

Issues and Best Practices

Following are details of the issues stated above that can create delays or misunderstanding in the loan and closing processes. Following each stated issue is a BEST PRACTICE that, if implemented, could eliminate the issue and create smoother sailing.

Issue I. CONTRACT EXECUTION

Contract should be complete and legible. Proper addresses, phone numbers, and names should be spelled correctly and printed under signatures. The legal description should be included and legible.

Other common contract issues causing delays in underwriting **or** closing processes 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.

BEST PRACTICE: Write contracts knowing they will be read by a number of people throughout the process including, but not limited to, the buyer, seller, lender, underwriter, and closing attorney. Include all names and addresses in complete form and including the correct legal description. The Best Practice is for the contract to be typed prior to signatures, but if it must be handwritten, write clearly and with all required detail.

Issue 2. 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" include. 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 you or your client would pay the lump sum amount specified PLUS the termite certificate and home warranty, etc. 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 \$1500 in closing costs. Seller to pay termite and home warranty.* Who pays Buyer's closing costs in excess of \$1500?

BEST PRACTICE: Specify if the closing costs are inclusive/exclusive of the termite certificate (WDIR) and the Home Warranty, and/or any other items that may be addressed in separate paragraphs in the

contract. Preferred wording is: "Seller to pay up to _____ amount in Closing Costs, including, but not limited to, pre-pays, WEIR report, and home warranty." Some loans have a maximum of 3% that the seller can contribute to the closing costs and others have a maximum of 6%. Be sure to check with your lender prior to completing the negotiations.

Issue 3. PRE-QUALIFIED vs PRE-APPROVED

Pre-qualified is the preliminary review by lender of limited information that leads them to believe a buyer will qualify. Pre-approval occurs after the contract and application have been submitted.

BEST PRACTICE: Recommend that buyers be pre-qualified before starting the house hunting process to ensure their search is in the appropriate price range.

BEST PRACTICE: Buyers who are pre-qualified should avoid purchasing big-ticket items on credit that would add to their outstanding loan balances and reduce their credit score. Also, do not go shopping for a big-ticket item and give your s/s# to the salesperson as they will check your credit with one or more lenders and this lowers your credit score for a period of time.

Issue 4. 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 all addendums indicated on the contract as being included are provided to the lender. Failure to provide the ENTIRE contract that includes all addendums can delay the process in underwriting.

Issue 5. TIME LINES AFTER CONTRACT IS SIGNED

How much time on average do lenders need to close? Generally lenders need between 30 and 45 days to close. Lenders do not normally order the appraisal until the home inspection contingencies 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 RESPA laws. Get the home inspection contingencies removed as quickly as possible opening the door for the appraisal to be ordered and completed in a timely manner.

BEST PRACTICE. Allow up to 45 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.

Issue 6. SIXTEENTH SECTION and PEARL RIVER VALLEY WATER SUPPLY DISTRICT PROPERTY

Leasehold property and property on 16th section land are 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. Further, since lease transfer documents take time to complete you should contact those entities that apply as soon as the contract is accepted.

Issue 7. POSSESSION OF THE PROPERTY

Possession can be tricky creating enormous emotional and financial distress if handled without full understanding of the parties. For one person to possess a property the other person must be out. Possession by the buyers immediately after closing requires the seller to be out by closing which can put the seller at financial and emotional risk if the closing is delayed or cancelled and he has to move twice. The same risks might apply if the buyer possesses before closing. If the sale falls through, the buyer must incur expenses of moving again and may be difficult to get them out of the house quickly.

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

BEST PRACTICE: To avoid *all* financial risks the seller should not be expected to move out prior to closing and possession by the buyer should be provided 72 hours after closing allowing sufficient time for underwriting delays and/or for the seller to move. Of course, insurance issues would need to be addressed if the seller still possesses the property after closing as the Best Practice suggests.

BEST PRACTICE: The buyer should never be allowed to move in prior to closing. It can be a real pain getting them out of the house if the loan falls through or cancels for some reason.

Issue 8. TERMITE INSPECTIONS

Pest inspections are generally required by lenders, but there are exceptions. Some conventional loans do not require them.

BEST PRACTICE: Buyer's agents should have a Very frank discussion with their clients about the risks of not having a termite inspection if it is not required.

Issue 9, 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.

BEST PRACTICE: Do not include personal property anywhere on the contract. Personal property should not be negotiated as part of the closing of the real property, but rather separately through a Bill of Sale. The only exception is when there is a refrigerator or other item included for "no" or "zero" value. Also, never include a Seller paid allowance for repairs or decorating.

Issue 10. UNDERWRITING and LENDER DOCUMENTATION.

Request for documentation. After initial request for documentation goes out, 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 at the beginning by the borrower 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 review the lender's list of required documents with the buyer, and check off those which have been provided to the lender. Most lenders can confirm with the buyer's agent that they have/have not received all of the initial documentation and/or any requested follow-up documents.

Issue 11. CLOSING

Communication lines.

BEST PRACTICE: The selling and listing agent, along with the lender, should be the primary contact with the closing attorney's office. However, with respect to the lender, the lender is 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. The closing office will usually communicate directly with the Seller with respect to payoff information.

Preliminary vs. Approved Closing Disclosure Settlement Statement

BEST PRACTICE: The closing attorney should release the Closing Disclosure Settlement Statement to the agents after the lender has issued final approval. The lender should communicate to the Buyer how much to bring to closing, type of funds needed (cashier's check/wire), and who the funds should be made payable to. In the event the package is delivered to the closing attorney close to the closing time, the closing attorney's office and/or the lender can provide estimated funds to bring.