



# Smooth Closing Process: Lender, Lawyer, Realtor Working in Collaboration to Serve Mutual Clients

**Main Action item: Create an updated Closing Process Best Practice Guide for REALTORS, and have a joint Lender, Lawyer, Realtor meeting to discuss.**

**This meeting has been scheduled for Wednesday May 27<sup>th</sup> Berkshire Hills Country Club, along with a Legislative and Midyear update**

## Document Delivery & Communication Topics:

- Attorneys not getting copies of contracts and addendums with enough time left to review, especially those written on a weekend.
  - *Action Item: Consider approved language for the attorney review clause, as agreed by attorneys.*
- Attorneys not getting contact information with P&S so can't reach out right away to discuss client relationship for new buyers.
- Attorneys and Lenders not routinely getting the contact worksheet with the P&S because (1) the Realtor doesn't have all of the information or (2) doesn't want to give it to the other Realtor.
  - *Action Item: Create a best practice item advising REALTORS to deliver the P&S and Contact Worksheet to lender and attorney IMMEDIATELY, with the P&S. Do not wait until after the inspection. The Board should also address the reasons why Realtors are reluctant to complete the contact worksheet and revise it to help promote universal adoption. When revising the Contact Worksheet, consider adding home heating fuel type to help with closing process.*
- Last-Minute Addendums are not being shared with all parties.
  - *Action Item: Create a best practice item for proper communication about inspection issues, especially understanding who (and more importantly, who should not) receive a copy of the full report. Communications in general with informative subject lines, needed details, who/how/where to send.*
- Many Attorneys reported working on dead files, having received no notice that the sale was terminated during the inspection period.
  - *Action Item: Request that there be a definite notice to the lender and attorney when the buyer is though inspection, with clarification if they are (1) proceeding as the original contract states, (2) include an addendum if applicable, with change of dollar figures or (3) termination of the agreement. This can be submitted as soon as known, which is sometimes before the inspection period ends.*
- Not all who are representing Condo clients are educated on the unique process needed to close one.
  - *Action Item: Consider creating a checklist or uniform condo questionnaire. Make sure to educate that Disclosure of Capital Account and Reserve Accounts is needed for Condos, as is the Master insurance binder. Perhaps creating a class on the specialized Condominium market.*

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- Emails and Conversations Crossing Lines beyond client. Cc'ing all.
  - *Action Item: Include in the best practice session about communication. Advise that Realtors should only speak and email their own client's side of the transaction... if a buyer's agent, then only the lender and buyer's attorney. Seller's agents should only contact and copy the seller's representatives. It should be noted that important (damaging) information has been seen by the "wrong" side in email threads that were sent to everyone. Also, attorneys must read (and bill in some cases) for all of the information received so you could potentially costing clients' money.*
  - *Action Item: Attorneys were asked to respond to all emails, with a confirmation that information was received. With the new secure transaction information, it was helpful for Realtors to be able to reference time and date stamps when material was delivered, to address 'lost' addendums. Perhaps when creating communication best practices, consider having all parties acknowledge receipt and train all REALTORS on how to pull tracking information from Ziplogix.*
- Everyone is handling the payment of cooperative commission checks differently – including calculating and asking for checks to be reported differently. There is also misunderstanding about 1099 responsibility.
  - *Action Item: Consider creating a standard / uniform commission statement, and best practices for the payment to selling brokerages by Atty/Realtor, collection of W-9s and issuance of 1099s.*
  - *We also noted that lenders / lawyers asking for commission statements from both brokers can be problematic if the full commission payment is made to the listing broker and they are responsible to pay the cooperative compensation listed in the MLS. When a lawyer pays a cooperating broker directly, based on their invoice, and the invoice is not accurate, there are commission disputes that should not be occurring.*
- Completion of P&S accurately and fully is important. Property book and page are incredibly important to the title search process. So is the full (correct) legal, address, and all of the check boxes completed. No blanks!
  - *Action Item: Add to best practices. Ask Patsy Harris to do another class on searching registry.*

### Closing Hiccups Discussed:

- If safety / repair items are mentioned by an appraiser, or in an addendum, the lender will be looking for invoices paid by a licensed professional for correction (electrician, plumber, etc.)
  - *Action item: Educate on the importance of properly wording addendums. For example, if is worded "\$2,000 credit due to electrical inspection issues" - that triggers need for some lenders to request a copy of the electrical section of the inspection and require an electrical inspector or licensed electrician to approve / complete repairs. If its worded \$2,000 credit at closing for minor repairs (if truly minor) that might not trigger as many issues.*
  - *Action Item: Asked if we would consider, in the best practice guide, advising listing brokers / buyer brokers to attend appraisals so you are flagged early on issues that will be identified and must be corrected for loan to proceed? A request was made that the forms committee consider adding a dollar volume (under \$250 for example) that would be waived if an inspection or walkthrough issue arises lower than that amount?*
- Creating realistic timelines is important to all. Moving up title search so it is completed earlier, Title V inspections are taking a long time, inspection dates being pushed. Closings impacted.

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Late stage delays (2 weeks or less before closing) are leaving clients in limbo / stranded (in order of # reported by Brokers): Title Issues, Title V or Permits, Appraisals not back, attorney vacation. Cheap Plot Plan provider with unreliable product, no license to sell/wrong parties named, change of mind.

- *Action Items: Add to the Best Practices guide how important it is to contact the lender for the appropriate dates based on the loan and buyer. Knowing when the last time a sale took place (for title search) and if it's a 1st time homebuyer can make a difference. Continue the discussion with the legal community on changing the way titles are ordered. Same with towns that take a long time on MLC & Plot Plan. Lawyers asked Lenders to consider raising the quoted rate for plot plans. Perhaps if we begin the practice of sending a lender/lawyer notice of inspection outcome, they can consider offering to start title earlier with buyer's agreement to pay or at the very least, to begin when the notice of inspection is submitted. Waiting to start title until days before the closing can financially devastate a client with their life packed into a moving truck.*
- Requesting to move up a closing by a week (or postpone, in the case of attorneys) can be a big deal. When the P&S is received, all parties mark their calendars for all of the dates and work towards those dates
  - *Action Item: Create a best practice flow chart explaining what happens in each stage of the process and who is handling it, to help illustrate that moving a closing requires the agreement and calendar availability for 10-12 people working on the closing process. Attorneys were also reminded that advance scheduling of vacation well in advance is critical when there is limited coverage is important. The lawyers were also asked to consult with the REALTOR representatives before reschedule closings between each other. All acknowledge, it takes all Lender – Lawyer – Realtor, communicating and working together, to make these timelines work on behalf of our mutual clients.*

### Client Level Fiduciary Concerns:

- Lawyers noted that they are seeing more Seller clients accepting small deposits without consult or recommendation from their agent or attorney.
- Electronic contracts are being executed, with no deposit funds being delivered to the escrow agent. Contracts are not binding until secured with earnest money as outlined in the agreement, and in this fast market, clients are unaware of the contractual ramifications of this “check delivery” delay.
  - *Consider the possibility of including a date on the contract for the deposit to be delivered to the listing agent (technically you do not have a contract without the \$)*
- Document security to avoid wire Fraud. More training and integration of online transaction systems Ziplogix, Dotloop and docu-sign for a universal way to convey data securely – and knowing when to open those links.

### Closing Timeline:

- Update needed for current best practice suggestion for REALTORS completing the P&S dates.
- Best practices: Continue to work with lenders to define the best overall contract dates, but know that timelines are different based on lender, loan type, buyer and property specifics. Note that rate locks are good for 50 days but some can be extended, but it is a factor. A conversation with the lender and lawyer before the offer is made would be an important preliminary step for buyers in tight markets.

### Anything we can do?

- Shortage of industry professionals in some parts of the county: Title Abstractors, Paralegals, Inspectors, Appraisers. Appraisers – there are no trainees right now!



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