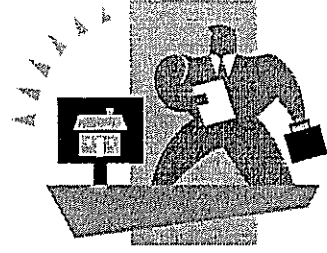


Representing the REO Buyer: What to Expect



Making an Offer

Prequalification

NAC 645.630(1) states, "A licensee shall promptly deliver: to the seller, every bona fide offer, complete with all terms and conditions of purchase, which he obtains."

Sellers of all types are more comfortable knowing that the buyer is financially able to close the transaction. You may see a listing that requires prequalification with a specific lender before an offer will be presented to the seller. Generally, it will be the same bank that owns the home. You have the right to question the source of the requirement to determine whether it is a genuine requirement or a fabrication of the listing agent. Pre-qualifying with a particular lender does not compel the buyer to use that lender for the actual loan.

Closing Costs

There is no one standard for allowable closing costs in REO transactions. Fannie Mae and Freddie Mac have different allowables, which can vary greatly from property to property. This should be taken into consideration when writing the initial offer and reviewing any counteroffer or addendum.

Multiple Offers

Some, if not most, REO properties will have multiple offers within days of listing. You should prepare your buyers for the possibility that their offer will be one of many, and **buyers should make their highest and best offer up front**. As the buyer's agent, you have the right to inquire whether there are other offers on the property. However, the listing agent must have authority from the client to disclose the existence of multiple unaccepted offers. Standard of Practice 1-15 of the Code of Ethics states:

REALTORS[®], in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS[®] shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker.

Even then, the listing agent may or may not disclose the number of other offers, their terms or conditions.

Presentation of Offers

Most REO asset managers use an Internet-based contract management system or portal. The listing agent will input the essential terms of the buyer's offer into the system for the seller's review. Generally all bona fide offers will be presented to the seller as long as the portal is open. Note: if the seller requires a Multiple Offer Disclosure form, the form must be returned signed by the buyer before the offer is presented.

Entities; adding buyers

If the buyer anticipates purchasing the home in the name of an entity (for example, a trust or LLC), or wants to add another buyer, this should be disclosed as soon as possible so documents will be prepared in the appropriate name(s). Otherwise, the transaction could be delayed significantly. In addition, the name(s) on the loan prequalification should match the offer.

Responses; "reasonable time"

The listing agents have no control over the seller's response time and can never guarantee a time frame. Each asset manager is different. The current market is in a period of high foreclosures and response times are generally longer. Sometimes the listing agent will have an answer in a few days; sometimes it takes a week or more. If it is a multiple offer situation, time frames can be extended. Buyers and their agents should exercise patience during this time.

Written rejections

Buyers are entitled to a written rejection. Some asset managers sign written counter/rejections, but it is very rare. NAC 645.632(1) states:

If a licensee represents a seller in a transaction, and if the seller does not accept an offer within a reasonable time after an offer has been presented to the seller, the licensee shall provide to the buyer or the representative of the buyer written notice signed by the seller which informs the buyer that the offer has not been accepted by the seller.

According to the Real Estate Division, if the seller directs the listing agent to accept one offer and reject all others, the licensee is allowed to write that instruction (for example, "rejected per email from client ...") on the purchase agreement, sign and date it and return it to the buyer's agent. There may be only a fax or email from the listing agent conveying the seller's decision. Any of these written notices should satisfy the buyer and the buyer's broker.

Getting a Contract

Multiple Counteroffers; Highest and Best

In many situations the seller will make multiple counteroffers and/or a request for the buyers' "highest and best" offers. It is each buyer's option to respond to such a request; the buyer should only offer what they feel comfortable with and are qualified to purchase.

Counteroffers and Addenda

In every REO transaction, you can expect a form counteroffer (sometimes styled as an "addendum" but serving the function of a counteroffer nonetheless) which overwrites numerous provisions of the buyer's offer (purchase agreement) and inserts entirely new provisions not addressed in the purchase agreement. **Both the agent and buyer should carefully read and understand every provision of the counteroffer or addendum.** Very important topics are often addressed: when escrow opens; when due diligence begins and how long it lasts; when loan approval is required; and what are the penalties for not closing on time. If the asset manager crossed out and initialed any portion of the purchase agreement, the buyer should likewise initial those provisions, to show they understood the provision was rejected or replaced. This is a risk management point for you as the buyer's agent.

Typically, the asset manager will not make a final acceptance or sign anything until the buyer has returned all seller-required counteroffers or addenda.

Verbal Responses

Very often, the asset manager will direct the listing agent to work with one offer to the exclusion of all others. At that point, the "successful" buyer does not have a contract! Until the asset manager actually signs the purchase agreement and any addendum or counteroffers, there is no contract. This means that, during the time between verbal acceptance and signature (which can take days or weeks), the seller is at liberty to accept another offer because it does yet have an actual contract with the buyer. **Another reason to carefully read and understand all counteroffers and addenda: some timelines (such as due diligence) may start on verbal acceptance.**

Updating the listing status

To accommodate the delay in getting a final signature from the seller in an REO or relocation transaction, the MLS allows for a listing to be placed in "C" (contingent) status after all buyer's signatures have been obtained, and the only thing left to do is obtain the seller's signature on the final contract (including counteroffers and addenda). Typically, the seller is no longer accepting offers and signing the agreement is a formality.

Due Diligence

Inspections and Utilities

Even though REO properties are generally sold “as is,” the buyer is generally still entitled to a due diligence period for inspections and other inquiries into the property. (Note: Be sure to verify any changes to the purchase agreement regarding due diligence and inspections that may be contained in a counteroffer or addendum.)

Each property is different when it comes to the availability of utilities. As the buyer’s agent, you should understand if and when utilities will be turned on and how long they will remain on. Most asset managers are willing to work with buyers to turn utilities on for some period to allow inspections and appraisals.

Disclosures

Federal and state laws require certain disclosures from sellers. Some disclosures, such as the Seller’s Real Property Disclosure, may be waived according to state law. Others, such as the Common Interest Community resale package, may not be waived. If the buyer closes escrow without receiving a required disclosure, his/her right to sue for such a failure may be affected. If the buyer has any concerns, you should advise the buyer to consult legal counsel prior to closing escrow.

Repairs

Buyers and buyers’ agents both need to be aware that REO properties are being sold “as is.” Asset managers cannot guarantee that any repairs will be made in the event there is an issue with the appraisal or home inspection.

Closing and Beyond

Extensions

In today’s lending market, lenders are often taking additional time to finally and fully approve the buyer’s loan. As the buyer’s agent, you should take this into consideration when writing the initial offer and proposing a closing date.

If an extension is sought by the buyer, the buyer should expect a request to release earnest money, a per diem cost or some other demand from the seller. The asset manager’s counteroffer or addendum may address this issue ... another reason to read all documents very carefully.

Moving In

A vacant home is not an invitation to move in early. At no time and for absolutely no reason should the buyer's agent ever allow, advise or facilitate the buyer moving into the property prior to recordation. This creates an ethical situation for the agent, plus potential liability for the agents, the brokers and the parties, **up to and including criminal charges for trespass.**

Keys

There may be "key disclosure" language in the asset manager's counteroffer or addendum, or in a separate document. Typically, the buyer is responsible to have the home re-keyed before moving in. The buyer should be prepared for this and have a locksmith ready. Note: This is also a safety issue for the buyer, since many people may have had access to the property with a master key.

As the buyer's agent, you should never remove the key from the lock box and give it to the buyer!

Other items such as gate transponders, garage remotes and mail box keys are typically not available from the seller of an REO property. The buyer will be responsible for obtaining replacements from the appropriate entity such as the homeowners' association or U.S. Post Office.

This document is of a general educational nature and is not intended to address any specific legal or ethical situation. Every transaction is different. Agents should read all documents and seek advice from their office managers and brokers. Legal questions may be directed to NVAR's Legal Answerline at 1-800-748-6999.