

Impossible situations solved professionally

WHY A REAL ESTATE ATTORNEY? *by Glen Riegler, Esq.*

Home ownership can provide you with many benefits. However, a home is also a major financial commitment. Hiring a knowledgeable real estate attorney prior to commencing the home buying or selling process can assist you so that you hopefully avoid problems and pitfalls when negotiating the contract.

Would it be ideal to move out of your home before selling? Sure. But unfortunately, this is not practical. Instead, when negotiating the sales contract, the attorney for the seller should build in a few extra days of post closing possession just in case the house that the seller's are buying is not ready to be closed on until a day or two later. In a perfect world, one would sell in the morning and then purchase in the afternoon. Unfortunately, this too is not always possible, unless one of the two deals is a straight cash transaction. With the strict lending requirements now in place, funding not always available till late in the day, and with the hoards of paperwork required, the seller will want to insure that they have the maximum number of post closing possession days allowed while the buyer would want the least number of post closing possession days. Generally, when representing sellers, I request a seven (7) day post closing possession clause. When representing buyers, I seek a five (5) days post closing possession. This would insure that each party is not left without a place to live.

One problem with being able to close on time is that lenders have gotten nervous. Even after pre-approving a buyer and receiving loads of paperwork, lenders have developed a tendency to come up with further requests for more paperwork, thereby delaying the process or even the closing. What if you have closed on your sale, and expect to purchase the very next day, but this closing

is delayed at the last minute by the lender? Without a post closing possession agreement of seven days, you, as the seller, may be forced to move out before you are able to purchase, thereby leaving you with nowhere to live. In order to minimize this from occurring, it is suggested that you hire an attorney early on in the process so as to be sure that all points are negotiated and that you have all of your paperwork together as soon as practical. Then you and your attorney should continuously check with your lender as to exactly what it is they are going to need. Also, stay on top of the lender and ask, ask, ask questions. By doing this, the lender will know that you intend to be vigilant about the process and not accept any vagueness or inconsistency as an answer.

Another avenue to consider to minimize the effect of a closing being delayed, is having the agents keep in regular touch with each another as well as the attorneys about not only the number of post closing days needed, but the loan approval process as well so that all parties are on the same page. The fewer surprises that develop, the less likely that a deal would fall apart. One deal I just was involved in was delayed due to the further demand by the lender's attorney that the sellers provide additional documentation relative to judgments which were to be cleared at the closing table. This had the possibility of creating a domino effect on many other deals. Fortunately, we were able to work out the particulars without causing others any delay.

Issues always arise and one needs to be aware of what they are and how to resolve them. Patience and persistence have always been my keys to success and have helped me avoid many potential pitfalls. Feel free to contact me with any questions you may have. ~

IN TODAY'S MARKET CO'S CAN BE A HUGE PROBLEM! *by Leor Gamzo, Esq.*

The lack of inquiry prior to contract of sale signing can cause the loss of a deal before it even begins. Agents should question the seller regarding the presence of certificate of occupancy (C/O) or equivalent, legalizing documents for all improvements, extensions or conversions made to the property. There are many instances where sellers do not have a certificate of occupancy for items on the property and unaware that they may be required to obtain them prior to closing.

In today's mortgage market, lenders have more stringent requirements to insure the presence of the certificates. Many sellers are unaware of the

requirement for c/o's and/or assume that if they purchased the property with the improvement existing, that the structure is legal and will not become an impediment to closing. In addition, the buyer's attorney typically inquires into the presence and legality of any structures that would require c/o's. The sellers being unaware of any possible issue, usually hampers the progress of the contract execution.

Having the client aware/prepared for c/o issues will avoid the agent being blamed for not mentioning the issue and instill the client with confidence in the agent. ~

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Attorney tips for brokers

TIP NUMBER 1 *by Craig Augi, Esq.*

CONTINGENCY FOR SALE OF PRESENT HOUSE. If the buyer also has a house to sell, and needs the equity in the house or cannot afford to pay two mortgages at the same time or the bank will not allow the buyer to pay for two mortgages at the same time, the Purchase Offer MUST be made contingent on the sale of the buyer's property. This protects the buyer from being committed to purchasing a property if the sale of the buyer's house does not close for any reason. ~

TIP NUMBER 2 *by David Mirabella, Esq.*

DON'T BE SCARED OFF BY SHORT SALES. In tough economic times they present an opportunity for those of us in the real estate community. Using an attorney proficient in short sales not only elevates delays and inconsistencies, but will also insure that a short sale transaction winds up being not much different than a regular transaction. The only documents which a realtor needs to provide are a listing agreement, a listing history, and a MLS/property photograph. An attorney who knows how to handle short sales will take care of the rest. One final and very important tip is the importance of evaluating the purchase price to meet market value pricing. Proper pricing drastically speeds up the short sale negotiation process by avoiding BPO discrepancies and counter offers which will be raised by the short sale payoff bank. If the property is not priced close to market value, then a short sale transaction can become a lengthy process and will often be unsuccessful. But with proper teamwork between the realtor and a knowledgeable short sale attorney, the process should be both effective and profitable. ~

Fanny Mae Survey

by Biagio Muratore, DE Capital Mortgage

Fannie Mae just released their latest survey with regards to consumer sentiment towards the housing market. The survey was taken by 3,001 members of the general population. The results were quite encouraging, so I thought I would share them with you! 74% of mortgage borrowers and 69% of underwater mortgage borrowers said owning a home is a safe investment. 83% of mortgage borrowers and 77% of underwater mortgage borrowers said they are more than likely to buy another home in the future. The majority surveyed felt prices have bottomed out. 78% felt prices will hold steady or go up over the next year. Of that 78%, 41% felt they would hold steady and 31% think they will go up. 70% of the first time home buyers surveyed said it was a good time to buy a home and feel it is a buyer's market. All in all the negative press about the housing market IS NOT all true! We are TRULY in a PERFECT STORM with rates at historic lows and prices down. It is up to us to educate our clients about all the positives of home ownership! ~

PDETitle is your in-house Title Insurance Company working exclusively with PDE agents. Our goal is to ensure that your deals get to the closing table as smooth as possible because we really understand what's at stake and have your best interest in mind. Please contact us at with any inquiries or questions at: 631.425.1027 or www.pdetitle.com.

Avoid Probating a Will *with Respect to Real Estate!*

By William A. Stouges, Esq.

Under New York State law, a deceased person's next of kin may, in certain circumstances, transfer real property as the heir(s) at law. There are many advantages to transferring property this way, saving the time and expense of probate being one.

To give an example, Mom and Dad owned a house in Syosset, New York. Dad died several years prior and Mom passes away this year. Son and Daughter are now going to sell the parents house. Mom had a will leaving everything to Son and Daughter equally. Son and Daughter may sell the house as the surviving heirs at law rather than as executors under the Will. They can immediately enter into a contract of sale and title can be certified in Son and Daughter, as the heirs at law of Mom. While most wills are probated as an uncontested proceeding in Surrogate's Court, the probate of a Will can become time consuming and costly. In the above example, probate was avoided all together.

ADDITIONAL REQUIREMENTS:

- Locate the Will, if any, and send to the title company for review. The provisions of the will must be reviewed to see if this type of transfer is possible. If there is no Will, the property passes by the laws of intestacy, which means the heirs at law may transfer title anyway and still avoid probate.
- Locate the Death Certificates for all parties on title and send to the title company for review. Further affidavits may be necessary to prove the parties were still married the time of death, etc.
- You will need to obtain some additional title affidavits, usually from a disinterested third party, attesting to the fact that the person died leaving only those heirs now transferring title. ~

techTips  **BlackBerry**

SHORT-CUT for SOUND PROFILE

On **MOST** BlackBerries, if you want to change your **SOUND** profile from Vibrate to Normal or vice versa, just hold down the **"Q"** key and it will change it for you!

by Michael Constantine
Director of Information Technologies