

Top 10 Pitfalls at Closing

When closing a real estate transaction, or taking listing, there are a number of pitfalls that you interrupt your closing. This article provides some guidance on the most typical of these, and gives you some advice on how to avoid them.

Divorce or Separation

The first of these pitfalls is in the divorce scenario. Whenever you are going to take the listing or purchase the property where there is a divorce either pending or past, you have to be prepared to deal with the difficult situation between the two sellers. You will need both the husband and wife for signatures on all of the paperwork, including the listing agreement, the contract and the deed. It is imperative that you get both parties signatures on all of the documents. Whether the taking the listing or going to closing, this will be much easier if they have signed the listing agreement and the contract because they will be obligated to sell and go to closing.

In addition, there is no such thing as a separation in Florida. Couples are either married or divorced. If a couple tells you they are separated, they are married and both must sign.

Bankruptcy

If your seller is currently or recently has gone through bankruptcy, you may need the bankruptcy trustee's permission to sell or purchase the property. You can discover that information quickly by asking the seller if they had recently filed for bankruptcy. If the answer to the bankruptcy question is yes, you have a lot more research to do and the immediate assistance of an attorney access to the Federal bankruptcy filing system.

Foreclosure

While foreclosure and REO properties are dwindling, they remain in our marketplace. Most of us that have been in the business for a few years have had our share of foreclosures and other challenges. Just as a refresher, if your property was in foreclosure it is imperative that the title agent check the foreclosure proceeding to make sure that all of the parties were properly served and at the foreclosure actually foreclosed out the interest of everybody but your seller. In the event the foreclosure was not done correctly, your seller will have to go through a re-foreclosure process before the property can be purchased.

Recent Marriage of Seller or Buyer

In Naples, lovers may not be young but love always is. In the event your lovebird clients have recently got married, you have extra issues to worry about when you go to help them buy or sell a property. Florida has very strong homestead protection for married couples. Even if a couple wishes to sell their home but they have moved in and made it their marital home prior to sale, the new spouse must sign the deed.

Probably more the case in Naples, a couple wishes to purchase a home and one spouse will be making a substantial contribution to the purchase price. Both couples be to be aware of their homestead rights and have a properly drafted plan to deal with the marital home in the event of death or divorce.

Liens or judgments against property owners

Whether buying or selling a home, if your client has a judgment against them, he or she will have issues selling or purchasing. For the seller with the personal judgment against them, recorded in the county where the property lies, that judgment will have to be cleared prior to closing. In the event the sale proceeds to knock over the judgment amount, seller must obtain a release of lien from the judgment creditor prior to sale. This will often involve a substantial payment of most or all of the sale proceeds to the judgement creditor.

If the buyer desires to obtain a mortgage, but as a judgment recorded against them, this judgment will have to be satisfied or it could become a lien superior to their new mortgage and thus disallowed by the buyers lender.

Death of property owners and Probate

When you encounter a property where one owner on title recently passed away, you may need to obtain a death certificate for the deceased. You may also have probate issues that could delay closing. When you encounter a deceased person on title, the next call should be to your closing attorney alerting them to the situation so the attorney can keep the closing moving forward.

If probate is required, the parties should plan to extend the contract, assuming all agree, while the property is taken through the probate process. This process can take from 90 days to more than a year depending on how the parties to the probate get along.

Easements obtained or given since purchase of property

If you come across an easement that has been put on the property or granted to the property since the seller purchased the property, you will want to immediately look for a written document showing the location of the easement. If there is not written

documentation of the easement, your closing attorney will likely need to prepare one for the closing.

You will find these issues mostly in Golden Gate Estates where a driveway runs along one edge of the property to a lot that may have been split off in the back of one of the deep 660' lots. Look for tire tracks, gravel or even a paved driveway running along the lot line. If you see something, ask the seller if they allow someone to traverse their property to get to another. If the answer is yes, look for the easement and give it to your title closer and surveyor.

Powers of Attorney

The use of Powers of Attorney for closing is less of an issue now that we have email and FedEx but occasionally you will come across a buyer or seller who will not be present for closing and not able to receive and return the closing documents. In these cases, your buyer or seller may want to give power of attorney to another person to sign for them.

If your buyer or seller want to give power of attorney, and the buyer is getting a loan, immediately contact the loan underwriter and make sure the lender will accept documents signed by someone other than the seller or borrower. Very often, the lender will not accept the power of attorney and the parties will have to make other arrangements like signing early or extending the contract.

These are just some of the many issues that could come up as you list and sell property. Some other issues you might see are:

- Guardianship or Incompetence of seller
- Last minute Lender issues (HOA & Flood Insurance, Verification of Employment, bounced checks issues, Furniture/Car purchase before closing)
- Sellers incarcerated prior to closing
- Foreign Sellers/FIRPTA
- Foreign Buyers, LLC's or Trusts
- Open Permits

The solution to all of these is early detection and proactive problem solving. Any of the above issues can be resolved if your closing team is diligent in their efforts to attack the problem.