

**2009
INDUSTRY
PARTNERS
CONFERENCE
SCENARIOS**



industry partners conference

2009 INDUSTRY PARTNERS CONFERENCE

TOPIC OVERVIEW

TOPIC	OBJECTIVE
EARNEST MONEY DISPUTES	Demonstrate how to represent your client in an earnest money dispute pursuant to the terms and conditions of the contract.
FINANCING	HERA. HOEPA. HVCC. HELP ME! Explore how these regulations affect your transaction and what you need to know to navigate through these issues.
FORECLOSURES	Explain the process of the Trustee's Sale: how the bidding happens; how to adequately review the value of the property to see if you and your client want to bid on the property; and the process for acquiring the property. What are the "rules of engagement" for navigating a Trustee's Sale?
REO MANAGEMENT	What are the contract issues that change the AAR contract provisions? Discuss "As Is," financing contingencies, inspections, performance issues (no 3-day cure period notices) and earnest money being non-refundable. Consider negotiating the costs, penalties for Buyer's failure to close, assigning the REO contract, etc.
SHORT SALES	Explain the short sale process: what the obligations are of the licensee; how to coordinate your efforts with your escrow officer; and how to coordinate the efforts with the new lender.

The scenarios and opinions expressed in these scenarios and in the oral presentations are not necessarily those of AAR, AMLA, ASEA.

Earnest Money Disputes – Scenario #1

Your transaction is contingent upon the acceptance of the contract by the short sale lender. According to the Short Sale Addendum, the Buyer does not have to put in earnest money until receipt of the agreement notice.

The “agreement notice” is the term used in the Short Sale Addendum that defines the terms of the short sale approval that has been accepted both by the Seller and the Seller’s creditor(s).

As the listing agent, you want to tie the Buyer to this transaction, so you add to the contract: *“Buyer shall deposit \$5,000 non-refundable earnest money. This earnest money shall be non-refundable for a period of 60 days.”*

It’s now 30 days into this contract. The Buyer wants to cancel because he has found a different property. His agent tells him that until the lender provides the approval, “They really don’t have a contract.”

The Buyer submits to escrow the following instruction: *“I have decided to cancel this contract. Please cancel this contract and return my \$5,000 to me.”*

Discussion Questions – Scenario #1

Is the Buyer entitled:

- a) to cancel the contract?
- b) to receive a refund of the earnest money?

Earnest Money Disputes – Scenario #2

Let's continue with the same scenario as Scenario #1. You have the same contract, but in this case, the lender, on day 45, HAS approved the short sale, and the terms have been accepted by the Seller.

The lender's approval has been provided to the Buyer.

The contract provides that the inspection period would start upon the receipt of the lender's approval of the short sale.

The Buyer conducts his inspection and based on his inspection he decides he does not want the property because it's in a bad school district.

The non-refundable earnest money provision lasts for 60 days. On day 45, the Buyer received the Lender's approval and now the Buyer's inspection has been completed on day 52.

The Buyer sends the BINSR to the Seller and to escrow stating: *"Please cancel this contract based on my inspection and refund my \$5,000 to me."*

Discussion Questions – Scenario #2

Can the Buyer cancel?

Can the Buyer receive a refund of his earnest money?

Earnest Money Disputes – Scenario #3

Your transaction is contingent upon the acceptance of the contract by the short sale lender. According to the Short Sale Addendum, the Buyer does not have to put in earnest money until receipt of the approval by the short sale lender, the “agreement notice.”

You want to tie the Buyer to this transaction, so you add to the contract: *“Buyer shall deposit \$5,000 non-refundable earnest money. This earnest money shall be non-refundable for a period of 60 days or upon the receipt of the lender’s acceptance of the short sale.”*

Discussion Questions – Scenario #3

With this language “or upon receipt of the lender’s acceptance of the short sale,” what is the status of the earnest money?

What is the difference between the lender’s acceptance and the “agreement notice?”

Earnest Money Disputes – Scenario #4

The contract includes the AAR “As Is” Addendum.

The Buyer completes his inspection of the property and discovers that the air conditioning unit is not working.

The Buyer issues the BINSR to the Seller that he expects that the Seller will complete the repairs on the air conditioning unit because he believes that the warranted items per the contract are still the obligation of the Seller.

The Seller makes NO response to the BINSR. Because the Seller does not respond to the BINSR, the Buyer cancels the contract and instructs the escrow company to refund his earnest money.

Discussion Questions – Scenario #4

Is the Seller obligated to repair the air conditioning?

If the Seller fails to respond to the BINSR, what does that mean to the Buyer?

If the Buyer does not cancel based on the inspection and asks for repairs from the Seller, has the Buyer then agreed to proceed with the contract?

Earnest Money Disputes – Scenario #5

The Buyer offers his contract to the REO bank. The bank insists that their “counter offer” be signed by the Buyer and be made a part of the contract.

In the REO “counter offer,” there is a provision that states: *“By signing this addendum, the Buyer has conducted all inspections and accepts the property in ‘as is’ condition.”*

The Buyer deposits their \$1,000 earnest money into escrow.

The Buyer then orders their inspection of the property and, during the inspection, discovers that the roof needs to be repaired or replaced. The Buyer now wants to cancel the contract based on the inspection.

Discussion Question – Scenario #5

Can the Buyer cancel and receive a refund of the \$1,000 earnest money?

Earnest Money Disputes – Scenario #6

The Buyer offers his AAR Residential Resale Purchase Contract to the REO bank for approval. The REO bank responds with its own “counter proposal.” The Buyer’s contract states that they have a contingency for loan financing.

In the REO bank’s counter proposal, the loan provisions state: *“The Buyer has 72 hours to present their pre-approval form that they have been pre-approved for the loan.”*

There is no other loan contingency provision.

Two weeks into the transaction, the Buyer submitted their “unfulfilled loan contingency” that they were unable to obtain the loan. The Buyer requests that they receive a refund of their \$2,000 earnest money.

The REO bank states that the Buyer cannot have their earnest money because the loan contingency has expired.

The Buyer’s agent is furious at the escrow company because the AAR Residential Resale Purchase Contract clearly allows for the loan contingency to last throughout the time period of the contract, and they insist that this 72 hour provision did not override the AAR contract.

Discussion Question – Scenario #6

How should the agents, principals and escrow company deal with the “hand written/over print/over type” issue about what amends a contract?

Earnest Money Disputes – Scenario #7

A Different Loan Contingency

Your Buyer has accepted the addendum from the REO bank, and the Buyer's contract clearly contains the loan contingency. On the AAR contract, the loan contingency continues through the close of escrow.

However, on this particular REO bank's addendum, the loan contingency states: *"If the Addendum is contingent upon financing, the Buyer shall present proof, satisfactory to the Seller, of the Buyer's prequalification for a mortgage loan in an amount and under terms sufficient for the Buyer to perform his obligations under the addendum. The prequalification shall include, without limitation, a certification of prequalification (or a mortgage loan commitment) from a direct mortgage lender. The Buyer's submission of proof of prequalification, satisfactory to the Seller, is a condition precedent to the Seller's acceptance of the addendum and failure of the Buyer to provide such proof prior to the Seller's execution of the addendum may nullify the Seller's execution of the addendum and render the contract null and void. The Buyer shall complete and submit to a mortgage lender an application for a mortgage loan containing the terms set forth in the Terms and Conditions section of this addendum within three (3) calendar days of mutual acceptance of this addendum. Buyer shall employ diligent efforts to obtain a mortgage loan commitment within fourteen (14) calendar days of mutual acceptance of this addendum. If, despite the Buyer's diligent efforts, the Buyer cannot obtain a mortgage loan commitment within such fourteen (14) calendar days, then either the Buyer or the Seller may terminate the addendum by giving written notice to the other party, and this addendum may be automatically terminated at the sole option of the Seller. In the event of termination by the Buyer, the Buyer's notice to Seller must include a copy of the loan application, proof of the application date and a copy of the denial letter from the prospective lender. Earnest money is considered non-refundable if Buyer chooses not to terminate within the (14) calendar days."*

It's now three weeks into the contract with the close of escrow date scheduled 10 days from now. The Buyer submits to escrow the "unfulfilled loan contingency" form and requests that the escrow be cancelled and his \$5,000 earnest money be returned to him.

The escrow officer refers the Buyer to his agent. As the Buyer's agent, you presumed that the loan contingency that you were familiar with in the AAR contract would prevail in the face of this addendum.

Discussion Question – Scenario #7

What would you tell your Buyer now?

Earnest Money Disputes – Scenario #8

Your Buyer has entered into a contract with the REO owner who is FNMA to purchase the property at \$110,000. It is the intent of your Buyer to put money into the property for remodeling and clean-up and then to immediately resell the property for a profit, hopefully getting \$150,000 for the resale of the property.

Your Buyer has clearly indicated on the contract that he is NOT going to be occupying the property, and he's paying cash for the property.

You receive the Real Estate Purchase Addendum from the REO bank and in paragraph 14, you read the following language: *“Seller’s deed shall include the following deed restriction: Grantee herein shall be prohibited from conveying captioned property to a bona fide purchaser for value for a sales price of greater than \$127,200 for a period of 3 months from the date of this deed. Grantee shall also be prohibited from encumbering subject property with a security interest in the principal amount of greater than \$127,200 for a period of 3 months from the date of this deed. These restrictions shall run with the land and are not personal to the grantee.”*

The Buyer has signed the Real Estate Purchase Addendum received from the bank and has opened escrow. You have \$5,000 earnest money.

You have provided the Special Warranty Deed to the Buyer containing this language, and the Buyer has called you, the escrow company, telling you that he wants to cancel based on this provision and he wants his earnest money returned to him.

Discussion Question – Scenario #8

What should the escrow company tell the Buyer?

Earnest Money Disputes – Scenario #9

Your Buyer has accepted the Real Estate Purchase Addendum from the FNMA REO bank. Relative to the inspection provision, the addendum reads: *“On or before 10 calendar days from the Verbal Acknowledgement Date, the Purchaser shall inspect the property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the property, or be deemed to have waived such inspection and any objections to the condition of the property and to have accepted the property.”*

The Buyer deposited earnest money on August 1st. It’s now August 25th, and the Buyer writes to escrow: *“Please cancel the transaction and refund my \$6,000 earnest money.”*

Discussion Questions – Scenario #9

How does escrow know when the “Verbal Acknowledgement Date” started?

What needs to happen to determine if the Buyer gets his money back?

Financing – Scenario #1

Writing an FHA Contract and Not Asking for Any Seller Concessions

Your Buyer has fallen in love with a house. You are writing an offer on a property. The purchase price is \$330,000. The MLS remarks said the Seller would absolutely not contribute to any closing costs or down payment assistance program. Your Buyer was prequalified by a loan officer who said they could qualify for an FHA loan. This is the first time you will have written a contract with the Buyer purchasing a home using an FHA loan.

You are reading page two of the contract, lines 70-81, “Types of Financing and Loan Costs.” On line 70, you circle “FHA.” On lines 74 to 78, you have choices as to who is paying for discount points, the lender policy, origination fees and the appraisal fee. Your choices are Buyer, Seller and Other.

Discussion Questions – Scenario #1

What box do you check on each one of these?

Now you are reading lines 79-81, “Other Loan Costs.” The contract says: *“In the event of an FHA or VA loan, Seller agrees to pay up to \$_____ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein.”*

You are confused. What are the loan costs on an FHA loan not permitted to be paid by the Buyer?

Since the Seller has indicated they will not pay for any Buyer costs, can the real estate agent pay the tax servicing fee?

Financing – Scenario #2 – FHA Financing

The sales price of the property is \$300,000. The Buyer must come in with 3.5% down payment or \$7,000.

Discussion Question – Scenario #2

Can the real estate agent contribute any of his commission to the Buyer for this down payment?

Financing – Scenario #3

The Buyer made an offer for \$190,000 that the Seller accepted. The earnest money deposit is \$2,000. The property needs about \$35,000 in repairs.

The Buyer wants to finance the purchase price plus repairs under an FHA 203K streamline loan.

Discussion Question – Scenario #3

Could the Buyer obtain a loan for the purchase price plus the \$35,000 repairs?

Financing – Scenario #4

LSR for the FHA loan

In writing the offer for an FHA 203K streamline loan, what should you know that would assist you in helping the Buyer complete the LSR?

Discussion Question – Scenario #4

Look at the contract provisions for “unfulfilled loan contingency.” It must be based on the LSR.

Do you insert the base loan amount on the LSR, or should you take into consideration any FHA pre-paid mortgage insurance premium?

Do you put in the base loan on the LSR, or should you calculate the amount that the Buyer would be able to finance, which includes the 203K repair money?

Financing – Scenario #5

LSR Not Signed by the Buyer

The contract is presented with the LSR included. However, the LSR has not been signed by the Buyer.

Discussion Question – Scenario #5

What issues are raised by not having the LSR signed by the Buyer?

Financing – Scenario #6

Lenders are under extreme pressure to complete the LSR and to mark ALL of the boxes, especially to include that the Buyer has made a loan application.

Discussion Question – Scenario #6

Under the MDIA, there are six provisions in order to determine if there has been a loan application made by the Buyer. What are they?

Financing – Scenario #7 **FHA Anti-Flipping Rules**

The date of the contract is August 1 with a close of escrow September 10. The Seller of the property acquired title to the property May 22 and has flipped this property after making some cosmetic improvements.

The new contract is accepted by Buyer and Seller on July 5. The Buyer's financing is FHA financing. The Buyer's lender receives the title commitment which shows the acquisition of the property by the Seller to be May 22.

Under the FHA anti-flipping rule, HUD prohibits FHA financing for any property being sold within 90 days after acquisition by the Seller. If the re-sale is between 91 days and 180 days following the acquisition by the Seller, the final rule requires the lender to document the resale value.

In this case, the lender is satisfied with the increase in the value but requires a NEW contract be written showing the date of contract to be August 23 or after because the Seller could not enter into a contract to sell the property FHA until August 22 (90 days after acquisition of the property).

Discussion Question – Scenario #7

Would you simply proceed to cancel your contract and write a brand new one?

Financing – Scenario #8 **Loan Modification**

The homeowner cannot make the monthly mortgage payments and a foreclosure sale has been scheduled. The home is worth \$100,000 less than the mortgage balance.

Discussion Question – Scenario #8

If the homeowner qualifies for the Making Home Affordable modification program, will the lender reduce the mortgage balance to the current value of the home?

Financing – Scenario #9 **Modification**

The homeowner is current on the adjustable rate mortgage loan. In two months, the interest rate will adjust higher, increasing the mortgage payment by \$200 per month. The homeowner will then be unable to make the increased mortgage payment.

Discussion Question – Scenario #9

Must the homeowner be late on the mortgage payments to qualify for the Making Home Affordable modification program?

Financing – Scenario #10

The homeowner is current on the mortgage loan and has money in savings to continue making payments. The value of the home, however, is less than the current mortgage loan amount.

Discussion Question – Scenario #10

Will the homeowner qualify for the Making Home Affordable modification program?

Financing – Scenario #11

The Seller and Buyer have signed an AAR contract with a Short Sale Addendum, and they are waiting on the approval of the lender. The Seller now wants to do a loan modification with the lender.

If the lender agrees to the loan modification, the lender will obviously not approve the short sale, and the Seller will remain in the house.

Discussion Question – Scenario #11

Does the listing broker need to inform the Buyer of the Seller's attempt to do a loan modification?

FORECLOSURES

Foreclosures – Scenario #1 **Anti-Deficiency**

An owner of a four-acre lot has nearly completed the construction of the home. The mortgage lender has scheduled a Trustee's Sale to foreclose on the home next week.

Discussion Questions – Scenario #1

If the mortgage lender completed the foreclosure next week, does the owner have the protection of the anti-deficiency statute?

Foreclosures – Scenario #2 **2nd Position Lender**

The Buyer purchased a \$100,000 home with 80-20 financing. In other words, the first lender made an \$80,000 first purchase money loan and another lender made a \$20,000 second purchase money loan.

The \$80,000 first purchase money loan has foreclosed and now owns the home.

Discussion Question – Scenario #2

Can the \$20,000 second purchase money lender file a lawsuit against the owner to collect the \$20,000 loan amount?

Foreclosure – Scenario #3

Lender Has No Right of Possession Prior to the Foreclosure

The foreclosure sale is scheduled for November 15. The owner of the home has listed the home for sale. Although the home is not occupied, the listing broker visits the home almost daily, and the home is in good condition.

On September 30, the lender's representatives forces entry into the home by breaking the locks. The lender's representatives refuse to permit the owner or the listing broker any access to the home.

Discussion Question – Scenario #3

Is the lender who is in the process of foreclosing on the property, permitted to forcibly take possession of the home prior to the foreclosure sale?

Foreclosure – Scenario #4

The homeowner is delinquent on the monthly mortgage payments. A foreclosure sale is scheduled. Prior to the foreclosure sale, the homeowners want to remove the refrigerator, built-in microwave oven and the electric stove from the home.

Discussion Question – Scenario #4

Is the homeowner legally entitled to do so?

Foreclosure – Scenario #5

A foreclosure sale has been scheduled. On the day of the foreclosure sale, an investor outbids the lender and obtains the title to the home. The investor demands that the homeowner vacate the home the next day.

Discussion Question – Scenario #5

Must the homeowner vacate the foreclosed home the next day after the foreclosure?

Foreclosure – Scenario #6

The homeowners cannot make their monthly payments on the home equity line of credit (HELOC).

Discussion Question – Scenario #6

Can the lender garnish the homeowner's wages or bank accounts after the HELOC is delinquent the first month?

Foreclosure – Scenario #7

The homeowner did not make the monthly mortgage payments and lost the home at a foreclosure sale to the lender. The homeowner also did not pay the HOA fees for the previous six months.

Discussion Question – Scenario #7

Can the HOA sue the lender (the new owner of the home) for the delinquent HOA fees?

Foreclosure – Scenario #8

The bank foreclosed on the home and became the new owner of the home. The property is serviced by an on-site waste water system (septic tank).

The REO bank may or may not know that the property is serviced by a septic system.

During the inspection period, the Buyer's agent contacts the listing agent to obtain a copy of the Seller's ADEQ septic inspection. The listing agent responds that the property is being purchased "as is," and the Seller has no intention to obtain any inspections.

Discussion Questions – Scenario #8

Is the Seller obligated under Arizona Administrative Code AACR 189-9-A316 to provide the septic inspection?

If the Seller refuses to provide the inspection, would the Buyer be able to cancel this transaction?

Foreclosure – Scenario #9

The bank foreclosed on the home and became the new owner of the home. The property is located in an unincorporated area.

The Seller refuses to provide any SPDS, claims history report or “any other” documents relative to the property. The Seller is selling the property “as is.”

Discussion Question – Scenario #9

Does this “as is” include that the Seller would be exempt from providing the Buyer with the Affidavit of Disclosure?

REO MANAGEMENT

REO Management – Scenario #1

The bank foreclosed on the home and became the new owner of the home. When the previous owners of the home moved out after the foreclosure, they removed all of the fixtures from the home, including vanities, sinks, toilets and light fixtures.

Discussion Question – Scenario #1

Did the previous owner commit a criminal offense by removing these fixtures after foreclosure?

REO Management – Scenario #2

The bank has foreclosed on a home built prior to 1978. At the foreclosure sale, the bank received a Trustee's Deed.

The bank has now entered into a contract to sell the home but does not want to use the lead-based paint disclosure forms.

Discussion Question – Scenario #2

Is the bank as the Seller of an REO property required to use the lead-based paint disclosure forms?

REO Management – Scenario #3

The Broker enters into a listing agreement with the bank for the sale of an REO property. After the transaction closes, the bank requests a “referral fee.”

Discussion Question – Scenario #3

Can the Broker pay a “referral fee” to the bank after the close of escrow?

REO Management – Scenario #4

You are the listing agent and have been assigned a new REO property. Once at the property, you find that the property is occupied.

Discussion Questions – Scenario #4

What do you do? Do you tell the occupants to get out or do you evict them?

REO Management – Scenario #5

Discussion Question – Scenario #5

What is “cash for keys”?

REO Management – Scenario #6

BPOs (Broker Price Opinions) may be completed by real estate licensees.

Discussion Questions – Scenario #6

As a real estate licensee, do you charge for them or not?

How can lender or title help?

REO Management – Scenario #7

Discussion Questions – Scenario #7

What happens with commissions on REO property?

As the real estate licensee, do I have to negotiate every time I have a contract?

REO Management – Scenario #8

Banks use a Master Listing Agreement that specifically details the broker's responsibility.

Discussion Questions – Scenario #8

Have you seen one? Do you know what it says?

Whose liability is it regarding issues like bills, utilities, disclosures, etc.? Is it the agent or his broker that is liable? Does your broker have the proper E&O coverage to conduct property management?

REO Management – Scenario #9

Your bank has foreclosed on twelve homes in a subdivision, and these homes are now REO properties. The public report for the subdivision was issued four years ago.

Discussion Question – Scenario #9

Can the bank sell these homes without filing a new public report with the Arizona Department of Real Estate?

REO Management – Scenario #10

As the REO listing agent, you handled and paid for mold remediation on a property. The bank has just reimbursed you.

Discussion Question – Scenario #10

Does the bank have to disclose the fact that the property had mold that has been remediated?

REO Management – Scenario 11

A listing broker represents an REO property. The listing broker has a listing agreement that will pay them a specified commission. The listing broker lists the property in the MLS offering a specified co-broke commission. A Buyer makes an offer on the property. The REO Seller will accept the offer but only if the listing broker reduces their commission.

The listing broker agrees to the reduced commission.

Discussion Questions – Scenario #11

Can the listing broker require the Buyer's broker to split the reduced commission after the sale of the property?

REO Management – Scenario #12

The bank will not provide the SPDS (Seller Property Disclosure Statement) or claims history. They are selling the property "as is."

Discussion Questions – Scenario #12

What is the standard of care that selling agents should provide to the Buyers?

How does this absence of the SPDS, claims history report and other items affect the broker's E&O insurance?

REO Management – Scenario #13

The REO bank counters with their own document which overrides many items in the AAR contract. Some of these are called “Counter Proposals.”

Discussion Question – Scenario #13

What are some items you have noticed in these “counter proposals” that would be helpful to the participants in this conference?

SHORT SALES

Short Sale – Scenario #1

Seller Must Agree to Lender’s Requirements for Approval of a Short Sale

The Seller and the Buyer executed an AAR contract with the Short Sale Addendum. The Seller submitted this contract to his lender for approval. The lender has furnished a notice of approval of the terms of the short sale.

In the Notice of Approval, the short sale lender has made a condition of their approval, namely that the Seller pay the short sale difference in monthly payments over five years by signing an unsecured promissory note to the lender.

The Seller now wants to cancel the contract with the Buyer.

Discussion Questions – Scenario #1

Is the AAR contract between the Buyer and Seller a valid contract while the parties are waiting for the short sale lender approval?

Can the Seller cancel the contract with the Buyer because of the lender’s conditions?

Short Sale – Scenario #2

The AAR contract, with the Short Sale Addendum, is accepted between the Buyer and Seller.

Discussion Questions – Scenario #2

Should you, could you, would you open escrow?

Should the escrow company open an escrow based on the AAR contract?

Should the escrow company create an estimated HUD-1 settlement statement to assist the listing agent in presenting the offer to the Lender?

Should the escrow company create 2, 3, 4, 5, amended estimated HUD-1 settlement statements?

Should the Buyer deposit earnest money into the escrow prior to the Agreement Notice from the short sale lender and Seller?

Can the listing agent create their own HUD-1 without having to use the escrow company?

Short Sale – Scenario #3 **Back-Up Offers**

The Seller and the Buyer executed an AAR contract with the Short Sale Addendum with a loan contingency that the Buyer must obtain new financing.

The lender says that they may take up to four weeks to determine if the lender will accept this contract. Three days after the Seller and the Buyer execute their contract with the Short Sale Addendum, the Seller receives an all-cash offer to close in fifteen days.

Discussion Questions – Scenario #3

Can the Seller cancel the contract with Buyer #1 in order to accept the all-cash offer?

Is the Seller obligated to send all offers to the lender, including any back-up offers?

Short Sale – Scenario #4 **Buyer's Broker Cannot Contact Seller's Lender**

The Seller and Buyer #1 executed the AAR contract with the Short Sale Addendum. This contract #1 is submitted to the lender for approval.

Buyer #2 then makes an offer to the Seller with a higher price than Buyer #1. The Seller rejects the offer from Buyer #2.

Discussion Question – Scenario #4

Can the Broker for Buyer #2 go around the Seller and present their offer directly to the Seller's lender?

Short Sale – Scenario #5

Seller Must Submit Accepted Subsequent Offer to Lender

The Seller and Buyer #1 execute an AAR contract with a Short Sale Addendum and submit this contract to the lender for approval.

Two weeks later, the Seller and Buyer #2 execute a “back-up” contract with a Short Sale Addendum for a \$10,000 higher purchase price. The Seller then realizes that, if the contract with Buyer #2 is sent to the lender for approval, there may be an additional delay while the short sale lender tries to determine which offer to accept. The Seller has heard from his friends who have also done short sales that if you submit multiple contracts, the process will be slowed down. The Seller wants this transaction to run smoothly. The Seller now does not want to submit the contract from Buyer #2 to the lender.

Discussion Questions – Scenario #5

Does the Seller have to submit the contract from Buyer #2 to the lender?

Question for brokers and lenders: Knowing that the Seller has received and accepted the back-up offer for \$10,000 more, what duty might you have to submit the best price to the short sale lender? Do you have any obligation to make the short sale lender aware of a better priced offer?

Short Sale – Scenario #6

Seller Can Submit “Short Sale” Backup Offer to Lender

The Seller and Buyer execute an AAR contract with the Short Sale Addendum, and this contract is sent to the lender. The Seller has now accepted a back-up contract with the Short Sale Addendum at a higher price and is planning on submitting this back-up contract to the lender.

Buyer #1 on the original contract is objecting to the submission of this back-up contract to the lender.

Discussion Question – Scenario #6

Can the Buyer prohibit the Seller from submitting subsequent offers to the short sale lender?

Short Sale – Scenario #7 **Commission Dictated by Short Sale Lender**

In the MLS, the listing broker offers a co-broker commission. The listing broker is the owner of the home and is not taking any commission.

The lender has now approved a short sale, but demands that the co-broker's commission be reduced. If the co-broker commission is not reduced, the lender says that they will not approve the short sale.

Discussion Question – Scenario #7

Does the co-broker have an obligation to reduce the commission in order for the short sale to close?

Short Sale – Scenario #8

Short Sale Not Anticipated By The Seller

The contract is accepted, the Buyer has deposited his \$2,500 earnest money, and he has completed the inspection of the premises. The Buyer has requested repairs, and the Seller has agreed to complete all requested repairs.

It then occurs to the parties that in order for the Seller to complete this transaction, he must obtain a short sale approval from his existing lender as the sales price he accepted does not cover what he owes on the property.

The parties have now agreed that they need a Short Sale Addendum to this transaction. The Short Sale Addendum is executed and deposited into escrow.

Discussion Questions – Scenario #8

Does the Short Sale Addendum supersede the contract?

What happens to the Earnest Money?

Does the Buyer get a second inspection once the Acceptance Notice is received approving the short sale?

What if the Buyer completes his second inspection and now decides to reject the property and cancel the transaction?

Once the acceptance comes from the Seller's lender, does the Buyer get ANOTHER inspection notice to be started from that date?

What about Buyer's loan costs?

Short Sales – Scenario #9 **Contract Additional Terms**

The Seller realizes that in order to sell his property he must be able to successfully negotiate a short sale with his lender(s).

You represent the Buyer and have made an offer to the Seller including your Short Sale Addendum.

The listing agent provides a document to you for your Buyer to sign that is called “Buyer Acknowledgment of Short Sale.”

Contained in this form are the following provisions:

*“The sale of this property **will require the approval of a third party.**”*

“All offers will be presented to the Seller of Record; however, no offer will be accepted by the Seller until it has been approved by the Seller’s lender(s) of record. Upon acceptance of the Buyer’s offer by the Lender(s) of record, the offer will then be signed by the Seller (as the Seller is still the owner of record).”

“If commissions are reduced by the lender of record, it is agreed that the real estate agents will share equally in the reduction or as agreed separately in writing outside of the purchase contract.”

This form is presented to you for both your Buyer and your broker to sign.

Discussion Question – Scenario #9

Are any of these provisions of concern to you?

Short Sales – Scenario #10 **Loan Modification Request**

The Seller and Buyer have signed an AAR contract with a Short Sale Addendum, and they are waiting for the approval of the lender. The Seller now wants to do a loan modification with the lender.

If the lender agrees to the loan modification, the lender will obviously not approve the short sale, and the Seller will remain in the house.

Discussion Question – Scenario #10

Does the listing broker need to inform the Buyer of the Seller's attempt to do a loan modification?

Short Sales – Scenario #11

The Buyer has tried to do a short sale, waited for 6 weeks for approval and in the end did not get the property. The Buyer then asks their agent to show them more homes with the intention of making offers on more than one home. They figure if they get accepted on one, they will cancel the others. Their agent tells them if they get accepted on more than one at one time, they will be able to cancel during the inspection period.

Discussion Questions – Scenario #11

Should their agent make offers on more than one home for the Buyer?

Is it ethical to make multiple offers and, if more than one get accepted, to cancel during the inspection period?

What should their agent advise the Buyer to do?

Short Sales – Scenario #12

The Buyer and Seller enter into a short sale. All paperwork is submitted to the lender, the short sale is approved by the lender, and the acceptance notice has been delivered to the Buyer.

Two weeks before the close of escrow, it is realized that there is \$5000 in back property taxes owed on the property. The escrow officer provided a pre-audit HUD-1 settlement statement to the lender, but it was before the title commitment was received, so no one was aware of the delinquent taxes.

The Seller and the lender refuse to pay the back taxes from the short sale proceeds. They say if the Buyer wants the property, they have to pay the back taxes.

Discussion Questions – Scenario #12

What advice should the agent give to their Buyer?

What did the contract say in regards to taxes or liens?

Short Sales – Scenario #13

The Seller has had his home listed with a REALTOR® as a short sale for almost a year. They receive an offer which is for a short sale; the Seller approves the offer, and it is sent to the Seller's lender.

There are a first and a second mortgage on the home. The first agrees to the short sale. The second has sold their note and deed of trust, and the holder of that note has commenced an action against the Seller to collect on the debt.

When the real estate agent tries to negotiate with the second, the second directs the agent to the collection agency.

The second is owed \$40,000. The Seller's lender will authorize only the payment of \$3,500 to be paid to the 2nd lender through the short sale.

The collection agency wants \$7,500 and tells the agent that since the real estate agent is getting more commission than the collection agency is receiving, the real estate agent should just reduce their commission.

The agent refuses to reduce their commission.

Discussion Questions – Scenario #13

What will happen to the Seller if this deal cannot be worked out?

What will happen to the first lender if the 2nd will not make a deal?

What will happen to the 2nd lender if the first refuses to allow any additional payment?

What if the Buyer wants to add an additional \$4,000 to this transaction to be paid to the 2nd lender?

Should the agent kick in the \$4,000 to make this deal work?

Is the 2nd lender permitted to sue under the note while they still have a 2nd lien on the property?

If either the Buyer or agent decide to kick in money to make this deal happen, what information would you need from the first lender in order to complete this transaction?

Short Sales – Scenario #14

The Seller and Buyer execute an AAR contract with the Short Sale Addendum.

The contract is sent to the lender for lender approval. The process has taken 3 months. In the meantime the Sellers have moved out, and the utilities are turned off.

Approval has now been received from the lender, and the acceptance letter from the Seller's lender has been provided to the Seller and Buyer. They both accept the contract, and the Buyer opens escrow.

The inspection period starts upon the acceptance of the contract and receipt of notification by the short sale lender. The Buyer's agent discovers that the utilities are not on and asks the listing agent for a status of when the utilities will be turned on. The listing agent talks to the Sellers, and the Sellers refuse to turn on the utilities.

The contract requires that the Seller have the utilities on during the contract period and through the walkthrough inspection. Probably the Seller should have never turned off the utilities.

Discussion Questions – Scenario #14

Since your Buyer really wants this property, what suggestions do you have?

What are the Buyer's options?

What should the listing agent have done if he knew the utilities were not on?

Short Sales – Scenario #15

The Seller and Buyer execute an AAR contract with the Short Sale Addendum. The Buyer offers \$155,000, and the Seller agrees to the offer and sends the offer to his lender for short sale approval.

The bank agrees to the short sale, and the Seller sends the agreement notice to the Buyer's agent. The Buyer's agent opens escrow, and the Buyer has a professional home inspection done. A week after the inspection period is over, the home is broken into and the stove, microwave, air conditioner and garage door are stolen.

The bank will not replace the stolen appliances or the garage door, and the Seller cannot afford to replace them.

Discussion Questions– Scenario #15

What options does the Buyer have?

Can the Buyer ask the Sellers and their bank to lower the price to offset the cost of the stolen appliances?

What if the new loan is FHA? FHA will require the air conditioning unit and the stove be replaced in the property before the loan will be approved.

Short Sale – Scenario #16

The Seller and Buyer execute an AAR contract with the Short Sale Addendum. The Buyer offers \$255,000, and the Seller's balance is \$350,000. The Seller's lender accepts the short sale offer at \$255,000 and sends out the notice of acceptance.

The Seller is pretty happy that they are getting out from under this loan until they talk to their neighbor who had the same issue. The neighbor tells your Seller that they'd better talk to a tax attorney or get some tax advice before they close this escrow.

Discussion Question – Scenario #16

How should you handle the situation?