

Miranda Rights of Hard Money

Part II

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In real estate, it is “location, location, location.” In hard money lending, it is “experience, experience, experience.”

Last month’s article, *The Miranda Rights of Hard Money* (Part I), gave an overview of selecting and designing a lending team and of the rights of borrowers in the funding process. Part Two of this series explores the lenders’ rights, the brokers’ rights and broker practices.

Every person involved in the hard money industry should know their rights and obligations as well as understand the roles and practices of the professionals with whom they will be working. In addition to adhering to governmental disclosure requirements, some hard money lending professionals have expanded on their disclosures with their clients to ensure that they understand their rights and agree to what transpires during a transaction. Some professionals require all parties to sign these rights at the beginning of the funding process, so that everyone is on the same page.

While a more comprehensive list is needed, the following are examples of rights that should be fully understood:

For Lenders:

- Disclose all fees in writing, including, but not limited to, loan fees, due diligence fees, commitment fees and document processing costs. Explain which fees are refundable and which are not.
- Outline any scenarios where the borrowers can forfeit deposits or be required to pay fees or costs if the loan does not fund.
- Disclose the source of your funds: i.e., personal funds, real estate fund, REIT, credit line or private clients. This will increase the confidence level of borrowers and provide a level of comfort.
- Provide proof of available funds at the appropriate time in the funding process.
- Be accessible via phone or e-mail during work hours. Review loan documents immediately upon receipt and provide any comments to the appropriate party.
- Provide a written timeline for the funding process, so that borrowers and brokers can plan.
- Provide a Letter of Intent (LOI) and commitment letters in a timely manner.

For Brokers:

The role of the broker can vary greatly from transaction to transaction. If the broker is working on behalf of an inexperienced or passive borrower or lender, the broker may be expected to assume control of the transaction, recruit the lending team and direct it until the loan is funded.

If either the borrower or the lender is experienced and takes a proactive role

in the transaction, the role of the broker may be very different. The broker’s tasks may range from simply introducing the borrower and the lender to providing limited assistance in the furtherance of the transaction. The broker must be responsive to the needs and the directions of the borrower and the lender, while recognizing that his/her authority depends upon the client’s directions. Thus, a good broker will always assess the capabilities and the desires of the parties and take the necessary steps to ensure that the loan will be processed in a professional and timely manner, while making certain to follow the client’s directions.

There are specific things that a broker should always do:

- Assemble a complete loan analysis package for presentation to the lender, if the borrower has not already done so. This package should include property descriptions and valuation, a Preliminary Title Report, a summary of the financial considerations, property comparables, pertinent area information, borrower financial information and any specific funding requirements.
- Prepare government required Disclosure Documents and make sure each party has received, and if required, signed these documents.
- Make certain that the team members are communicating and completing their assignments in a timely manner.
- Keep the client informed of the progress of the transaction. One of the most commonly heard complaints is the following: “I was told that the loan would close earlier.”

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- Obtain the borrower's signature on a Fee Agreement that clearly sets forth the broker's responsibilities and performance requirements. Up-front disclosure of the broker fees to the lender is also recommended.
- Do not fail to disclose any pertinent negative information, even if you think it may kill the deal. Failure to do so may result in your being held liable.

After obtaining the loan approval or direction from the client, the broker should be prepared to do the following:

- Select and open an escrow. Preferably, use an escrow associated with a title company. In case there is any material error on the part of escrow, there are financial and professional commitments to stand behind their product.
- Select a title company and order a Preliminary Report.
- Recommend an attorney to prepare and/or review loan documents if the Standard Form documents are not to be used. Always discuss this option with your client.
- Coordinate the presentation and signing of loan documents.
- Draft an Instruction Letter to escrow to be signed by the broker, the borrower and the lender. Obtain the signatures before presenting it to escrow.
- Coordinate with the lender and escrow to make certain the transfer of funds takes place smoothly and in a timely manner.

There are also things a broker should not do:

- Do not shop the loan to other brokers without first obtaining authorization from the borrower.
- Do not work with other brokers without a written fee agreement. Even though broker fee splits are not required to be in writing, a written agreement will avoid future disagreements.
- Do not make promises that cannot be fulfilled.

- Do not fail to return telephone calls and transmit information in a timely manner.

These are just a few examples of the rights and procedures that should take place between or among partners in a hard money transaction. Good luck in selecting your hard money team!

Weston A. Jones is the principal broker for Mentor Financial Group ("MFG"), a private hard money and commercial real estate lending and investment company. Founded in San Diego, Calif., MFG specializes exclusively in quickly funding hard money trust deed investments primarily in California and selected opportunities nationwide. Mr. Jones co-founded MFG and is dedicated to developing the world-class customer service, underwriting and processing framework that the industry demands. Mr. Jones received his MBA with a concentration in finance and real estate from the Harvard Business School. He is a licensed California real estate broker and has received his CPA designation. For more information, contact Mr. Jones at: 619-987-9433; e-mail him at: weston@mentorfg.com; or visit his Web site at: www.mentorfg.com. ♦