

THE MAD, MAD WORLD OF A BUYER'S MARKET

BY KAREN M. GOODMAN¹

I. INTRODUCTION

- High rate of foreclosures
- Static or declining market value
- Shrinking # of lenders
- Increased number of cancellations
- Navigating the buyer's market.

II. CONTRACT FUNDAMENTALS.

A. Listing issues

- Pricing in the declining market.
- The anxious seller who "has to sell."
- Deferred maintenance as a deal killer.
- Concealed problems: your duty as the listing agent.
- Prior repairs: Seller Property Questionnaire
- Neighborhood conditions—noise, abandoned properties, environmental.

B. Offer issues

- Close of escrow.
- Loan contingency
- Appraisal contingency
- Seller financing.

¹ Karen M. Goodman is the principal in the law firm of Goodman & Associates, a "AV" rated firm concentrating in trial practice, real estate and professional liability matters. She can be contacted directly @ kgoodman@goodman-law.com.

- Inspections—including soil suitability, well capacity, property corners.
- Buyer's "due diligence" period. (Par. 12).
- Mediation: mandatory
- Arbitration: what it means to the buyer.
- "Other terms and conditions."
- Scope of broker duty (Par. 34).
- Fiduciary duties: *Warren v. Merrill* (2006) 143 Cal.App.4th 96. `

C. Contract formation

- Counter-offers v. addendums.
- Letter of intent –binding or "discussion points."

D. Escrow

- Time matters: use a calendar for each transaction.
- Release v. failure of contingency
- Loan/appraisal issues
- Negotiations on repairs v. credit
- Cancellation v. breach
- Final walk-through
- Signing at close of escrow.

III. SHORT SALES: GROWING TREND

- A. With negative amortization loans, 100% loans, interest only financing and declining market value, many sellers are in dire need of cooperation from lenders to accept less than face value as pay-offs.
- B. Foreclosure is not the cure.
- C. If not a purchase money mortgage, loan debt may remain.
- D. Burden on the seller to show financial hardship.
- E. Negotiate with the lender
- F. Don't let contract with the buyer expire
- G. Tax consequences

H. Buying distressed properties: disclosure and rescission requirements under Civil Code Section 1695.5.

IV. PREDATORY LENDING: THE BUBBLE HAS BURST

A. Unfair, unconscionable loans aimed at people who least can afford to protect themselves: the elderly, the immigrants, the financially desperate.

B. What it is:

- Sell properties for more than they are worth
- Encourage borrowers to lie about their income to get a loan.
- Knowingly lend more money than a borrower can afford
- Charge fees for unnecessary products and services
- Charge high interest rates based on race or national origin
- Pressure borrowers to accept high risk loans
- Target vulnerable borrowers to cash out refinances
- “Strip” equity
- Use high pressure sales tactics.

C. The subprime market: aimed at people with poor credit, at significantly higher interest rates than others pay.

D. Not new: 2001—Sacramento City Council proposed an ordinance to regulate predatory lenders, but shot down under state/federal pre-emption.

E. California has laws on the books—but enforcement has not been a priority.

- Financial Code Section 4970 et seq.
- *McKell v. Washington Mutual* (2006) 142 Cal.App.4th 1457

F. Federal laws: Truth in Lending Act (15 U.S.C. Section 1631 et seq).

G. Red flags:

1. High fees
2. Short-term financing
3. “teaser” rates
4. True terms are not disclosed.
5. Terms changed at the last minute.
6. “Portable” notaries.
7. Loan applications signed in blank.
8. Borrowing more money than the client can afford to repay.
9. Refinancing will solve money problems.

V. CONCLUSION: MARKET CYCLE WILL PROVIDE OPPORTUNITIES

- A. Market for the professionals—clear contracts
- B. Shop for good lenders.
- C. Keep a close eye on details: pricing, inspections, deadlines.
- D. Know when to cancel and when to extend.