REAL NEWS…A Publication of Campbell & Brannon, L.L.C.

UNDERSTANDING THE NEW GOOD FAITH ESTIMATE AND HUD-1 SETTLEMENT STATEMENT

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Effective January 1, 2010, lenders and closing attorneys implemented the new standardized Good Faith Estimate ("GFE") and HUD-1 Settlement Statement ("HUD-1"). The goals of these new forms include: 1) making it simpler for borrowers to "shop around" and compare lenders' closing costs; and 2) holding lenders accountable for cost variations between the GFE and the final HUD-1 in order to prevent surprise. Although these changes do not directly affect real estate agents, the changes do impact the process of interaction between all parties involved in the closing transaction. It is beneficial for agents to understand the changes in order to be able to answer questions from clients as they arise.

The New GFE

The GFE is an estimate of charges a borrower will incur in closing a transaction. On the new GFE settlement charges will fall into one of the three "buckets" identified below. Except in the event of a "changed circumstance", charges either cannot increase or any increase is capped at 10% of the total fees.

Bucket #1 - Charges That Cannot Increase:

1) Mortgage origination charges;
2) The credit or charge (i.e. points) for the specific interest rate;
3) Adjusted mortgage origination costs; and
4) Transfer and intangible taxes.

Bucket #2 - Charges That Can Increase No More Than 10% Total:

1) Lender required services including credit report and appraisal;
2) Title services, lender's title insurance and owner's title insurance (where the lender identifies the provider); and
3) Recording costs.

Bucket #3 - Charges That Can Increase Without Any Set Limit:

1) Services performed by a provider selected by the borrower, independent of the recommendation of the lender;
2) Initial deposits for the borrower's escrow account;
3) Daily interest charges; and
4) Homeowner's insurance.

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Exceptions - Where Costs Can Vary More Than Outlined Above

Each of the items listed below will be a "**changed circumstance**" and possibly require re-disclosure by the lender if cost varies more than outlined above. Also, keep in mind that even if the final costs are less than initially disclosed on the GFE and therefore compliant with the new GFE requirements, the costs may not vary more than 1/8 of a point to be compliant with the TILA changes implemented in July 2009 (even if they have decreased). Therefore, it is important to stay in close contact with the lender alerting them to **any changes relevant to the borrower and the transaction itself**.

1) Information provided by the borrower prior to the GFE is incorrect or inaccurate; and
2) New information relating to the borrower or the transaction presents itself.

Other Changes You Will Notice on the New HUD-1

1) **Commission percentages** are no longer shown on the new HUD-1. Line 703 will show the total commission and lines 701 and 702 will show the appropriate split between each broker. The earnest money held by the broker will be listed on line 704 as Paid Outside of Closing (P.O.C.). Line 703 will only reflect the commission being disbursed at closing and will not include the earnest money already received, as shown in line 704;
2) **Lenders fees** in the 800 Lines will be lumped together and only the Appraisal, Credit Report, Tax Service and Flood Certification Fees will be allowed to be listed separately;
3) **Title Charges** in the 1100 Lines will also be lumped together. Our fees will remain unchanged but our attorney's fees, title examination, lender title insurance commitment, tax report and expedited delivery services charges will be combined and listed as only one charge as "Title Services." This fee is then combined with the Lender's Title Insurance Premium and listed as one fee on line 1101. Line 1103 will separately list the Owner's Title Insurance Premium. Please note, we will always quote the Enhanced Owner's Title Policy Premium, because of the superior coverage it provides the borrower and the fact that it reduces an agent's liability for any title issues. If an Enhanced Policy is unavailable for the property or the borrower wishes not to purchase an Enhanced Policy, the premium will be adjusted downward; and
4) The New HUD-1 also features a third page which provides a **direct comparison** between the costs on the GFE and the HUD-1. The third page will summarize the **loan terms** and is intended to provide the borrowers with all the pertinent loan information. Please note, Lenders may or may not provide the GFE to the closing attorney. As in the past, it is good practice for borrowers to bring their GFE to closing in case any questions arise.

Looking Forward

We hope that through our combined growing pains relating to the new GFE and HUD-1, borrowers will benefit from the increased transparency and information involved with the closing process. As always, please feel free to contact any of our offices with any questions you might have as the new GFE and HUD-1 are implemented.

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PROPERTY TAXES - AVOID OVERPAYING

By Kristi Bone, Attorney at Law

We have all seen real property values plummet in Georgia, and the nation, over the last couple of years. This has not been good news for most of us. To add insult to injury, many local tax assessors have not reduced the values assigned many properties in determining the property tax due. As a result, immediate action is needed by the impacted property owners to avoid a higher tax bill than necessary.

Georgia law requires each property owner file a Taxpayer's Return of Real Property ("Return") for all taxable property owned as of January 1st each year. **The deadline to file a Return varies by county, but for most metro Atlanta counties the Returns are due on March 1st or April 1st**. The specific Return deadlines for metro Atlanta counties are included below. If a real property owner fails to file a Return by the deadline, the property owner is deemed to have returned the property for the same value as the previous year. The Board of Assessors ("BOA") in each County is responsible for determining the fair market value of all real property. The BOA reviews all Returns and determines the property's assessed value. The assessed value of real property is 40% of its fair market value. The BOA does not bill or collect real property taxes. That responsibility lies with the Tax Commissioner.

With the decline in property values, owners may do themselves a great disservice by not filing a Return. Ordinarily, a property owner has two opportunities to establish a decreased property value: 1) filing a Return; and 2) appealing a Notice of Assessment Change. Based on the state of our economy, the Georgia General Assembly passed House Bill 233, which prevents the BOA from increasing the 2010 and 2011 assessed value of property that remains constant. The result is that **filing a Return is the only opportunity a property owner has in 2010 and 2011 to avoid a tax bill based on a higher value carried forward from 2009**.

If a property owner elects to file a Return, the BOA will decide whether or not to accept the declared value. If the BOA accepts the value submitted by the property owner, the BOA will send a Notice of Assessment Change to the property owner and the matter is concluded. In the event the BOA denies the property owner's valuation, the BOA will send written notice to the property owner. The BOA denial is automatically appealed to the Board of Equalization ("BOE"), without any action by the property owner. The BOE will hold a hearing to determine the value of the property. In lieu of the BOE appeal, the property owner may elect arbitration.

Regardless of the appeal route chosen by the property owner, the decision of the BOE or the arbitrator can be appealed by either party within 30 days to the Superior Court. **No extensions are available for tax appeal deadlines for any reason.** It is imperative that property owners ensure the property value assigned for 2009 is accurate for 2010. If not, the property owner should file a timely Return.

During these tough economic times Benjamin Franklin's words are more relevant than ever. "A penny saved is a penny earned." Please contact any attorney at Campbell & Brannon, L.L.C. for real property tax assistance.

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Real Property Return deadlines for metro Atlanta counties are as follows:

March 1st	April 1st
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DeKalb	Barrow
Gwinnett	Bartow
Hall	Carroll
Newton	Cherokee
	Clayton
	Cobb
	Coweta
	Douglas
	Fayette
	Forsyth
	Fulton
	Henry
	Paulding
	Rockdale
	Spalding
	Walton

County specific real property information can be found at https://etax.dor.ga.gov/ptd/county/index.aspx.

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SEVEN TIPS FOR CONQUERING A SHORT SALE

By Whit Wood, Attorney at Law

Despite the fact that there are literally thousands of Georgians facing foreclosure, there are times homeowners still feel shipwrecked and alone in the process. Times when even the most resourceful survivor would feel the need to put a message in a bottle. Perhaps the most effective message will be a plea to their lender for a "short sale." A short sale is an attempt by the current owner to sell a home in lieu of the lender taking it back through foreclosure proceedings by negotiating with the lender(s) to accept less than the full payoff(s) owing on the property. When thinking about a short sale the word conquer comes to mind:

Con-quer [kong-ker] – *verb*
1.to acquire by force of arms; win war;
2.to overcome by force; subdue;
3.to gain, win or obtain by effort, personal appeal, etc.;
4.to gain victory over; surmount; master; overcome.

If you are a real estate agent who has successfully "conquered" a short sale recently you should give yourself a pat on the back. Always frustrating, and certainly time consuming, unfortunately, short sales will continue to be a player in our world in the coming year. Listed below are seven tips which may prove useful in successfully negotiating short sales this year.

1) **The Agent and the Seller, not the Lender, usually set sales prices.** With the exception of some VA and FHA loans and select loans held by a few lenders, most short sale transactions require an accepted Purchase Agreement between a potential Purchaser and Seller before the lender will begin the process of negotiating a short sale transaction.

2) **Some VA and FHA loans may be negotiated in advance without a Purchase Agreement.** As stated above, most lenders require a Purchase Agreement between a potential Purchaser and the Seller before they will begin to negotiate a short sale transaction. However, some VA and FHA loans may be approved for a short sale prior to an accepted Purchase Agreement. Often times, this prior approval allows a potential Purchaser to close in a relatively short amount of time and not the typical six months which it takes to have an average short sale approved.

3) **Properties with only one lien are usually the easiest to negotiate.** Unfortunately, to close a short sale transaction the Seller must have all parties who have an interest in their property agree to release their respective interests. This includes second lienholders, materialman's lienholders, HOA lienholders, tax lienholders, etc. Getting approval from the first lender is often only half the battle. Our offices can perform limited title examinations for a small cost to identify any liens outstanding on the property when seriously considering a short sale listing.

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4) Low offers will generally waste your time and could end up putting your Seller at greater risk. It is in an Agent's best interest to check comparables before listing a short sale property to invite offers and submitting offers to the lender. The listing agent must be sure to check recent home sales in the area to give purchasers of the property a better idea of what properties in that neighborhood are selling for. Lenders generally will not approve low offers and the precious time spent negotiating an unacceptable offer may cause your Seller to end up in foreclosure when they could have had a short sale approved based on submission of a reasonable sales price.

5) Sellers with other properties or strong financials may not qualify for a short sale and/or may be asked to pay the difference. Simply because a property is worth less than your Seller owes on it does not mean the property will be approved for a short sale. In considering approval of a short sale, the lender will generally assess the Seller's liquid assets in determining their ability to re pay the loan. If the Seller has many assets but no or very little liquid assets, the lender may approve the short sale but require the Seller to sign an unsecured note for repayment of the deficiency. This is done in hopes that the Lender will receive all or a portion of the deficiency after the sale of another property the Seller owns.

6) Have all inspections performed after the Seller signs and not after the Lender approves the short sale. Generally the Lender will not agree to any concessions for repairs after they have approved a short sale. While some purchasers may be unhappy with paying the cost of an inspection prior to the lender approving the short sale, unfortunately if they do not do so, they will be left to shoulder the burden of whatever issues may arise in the inspection as the Lender will not give concessions and the Seller will not have the funds to make any repairs.

7) GAR Special Stipulation for Short Sales. The Georgia Association of Realtors has provided a very useful stipulation to include in short sale purchase agreements. The stipulation identifies the nature of the sale as a short sale and makes the Purchase Agreement contingent upon 1) the Lender's approval of the Purchase Agreement and 2) the Seller being released from any claims for deficiency of the loan. While the first condition should be included in every short sale transaction, the parties should give careful consideration as to whether to include the second portion of the stipulation. Release of the Seller from claims for the deficiency will require the Seller's most zealous efforts. Often times, the Lender will approve a short sale but not release the Seller from the deficiency and require them to sign a note for that balance. Consider the circumstances in your particular transaction in deciding whether to include the second portion of this stipulation in your Purchase Agreement.

Campbell & Brannon, L.L.C.'s Continuing Education Real Estate School has a CE credit approved Short Sale class available for real estate agents. Please contact any of our offices if you are interested in taking this class.

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YOUR REAL ESTATE COMMISSION IS AT RISK

By Kristi Bone, Attorney at Law

Beware of the consequences of signing a Termination and Release Agreement ("T&R"). The Georgia Court of Appeals recently affirmed a Putnam County Superior Court decision (Reynolds Properties, Inc. v. Bickelmann, 300 Ga. App. 484 (685 SE2d 450) (2009)) wherein the Court held that **the T&R terminated all rights and obligations of the Buyer and Seller, including those related to commission**. Specifically, the Court found the general release language in the T&R trumped the defaulting party's obligation to pay the Broker the full commission outlined in the Listing Agreement, confirmed in the Purchase and Sale Agreement ("Contract'), and specifically preserved in the T&R.

How could the Court possibly reach this conclusion? The specifics of the transaction seem simple enough. Mary and Larry New ("Sellers") entered into a Georgia Association of Realtors ("GAR") Exclusive Seller Listing Agreement with Reynolds Properties, Inc., d/b/a Coldwell Banker Lake Oconee Realty ("Coldwell Banker") to sell their home. Bruce Bickelmann ("Purchaser") entered into a standard GAR Contract to purchase the News' home. Before closing the Purchaser decided not to complete the transaction. The Sellers and the Purchaser mutually agreed to terminate the Contract and signed a standard GAR T&R. The T&R provided the Purchaser's Earnest Money be paid to the Sellers. Coldwell Banker participated in the T&R.

The T&R confirmed that Coldwell Banker "join[ed] in the Agreement for the sole, limited, and exclusive purpose of allowing the earnest money to be distributed…[and] Broker expressly does not release or waive any rights with respect to any real estate commission, which may be due and payable to Broker." Based on the Purchaser's breach of contract, Coldwell Banker sued the Purchaser for its real estate commission. Coldwell Banker's argument was based on the language in the T&R and the Contract providing for the survival of the defaulting party's obligation to pay Coldwell Banker the full commission it would have been entitled to if the transaction had closed.

The Court did not agree with Coldwell Banker's argument and found that **the T&R not only terminated all rights and obligations between the Seller and Purchaser, but the rights of the Broker also**. The Court concluded that the T&R terminated the Contract in its entirety, including any right to commission. Specifically the Court held that the Purchaser was "relieved of the obligation to proceed to closing, foreclosing any right to a commission in Coldwell [Banker] arising under…the Contract for non-performance." The surprising conclusion the Court reached is that **the general release language in the T&R trumped the Broker's commission preservation in the T&R as well as the Contract**.

Brokers beware of the possible unintended consequences of participating in the T&R. Seek legal advice on how to protect your commission and look for changes in the GAR forms. As Ben Franklin once said…"An ounce of prevention is worth a pound of cure".