

The Miranda Rights of Hard Money

Part I of II

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This month's article, "The Miranda Rights of Hard Money," Part One, gives an overview of the process of selecting a lending team and of the rights that borrowers get from and give to brokers and lenders during the funding process.

If the objective is to fund a loan quickly, professionally and with the proper documentation, there is absolutely no substitute for working with an experienced hard money team. The members should include the borrower, lender, broker, and escrow and title officers, and they should think of themselves as funding partners. In more complex transactions, the team may be expanded to include attorneys and property evaluators (i.e., appraisers). It is important to recognize which team members will be needed, and then identify and involve them *early* in the process. Pick members who have successfully funded loans, are experienced in their respective areas of expertise and have good reputations in the hard money business.

We all have heard that, in real estate, it is "location, location, location." In

hard money lending, it is "experience, experience, experience." But, how do you choose a good hard money lending team? Regardless of whether you are a borrower, lender or broker, selecting the right members for your team is much like interviewing a job applicant. First, establish that the prospective member has the required technical skills and experience. Then, determine his or her availability and willingness to participate and react quickly. Next, decide if the personality of this individual will "mesh" well with the other team members. Last, but certainly not least, you will need to agree upon the compensation for each team member. If possible, do so in a written document signed by you and each member. Even though some states do not require written commission agreements, committing your compensation agreements to writing will avoid many future disagreements.

During this interview process, it is important to fully outline the role and responsibility of each team member and to clearly set forth what is expected of each member. Select a team leader. Once the team is in place, it is the leader's responsibility to coordinate the team's activities in accordance with the objectives of your clients.

Every person involved in the hard money industry should know his/her rights and obligations and should understand the roles and practices of the professionals with whom he/she will be working. In addition to adhering to governmental disclosure requirements, some hard money lending professionals have expanded their

disclosures to ensure that their clients are aware of their rights and understand what should transpire during the funding of a loan. It is advisable to require all the parties to sign disclosure documents, which set forth some of these rights at the beginning of the funding process, to guarantee that everyone is "on the same page."

Here are selected examples of certain rights and obligations that, in general, should be given to and received from borrowers:

1. Borrowers have the right to know when they can expect the loan to be financed. However, only after a thorough analysis of all matters that need to be investigated and processed should this information be given to the borrower. Care should be taken not to entice the borrower by underestimating these time requirements. It will typically take up to 30 days to fund a hard money loan. By the time the collateral has been inspected and valued, all documentation is received and reviewed, and documents are drawn, the borrower can expect 30 days to have passed. Funding can occur much faster if everything is in place, but there is always *something* unforeseen that will delay financing. So, be conservative in your estimation of the time it will take to fund a loan so that you can retain both your credibility and your client.
2. Brokers and lenders have the right to expect the borrower to provide all documents upon request. Typically, the funding timetable does

not start until all of the requested documents have been provided. The borrower is in the best position to know what will be required in the evaluation and documentation of the loan request. He/she should anticipate the lender's requirements and respond quickly to requests for information that may not have been anticipated.

3. Brokers and lenders have the right

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to expect that the borrower owns, has under contract or has control over the real estate that is to be provided as collateral. Borrowers should make sure they explain exactly what their position in the property is and provide clear, complete documentation in support of this position.

4. Brokers and lenders have the right to anticipate and request the following minimal information from the borrower:

- a. appraisal or opinion of value
- b. preliminary title report and APNs
- c. application for the loan
- d. overview of the subject property and/or executive summary

5. Borrowers have the right to know the cost of the loan. They should sign a fee agreement or other document with the broker or lender up-front.

6. Brokers and lenders have the right to know (in writing) the borrower's needs as to timing, amount, etc.

7. Brokers and lenders have the right to know (at the start of the funding process) about any unusual issues regarding the transaction. Failure to do so will only delay the loan and could result in the loss of credibility.

8. Brokers and lenders have the right to know with whom borrowers have dealt previously and the status of their relationship with each of their previous contacts.

This article has provided a few examples of the rights, processes

and procedures that should take place among partners in a hard money transaction. (This is not a complete list.) In next month's article, “The Miranda Rights of Hard Money,” Part Two, the lenders' and brokers' rights will be explored. The article will also outline broker practices in the hard money industry. So, good luck in funding your loan!

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