

Your monthly newsletter about Real Estate in the Phoenix, Scottsdale, and Paradise Valley, Arizona markets.

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Contact Me!



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Understanding Agency and Agent Compensation

By Dan Pinson, Designated Broker

One of the least understood parts of the real estate business is agency and compensation.

Agency is a relationship in which one person (the agent) is authorized to represent the interests of another (the client). Compensation is about the payments brokers and their agents receive for their services.

Note that I refer to “agents” in this article. Listing, Buyer Broker, and For Sale By Owner (FSBO) Agreements belong to the Designated Broker and Agents (and Associate Brokers) work for the Broker, so I’m generically using the term.

The laws of Agency in Arizona are governed by the Arizona Constitution, State Statute, Arizona Department of Real Estate Commissioner’s Rules, and Common Law of Agency (about 300 years of court decisions).

There are four types of Agency – Seller’s Agent, Buyer’s Agent, Dual Agent, and Subagent. A Dual Agent represents both parties, but there are conflicts in the loyalty, obedience, disclosure, and confidentiality owed to each party. Sub-agency is a person acting as an agent of someone who is already an agent of the principal. Sub-agency is very rarely used today because of liability issues, and will be excluded from this discussion.

Two different Agency relationships can be created. An Express Agency is created by the agreement of all involved parties and is usually supported by a written Agency Disclosure. An Implied Agency is created by actions or statements. The existence of this agency depends on the specific circumstances of the particular case.

A real estate employment agreement (Listing, Buyer Broker, or For Sale By Owner Agreement) is not required to for an agent to represent a party in a transaction. However, it’s helpful to have everything in writing to make the relationship(s) clear.

Compensation is typically established in the Listing Agreement (for Sellers) or a Buyer Broker Agreement (for Buyers), or For Sale By Owner (FSBO) Agreement. It may be in the form of an hourly, flat fee, or commission (a dollar or percentage fee). Most prevalent is a percentage commission based on sales price.

Compensation is then offered by a Listing Agent to the Selling Agent (buyer agent) by placing the compensation into the Multiple Listing Service (MLS). A

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Buyer Broker Agreement can also preclude a buyer's agent from receiving any compensation from the seller, and state that the agent will be paid directly from the buyer. If a buyer wants to pay their agent directly, then they can strike the provision in the Arizona Association of Realtors standard Buyer Broker Agreement. This is much less common.

State law and our Code of Ethics say that compensation can't impede a transaction and that they must be disputed between brokers. It's also against Commissioner's Rules for an agent to put their interests ahead of client interests.

Agents owe their clients a "CARLOAD" of duties:

C=Care and Confidentiality
A=Accountability for Monies
R=Reliable Information
L=Loyalty
O=Obedience
A=Advocacy to client interests
D=Disclosure

Some of these duties are compromised when a Dual Agency situation can occur, but as long as both principals to the transaction agree in writing, the Dual Agency situation may occur.

Note that some things are not required (by Statute) to be disclosed to a buyer: a death, felony, HIV/AIDS, and the vicinity of a sex offender. However, a buyer can certainly check the County sex offender website, and speak with neighbors to find out what they can about the home and neighborhood!

There's a lot more to know about Agency, but that'll have to do for now.

I'll be the first to say that the real estate business, especially the residential side, has a lousy reputation. We're commonly thought of as trying to sell you anything at the highest price in order to get the most commission. We typically place somewhere between attorneys and used-car salesmen as one of the most unsavory professions.

My hope is that we here at International Realty Partners can do a small part in rectifying those beliefs by informing and educating our readers and clients, acting like professionals at all times, and providing excellent service. Thanks for reading! – DP

Home Affordable Refinance Program Extended

On March 1, 2010, the Federal Housing Finance Agency (FHFA) announced the extension of the Home Affordable Refinance Program (HARP) to June 30, 2011. FHFA is the regulator and conservator of Fannie Mae and Freddie Mac. HARP is a component of the Obama Administration's Making Home Affordable Program. Borrowers with loans guaranteed or owned by Fannie or Freddie with loan-to-value ratios between 80 percent and 125 percent may be eligible to refinance their mortgages under HARP. In 2009, there were nearly 200,000 refinancings under HARP, far short of the original goal of helping up to 5 million homeowners.

The Monthly Numbers

For the Metro Phoenix area, February, 2010:

- Total Sales: 6,158
- Total New Home Sales: 422
- Total Resale Sales: 5,736
- Notice of Trustee Sales: 7,604
- Number of Trustee Deeds Recorded: 4,271
- Pending Number of Active Trustee Sale Notices: 50,416

We regret that we cannot provide specific information for each individual city in this issue.

"The difference between a successful person and others is not a lack of strength, not a lack of knowledge, but rather in a lack of will."

~ Vincent J. Lombardi

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Home Affordable Foreclosure Alternatives Program Introduced

The Home Affordable Foreclosure Alternatives Program (HAFA) goes into effect April 5, 2010. HAFA is designed to "streamline" a short sale via 43 pages of forms and guidelines (!).

HAFA is part of the Home Affordable Modification Program (HAMP). HAFA provides incentives in connection with a short sale or a deed-in-lieu of foreclosure (DIL) used to avoid foreclosure on a loan eligible for modification under the HAMP program. Servicers participating in HAMP are also required to comply with HAFA. A list of servicers participating in HAMP is available at MakingHomeAffordable.gov.

HAFA applies to loans not owned or guaranteed by Fannie Mae or Freddie Mac, which will issue their own versions of HAFA in coming weeks. HAFA:

- Complements HAMP by providing a viable alternative for borrowers (the current homeowners) who are HAMP eligible but nevertheless unable to keep their home.
- Uses borrower financial and hardship information already collected in connection with consideration of a loan modification.
- Allows borrowers to receive pre-approved short sales terms before listing the property (including the minimum acceptable net proceeds).
- Prohibits the servicers from requiring a reduction in the real estate commission agreed upon in the listing agreement (up to 6 percent).
- Requires borrowers to be fully released from future liability for the first mortgage debt (no cash contribution, promissory note, or deficiency judgment is allowed).
- Uses standard processes, documents, and timeframes/deadlines.
- Provides financial incentives: \$1,500 for borrower relocation assistance; \$1,000 for servicers to cover administrative and processing costs; and up to \$1,000 for investors for allowing a total of up to \$3,000 in short sale proceeds to be distributed to subordinate lien holders (on a one-for-three matching basis).
- Requires all servicers participating in HAMP to implement HAFA in accordance with their own written policy, consistent with investor guidelines. This includes factors such as the severity of the potential loss, local markets, timing of pending foreclosure actions, and borrower motivation and cooperation.

The program sunsets on December 31, 2012.

Tax Credit Update

If you're thinking of buying, you should write your contract prior to April 30, in order to take advantage of the available tax credits. The transaction must close no later than June 30, 2010.

In Escrow



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“Imagination is more important than knowledge.”

~ Albert Einstein

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Metro Phoenix Market Data (from ARMLS as of 3/1/2010):

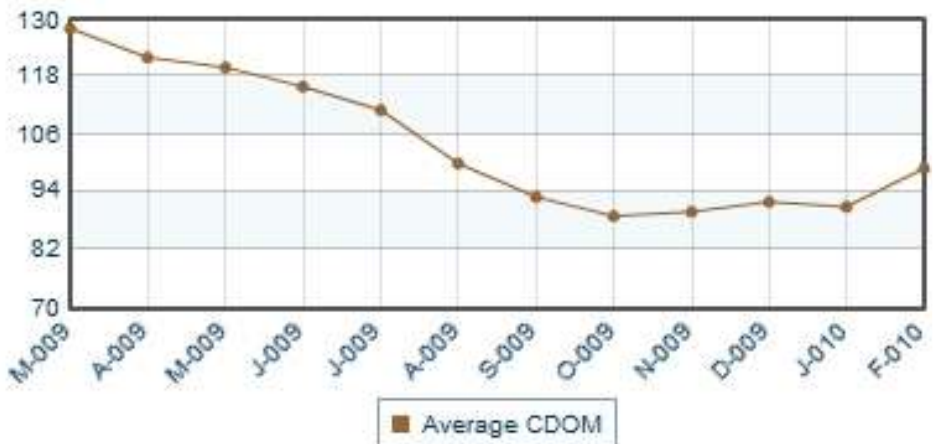
Inventory



Prices



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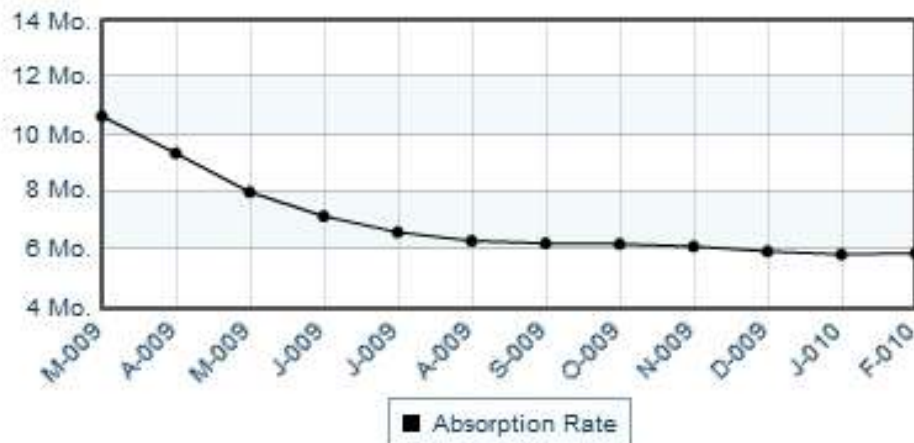
In only **15 minutes** we can help you determine your options and relieve your real estate pain!

This newsletter is for informational purposes only. Real estate laws, market conditions, and local customs frequently change. Consult an attorney specializing in real estate law before buying or selling. Consult with your CPA as to the tax ramifications of any real estate transaction. Be sure to perform ALL of your due diligence. Only deal with reputable real estate agents, developers, CPAs, and attorneys.

Market data courtesy of Arizona Regional MLS.

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Absorption



Volume



Sold Price to List Price Ratio

