Who's Going To Pay The Broker?

Servicers Could Be Liable For A Commission At A Foreclosure Sale

BY BRUCE J. BERGMAN

"Might a servicer have to pay a real estate broker at the "foreclosure sale?" The inquiry may not be as perplexing as, "How many angels can dance on the point of a pin?" - but it is probably far more incendiary.

Lenders and servicers are aware that as the date of a foreclosure sale approaches, so too typically does the borrower's frenzy to find some resolution to the dilemma. Orders to show cause and bankruptcy filings, in addition to the floods of desperate calls and correspondence, are among the frequent onslaughts.

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Far more welcome, though, is the intent to sell the property - certainly if it is sincere. That at least portends partial or full payment of the mortgage rather than contentious litigation.

Enter the broker

Sometimes this apparent desire to sell emerges through a call from a real estate broker to the servicer or servicer's counsel seeking a price to purchase the premises.

Surprisingly, many people do not understand what lenders and servicers know well: the mortgagee is not the owner of the property. The lender has a *lien* on the property, but not the title. The ownership still remains with the borrower (who most often, of course, continues to be the owner) until such time as the hammer falls at the foreclosure auction sale. Prior to the sale, while the borrower's title is in imminent danger of being taken away, it stays precisely where it is.

Thus, the real estate broker, or anyone else who is interested, can negotiate with the lender for one of two things - neither of which is immediate ownership of the premises.

There should be a contract to purchase the property from the lender should the latter become the successful bidder at the foreclosure sale. It can be impractical to assure that this result will eventuate, but it is something which can be negotiated and accomplished, albeit somewhat more complex than can be readily discussed here. Because this conclusion tends to be infrequent, certainly in the residential sector, it is perhaps uneconomical to dwell upon it further.

Another readily discernible alternative

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broker feedback and recent sales of comparable properties. If you choose to change direction, do it quickly and decisively – well before a property that was poorly positioned at the outset suffers from the further devaluation associated with remaining on the market longer than competing properties.

In monitoring your REO portfolio, set formats that are simple, understood by your brokers, consistent between "wholly owned" and investor files that allow you to manage by exception.

■ **When you receive an offer on a property respond immediately.**

Many REOs are being purchased by investors with little/no emotional attachment to the property. The offer has a limited "shelf life"; if you do not respond quickly, they move on.

To reduce the turnaround time of your counter offers, have a standard format ready, set policy to counter every offer within a certain period of time, and be sure that all employees know and understand your corporate signature format. If the deal has life beyond your counter, demand a "source of funds" notification and step up performance contingencies (increased deposits, loan and inspection contingencies, etc.).

■ **At closing, be sure that title is clear, the "step up" performance issues are contracted, and that a professional escrow agent/attorney represents your interests.**

FYI

Boatmen's Mortgage Signs Up With LIS

Boatmen's Mortgage Corporation of St. Louis has signed a five-year service bureau contract with Lomas Information Systems (LIS) of Dallas for the Excelis Mortgage Loan Servicing system.

Boatmen's was scheduled to bring its self-originated portfolio onto Excelis MLS on Oct. 1 and, over the next 18 months, add on the loans of Boatmen's affiliate banks to the system.

Boatmen's Mortgage is a wholly-owned subsidiary of Boatmen's Bancshares, Inc.

LIS is a subsidiary of Lomas Financial Corporation and markets its loan production, secondary marketing and servicing systems using the trade name Excelis.

Western Bank Mortgage Merges With Victoria

Western Bank Mortgage Company, Costa Mesa, Calif., has merged operations with Victoria Mortgage Corporation of San Antonio. The merger creates a full-servicing mortgage banking company with a nationwide loan servicing portfolio approaching $4 billion.

Larry Koppelman, managing director of Western Bank, is vice chairman of the board of the new corporation.

The new Victoria Mortgage Corporation is engaged in the origination, sale and servicing of residential first mortgage loans and the sale of servicing rights associated with such loans. All servicing operations will be consolidated in San Antonio while Costa Mesa will remain the headquarters for loan origination.

First Western Acquires $2 Billion In Servicing

First Western Corporation of Scottsdale, Ariz. completed three servicing portfolio acquisitions last summer.

The company purchased:

■ a $1.4 billion portfolio from California-based Headlands Mortgage Company, which included 10,700 single-family residential loans with a weighted average note rate of 7.75% and an average loan balance of $134,000; and

■ a total $800 million portfolio of 6,800 single-family residential mortgages from Miami-based Universal American Mortgage Company and Plaza Home Mortgage Bank in Santa Ana, Calif., with a weighted average note rate of [illegible] and an average loan balance of $118,100.

The acquisitions bring First Western's loan servicing portfolio to a [illegible] of $6 billion.

The company's name has changed to Express America Holdings Corporation and its trading symbol on NASDAQ from FWCO to EXAM.