

BEST PRACTICES FROM LISTING TO CLOSING

Revised and adopted by Board of Directors 2019

Best Practices was created in 2013 by members of Central Mississippi REALTORS® and the Mississippi Mortgage Bankers Association. The Best Practices Working Group is made up of REALTORS®, lenders, home inspectors, and closing attorneys.

The Best Practices is updated and released annually.

2020 EDITION

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THE LISTING APPOINTMENT

ISSUE 1. The Listing Appointment - Fact Finding

Everyone loves a smooth closing, but they don't always work out as smoothly as we would prefer. There are some basic questions that you can ask during your listing appointment that will help to avoid delays later in the transaction.

BEST PRACTICE

Listing agents should always thoroughly review the Property Condition Disclosure Statement (PCDS) that the seller has completed. Are there any red flags? Address them now! Remember that there should be no blanks; your seller should answer every question, even if the answer is "unknown." Work with your seller to help them find answers to their unknown items so they can amend the PCDS as soon as possible. Following are some questions that you should ask during the listing process.

- **Do you have the right to sell this home?** Who is on the deed? If the property is owned by a Limited Liability Company (LLC) or a corporation, who are the authorized signers? If the property is an LLC or a corporation, then you should ask to see proof of formal filing with the Secretary of State, the operating agreement, articles of incorporation and the meeting resolution authorizing that person to execute and bind the LLC/corporation (should the operating agreement/articles not properly specify). The owner(s) of the property or the authorized signer(s) for an entity must sign the listing agreement. Perhaps there has been a divorce or a death. Does the property need to go through probate? If the property is in probate, you should ask to see the letters of testamentary or the letters of administration which authorizes the person to sign on behalf of the

PCDS
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estate. Probate can be a lengthy process that can delay your closing and “cost your sellers the deal.” As long as you know what to look for on the front end, you can take the appropriate measures to expedite the process and obtain the appropriate paperwork to sell the property out of probate. Remember, on all issues regarding who has the authority to sign, always ask questions, and never assume.

- **Are there any liens or judgments on the property?** Is there more than one mortgage? Did the buyer receive a grant when they purchased the home that needs to be paid back when the house sells? The net is very important to your seller, especially when the numbers are tight. It can be a disaster when you are headed to the closing table and your seller suddenly finds out that they owe more money than they originally thought.
- **Are there any leased items remaining with this property?** This question is addressed on some listing agreements as well as the PCDS, which is a great prompt for you to discuss with your seller if there is a lease and what needs to be done about it. Is the propane tank leased? What about the security alarm system? Obtain the information, ensure the seller lists leased items on the PCDS and disclose any in REALTOR® Remarks in MLS. Once an offer is received, make sure that the final contract addresses the leased item and how it is being handled.
- **Are there any fixtures that you do not want to sell with the property?** Explain to your seller what is considered a “fixture.” Are they not wanting to leave the dining room light that their great grandma left them? What about the curtain rods or the rose bushes? Encourage them to change it out before listing the property. If that is not an option, be sure that this is clearly mentioned in the REALTOR® Remarks on the MLS and, once an offer is received, make sure that the final contract states which items are being removed.
- **Are there covenants or rules that apply to real estate signage?** (see “ISSUE 2. HOAs/POAs” on page 3).

- **Is the square footage accurate?** Request that the seller provides a written source of the square footage indicated on the PCDS.

ISSUE 2. HOAs/POAs

Some subdivisions are managed by Homeowner Associations (HOAs) or Property Owner Associations (POAs). New property owners are sometimes not aware until after they move in that there are restrictive covenants, annual assessments, rules and regulations and consequences for non-compliance. Covenants and rules can apply to pets, trash cans, car parking, landscaping, real estate signage, garages, fences, and rental property, among other things. When new property owners get crossways with an HOA/POA upon learning about the covenants and rules, the REALTOR® is sometimes blamed for not providing them the information prior to buying. In addition, some HOAs/POAs are managed by third-party Management Companies who charge transfer fees to the new homeowner at closing.

BEST PRACTICE for Listing Agent

Listing agents should obtain and review any HOA documents to ensure compliance with real estate signage. Some subdivisions dictate very specific signage, the number of signs that can be placed on a property and can prohibit signage in certain places, such as facing a golf course. The seller is required to answer questions on the PCDS pertaining to an HOA making the listing appointment a good time to learn where the covenants, rules, and assessment information can be found. Since the phone number for the HOA is required on the PCDS, the listing agent might want to obtain a current copy of any HOA rules to upload into MLS to expedite offers or include the URL of the HOA's website in REALTOR® Remarks (not Public Remarks).

It is the responsibility of listing agents to properly notate in MLS all information regarding the existence of an HOA, the HOA fees, any HOA or HOA Management Company transfer fee and what the HOA fee includes. In addition, the Listing Agent should encourage the seller to properly complete the PCDS with answers to any and all questions related to HOAs. Remember...do not let a seller leave blanks!

BEST PRACTICE for Buyer's Agent

Buyers' agents have a duty to make potential buyers aware that the subdivision in which they are interested in purchasing/leasing is controlled by an HOA with covenants and rules that include annual assessments, fees and consequences for non-compliance.

Before writing an offer:

Share with the buyer where the covenants and rules can be found and encourage the buyer to read them carefully to be well informed about the expectations of the HOA. Many subdivisions have websites where HOA information is located.

Determine if there is an HOA Management Company involved who charges a transfer fee to the new property owner at closing so that the fee won't be a surprise. Mississippi law only permits an HOA Management Company to collect a transfer fee if the authority to collect the fee is described in the Covenants (July 2019).

SHOWING PROPERTY

ISSUE 3. Safety first when showing property

Before showing a property to prospects with whom you have had no prior contact (unvetted), you should make an effort to ensure you know the person's true identity and that he/she has the ability to buy a property. Your time and your safety are valuable. Follow the principle: C.I.T.O. -- Come Into The Office -- where professional services begin. Start your relationship at the office where the person can be seen by others, where you can get a photocopy of his/her ID and where you can open dialog about his financial ability to buy. A prospect who refuses or is offended by the requirements to meet first at your office, show ID, and discuss needs and financing may not be worth you risking your life. Further, sellers of listed properties expect REALTORS® to show their properties only to prospects who have been vetted to some degree and who have demonstrated the financial ability to buy.

BEST PRACTICE

Always start your relationship with a new prospective buyer at the office. It demonstrates to the prospect that you only do business in a professional manner, and it's safer. (If meeting at your office is not possible, identify another public place where all the same requirements can be met.)

BEST PRACTICE for Principal Broker

Incorporate into your office policy and procedure manual the C.I.T.O. principle recommended by the Central Mississippi REALTORS® and the Central Mississippi MLS:

It is the policy in this firm to begin all business relationships with prospective buyers at the office adhering to the principle: C.I.T.O. -- Come Into the Office -- where professional services begin. The firm adheres to the principle by:

- encouraging its affiliated agents to use the C.I.T.O. slogan with consumers describing the benefits of beginning a professional business relationship at the office,
- displaying the C.I.T.O. graphic on the firm's and agents' websites, and across social media platforms where the option is available,
- displaying the C.I.T.O. poster in the common area of the office,
- showing property only to prospective buyers who provide proof of identity and ability to buy,
- and reviewing the policy with agents annually.

“
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”

LOAN QUALIFICATION

ISSUE 4. Prequalified vs. Preapproved

Definition of Prequalify. Unqualified information only! The lender cannot require financial documents in order to issue a prequalification letter. Prequalification letters can be issued very quickly if the information meets guidelines; this is not a commitment.

Definition of Preapproval. The formal commitment. Customer needs to review the financial checklist and offer information on it voluntarily to the lender to review and approve. Must go to an underwriter and financial information must be vetted.

Definition of Application. Once the customer has voluntarily provided the following six pieces of information to the lender, an application has been initiated:

- your name,
- your income,
- your Social Security number,
- the property address,
- the estimated value of property, and
- the mortgage amount being sought.

BEST PRACTICE

Recommend that buyers be prequalified before starting the house-hunting process to ensure their search is in the appropriate price range.

BEST PRACTICE

Encourage buyers who are prequalified to avoid purchasing items on credit that increases their outstanding debt balances and to avoid changing jobs without notification to the lender, even if compensation is the same.

THE CONTRACT

ISSUE 5. What is Contractual and What is Not

For a buyer and seller to have an agreement (contract), the terms must be in writing and signed by all parties. Conversation between agents about what their clients will do is not contractual. A text message between agents stating what their clients will do is not contractual. Until the agreement is signed by all parties, it is not contractual.

BEST PRACTICE

Counsel your clients that until their agreements are submitted in writing, signed by all parties, and delivered back, they should have no expectation that they have a contract.

“
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”

ISSUE 6. Lump Sum Closing Fees

Many of the contracts today provide that the Seller will pay a lump sum amount for the closing costs. This is a great practice, but it does lend itself to interpretation as many people have a different idea of what “closing costs” includes. The language used to convey the cost distribution should be explicitly clear so as not to be left up to interpretation. Contract law states that if contract language is ambiguous or open to interpretation, the provisions that specifically address the issue control the outcome. Therefore, if you do not write your contract as specified in the Best Practice below, it could mean your client would pay the lump sum amount specified plus the termite certificate and home warranty. Avoid this misunderstanding by using the suggested language. Further, avoid the following frequently used language that leaves costs unassigned and up to interpretation creating misunderstandings: “Buyer to pay \$_____”

in closing costs. Seller to pay termite and home warranty.” Who pays Buyer’s closing costs in excess of \$_____?

BEST PRACTICE

Be keenly aware of any language in the purchase agreement you are using that describe what are and are not considered closing costs. Specify if the closing costs are inclusive/ exclusive of the termite certificate, Wood Destroying Insect Report (WDIR), and the Home Warranty, and/or any other items that may be addressed in separate paragraphs in the contract. The preferred wording is:

Seller to pay up to \$_____ in Closing Costs & prepaid/escrow expenses, including, but not limited to, the WDIR report and the home warranty. Buyer to pay any costs not paid by the seller.

ISSUE 7. Personal Property

Personal property is not part of the real estate being conveyed from the seller to the buyer, and real estate agents should not be part of any documents regarding personal property.

ISSUE 8. Possession of the Property

Possession can be tricky, creating enormous emotional and financial distress if handled without a full understanding of the parties. For one person to possess a property, the other person must move out. Possession by buyers immediately after closing requires the seller to be out prior to closing. This can put the seller at financial and emotional risk if the closing is delayed or canceled. If the sale falls through, the buyer might incur the expenses of moving again.

“_____
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”_____

BEST PRACTICE

At the time of contract negotiation, the possession provision should be thoroughly discussed with the seller to determine if he's being asked to assume risks if possession is on or immediately following closing.

Possession by the buyer should be provided 72 hours after closing to minimize financial risks. This allows time for unexpected closing delays and for the seller to prepare to move. Of course, insurance issues would need to be addressed if the seller still possesses the property after closing. The risks simply need to be acknowledged by all parties upfront.

The use of MAR's *Pre-Closing* and *Post-Closing Addendums* should be considered to ensure all expectations and liabilities are discussed.

ISSUE 9. Contract Execution

In addition to the buyer and seller, the lender and title agent or closing attorney must be able to read and understand the contract. When it is incomplete or illegible, time is wasted, and loan approval or closing can be delayed as a result.

BEST PRACTICE

The contract should be complete and legible and include the full address with lot, block, if applicable. Phone numbers and names of all parties should be spelled correctly and printed under signatures. The legal description should be included and legible. Other common contract issues that cause delays in underwriting or the closing process are:

1. An incorrect address that does not include the proper name such as "street, drive or circle."
2. The copy circulated to the lender and/or closing attorney is not legible because it is a faxed copy or otherwise poor copy of the original.
3. A missing signature or initial. An offer does not become a contract until every single term has been agreed to and signed or initialed by all parties. One missing

initial or signature means the deal is not consummated and your client could be at risk of losing the sale.

ISSUE 10. Transmitting the Contract

Who is responsible for sending the contract and preliminary contact info regarding the parties / agents, etc. to the lender and the closing office?

BEST PRACTICE

It is customary for the Buyer's Agent to initiate this process.

BEST PRACTICE

The Buyer's Agent should ensure that any and all addendums indicated on the contract as being included are provided to the lender. Failure to provide the entire fully executed contract, including a copy of the earnest money check, and all addendums can delay the process in underwriting. The listing agent and buyer's agent should communicate and determine which will send the documents to the closing attorney.

ISSUE 11. Sixteenth Section and Pearl River Valley Water Supply District Property

Leasehold property and property on 16th section land are fairly common in Mississippi, and they can affect your timeline for closing.

BEST PRACTICE

As soon as a contract is executed that is on 16th Section land or on the PRVWSD, let the lender and closing attorney know immediately. The seller's agent should obtain a copy of the ground lease to provide when necessary. Further, since lease transfer documents take time to complete the closing attorney will contact those entities.

ISSUE 12. Timelines After Contract is Signed

How much time, on average, do lenders need to close? The lender's timeline starts when all the income documentation from the borrower is signed, and disclosures are in the lender's hand. Generally, lenders need between 30 to 45 days to close once

all documents are received. The appraisal is generally not ordered until the home inspection contingencies, if any, have been removed. In some cases, appraisals can take a couple of weeks during which time lenders have no control over the process due to the Real Estate Settlement Procedures Act (RESPA) laws. If the contract is contingent upon a satisfactory home inspection, get the home inspection contingencies removed as quickly as possible, allowing for the appraisal to be ordered and completed in accordance with the contract terms.

Commercial inspection periods can vary in length depending on the type and size of the property being acquired. Lenders often require a minimum of 45 days to finance commercial properties upon completion of the buyer's due diligence period, and contract extensions are to be expected when reasonable issues arise.

BEST PRACTICE

Allow up to 60 days to close to ensure all deadlines known can be met in a timely manner, and to include time for "Murphy's Law" to interfere.

INSPECTIONS

ISSUE 13. The Home Inspection

Who attends? Who gets the report?

It is a common misconception that buyers may attend the home inspection along with the inspector unaccompanied by the agent representing them. The only authority a buyer has to access a listed property is with an agent (MLS Participant or Subscriber) who is responsible for buyers' activities while in the property. The only way buyers should be at the property unaccompanied by their agent is with the seller's written permission. That request for permission should be made to the listing agent who will have that discussion with the seller.

BEST PRACTICE

A buyer's agent should accompany his buyer client to the home inspection. The agent, however, has a limited role:

1. protecting the listed property as he did during the times he was showing the property,
2. ensuring the buyer has the opportunity to discuss the findings with the inspector, and
3. hearing the inspector's communication in the event the buyer needs assistance with negotiations related to repairs.

The agent should not interject himself into the home inspection process, letting all communication be between the buyer and the inspector. The report belongs to the buyer or the person who entered into an agreement with the inspector. The buyer's agent should receive a copy of the inspection report only if the buyer client chooses to share it. The listing agent should not be provided the inspection report, but rather a list summarizing any repairs requested by the buyer.

ISSUE 14. Communicating with the Appraiser

What are the appropriate channels of communications related to a specific appraisal report? Although both buyer and seller have an interest in the outcome of the appraisal, the appraisal report itself belongs to the buyer's lender. It is after the appraiser has turned in his/her report to the lender that issues sometimes crop up, resulting in someone in the transaction wanting information. It is critical for real estate practitioners to know the proper chain of communication so as not to cross a line and be accused of unduly influencing an appraiser. (For the sake of this Best Practice it is assumed that the buyer obtained financing from a lender who ordered the appraisal.)

BEST PRACTICES

Before and during the appraisal process:

- As a listing agent, when contacted by the appraiser to schedule the inspection, get the appraiser's name, MLS ID number and their company name for use when closing out the sale in MLS.
- Be courteous and helpful in setting the appointment.
- Ask the appraiser to communicate the square footage back to you once the house has been measured.
- If using an MLS supported lockbox (Supra iBox), be sure to assign the lockbox to the property which will help you identify the appraiser when he/she goes to inspect.
- Never pressure the appraiser on value. The appraiser cannot discuss value related items pertaining to the subject property. Do not ask for a ballpark number or throw out a number the appraiser needs to meet as the contract price. This type of communication can be interpreted as applying undue pressure on the appraiser, which is a big "no-no."
- If the property is unique or if you have comps or information about the property you believe the appraiser may not have (not in MLS), it is acceptable to convey that information to the appraiser for consideration before the report is filed with the lender.

**DO NOT
ASK FOR A
BALLPARK
NUMBER
OR THROW
OUT A NUMBER
THE APPRAISER
NEEDS TO MEET
AS THE
CONTRACT PRICE.**

After the appraisal report has been provided to the lender:

- There should be no further communication with the appraiser after he/she has turned in the report to the lender other than to inquire about the appraised square footage.
- If a dispute arises after the appraisal is filed, communication should be directed to the buyer's lender and not to the appraiser.
- Appraisers are required to remain unbiased and "call it as they see it" based on the information available.

- If an agent is aware of additional or better-verified comps that the appraiser may not have known about or overlooked, most appraisers are open to considering the information if received from the lender.

ISSUE 15. Termite Inspections

Adequately counsel the Buyer or Seller about the requirements and benefits of having a WDIR completed.

BEST PRACTICE for Listing Agent

- Discuss all possible incurred expenses if a completed termite inspection shows previous or active damage.
- If a termite bond is in place from previous damage, collect all documentation related to the treatment, repairs, warranties, etc. upon listing the property and include documentation with the PCDS.
- If there are concerns of possible infestation or previous damage, discuss with the seller the pros and cons of having a WDIR completed prior to listing. If one is done prior to listing, be aware that the report will only be valid for a specific time, and the buyer's lender may require another one.
- Counsel seller about any expenses that could be incurred or requested if the WDIR shows previous or active damage.

BEST PRACTICE for Buyer's Agent

- Determine whether or not a WDIR is required by the lender.
- Counsel the buyer to the benefits of having a WDIR completed, even if not required.
- Ask the listing agent to schedule the inspection at least ten days prior to closing to prevent delays in the event the report shows active termites or damage. This is especially important if the PCDS notates previous damage or infestations of any kind.
- Confirm with the lender the length of time the report is good. Most expire in 30 – 45 days.

- Do not assume any / all previous repairs are a result of previous damage.
- If the PCDS notes previous termite activity, address in the offer any correction of any lender requirements, including but not limited to noting who is responsible for the cost of treatment, warranties, etc.
- If a Home Inspection noted possible termite or pest infestation, contact the lender promptly and address the lender's requirements in the Home Inspection Contingency Removal form rather than waiting for the inspection to be completed.
- Do not assume the Seller will agree to expenses related to treatment or damage.
- Request a copy of the report from the Listing Agent upon completion. Waiting to review just prior to closing can cause issues and delays.
- Counsel the buyer to the fact that if the report shows any damage, whether cosmetic or not, the lender may require further investigation.
- If the report shows an active infestation contact the lender immediately to determine the lenders' requirements on addressing the issue.
- If any damage is noted and the lender requires further investigation, contact the Listing Agent immediately with the lender's requirements.
- Prepare the buyer that the lender may request a letter from a licensed contractor stating the issue, repairs to be completed, and whether or not structural damage has occurred.
- Treatment due to infestation is generally considered a Seller's expense, but never assume.

ISSUE 16. Utility Inspections

Some areas have ordinances requiring residential properties to be inspected by Government Inspectors for safety, health, and other hazards prior to allowing a new homeowner to have utilities connected. The following best practices may reduce the likelihood of unexpected delays in closing:

BEST PRACTICE for Listing Agent

- Contact the local building permit department prior to listing the home to ask for a current list of requirements. This may prevent last-minute repair requests and could potentially affect the Seller's response to the offer.
- When an offer is received, be aware of any clauses that state a Seller must make any repairs required by local authorities.
- If there is no mention of the above on an offer and the Seller intends to counter an offer, address the inspection by giving a timeline required to complete the inspection and request repairs making them negotiable. (Example: Buyer to have utility permit inspection and repair request relating to it, within ten business days of executed contract.) This will reduce the likelihood of last-minute and sometimes major expenses.
- In offers, address who is to pay for the inspection as well as any cost of repairs related to it.

BEST PRACTICE for Buyer's Agent

- Contact the local building permit department prior to making an offer to ask for a current list of requirements.
- If any of the items are significant to your client, list those repairs in the initial offer to prevent potential negotiation of those repairs during the home inspection repair negotiations.
- Suggest the Buyer schedule the inspection early in the transaction rather than waiting until right before closing.
- In offers, address who is to pay for the inspection as well as any cost of repairs related to it.
- Be aware of clauses relating to local authority required repairs within your contract package.

**“
IN OFFERS,
ADDRESS WHO
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INSPECTION
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ANY COST OF
REPAIRS
RELATED TO IT.
”**

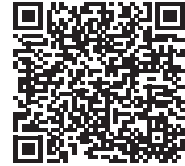


RESOURCES

Useful Resources Related to Inspections and Permits

Richland – 601-420-1600

[http://www.richlandms.org/departments/public-works/
planning-development/building-code-enforcement](http://www.richlandms.org/departments/public-works/planning-development/building-code-enforcement)



Home Sales & Rentals

Pearl River Water Supply District – 769-243-7014

<https://www.therez.ms.gov/Pages/Buiding-Department.aspx>



Unincorporated Rankin County – 601-824-2570

[https://www.rankincounty.org/topic/index.
php?topicid=35&srustructureid=24](https://www.rankincounty.org/topic/index.php?topicid=35&srustructureid=24)



Richland – 601-420-1600

[http://www.richlandms.org/departments/public-works/
planning-development/building-code-enforcement](http://www.richlandms.org/departments/public-works/planning-development/building-code-enforcement)



Rentals Only

Pearl – 601-932-3526

<http://www.cityofpearl.com/community-development>



Flowood – 601-939-4279

[https://www.cityofflowood.com/sites/default/files/
UTILITY%20insp%form.pdf](https://www.cityofflowood.com/sites/default/files/UTILITY%20insp%form.pdf)



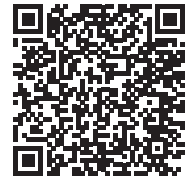
Madison the City – 601-856-6336

<http://www.madisonthecity.com/building-permits>



Ridgeland – 601-856-3877

<https://www.ridgelandms.org/city-departments/community-development/permits-and-inspections/>



ISSUE 17. Wastewater System Inspections

There are state laws and county ordinances that apply to the ownership of properties with Individual On-site Wastewater Disposal Systems (IOWDS). Real estate agents, buyers, and sellers all need to understand these provisions as some may differ by county.

BEST PRACTICE

The seller, at the time of listing, should file a Notice of Intent for an existing system inspection to determine if the on-site wastewater system is functional and meets all state and local requirements. This will help avoid inspection-related delays after an offer to purchase the property is negotiated. As much detailed information as possible should be provided concerning the existing system, e.g., advanced treatment system, conventional septic tank, final disposal type, etc. An existing system inspection request may be filed through the Mississippi Department of Health (<http://www.healthysms.com/wwapply>). All advanced treatment systems older than two years must be inspected by a state-certified company who can provide at least a one-year maintenance agreement. However, it is the individual county ordinance that determines if the on-site wastewater system of any type must have a Department of Health inspection, which is different than the state-certified company.



BEST PRACTICE

Negotiate upfront! While it is usually the seller who pays for the inspections performed on the IOWDS for the property they are selling, the costs of these inspections, possible repairs and any maintenance associated costs are actually negotiable items. This is very similar to who is paying for a termite inspection, home warranty, etc. If the seller does not have recent inspection reports to provide to the buyer, then the party responsible

financially for inspections and the maintenance agreement needs to be clarified in the final contract and agreed on by all parties. If the buyer's agent does not make the necessary requests in the initial offer, it will be to everyone's advantage if the seller's agent negotiates these costs and clarifies in writing.

UNDERWRITING/LOAN APPROVAL

ISSUE 18. Underwriting and Lender Documentation

After the lender requests documentation from the buyer, the review of that documentation often requires follow-up documentation. It is important that everyone involved with the closing understands that the underwriting process/closing date is a "moving target." Often documentation supplied by the borrower at the beginning is incomplete and/or review of that documentation leads to further questions requiring additional documentation and explanations by the borrower.

BEST PRACTICE

The buyer's agent should encourage the buyer to shop lenders and select one whose practices and fees are in the best interest of the buyer. They should be encouraged to include in their research of lenders what benefits there might be in choosing a local lender versus an out-of-state lender. Further, encourage buyers to supply the lender all required documentation in a timely manner. Also, prepare the buyer of the possibility that the lender may require follow-up documentation. Most lenders can confirm with the buyer's agent that they have/have not received all initial and/or follow up documentation.

BEST PRACTICE

Know some phrases used as a result of the Truth in Lending Act (TILA)-RESPA Integrated Disclosure (TRID) education:

- The Consumer Financial Protection Bureau's (CFPB) Motto for consumers: Know Before You Owe
- Customer Motto: Know Before You Shop
- REALTOR®'s Motto: Know Before You Show

BEST PRACTICE

Know these definitions:

Definition of Prequalify. Unqualified information only! The lender cannot require financial documents in order to issue a prequalification letter. Prequalification letters can be issued very quickly if the information meets guidelines; this is not a commitment.

Definition of Preapproval. The formal commitment. Customer needs to review the financial checklist and offer information on it voluntarily to the lender to review and approve. Must go to an underwriter and financial information must be vetted.

Definition of Application. Once the customer has voluntarily provided the following six pieces of information to the lender, an application has been initiated:

- your name,
- your income,
- your Social Security number,
- the property address,
- the estimated value of property, and
- the mortgage amount being sought.

CLOSING

ISSUE 19. Who Selects the Closing Attorney?

Anxiety can arise when it's time to set up the closing. It is often the expectation of both the buyer and seller that they get to choose the closing attorney.

BEST PRACTICE

In order to prevent any confusion related to who is the designated closing agent/attorney for each transaction, the closing attorney or title company name should be included in the contract. RESPA states that the Buyer has the right to choose the title agent/attorney who will provide the title policy, so long as the Buyer is paying for the title policy. As a practical matter, the same person is often the closing attorney and the title agent. However, there is no requirement that both services must be provided by the same person or entity.

“
**THE MORE
INFORMATION
PROVIDED
UPFRONT TO
THE LENDER
AND TO
THE CLOSING
ATTORNEY/
TITLE AGENT,
THE SMOOTHER
AND FASTER
THE CLOSING
CAN BE
SCHEDULED.**
”

ISSUE 20. Closing Communication

Delays are frequently caused when the lender or closing attorney/title agent has to track down the agents in the transaction to obtain information required for loan approval or closing. The more information provided upfront to the lender and to the closing attorney/title agent, the smoother and faster the closing can be scheduled.

BEST PRACTICE

Complete the Closing Form pertinent to your side of the transaction and provide it as soon as possible to the lender or closing attorney/title agent. Use CMR's Closing Information Forms to provide pertinent information about the transaction expeditiously to the lender and closing agent. The *Buyers' Agent's Information Form* and the *Sellers'*

Agent's Information Form are located on the CMR website (<https://cmr.realtor>) under Quick Links, as well as under the Resources heading below.



BEST PRACTICE

The selling and listing agents, along with the lender, should be in communication with the closing attorney or title agent's office. Generally, the seller and buyer should not contact the closing office, if represented by an agent. The one exception is that the closing office will generally communicate with the seller directly regarding payoff information.

BEST PRACTICE

Lenders are required to abide by privacy laws, and their primary communication will be with the Buyer and the closing attorney's office. The lender has very limited information that can be disclosed regarding the closing status with the selling agent.

RESOURCES

- Buyers' Agent's Information Form
"CLOSING INFORMATION: BUYER'S AGENT" on page BPBA-A1
- Sellers' Agent's Information Form
"CLOSING INFORMATION: SELLER'S AGENT" on page BPSA-B1

ISSUE 21. Avoiding Wire Fraud

The last step prior to closing is your client wiring their funds to the closing agent. BEWARE! There is a growing trend in the real estate industry where real estate agents, their clients, and closing attorneys have been a victim of wire fraud by nebulous third parties. Should agents not properly protect themselves and advise same to their clients in regard to the real estate transaction, they could find themselves not only in direct pecuniary loss due to theft but also expose themselves to liability for their inaction of not properly advising their client.

BEST PRACTICE

Common tips suggested by the National Association of REALTORS®:

1. Build a standard warning about wire scams into your email signature or include a disclaimer at the bottom of your email that says you will not discuss personal financial information over email.
2. At the beginning of every transaction, advise clients of your communication practice.
3. If you do engage in a wire transfer with a client, call them on the phone immediately prior to the transfer of funds, so they know they are sending money to the legitimate source.
4. You and your clients should avoid free Wi-Fi with no firewall to protect against hackers capturing an email password or other sensitive information.
5. Always use strong passwords and change them regularly; advise your clients to do the same. Also, encourage your client to change their password before wiring instructions are sent.
6. Brokers should consider employing a staff person responsible for monitoring, updating, and implementing information security systems and procedures for your office.

—“—
Y O U A N D
Y O U R C L I E N T S
S H O U L D
A V O I D F R E E
W I - F I W I T H
N O F I R E W A L L
T O P R O T E C T
A G A I N S T
H A C K E R S
C A P T U R I N G
A N E M A I L
P A S S W O R D
O R O T H E R
S E N S I T I V E
I N F O R M A T I O N .
—”—

Additional Protection Tactics:

- Suggest the client personally give the wire transfer instructions directly to the closing attorney.
- When calling to confirm wire transfers, have your client call directly from their phone number and instruct them to specifically give details of the closing transaction to the person wiring the funds. Phone numbers can be spoofed, and by divulging only information related to the transaction would enable the person on the wiring end to properly confirm the identity of your client. Do not call any number that is listed in a potential fraudulent email.

- Never send personal information such as social security numbers, bank account, and credit card numbers unless it is through a secured and/or encrypted email server.

CLOSING INFORMATION: BUYER'S AGENT

To facilitate a smooth closing, provide this form to the Lender, to the Settlement Agent, and to the other agent. This form is for information purposes only; it is not an amendment to the Contract nor should it be interpreted as part of the Contract. In the event of a conflict between this form and the Contract, the Contract controls.

Projected Closing Date: _____

Property Address: _____

Please provide the first, middle, and last name of all buyers.

Buyer(s) Name(s): _____

Cell Phone: _____ Email: _____

Selling Real Estate Firm

Firm Name: _____ Firm License #: _____

Firm Address: _____

Buyer's Agent's Name & Phone #: _____

Buyer's Agent's License #: _____ Email: _____

Commission

Commission % or \$ to Selling Office: \$ _____

Administrative Fees (if any): \$ _____

Closing Costs

Seller credit toward borrower's closing fees: \$ _____

Does the contract specify if the WDIR and Home Warranty are included in closing costs? ☐ Yes ☐ No

Third Party Vendors

Check any that apply	Fee (if known)
<input type="checkbox"/> WDIR Company: _____	\$ _____
<input type="checkbox"/> Home Warranty Company: _____	\$ _____
<input type="checkbox"/> Survey Company: _____	\$ _____

*Neither the Lender nor the Closing Attorney needs a copy of the home inspection report – just the fee amount and the Inspector's name.

Settlement Agent/Closing Attorney agreed to by Buyer and Seller

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

IMPORTANT! Buyer funds for closing - Please alert the Buyer that many Closing Attorneys now require funds for closing be wired. Your Buyer will need to contact his bank to discuss their policy regarding initiating wires very early in the process. Many banks now require in-person authorization, and this is a frequent problem and cause of delays with Buyers who have funds in out-of-state banks.

CLOSING INFORMATION: SELLER'S AGENT

To facilitate a smooth closing, provide this form to the Lender, to the Settlement Agent, and to the other agent. This form is for information purposes only; it is not an amendment to the Contract nor should it be interpreted as part of the Contract. In the event of a conflict between this form and the Contract, the Contract controls.

Projected Closing Date: _____

Property Address: _____

Please provide the first, middle, and last name of all sellers.

Seller(s) Name(s): _____

New Mailing Address: _____

Cell Phone: _____

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed ☐ Probate

If divorced while residing in the property, provide a copy of the Final Divorce Decree/Order to the Settlement Agent. If widowed while residing in the property, provide a copy of the death certificate to the Settlement Agent.

Listing Real Estate Firm

Firm Name: _____ Firm License #: _____

Firm Address: _____

Seller's Agent's Name & Phone #: _____

Seller's Agent's License #: _____ Email: _____

Commission

Commission % or \$ to Listing Office: \$ _____

Commission % or \$ to Selling Office: \$ _____

Closing Costs

Seller credit toward borrower's closing fees: \$ _____

Does the contract specify if the WDIR and Home Warranty are included in closing costs? ☐ Yes ☐ No

Third Party Vendors

Check any that apply	Fee (if known)
<input type="checkbox"/> WDIR Company: _____	\$ _____
<input type="checkbox"/> Home Warranty Company: _____	\$ _____
<input type="checkbox"/> Survey Company: _____	\$ _____

*Neither the Lender nor the Closing Attorney needs a copy of the home inspection report – just the fee amount and the Inspector's name.

HOA Management Company (if applicable)

Contact Information: _____
Annual Payment: _____ Are they paid current? ☐ Yes ☐ No
Due Date(s): _____ HOA Transfer Fee: _____

Leasehold Annual Assessment (if applicable)

Annual Lease: _____ Are they paid current? ☐ Yes ☐ No
Due Date: _____ ☐ PRVWSD ☐ 16th Section
Any other anticipated costs or fees such as foundation, septic or well
water inspection? ☐ Yes ☐ No
If yes, please list here: _____ Paid by: ☐ Buyer ☐ Seller

Payoff of Seller's Current Mortgage(s)

List the following information for all mortgage holders
Mortgage Holder Name: _____ Loan #: _____
Contact Information: _____
Equity Holder Name: _____ Loan #: _____
Contact Information: _____

Settlement Agent/Closing Attorney agreed to by Buyer and Seller

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____
Will the seller attend the closing? ☐ Yes ☐ No
Will the documents needs to be mailed to the Seller? ☐ Yes ☐ No
Is a Power of Attorney closing for the Seller? ☐ Yes ☐ No

Homestead

In Mississippi, a spouse cannot convey homestead by Power of Attorney for their spouse. Please contact the Settlement Agent immediately to discuss options and fees for a Power of Attorney.
Is Seller's homestead exemption in place for the current year? ☐ Yes ☐ No
Yearly Tax Bill: \$ _____

Ask your Seller if any of the following actions occurred in the prior year:

☐ Seller moved ☐ Purchased car tag in another county ☐ Leased the property

If your seller answered "Yes" to any of the above, please advie the Lender and Settlement Agent.

New Construction

The builder will need to provide the Buyer's lender with the Certificate of Occupancy, the Building Permit, and the Termite Pretreatment Information, at a minimum.

HOA Management Company (if applicable)

Contact Information: _____
 Annual Payment: _____ Are they paid current? ☐ Yes ☐ No
 Due Date(s): _____ HOA Transfer Fee: _____

Leasehold Annual Assessment (if applicable)

Annual Lease: _____ Are they paid current? ☐ Yes ☐ No
 Due Date: _____ ☐ PRVWSD ☐ 16th Section
 Any other anticipated costs or fees such as foundation, septic or well water inspection? ☐ Yes ☐ No
 If yes, please list here: _____ Paid by: ☐ Buyer ☐ Seller

Payoff of Seller's Current Mortgage(s)

List the following information for all mortgage holders
 Mortgage Holder Name: _____ Loan #: _____
 Contact Information: _____
 Equity Holder Name: _____ Loan #: _____
 Contact Information: _____

Settlement Agent/Closing Attorney agreed to by Buyer and Seller

Name: _____ Phone: _____
 Address: _____
 Email: _____ Fax: _____
 Will the seller attend the closing? ☐ Yes ☐ No
 Will the documents needs to be mailed to the Seller? ☐ Yes ☐ No
 Is a Power of Attorney closing for the Seller? ☐ Yes ☐ No

Homestead

In Mississippi, a spouse cannot convey homestead by Power of Attorney for their spouse. Please contact the Settlement Agent immediately to discuss options and fees for a Power of Attorney.
 Is Seller's homestead exemption in place for the current year? ☐ Yes ☐ No
 Yearly Tax Bill: \$ _____

Ask your Seller if any of the following actions occurred in the prior year:

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