



# Helping Consumers Understand the Complexities of Today's Real Estate Transaction

## REALTORS® Working with Sellers

### Pre-Listing ("pre-counseling")

- ▶ Discussion and explanation of agency relationships.
- ▶ Obtain signed Agency Relationships in Real Estate Transactions form.
- ▶ Find out what the seller's expectations are, wants, desires, motivation for moving, price, and marketing

plan: (Dual interview process)

- ▶ What are the sellers looking for in an agent
- ▶ Compensation in a real estate transaction, including the listing company's policy for paying co-op agents. Including a discussion of Code of Ethics Standard of Practice 1-12, Variable Commissions, etc.
- ▶ What is the seller's position: i.e. relocation, move-up, retirement

### Marketing Plan Presented

- ▶ Present a CMA
  - ▶▶ Why they are the best agent/broker/ sales pitch

### Listing the Property

#### *Post-Listing Counseling*

- ▶ Seller Disclosure and related forms
  - ▶▶ Truth-in-housing disclosure requirements (if applicable)
  - ▶▶ Sellers Property Disclosure Statement
  - ▶▶ Resale Disclosure Certificate (if applicable)
  - ▶▶ Environmental Disclosures (if applicable) (wells, septic systems, Methamphetamine, lead paint, underground storage tanks, wetlands)
  - ▶▶ Property Tax preferences disclosures
  - ▶▶ Code compliance issues
  - ▶▶ Seller inspections
- ▶ Abstract or owners title insurance policy and location.
- ▶ Address issues of the house (Repairs and/or replacement – get quotes for repairs/replacements)
- ▶ Verifying data such as selling price, mortgage amount, pre-payment penalties, taxes, assessments, and other issues with the house
- ▶ Tax implications (1031 exchange, valuation exclusions, etc.)
- ▶ Net Proceeds
- ▶ Marketing plan:
  - ▶▶ Services that the agent brings to the sellers
  - ▶▶ Valuation issues – properly pricing the property
  - ▶▶ Marketing time Neighborhood sales and types of financing.
  - ▶▶ Current statistics/inventory
  - ▶▶ Market expectations (i.e. first time home buyers may use FHA financing requiring seller to pay for some repairs)
  - ▶▶ Staging
  - ▶▶ Advertising/signs
  - ▶▶ Open houses
  - ▶▶ Virtual tours
  - ▶▶ Promotional flyers/brochures
  - ▶▶ Closing time
- ▶ MLS exposure
- ▶ Explain company policies on cooperation and compensation

*These general guidelines provide an overview of activities completed by REALTORS® in many real estate transactions. Individual transactions may require additional or fewer services depending upon circumstances.*



#### *Post-Listing Counseling (continued)*

- ▶ How showings are arranged through listing office and who will be the contact person if listing agent is sick, out of town or otherwise unavailable.
- ▶ Electronic lock box key security system
- ▶ Seller availability for potential time sensitive issues regarding purchase agreement negotiations, removal of contingencies, inspections, etc.

#### **On-the-Market Counseling**

- ▶ Industry trends, interest rates, marketplace issues
- ▶ Housing supply in immediate area
- ▶ Number of showings for their house versus other homes in the immediate area

#### **Pre-Offer Consultation**

- ▶ How will offers be handled (faxed, buyer or buyer's agent present, etc.).
- ▶ Will an attorney be reviewing offers?
- ▶ Explain company policy on multiple offers and obtain seller's approval
- ▶ Counter offers versus "sleeping on it" Explain pros/cons of waiting to make a decision on offers received. Risk of losing buyer if long delays in acceptance or counters
- ▶ Contingencies and inspections: Pros/Cons of accepting/rejecting offers that include contingencies?
- ▶ Determine buyer's ability to purchase and consummate the transaction
- ▶ Pre-approved versus pre-qualified qualification
- ▶ Estimate net proceed sheet
- ▶ Capital gains and tax implications
- ▶ Binding purchase agreements, execution and acceptance. Oral agreements are not binding.

#### **Presenting/Countering and Offer Acceptance**

##### *Analyzing the offer*

- ▶ Analyzing the offer. What is flexible, what is not.
- ▶ Assist seller in understanding the risks and rewards of countering/accepting a particular offer. (Helping them answer, "what should I do?")
- ▶ Walking through the contract with them to analyze and understand the proposal.
- ▶ Earnest Money
- ▶ Purchase Price
- ▶ Personal Property
- ▶ Financing Issues and fraudulent arrangements
- ▶ Contingencies (House stays on market)
- ▶ Inspections (What happens during this time period/consequences/what can happen as a result of the inspection)
- ▶ Closing date
- ▶ Possession/Move-In Agreements
- ▶ Risks of multiple offers versus only one offer
- ▶ Reviewing the integrity of the other agent involved
- ▶ Verification of mortgage pre-approval
- ▶ strength of buyer
- ▶ anticipate any potential problems
- ▶ Appraisal and full-underwriting approval
- ▶ Net proceeds: bottom line for the seller
- ▶ Final Walk-thru review

##### *Negotiate the offer*

- ▶ Due diligence/time is of the essence
- ▶ Obtain proper signatures
- ▶ Provide copies to seller

*These general guidelines provide an overview of activities completed by REALTORS® in most real estate transactions. Individual transactions may require additional or fewer service depending upon circumstances.*



### Post Purchase Agreement

- ▶ Follow through and stay on top of all aspects
- ▶ Inspection time frames
  - ▶▶ Work orders: negotiated, completed and re-inspected
- ▶ Buyer's mortgage lender follow up
- ▶ Verify appraisal has been ordered
- ▶ Title: locate and provide to title company
- ▶ Schedule closing date, time and location and provide necessary documents to the closing agent.
- ▶ Provide necessary documents to lender for closing
- ▶ If a Common Interest Community sale, make sure the Disclosure Statement or Resale Disclosure

Certificate and other required documentation are delivered to the buyer. Track the purchaser's right of rescission period.

- ▶ Remind seller buyer has right to a walk through prior to closing (generally the day of or the day before closing)
- ▶ Negotiate any last minute complications/problems
- ▶ Obtain and verify mortgage information and pay-off requirements
- ▶ Review and summarize the purchase agreement for the seller
- ▶ Counsel seller on what to expect at closing
  - ▶▶ What to bring to closing
  - ▶▶ What to be prepared for
  - ▶▶ Review net proceeds, financials, etc.
  - ▶▶ Drivers license (photo ID)
  - ▶▶ Social Security Numbers
  - ▶▶ Previous addresses
  - ▶▶ Preview closing documents

### Closing the Sale

- ▶ Attend the closing
- ▶ Go through the HUD with the seller and match with estimate proceeds
- ▶ Credit for anything (Money transfers for bad carpet, etc.)
- ▶ Watch for fraudulent financing proposals that could bring liability to seller
- ▶ Handle any last minute issues—all known conflicts to be resolved by a written agreement, including escrow agreements to avoid adverse consequences.
- ▶ Home Warranty programs. Make sure they are addressed.
- ▶ Exchange keys, garage door openers and final information about the property
- ▶ Verify possession date and time

### Post Closing Follow up

- ▶ Closure
- ▶ Survey
- ▶ Any questions/problems/concerns
- ▶ Send thank you note and/or gift

During the pendency of the transaction and after the closing, real estate agents can perform a significant role in resolving disputes and moving the transaction forward and solving the problems before they escalate. However there does come a point in time when an agent will have to back off and suggest that the parties consult their own attorney. Dual agents are in a particularly awkward position when problems arise because they represent both parties. The dual agent can be an information disseminator but must not be a negotiator. Thus when a dual agent is involved and a problem starts to develop, the dual agent may have to refer the parties to an attorney earlier than they might if they were serving as an exclusive agent.



# Helping Consumers Understand the Complexities of Today's Real Estate Transaction

## REALTORS® Working with Buyers

### Meeting the Buyers

- ▶ Discussion and explanation of agency relationships
- ▶ Are the buyers working with another agent
- ▶ Forms: Agency Relationships/Exclusive/Non-Exclusive Buyer Representation/Facilitator
- ▶ Discuss compensation issues. How the co-op broker fee is paid by listing broker in many MLS

transactions, what that means to the buyers financial obligation and how working with another real estate broker while under contract to another could result in an obligation to pay the buyers representative under the terms of the contract.

### Pre-Buyer Counseling/Education

- ▶ Find out what the buyer's expectations are.
  - ▶▶ time frame for finding a home (lease ending?)
  - ▶▶ have they looked at homes previously?
  - ▶▶ what are the buyers looking for in an agent?
- ▶ Describe process of home buying.
- ▶ Search options
- ▶ Disclosure issues (forms)
  - ▶▶ Sellers Property Disclosure Statement
  - ▶▶ Well and septic issues
  - ▶▶ Code compliance issues
- ▶ What are the buyers housing needs:
  - ▶▶ Price
  - ▶▶ Style
  - ▶▶ Number of beds/baths
  - ▶▶ Drive time/vicinity to work
  - ▶▶ School requirements
  - ▶▶ Recreational requirements
- ▶ Has the buyer been pre-approved
  - ▶▶ If not, recommend lender
  - ▶▶ If yes, does the agent/broker have permission to speak to their lender
- ▶ What is the buyer's preferred method of communication: email, cell, work, home
- ▶ Will there be any other parties assisting in the home purchase (parents, attorney)?
- ▶ Any conditions they may have (e.g. corporate transfer)?
- ▶ Will they be wanting a home inspection, lead, radon test, etc.
- ▶ Signing exclusive buyer contract or facilitator agreement
  - ▶▶ Explain company policy on cooperation

### Preview Properties

- ▶ Agent accompanies buyers when viewing homes
- ▶ Explain what to look for while viewing properties
- ▶ Evaluate and analyze the differences in properties
- ▶ Understanding mechanical systems/buyer education while viewing homes
- ▶ How/when to review forms:
  - ▶▶ Sellers Property Disclosure Statements
  - ▶▶ Truth in Housing Reports
  - ▶▶ Explain difference between city housing reports versus third party inspections versus mortgage appraisal reports and which one do you want to rely on.

*These general guidelines provide an overview of activities completed by REALTORS® in most real estate transactions. Individual transactions may require additional or fewer service depending upon circumstances.*



### **Preview Properties** *(continued)*

- ▶ Review Forms:
    - ▶▶ Contingency Agreement
    - ▶▶ Inspection Contingency
    - ▶▶ Financing addendums and earnest money
  - ▶ Open Houses
    - ▶▶ Viewing alone versus accompanied by the agent
    - ▶▶ What to say or not say
  - ▶ Counsel for re-sale value/potential/historical statistics
  - ▶ How long do the buyers plan to stay in the home?
- ▶ Narrowing the choices
    - ▶▶ Pro's and con's of home features and locations
    - ▶▶ Prepare a CMA on the properties under serious consideration
  - ▶ Obtain disclosures/inspection information necessary for buyer to make decision

### **Drafting the Offer to Purchase**

- ▶ Explain the process
- ▶ Consulting for the Purchase Agreement
  - ▶▶ Contingencies: risks and rewards
  - ▶▶ Clauses
  - ▶▶ Multiple offers
  - ▶▶ Financing issues and illegal activities
  - ▶▶ Help buyer structure offer that is in their best interest
  - ▶▶ Earnest Money
  - ▶▶ Price
  - ▶▶ Contingencies (House stays on market)
  - ▶▶ Inspections (What happens during this period)
  - ▶▶ Closing date
  - ▶▶ Possession
- ▶ Present the Offer
  - ▶▶ How does the buyer want the offer presented (buyer present, buyer's agent present)?
  - ▶▶ Counsel buyer on expectation on how the offer may proceed such as counteroffer scenarios.
  - ▶▶ Communicate and negotiate counter offers from selling party
  - ▶▶ Negotiate and counsel client with their response.
- ▶ Due diligence/time is of the essence.
  - ▶▶ Agent/broker should review and make sure the offer is the final form as negotiated
- ▶ Obtain all proper signatures
- ▶ Provide copies to the buyer

### **Post Purchase Agreement Counseling and Follow-up**

- ▶ Follow through and stay on top of all aspects
- ▶ Arrange for property inspection
- ▶ Provide counsel and negotiate issues
- ▶ Follow-up on all other inspections/contingencies
- ▶ Verify work orders completed
- ▶ Mortgage lender follow up
- ▶ Provide all documents to lender
- ▶ Verify appraisal has been ordered
- ▶ Good-Faith Estimate provided
- ▶ Discuss fraudulent activities and buyer liability
- ▶ Arrange closing date, time, location
- ▶ Do early on to avoid delays/disappointments



### Post Purchase Agreement Counseling and Follow-up *(continued)*

- ▶ Verify title work complete
- ▶ Prepare buyers for closing
  - ▶▶ Order insurance binder
  - ▶▶ Explain what paid receipts will be required
  - ▶▶ Furnish list of utilities/phone/cable contacts/phone numbers
- ▶ Arrange for and attend final walk through
- ▶ Negotiate any last minute problems
- ▶ Counsel buyers on what to expect at closing
- ▶ What to bring to closing
  - ▶▶ Driver's license (photo ID)
  - ▶▶ Social Security numbers
  - ▶▶ Residence address for past ten years
  - ▶▶ Certified funds and personal funds
  - ▶▶ Verify lender and funds required
- ▶ Estimate time to allow for closing
- ▶ Explanation of Title Insurance
- ▶ Verify all terms of the Purchase Agreement have been are met

### Closing the Sale

- ▶ Attend the closing
- ▶ Go through the HUD1 Settlement Statement with the buyer
- ▶ Handle any last minute issues—all known conflicts to be resolved by a written agreement, including escrow agreements to avoid adverse consequences.
- ▶ Disclose fraudulent financing arrangements
- ▶ Exchange keys, garage door openers
- ▶ Verify possession date and time
- ▶ Homestead filing
- ▶ Register to vote

### Post Closing

- ▶ Closure
- ▶ Remind to sign homestead cards
- ▶ Remind to register to vote
- ▶ Post closing contact asking if they have any questions/concerns/problems.
- ▶ Survey
- ▶ Send thank you note and/or gift

During the pendency of the transaction and after the closing, real estate agents can perform a significant role in resolving disputes and moving the transaction forward and solving the problems before they escalate. However there does come a point in time when an agent will have to back off and suggest that the parties consult their own attorney. Dual agents are in a particularly awkward position when problems arise because they represent both parties. The dual agent can be an information disseminator but must not be a negotiator. Thus when a dual agent is involved and a problem starts to develop, the dual agent may have to refer the parties to an attorney earlier than they might if they were serving as an exclusive agent.