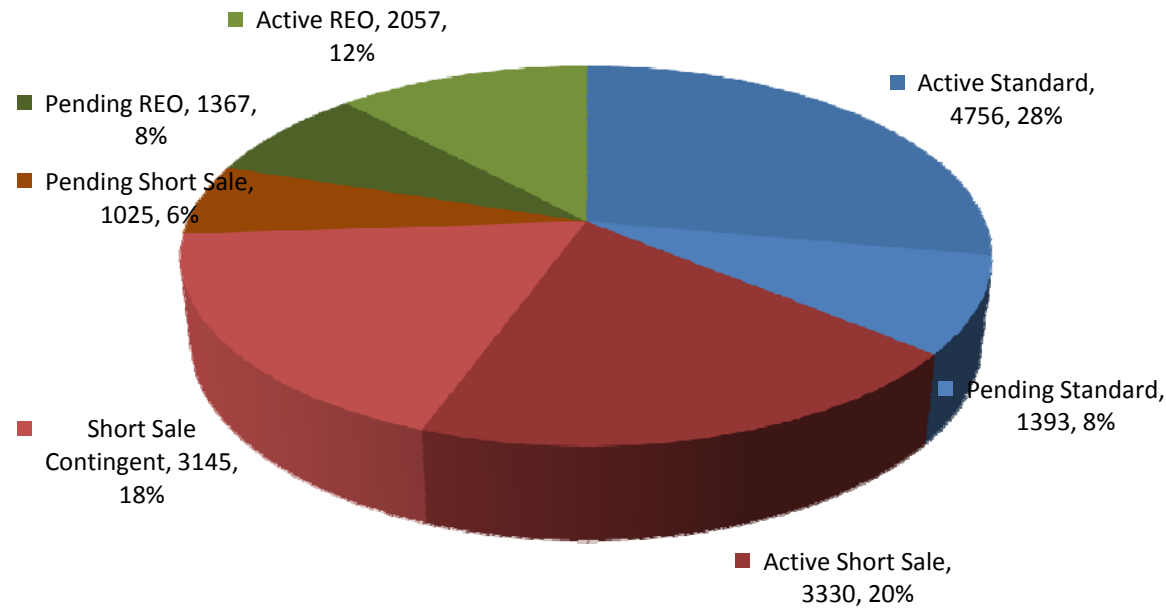
# Market Overview

## Inventory Split vs. Actual Sales Split

### Sales Split, September 2010



### Inventory Split, October 2010



Source: Metrolist MLS

# 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*

# 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

# Educating the Client

## Home Affordable Foreclosure Alternative:

- 🏠 Principal Residence
- 🏠 Loan Value Under \$729,750 (single unit)
- 🏠 Monthly Payment Exceeds 31% of PITI (1<sup>st</sup> Only)
- 🏠 Loan Originated on January 1, 2009 or earlier
- 🏠 Default Is Reasonably Foreseeable
- 🏠 Provides \$3000 to homeowner relocation assistance
  
- 🏠 HAFA review is slow!
- 🏠 Lenders are NOT following the published process



# Initiating The Listing

## Obtain Short Sale Documents Prior to Listing

- ➊ Most Bank Requirements Available Online or Have Seller Call
- ➋ Obtain Authorization to Release Information
- ➌ Obtain a Recent Mortgage Statement for Each Lender
- ➍ Have the Seller Write a Hardship Letter
- ➎ Review the Financial Worksheet for Clarity and Completeness
- ➏ If a 4506T Is Required, Do Not Leave Blanks Where the Years Are Listed (Cross Them Out)

# Initiating The Listing

## Use a Short Sale Listing Addendum

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

# 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

## 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!

# 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 2<sup>nd</sup> when you reach a negotiator on the 1<sup>st</sup>

# 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...

# Initiating Full Escrow

## 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

# 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.)

Short Sales are a Delicate Process...

...Doing it right the first time will save a bundle of time and frustration and keep the skeletons out of the closet!

