

Can an Asset Manager Simply Cancel an REO Sale Just Before Closing?

With the problems associated with selling distressed REOs (bank owned) properties, one would think that an asset manager for a lender would be glad to close out each and every headache he has in the lender's portfolio. With this in mind, we were totally shocked when on the day of closing on a six-unit multi-family property the asset manager for the sale (A – B) decided to cancel the closing with no explanation.

A student had put the REO under contract about three weeks earlier and we had sold it in about 3 days. That may sound pretty quick but the property had a list of code violations and looked like it should be bulldozed down. Actually, the City had a demo order request in hand and was pushing to level the structure.

It was a six-plex (six two-bedroom and 1 bath units) and would have a great cash flow when the code violations and lien issues were settled. Our buyer was disclosed all the negative issues and he had done his homework including having spoken to the City about the cost to get the code liens and violations remedied. Therefore, our end-buyer had done his due diligence and was ready to close.

The property had been on the market several hundred days (that's over 200 DOMs) before we got it under contract and the City was trying to condemn the property and demolish it. The asset manager should have been elated that a buyer stepped forward to buy his worst nightmare. This asset manager was extremely helpful in the contracting process and all went very well until the day of closing. Then suddenly he decided he had a goldmine on his hands and he hadn't known it previously!

When we were told by the listing agent that the closing had been cancelled, we went into attack mode since we were looking at losing a decent profit. The asset manager for the first time wouldn't take our calls (yes, we do sometimes talk to asset managers) and the agent said he had tried to talk sense into the asset manager but to no avail.

We wondered what had happened that caused this extreme change of heart – especially with the problems the property had. We had disclosed to the asset manager that we had an end-buyer and were selling it at a profit so maybe he decided that by cancelling the contract our end-buyer would come to him.

Since we had a signed contract by the asset manager, we wanted to file a Notice of Interest in the public record. However, his addendum to our original contract stated no notices of interest could be filed, which is typical since filing the Notice will cloud the title transfer. Our only choice was to file a foreclosure action against the owner of the property which was the asset manager's bank that previously foreclosed.

It is a little known fact that a contract is as strong as a deed in most states and a breach of this contract has the possible remedy of a foreclosure action by the buyer. Even filing the foreclosure motion causes the owner to take notice and hire an attorney to defend the suit in court. The student who had the contract also had a personal friend who was an attorney and who understood the situation. He filed a foreclosure action within two days and made sure the bank and the asset manager were served – despite their being out-of-state.

Low and behold, the listing agent called a couple of days later and said the asset manager had agreed to close but he wanted an additional \$4,000 added to the price. This additional money was a victory in the mind of the asset manager but we went ahead and told the end-buyer that he would have to pay an additional \$4,000 and he agreed. We then changed the contract and added it to the purchase price of our end-buyer.

Why had the asset manager stopped the original closing? We will never know but likely a supervisor of his saw that we were reselling the property for a profit. Why should he care? What usually comes to the mind of the bank is that there is collusion between the agent and the investor regarding the value of the property.

Besides the mental issue that he might have gotten a better price and that we were making money on his problem, there is a more important issue for him. This is that his, as well as most other banks' Compliance Department checks the resale price of the property in 30, 60 or 90 days to see what happened to the property.

They check re-sales because they want to uncover any collusion between the agents, buyers and asset managers, which does happen. In addition, they want to review the resale price to determine if the property sold too cheaply in the first place. Often they will see the property resold the same day for \$5,000 to \$50,000 profit. While they may believe this is illegal, it is not if no collusion or misrepresentation as to the purchase price from the bank is involved, the bank was notified of the resale and approved it, the end-buyer was a cash buyer so no end-buyer's lender was involved. What more could we have done, especially since the asset manager had it listed for over 200 days?

The reason that profit spreads can be made is that most investors don't use the MLS® to buy or resell their wholesale deals. Instead they have a preferred list of other investors who do not buy from the MLS® for various reasons including issues working with listing agents, listing prices that are too high and too much competition for newly listed properties.

In summary, sometimes you can't allow yourself to be intimidated by asset managers or agents where REOs are involved. In short sale situations, the lender is not the seller and your suing the homeowner for Breach of Contract is a waste of time because the seller and buyer have signed a disclaimer allowing the seller's bank to cancel the sale right up through closing. Actually, if fraud is suspected by a lender in a short sale, they can potentially sue to rescind the deed and reinstate the mortgage. Not so with REOs where the seller is the lender!

To your limitless success,
Dave Dinkel