

example, Note 6 to Section 5 (Compensation Specified on Each Listing) of the NAR MLS policy says as follows:

“Multiple Listing Services may, as a matter of local discretion, require participants to disclose a potential short sale. *In any instance where the participant discloses a potential short sale*, they [sic] must also be permitted to communicate to other participants how any reduction in the gross commission ... required by the lender ... will be apportioned between listing and cooperating participants.” (Emphasis added)

Does the highlighted language apply if there was no notice of a short sale? If the MLS does not require disclosure of short sale?

I express no opinion here because I don't know all the facts, and I wouldn't even if I did. But one thing becomes clearer with each passing day. The sooner we start standing up to lenders and refusing to accept their demands that we cut our fees (alone among all service providers in the closing), the better.

I understand some Realtors®' reluctance, but history is on our side here. Fannie and Freddie no longer require a reduction in any fee that does not exceed 6%, and the experience is overwhelming that most other lenders will yield if we refuse to cut our fee. And it just feels so good to say, “No, thank you very much. I worked hard for my fee, both you and my client have benefitted greatly from my efforts, and I expect to be paid what I was promised.”

Expecting someone taller

Q. At closing on a short sale, the selling agent and buyer are surprised to see that the seller of the property will be an entity or person different from the party shown on the purchase agreement. It turns out the owner has granted an option to buy the property to an investor, who will take title at closing and simultaneously convey title to the purchaser.

Shouldn't this have been disclosed to the buyer? Shouldn't we suspect some sort of fraud on the lender by the investor who is obviously flipping the property immediately after taking title?

A. I have weighed in on this phenomenon before, but it bears reexamination. What has happened is pretty basic. The investor has secured from the lender a price at which the lien will be released (the seller being under water and often in default under the mortgage), and from the owner an option to purchase the property for that price. The option agreement authorizes the investor to handle the marketing of the property on terms acceptable to him and to exercise the option upon obtaining an acceptable offer to purchase the property. He then hires a listing firm to secure a contract, at — he hopes — a substantially higher price than the strike price. He pays

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the costs of the closings and pockets the difference.

I've noted before that this is a curious sort of arbitrage where the investor is taking advantage of the terrible inefficiencies the mortgage lender faces when owning REO. Let's categorize the results for the parties involved, and judge for ourselves whether there's anything wrong with this increasingly common practice.

1. The seller gets out exactly the same way as if a laborious, time-consuming and uncertain short sale were to occur. It doesn't matter whether the seller markets the property independently of any lender agreement on the payoff amount, because if the more typical short sale route is taken, the seller still gets zilch. However, this way the seller gets a far more certain result, and gets it much more quickly.

2. The lender benefits enormously as well. It gets quick cash in roughly the same net amount as if it had foreclosed, held and then resold the property at about the price our buyer is paying here. Why does the lender not benefit from the higher market value? Because the cost to the lender of advertising, paying an attorney to foreclose, paying the taxes and insurance, repairing the results of vandalism and foreclosure parties, maintaining the place, and paying a Realtor® to sell it, plus the lost use of money and drain of reserves almost always equals or exceeds the difference in price, so inefficient is the lender in its ownership of the property. This is especially true when you consider the depressing effect on final price of the fact that the property is the sale of REO.

Similarly, if the seller were to go the typical short sale route, the higher price would also be unattainable, because we have made sure in all our MLSs that buyers are aware up front of the seller's distress, something our buyer here did not know.

In short, our lender knows it will never get the market value for this house, and it is crazy to try if a quick, certain, acceptable alternative is available. In this case, it is.

3. The Realtors® gain enormously as well. First, compare the deal flow here to the purchase of REO or — gawd help us — a typical short sale. At least as to the latter, the time is far less, the commission will not be chewed up by the lender, and the outcome is much more certain. Headaches? Negligible, compared to the short sale or REO deal.

4. How about the buyer? Buyer gets exactly what he bargained for, he gets it relatively quickly, and he gets the deal without the uncertainty attendant on a short sale. Oh, sure, he has to take title from someone he didn't expect, but so what? Good title is coming his way just the same. I don't see why he should care whose name is

on the deed.

So who loses? Nobody. Even the tax collectors and insurance folks come out ahead, as they get payments from owners making productive use of the asset. We all gain when inefficiency, uncertainty, and waste are squeezed out of the system. And we help hasten the return of reasonable market valuations, something of great benefit to our communities at large.

By the way, Fannie and Freddie, as mortgage holders, don't allow this kind of thing. Is anybody surprised?

Is that a contract in your pocket, or are you just trying to stall the bank?

Q. A DC Realtor® sends a Realtor® in the southern valley a referral of a home there that will be a short sale. The seller does not speak much English, and the DC agent must act as go-between. Listing agent lists the property at the suggested price of around \$500,000, but after about two months has had no interest and reduces the price to \$450,000 at the urging of the DC agent. There is still no interest, and a further reduction is made to \$400,000. Finally, two offers are received at about \$350,000, but both have been withdrawn because the ►►

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