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## Short Sale Offer Submission Guidelines

*(Note: This document was developed to assist you in preparing your offer to ensure a smoother acceptance process. It is not meant to be an Exhibit or part of your actual offer – please do not make it an Exhibit to your offer.)*

We will use BGS3, a national short sale processing company, to handle short sale negotiations with the seller's lender(s). Their Program HR 3648 has roughly a 95%+ success rate of getting short sales approved. (National statistics are that less than 15% of all short sales are approved.)

One of the requirements of BGS3 is that we present them with a clean contract with all changes or counters reflected in the final Purchase and Sale Agreement. Additionally, the seller is required to submit all their supporting documentation at the very beginning of the process. A clean and complete short sale package will make this a better experience for both buyer and seller.

Upon receipt of your offer, we will inform you of any changes that need to be made before the offer can be submitted to the seller's lender(s).

*We expect to receive multiple offers on this home. Please make your best offer first as you may not get a chance to make a counteroffer.*

**Please write or re-write your Purchase and Sale Agreement to include the items referenced below.**

### 1. GAR Forms Must Be Used

- a. All offers must be on the Georgia Association of REALTORS standardized real estate forms. Even if you are not a member of the Georgia Association of REALTORS or licensed to use the GAR Forms, you are allowed to use them in this transaction since I am a member of the Georgia Association of REALTORS.

### 2. Financing and Appraisal Contingencies

- a. All financing and appraisal contingencies to be removed within 10 days after written notice of short sale approval has been given to buyer.
- b. Buyer is to accept best available rate and terms for their financing.

### 3. Closing Attorney

- a. Closing attorney shall be Morris|Hardwick|Schneider; 7000 Central Parkway, Suite 300; Atlanta, GA 30328; Phone: (770) 625-0200; Fax: (770) 240-0062. Seller reserves the right to change the closing attorney if needed.

### 4. Buyer Discount Fee Agreement

- a. Because of BGS3's negotiations with seller's mortgage company, buyer has the opportunity to purchase this property at or below market value. This sale is to be conducted by including a Buyer Discount Fee of 1% of the sales price (or \$1,500 minimum whichever is greater) as part of the buyer's closing costs, to be paid to BGS3/HR Program 3648.
- b. Buyer Discount Fee Agreement must be included with your offer and referenced as an Exhibit in the Purchase and Sale Agreement.
- c. The amount of the buyer discount fee may be deducted from the purchase price your buyer offers on the property. For example, if your buyer was going to offer \$300,000 for a property, they could lower their purchase price to \$297,000 to factor in the cost of the buyer discount fee. Alternatively, they could include additional seller paid closing costs to cover this fee.
- d. If BGS3 is not successful in negotiating a short sale or discounted mortgage payoff to facilitate a successful closing, the buyer has *NO* contractual obligation and does not owe this fee to BGS3/Program HR 3648. If successful, the buyer gets to buy a great property at a great price.

### 5. Short Sale Addendum

- a. The Short Sale Addendum must be included and referenced as an Exhibit in the Purchase and Sale Agreement.

### 6. Lead-Based Paint Exhibit

- a. All offers must include a Lead-Based Paint Exhibit – *regardless of when the home was built.*

### 7. Possession

- a. *Occupied properties:* Possession shall occur 3 days after the closing at 5:00 p.m. or on such other date as may be agreed to in writing by the parties.
- b. *Vacant properties:* Possession shall occur at closing.

- c. Under no circumstances can the buyer occupy the property prior to closing.

## 8. Earnest Money

- a. Earnest money shall be a total of 1% of purchase price. The minimum total earnest money deposit is \$500.
- b. Earnest money shall be held by the **Selling Broker. Chapman Hall, REALTORS** **will not hold your buyer's earnest money on this transaction.**
- c. A legible copy of the earnest money check MUST accompany all offers.
- d. If your buyer is concerned about depositing earnest money on a short sale prior to approval, we recommend you either state that the earnest money check will be deposited once the short sale is approved or split the earnest money payment into two deposits.
  - i. If you are depositing the earnest money after the short sale is approved, please include the following language in your special stipulations "Holder is in receipt of earnest money and shall deposit earnest money within 2 business days of written notice of short sale approval." Please make sure you physically collect the check and include a copy with your offer.
  - ii. You may also structure the earnest money into two deposits so that 1/2% of purchase price is collected at the time you make the offer and an additional 1/2% is collected and deposited within 2 business days of notice of short sale approval – for a total of 1% of purchase price. If you are structuring the earnest money payment in two deposits, please include the following clause in your special stipulations: "Buyer agrees to pay Holder additional earnest money in the amount of \$xxxx within 2 business days of written notice of short sale approval and provide a copy to Listing Broker, making a total earnest money deposit of \$xxxx. In the event Buyer fails to pay the additional earnest money by said date, Seller may within 7 (seven) days of said date, terminate this Agreement due to the default of Buyer. If Seller fails to timely give notice of Seller's decision to terminate this Agreement, this right to terminate shall be deemed waived."

## 9. Loan Pre-Qualification Letter and/or Proof of Funds

- a. **Financed Offers:** All financed offers must include a loan pre-qualification letter that indicates the type of financing (FHA, VA, Conventional, etc.), the term of financing, the interest rate, as well as all contact information for the lender. If the buyer is putting down more than 3.5% of the purchase price, proof of funds for the down payment must accompany the offer.

- b. Cash Offers: All cash offers must include proof of funds for the entire purchase price. Proof of funds can come from multiple accounts, etc. but all must be in the name of the buyer.
- c. Some properties will require additional paperwork to be completed by the buyer and/or agent including Arms-Length Transaction Affidavits and other lender specific forms. If applicable, these will be provided after your offer is received.

## 10. Inspection Period

- a. While the buyer does not have to have their inspection until the short sale is approved, we recommend that their inspection be completed much sooner. Since this is an as-is sale, this prevents you and your buyer from waiting for the short sale to be approved only to find out the inspection results are not acceptable.
- b. Utilities may be off in the property. Since the seller is under a financial hardship, it is the buyer's responsibility to make utilities operational if needed for inspection purposes. In the event that utilities are not operational at the time the short sale is approved, Due Diligence Period shall be extended by the number of days needed to make the utilities operational.

## 11. Real Estate Commission

- a. All real estate commissions will be split equally on a 50/50 basis with the co-operating broker with the following exceptions:
  - i. If an agent is acting as a principal and purchasing for his or herself, the commission may be reduced to 2% or less for the co-operating broker. If this occurs; the commission shall be 3% to the listing broker with the remaining portion of the total commission going to the co-operating broker.
  - ii. Some lenders penalize agents that work at the same firm as the listing agent and reduce the commission, if this occurs; the commission shall be 3% to the listing broker with the remaining portion of the total commission going to the co-operating broker. (For example: if the total commission was 5.5%, the listing broker would receive 3% commission and the co-operating broker would receive 2.5% commission)
- b. If the mortgage is backed by Fannie Mae or Freddie Mac the commission is guaranteed to be 6% (split equally among brokers) and cannot be reduced. Servicers of Fannie Mae and Freddie Mac loan products can no longer require real estate agents to reduce their commissions as a condition to a short sale approval.

According to Fannie Mae, "Effective March 1, 2009, closing of pre-foreclosure sales may not be conditioned upon a reduction of the total commission to be paid to real estate agents to a level below what was negotiated by the listing agent with the borrower, unless the fee exceeds 6 percent of the sales price of the property in aggregate."

Freddie Mac in their August 20, 2009 bulletin stated, "Unless a real estate broker's sales commission exceeds 6% of the property sales price, Servicers must not, as a condition of the Servicer's acceptance of an offer, renegotiate the real estate broker's sales commission to an amount that is lower than the amount that was originally agreed upon between the broker and the Borrower. In the event the sales commission exceeds 6%, the Servicer must renegotiate the commission to limit it to 6% of the property sales price.

- c. Lenders will often try to reduce the commission paid on a short sale. We have listed this property with a 7% real estate commission with the seller in an effort that if the commission is reduced, it will only be reduced to where a 2.5% to 3% selling broker commission can still be paid. However please understand that the lender, not the listing broker, determines the final real estate commission.
- d. Lender reserves the right to pay commission on the net sales price of this property. The net sales price is the contract sales price minus seller concessions (closing costs, allowances, home warranties, etc.)
- e. In certain circumstances where two or more lenders are involved, the commission may be paid at different levels based on the proceeds received by each respective lender.
- f. No reference to real estate commission can be included in the body of the Purchase and Sale Agreement. The final real estate commission will be set by the lender.

## **12. Offer Submission Process**

- a. We ask that you take extra effort to make sure all pages of your offer are clear and legible and as many pages as possible are from a first generation source (i.e. not a fax of a fax of a fax). Since we will have to then fax or scan the accepted offer to the lender(s) to gain approval we want to avoid any delays due to illegible pages.
- b. Faxed offers: If you are faxing your offer, please fax using "fine" resolution setting if possible. Please fax offers to: 404-806-6203.
- c. Scanned/emailed offers: If you are scanning and emailing your offer, please set your scanner to scan in black and white between 100-200 dpi resolution and save as a PDF file. Please do not email contracts where each page is saved as a separate file or offers saved in JPG/jpeg format. Please email offers to: michael@michaelsmith.com .