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Exploring Return on Automation

Web-based originations spur questions on how lenders and vendors will adapt

INSIDE

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Fair and Square

Technology deters REO listing fraud and gets sellers the best price.

REAL-LIFE SCENARIO: A LISTING AGENT GETS ASSIGNED A BRAND-NEW bank-owned listing in a great neighborhood. Of course, before marketing the property, the agent needs to properly register it with the city, conduct a trash-out, change locks, make minor repairs, transfer utilities, winterize and/or facilitate lawn care service, and finish a few other checklist items like placing a sign in the front yard.

A week or two passes while the bank's asset manager approves initial expenses and determines a list price based on the agent's broker price opinion and an independent appraisal. Meanwhile, the listing agent fields telephone calls from prospective purchasers and other agents, inquiring about the property and when it will be available.

The answer isn't quite straightforward: the property isn't listed yet and the price hasn't been determined, so everything is up in the air. Buyers are lining up, waiting to see it, eager to pay, but the property isn't officially for sale. Still, these prospective buyers are encouraged and invited to take a look before the property hits the market, if they agree to purchase via the listing agent. There's the kicker. It's not quite an ethical way to handle this, now, is it? And actually, it's not even legal.

The listing contract eventually arrives, with instructions and the seller's list price. The agent submits the buyer's offer on day one. It may even be for the full asking price. Big surprise? No, it's clear where this was going.

A couple days later, the property finally hits the MLS, and other agents submit offers for their own buyers. They've been watching and waiting, and want a chance at the action—which they are entitled to have if all is handled in a fair and aboveboard manner. These agents rush out with their clients to see the property. They know how active it is and tend to write very strong offers. Some even come in above list price.

What do you think happens to higher offers when the listing agent has her own buyer? In a fair scenario, a bidding war ensues and the best offer is the one accepted by the seller. But this isn't a fair scenario. Far from it.

Agents won't give up the chance to earn double commission on a sale to their own clients. They won't present offers that net the seller more money, but puts less in their own pockets. Can you blame them? After all, the bank determined the list price and the agent brought an offer for exactly what the seller expected. Does anyone at the bank know they can get more? Does anyone really lose? And besides, how will they ever find out?

This happens every day. Buyers know it. Agents know it. Asset managers know it. Banks, servicers and the government-sponsored enterprises regularly get letters and phone calls from irate buyers and agents, demanding to know why a property sold for tens of thousands of dollars less than the offer they submitted.

It doesn't make sense and they deserve an answer better than times are tough, things fall through the cracks, agents are only human.

The sad thing is, there isn't much that anyone is going to do about it after the fact. The property is already sold, is off the books and price expectations were met. There's too much of a morass in our industry to waste time on looking backward. The industry is still reeling from the robo-signing debacle. Who is going to devote what slim resources are available to investigate accusations when the cost to prosecute far outweighs any possible recovery? Nobody.

When buyer's agents are able to submit offers directly to the seller or servicer, listing agent **fraud and flopping disappear.**

Human nature trumps everything an agent is supposed to do according to laws and the Realtor Code of Ethics. Real estate laws in every state require a listing broker to deliver all offers to the seller.

Article 1 of the Realtor Code of Ethics states, as a primary duty to clients and customers that Realtors "protect and promote the interests of their client," and "treat all parties honestly."

It's important to note that the listing agent's fiduciary duty is to the bank when selling a real estate owned property. And agents helping a homeowner with a short sale have an obligation to both treat the bank honestly and minimize any possible deficiency balance that may be left after the sale.

But forget for a moment the seller is a mortgage company. Insert yourself in that scenario.

What would you do if a listing agent you hired to sell your home found a buyer, negotiated a deal for what you were told it was worth and received full commission—then you learn the next day there was another agent with a different buyer whose offer was delivered to your agent but never shared with you? An offer for, let's say, $20,000 more? Don't answer.

Although we'd all like to believe that people want to do what's right and honest, the reality is that human nature—an attempt to look out for oneself, that Darwinian urge to survive better than the next creature—overrides legal language and anyone's moral code.

It's easy to think that this problem is exaggerated and can't possibly be that widespread. But skeptics need to only Google the question, "How do I know if my offer was submitted to the bank?"

A recent search returned about 330 million hits, representing an overwhelming number of aggravated agents and buyers who are screaming, begging, hoping that something will be done to right the many wrongs here.

And since that frustrated buyer is also the taxpayer whose money went to bail out the big servicers, there is no doubt in his-yours-my mind that the bank doesn't care…that the process is "fixed"…that it's just another example of poor government oversight. The headline risk alone is huge and should be enough cause for concern.

But that's not all. It gets worse.

Most mortgage servicers and asset managers today have a system or scorecard that ranks the effectiveness of the agents they employ. They're tracked on metrics like how quickly they complete tasks. And how quickly their listings sell. And how much deviation there is between an asset's sale price and the agent's valuation.

It's easy to see that the way agents are scored actually rewards the worst offenders; the agents with the best scorecards tend to get the most listings. And the most opportunity to take advantage of the process. And the cycle repeats.

There is a housing recovery waiting to happen. But until the market closes the gaps that allow scammers and fraudsters to depress values for personal gain, it won't come soon enough.

Proven, cost-effective technologies to identify and prevent these types of fraud before they happen are available today for users of all sizes. It doesn't matter how many distressed assets you have; the size of a business isn't a determining factor in best-practice business processes. If you have even one REO or short sale, you're betting against human nature. And eventually you'll lose.

It's time to make the industry honest. Any seller—even one deemed the "big bad bank" by whatever stories people tell themselves to rationalize bad behavior—deserves to see every single offer before making a costly decision.

When buyer's agents are able to submit offers directly to the seller or servicer, listing agent fraud and flopping disappear. Asset owners recover more money, servicers increase success rates with less risk, and agents and buyers finally see transaction time lines closer to that of a traditional sale—knowing, reassured, comforted by the fact that every offer is received, reviewed and considered.

You can't make an educated decision without all the facts. Technology brings fraudulent activity right to the asset manager or loss mitigator's desktop; with empowering solutions, there is no way to miss it.

We are sick of seeing immoral, unethical behavior in this industry. Deliberately defrauding a bank, a GSE, or other institutional investor is illegal and could send an agent or borrower to prison. Plus, it's just not a nice thing to do—even if you tell yourself the "big bad bank" is a nameless, faceless entity from some other part of the country—not a living breathing person. MT

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