



ILLINOIS STATE BAR ASSOCIATION

REAL PROPERTY

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

6 strategies to better represent sellers of real estate

By Colleen L. Sahlas

The old adage, "an ounce of prevention is worth a pound of cure," remains true. Implement these six strategies when representing sellers of residential real estate to avoid a myriad of problems down the road.

1. Discover & Defeat Potential Pitfalls Up Front

Upon Retention, **ask your client pertinent information** and take immediate action, such as amending or cancelling the contract within the attorney review provision:

- a. **Client's Marital Status:** Clients in divorce proceedings often assume their soon-to-be ex-spouse does not need to be involved in the real estate sale of their principal residence. Until divorce proceedings are final, regardless of whether only one spouse is a title-holding spouse, Illinois law requires the signature of both spouses to effectively release, waive or convey a homestead interest.
- b. **Mortgages, home equity loans and lines of credit:** Find out about *all* loans your client has on the property and the approximate balances. Before the attorney approval expires, calculate whether or not there are adequate sale proceeds to pay off all loans/liens as well as all other anticipated closing costs.
- c. **Insufficient Sale Proceeds.** Does your client require sale proceeds to purchase other real estate? How much money is required? Will a post-closing possession escrow or tax re-proration escrow for their sale tie up funds they require for their purchase?
- d. **Any Existing or Potential Foreclosure.** Is the property in foreclosure or has the

Seller defaulted on their mortgage(s)?

- e. **Leases, Tenants, Rentals.** Are there any rentals, leases or tenants at the property (don't overlook rental of parking spaces)? What are the terms? Is the Buyer willing to take the property subject to the leases/tenancies?
- f. **Pending Lawsuits or Judgments.** Are there lawsuits or other judgments against your client or the property? Find out now to allow yourself time to clear the defects without having to delay closing.

2. Verify warranties & representations your Selling client made in the contract and revise as necessary during attorney review

For example, for the Multi-Board Contract 5.0, see lines 30-31 and paragraph 21. Is your client aware of:

- a. Government violation notices concerning the property;
- b. Notices concerning any increase in property taxes or property assessments;
- c. A pending re-zoning of the property;
- d. Boundary line disputes over the property;
- e. A pending condemnation or Eminent Domain proceeding;
- f. An easement(s) on the property not shown on public record;
- g. Hazardous waste on the real estate;
- h. Improvements or upgrades to the property not included in the most recent tax assessment;
- i. Improvements to the real estate which may be eligible for the home improvement tax exemption;
- j. Whether or municipal permits were properly obtained for any improvements

made to the property.

3. Research Property Tax Issues. Negotiate a more accurate tax proration. File for any exemptions to which your client is entitled. Ensure your client receives monies from the County to which they may be entitled for unfiled exemptions, appeals or certificates of error which are not yet concluded. Rather than speculating or employing customarily used tax pro-rations, instead:

- a. **Research the Property's Information with the County Assessor** for:
 - i. **Exemptions** filed or not filed. Have your client file for exemptions for the most recent and previous tax years for which they are eligible but failed to file. For example, in Cook County they may file up to the past 4 tax years for the homeowner's exemption if they can prove eligibility;
 - ii. **Assessed value** increases or decreases (compare to the prior year's assessed value and calculate the percentage of increase/decrease);
 - iii. **Any improvements not yet assessed;**
 - iv. **Any certificates of error** filed or not yet concluded, or assisting your client in filing a certificate of error as appropriate;
 - v. **Any appeals** not yet concluded.
- b. **Make a Phone Call to the Township Assessor** and ask what he/she believes the percentage of increase for the next tax bill will be for that particular property. If not ascertainable, then ask whether or not the local municipality's recent decisions will cause an increase or decrease property

taxes for that tax year.

4. Place the Onus on the Buyer to Obtain Lender Approval of Credits from Seller to Buyer, rather than trying to salvage the deal at the closing table when the buyer's end lender first learns about and disapproves the credit. Via the attorney review provision, make credits from Seller to Buyer contingent upon Buyer having disclosed the credit, in writing within X business days, to the end lender (not simply the mortgage broker). Provide that if the lender disapproves of the credit, then Buyer's failure to proceed with the transaction based upon the same shall be deemed a default.

5. Duty to Update Statutory Disclosures. Inform your client that during the pendency of the contract, they have a duty to update the Illinois Residential Real Property Disclosure Report. E.g. if the property floods after disclosures are signed but before possession is delivered, then the form must be amended and re-signed by the parties.

6. Don't Outright Agree to a Vague Request for an Appraisal Contingency allowing Buyer to cancel if the property appraises at a value lower than the purchase price. Instead, CLARIFY the terms:

- a. Whose appraisal?** The Buyer's lender's appraisal report, and not an outside report (e.g. Buyer decides mid-way to forego financing and pay cash, and then wants to cancel based on an independent report obtained by Buyer individually).
- b. When can the Buyer cancel?** Recommended: the same date as the mortgage contingency deadline.
- c. Is the Seller entitled to a copy of the appraisal report?** Require that Buyer, within a specified time, notify Seller in writing that the property did not appraise out and produce a written copy of Lender's Appraisal Report.
- d. Is the Buyer required to appeal?** If so, what will be the time frame?
Recommendation: Buyer has three (3) business days do the following: a) formally challenge and/or appeal the lender's appraisal results (comparables or

"comps" found by the appraiser), and b) request the Listing and/or Selling Agents research and produce documentation of more accurate comparable property sales ("comps") to the buyer's lender, and c) if lender allows, request and pay for the lender to obtain a second appraisal.

- e. Can Seller Offer a Price Reduction?** Require that, if the appraisal appeal is not successful, then Buyer must allow Seller the opportunity within a specified time frame to offer to reduce the purchase price as an alternative to Buyer's outright cancellation. If Seller makes a timely written offer to Buyer to reduce the purchase price to the lender's appraised value, then Buyer will be obligated to proceed with the transaction. ■

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