Despite the reported effectiveness of the Nevada Supreme Court mediation program (see sidebar), REO transactions continue to be an important factor in the Las Vegas real estate market.

Listing Agents: Cooperation is Essential

On the listing side, the challenges continue to revolve around offers: disclosing multiple offers, presenting all offers and notifying buyers’ agents of rejected offers.

The existence of multiple offers continues to vex both listing agents and buyers’ agents. Ultimately, it is an education issue. Keep in mind that Article 1 of the Code of Ethics in Standard of Practice 1-15 prevents the listing agent from disclosing the existence of offers on a property without the seller’s permission. It is only when an offer has been accepted that the agent has a duty to disclose upon inquiry. (See Standard of Practice 3-6) Likewise, the agent has a duty to inform all MLS Participants and Subscribers than an offer has been accepted by updating the listing status to “C” (contingent) or “P” (pending) as appropriate.

The Duties Owed, in NRS 645.252(4), requires that agents present all offers made to or by their clients. At its July 2009 meeting, the Nevada Real Estate Commission concluded that “until a seller accepts an offer in writing and until the broker has knowledge of that acceptance, all offers submitted by buyers must be presented to the seller by the listing agent, regardless of any restrictions or requests by the seller.” (Bruce Alitt, “The Selling of REOs” posted on www.red.state.nv.us, emphasis added.) The sole exception is a limited service situation where the client chooses to have no offers presented by their agent. See NRS 645.252(4).

Because the listing agent may need to prove that a particular offer was presented, care should be taken to retain all fax cover sheets, emails and/or printouts from online offer management systems.

Once all offers are presented to the seller, the seller will make its decision to accept one or perhaps counter one or more. Whatever the seller’s choice, it is up to the listing agent to accurately convey the seller’s decision. This includes notifying those buyers whose offers have been rejected. Listing agents must provide the buyer or buyer’s agent with written notice of a rejection per NAC 645.632.

“The Division does accept that some sellers will not sign a rejection to the buyer. That circumstance then places a burden on the listing agent to note the rejection method and date, sign the rejected offer, and provide it to the buyer or buyer’s agent. Example: ‘Offer rejected per telephone conversation with [seller/seller rep name] on 8/24/09. Signed Agent Jones/date.’” (Bruce Alitt, “The Selling of REOs” posted on www.red.state.nv.us)

Online offer management systems may help agents in fulfilling this duty; once the seller has marked one offer accepted and all others rejected, the listing agent is in a position to notify the unsuccessful buyers. It is a good idea to keep a printout of the online system as backup for proof of rejection.

Buyer’s Agent: Education is Key

The key to having less stressed and frustrated buyer clients is keeping the clients informed about the REO process and what to expect in presenting offers. The most common complaints are from buyers whose offers were not accepted, even though they may have been higher than the offer ultimately accepted.

It is important for buyers’ agents to educate their clients that the “highest” offer is not always the “best” offer in the seller’s eyes. Sellers of bank-owned properties are typically asset managers who work for banks, who in turn answer to investors. These relationships are governed by a series of contracts, guidelines and deadlines, each of which may affect the asset manager’s decision in selecting an acceptable offer. In addition, the asset manager usually has obtained one or more broker price opinions. A typical asset manager will tend to favor an offer price that falls within the range of the brokers’ price opinions or other comparable sales data, particularly if the offer has an appraisal contingency. If the home does not appraise for the purchase price, the transaction could be cancelled and the seller would have to start the process over again.

When reviewing multiple offers, any seller (not just asset managers!) will often look for the offer that is mostly like to have a trouble-free escrow and an on-time closing. Numerous factors affect any seller’s decision to accept one contract over
another, such as price, financing contingencies, appraisal contingencies, proposed closing date, inspections, closing costs, repairs and other costs and concessions requested in the buyer’s offer, to name only a few.

Sometimes, it is the lack of terms in an offer that reduces its appeal to the seller. The buyer’s agent should ensure that all material terms are complete and accurate, all blanks and choices completed and that the offer is signed by the buyer. Any missing information (especially a signature) could signal a seller that the buyer’s offer is not serious.

Both sides of the equation can always do with more information and education. GLVAR provides continuing education classes focused on foreclosures and REOs; to see the current list of classes, go to www.lasvegasrealtor.com/education. For a resource guide of articles, webinars and client brochures, go to www.lasvegasrealtor.com/reo.

This article is of a general nature and is not intended to address any specific legal or ethical situation. Suggestions for revisions to GLVAR forms should be forwarded to the Forms Committee at forms@glvar.org. Legal questions may be directed to NVAR’s Legal Answerline at 1-800-748-6999.

Foreclosure Mediation Update

Since the Nevada Foreclosure Mediation Program began on July 1, nearly 3,300 homeowners who received notices of default have requested mediation as they seek to hold on to their homes.

Homeowners who receive Notices of Default and Election to Sell have 30 days from the day they received their notice to seek mediation under the program that was created by the Nevada Legislature and made effective on July 1, 2009. Mediations are expected to be concluded within 90 days of the notices of default being recorded

- Notices of Default filed: 32,662*
- Requests for mediation: 3,272
- Mediations conducted: 522
- Mediations scheduled: 1,064

(All statistics beginning July 1, 2009 and as of Dec. 4, 2009 unless noted) * Includes commercial and non-owner-occupied properties that are not eligible for the Foreclosure Mediation Program.