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Addendum to Short Sale Listing Short Sale Contract Interference: Danger !

Short Sale Contract Interference: Danger
Sue Saunders, NVAR General Counsel

The Legal information line still receives countless calls about short sales. Here is one that I believe is extremely important for REALTORS to understand.

QUESTION: In a short sale scenario, a seller has a property listed as a short sale contingent on lender approval. If the seller accepts an offer made by a buyer (Buyer X) and sends the contract to the lender for approval, can the seller send other offers received later to the lender, too?

RESPONSE: The key words are “accepts” and “contract”. In this scenario, Buyer X and the seller have had a meeting of the minds and have entered into a contract. Buyer X has promised to pay money for the property and the seller has promised to deed Buyer X the property. They are in contract; however, the contract is subject to a condition subsequent which makes it voidable. The contract could be voided by the lender if the lender does not agree with its terms and denies approval.

The seller can review other offers submitted to him, but should not send any other offers to the lender for approval. “Why not?”, you ask. Because sending other offers to the lender would interfere with Buyer X’s contract. Buyer X, who is in contract with the seller, has an advantage referred to legally as “Contractual Advantage”. The Advantage is that he is in contract with the seller and the other potential buyers are not. So, if the seller sends other potential offers to the lender while the bank is still reviewing the contract the seller has accepted, Buyer X could sue the seller, the brokerage, and the agent for “Intentional Interference with Contractual Advantage”. Buyer X could sue for any and all damages incurred by the interference, punitive damages and attorney fees. The seller can tell other potential buyers that he will keep their offers as back up offers if the bank denies Buyer X’s contract.

Buyer’s Signature & Date: _____, _____

Buyer’s Agent Signature & Date: _____

Seller’s Signature & Date: _____, _____

Seller’s Agent Signature & Date: _____

Golden Real Estate & Investments, LLC
(As Listing Agent)
Short Sale Disclosure

The transaction for the property of _____, City of _____, County of _____, located within the jurisdiction of the state of Nevada is a Short Sale. The Buyer(s) is hereby made aware that the Seller(s) (including but not limited to institutional lenders, mortgage insurers, bankruptcy trustees, federal, state and local tax authorities and/or other private parties that hold security interest against the property) than the proposed purchase price.

Once the offer is accepted by the Seller(s), along with any contingencies, counteroffers and addendums, the offer will then be submitted to the seller's Lender(s) for review & approval. The process takes typically 30-60 days after the Lender(s) receive a full and complete short-sale packet since the Lender(s) have their own time frame and procedures that they must go through for the mortgage insurer and/or the investors who funded the original mortgage.

1. Buyer(s) is hereby made aware that the Purchase Agreement is subject to the written approval and cooperation of the seller's Lender(s), to the Lender(s) releasing the Seller(s) from any and all future financial obligations as well as to the Lender(s) not reporting the reduction in debt. Seller(s) shall submit the Purchase Agreement to all the Lender(s) together with any additional documentation required by the Lender(s) for review and approval, but Seller(s) cannot guarantee the approval or the timelines of rejection or acceptance of the Seller's Lender(s).
2. The seller's have "NO ADDITIONAL CASH" and have provided required documentation of such to the lender for consideration and qualification of this SHORT SALE.
3. Buyer(s) is hereby made aware that the Lender(s) written authorization & approval is required at close of escrow in order for clear title to transfer. In the event, close of escrow may be delayed by the Lender(s), the Buyer(s) agree to hold Seller(s) harmless for the delay.
4. Buyer(s) agree that the Seller(s) is in no position to pay for any cost including but not limited to the closing cost; cost of inspections; cost of repairs; cost of any certification or report. Buyer(s) are required to pay for any and all inspections and/or certifications to satisfy the buyer's due diligence.
5. The actual selling price of this transaction will be determined upon getting an acceptable "NET PROCEEDS" required notification from the seller's Lender(s) and adding the lender's Acceptable costs to the bottom line. Any offer accepted by the Seller(s) is deemed to be a figure that their lender(s) is likely to approve. However, all offers accepted by Seller(s) are subject to short sale acceptance by seller's lender. Prior to the final acceptance from the Lender(s), the Seller(s) may continue to market the property and accept additional offers for purchase of the property.
6. Once a purchase contract is successfully negotiated & finalized, the Lender(s) will specify a closing date. The Lender's provided closing date is firm. There may be a monetary increase placed on the Buyer(s) to compensate for additional interest or fees incurred by the lender for closing after the required date.
7. The Lender(s) may decide not to pay for the Buyer's Appraisal cost, Home Warranty Premium cost, and/or any other "Buyer's Closing Cost".

8. In the event the Seller(s) has not been able to pay for the cost of maintaining the property, the Buyer(s) agrees to bear any cost and/or responsibility to have utilities turned on to satisfy any and all inspections shall be deemed necessary to complete their due diligence.
9. As per the MLS, we are offering a 3% Buyer Broker Co-Op Fee from a total commission of 6% agree to by the Seller(s) in the listing agreement. Due to Lender(s) taking less than what is owed to them, a request from the Lender(s) to renegotiate and lower the total commission rate may occur. The renegotiation of the total commission paid is an inherent part to successfully working out a short sale transaction. Any reduction to the total commission fee shall be split 50/50, with 50% being paid to Golden Real Estate & Investments, LLC and 50% to buyer's agent's brokerage. Any changes to the total commission rate will be announced at the time of the final approval from the Lender's Loss Mitigation Department approving the short sale.
10. If the Lender(s) approves to forgive all or a portion of the debt, the amount forgiven is considered as taxable income to the Seller(s). Seller(s) is made aware there may be legal and/or tax consequences regarding to this short sale transaction, therefore is recommended by Golden Real Estate & Investments, LLC to discuss and consult with their CPA and/or attorney for advice.
11. Golden Real Estate & Investments, LLC will NOT provide any legal or tax advice to any party involved in this transaction. Any such question or concern should be directed to the appropriate professionals or licensees. Furthermore, the undersigned Seller(s), Buyer(s), each prospective agent(s) and/or Broker(s) acknowledge receipt of this disclosure and agree to hold Golden Real Estate & Investments, LLC its members, brokers, agents harmless and free of any and all liability concerning the above transaction.

We have the read and agreed to the Short Sale Disclosure.

Buyer's Signature & Date: _____, _____

Buyer's Agent Signature & Date: _____

Seller's Signature & Date: _____, _____

Seller's Agent Signature & Date: _____