

Expired Listings

When a Real Estate Broker takes a sales contract (a listing) on a property and is unable to sell it in the time allotted, the listing expires on a stated date, and the expiration of the listing appears in the local Multiple Listing Service (MLS) bulletin and is at that point up for grabs for anyone intrepid enough to contact the owner of the property. Typically these expired listings are published daily or at least once or twice per week, and for the eyes of the MLS Member-agent only.

- The information normally available in record is:
- The property address,
- Square feet,
- Date taken off the market,
- Most recent asking price,
- A description of the accoutrements,
- Year built
- Lot size.
- (In some areas) the name and address of the former listing agent

One of the favorite means of trolling for new listings for many of the more aggressive Realtors is “Working the “Expired’s.” In order to get the next chance a the listing, the Realtor need merely contact and convince the seller that his/her talents and wherewithal in the business are greater than were the Realtor’s who just dropped the ball on marketing the property that last time around. Most Realtors (not all) will agree to do more advertising, more open houses, more pitches at the local Realtor Board meetings, etc. But more often that not they take the same listing, put it right back in the same MLS

and wait for someone else to bring them a buyer because a buyer's agent just happened to run across the listing when the buyer came into the office asking for properties in that general area and price range.

Many property owners who have learned this lesson too late, and who have had to sit and watch a burdensome and cash-draining property go unsold for six months or more are exasperated and disillusioned with their Realtor, and with the real estate sales industry in general. And this makes them a little testy, but considerably more open to creative options that they may not have considered before (e.g., lease optioning, equity sharing, rent-to-own, wraps, seller carries, contracts for deed, etc.). It goes without saying that these people thus become wonderful prospects for a creative real estate entrepreneur who would offer to step up and take the property off their hands, while saving them a real estate commission in the process.

The idea here is to get access list of Expired's in your community, or in the community in which you wish to concentrate, and generate regular mailings to the disillusioned owners, suggesting that you understand their plight and that you would like to speak with them about their property...now that it's showing on the MLS as an "Unsold" Property (this term will create more 'Pain' in the mind of the seller than will the expression 'expired listing').

If your not a Realtor and have no access to the MLS, one way to obtain this closely guarded information is to find a new Realtor who may be having trouble coming up with the money for the Board dues and their MLS membership, and offer to pay one or the other, or both, for the agent in exchange for their access to the centralized data. In

most localities it will entail being given a phone number and PIN code with which to access the board's website on the Internet.

A Different Approach

Network member, Adam Albright in Arizona, has come up with another twist on working Expired listings without having to do all the footwork, and the ability to elicit the services of a Realtor for all the hard stuff. Adam has taken it upon himself to begin contacting Realtors in the more distant areas in lieu of the homeowner, after their listings have expired. His fax to the Realtor essentially let's them know that that if they can resurrect their relationship with the seller and help him make the deal, he will buy the property under his own take-it or leave-it terms and conditions, and see that the agent gets paid for their services: i.e., a commissions they've already kissed good-bye.

Obviously this approach garners great interest from Realtors who see their hard-earned listings and commissions going down the drain, because of not having been able to perform under the terms of the agreement with their client. This also affords the Realtor an opportunity, and reason, to re-contact their lost client with a real live prospective buyer in hand and perhaps even get a renewal on the listing.

The following is a sample cover letter and a sample offer that can be mailed or faxed to the Realtor. The cover letter is designed to neutralize objections before they arise, and the offer explains the terms and the conditions and financing process under which he is willing to proceed. If the letter is not answered, nothing is lost, and he may contact the owner directly: if it is, then that's another property owned.

Adam's has sent out 150 such faxes to date and his return call rate so far is 50%. We'll see how many deals ultimately come from the program and report to you in a future newsletter.

THE COVER LETTER...

Ms. Brooke Angler
Century 21 Four Rivers
9876 Fly Street
Steelhead Bluff, Montana

Dear Ms. Angler,

The Rod County MLS records indicate an expiration of your Real Estate Sales Contract with Mr. and Mrs. James Alpers on the property at 123 Lake St. in Troutsville has expired. However, I would none-the-less like to make an offer on that property and will, for the sake of expediency and your professional assistance, be pleased to make the offer through your office, rather than by my contacting Mr. and Mrs. Alpers directly (if you wish).

Before reviewing the accompanying proposal, however, in anticipation of concerns you may have, or which may arise from your broker, your company's attorney or the sellers themselves, please make special note of the following important points.

- There are two ways to transfer real estate ownership – by a transfer of legal and equitable title to a buyer, or 2) by a transfer of beneficiary interest in a trust to a co-beneficiary, wherein the trustee is vested with the legal and equitable title

- Although not widely known of or extensively used by the vast majority of real estate professionals, land trusts (Illinois type title-holding trusts) are in-fact extremely safe, viable, protective and wholly legal holding and transfer vehicles. These trust forms are authorized or accepted in every state throughout the U.S., and have been used for real property ownership transfer since the beginning of the twentieth century. There are no states in which this particular trust structure is not held wholly viable, valid and legal.
- Unlike other inter vivos trusts, the beneficiaries of a land trust are its directors and make all decisions evening view of the fact that the trust property's ownership is vested with the trustee. The land trust trustee holds full legal and equitable title ownership of the property along with the full Power of Sale as directed by the trust's beneficiaries. Also, note that the nature of such a title-holding vehicle is to convert *Realty* ownership to that of *Personalty*, even through the IRS will still treat all beneficiaries as owners of the Realty for income tax purposes (IRR 92-105/*The Doctrine of Equitable Conversion (See Black's Law, 6thED, pp 332/538)*).
- Through the use of a bona fide title-holding land trust, ownership interest in real estate can be effectively conveyed to a co-beneficiary without the necessity of a new mortgage loan, without an unauthorized title transfer, and without a violation of a mortgage lender's "due on sale clause" or alienation admonitions. (FDIRA 12USC1702j-3)
- By utilizing a simple land trust as a transfer device, one can effectively buttress his/her real estate ownership against virtually any threat of lawsuits, judgment

creditor claims, IRS tax liens, bankruptcy and legal claims in marital dissolution, Probate proceedings, etc. (From an asset protection standpoint, one's holding *any* real estate in one's own name is considered by many to be an invitation to lawsuit and potential financial devastation).

- The land trust transfer allows one to convey full income tax benefits to a tenant co-beneficiary (See IRC 63(h)4(D), along with virtually all of the Bundle of Rights in Fee-Simple Real Property Ownership.

Please bear all of the above closely in mind as you peruse the accompanying purchase offer.

THE OFFER...

Date: 4/2/2002

From: Investor Bob

To: Ms. Angler, Realtor® - Century 21, Four Rivers

As I indicated in my cover letter (attached), I am prepared to acquire the subject unsold property under the following terms:

- Property to be accepted in As-Is condition without request for repairs, alteration or improvements by seller now or in the future. Buyer shall hold seller free and harmless from any claim of financial loss relative to discovery of substandard or hazardous conditions presently known and disclosed, or later discovered..

- All loans, taxes and insurance relative to the subject property to be current at the time of transfer
- Property to free of all title clouds and liens, other than those of record, at time of transfer.
- Seller to hold the current mortgage financing in place for a minimum of three to four years...although the ideal term would be ten years or more (the seller's choice)

[Note here that the suggested transfer process, more fully described in the accompany cover letter, will not violate a lender's due on sale clause or constitute any transfer to me of the property's legal or equitable title.]

- Seller to be paid all of its existing equity (if any) in the property at such time as the property is re-sold or refinance at the termination of the proposed Agreement.
- During the course of the proposed transaction, the property shall be held in trust, in the name of seller, for the benefit of seller, until such time as the Agreement has terminated and the property is disposed of or refinanced by buyer.
- Buyer to lease the property from the seller's trust on a "triple-net lease" basis: i.e., paying for 100% of all costs of ownership, including mortgage payments, property taxes and insurance; as well as handling 100% of all management, maintenance, repair and day-to-day upkeep for the term of the agreement.
- Buyer to take possession the property at the close of Escrow (30-60) days
- During the term of the subject title-holding trust, buyer shall be named as a co-beneficiary, in order to enable all the benefits of real property ownership to accrue to buyer/co-beneficiary without the necessity of title transfer and without undue

risk of comprising the due on sale clause relative to the underlying mortgage financing.

- Upon disposition of the property the termination, all existing loans will be retired by buyer/co-beneficiary, and at that time seller will receive 100% of all of its equity existing at the inception of the transaction.
- Seller shall be allowed to refinance its mortgage loan or acquire secondary financing at the monthly expense of buyer, prior to, or at any point during, the course of the subject agreement: so long as the agreed-upon aggregate monthly payments agreed to be made by buyer/co-beneficiary are not increased in the process; and so long as such new financing or re-financing would not exceed the mutually agreed upon value of the property at the inception of the proposed transfer.
- Buyer to cover all costs of closing except for Real Estate commissions, back taxes or unpaid insurance or delinquent mortgage payments (suggest commission deferment or carry for 1,2 or 3 years if a burden for seller)
- This offer shall become valid and in full effect 30 days from the date shown below, during which interim period, the following issues will be confirmed by seller for the benefit of buyer: 1) loan condition and pay-off; 2) comparative market value, 3) condition of insurance and property tax payments, 3) freedom from zoning and building code ordinance violations, 4) freedom from utility company liens, income tax liens and mechanics liens

- Buyer to execute any Purchase Offer and Contract deemed by agent to be suitable for the subject transfer, so long as all terms and conditions proposed here remain fully in tact.

Signed: _____ Date _____