

The Path to a Successful Real Estate Transaction

By John Dolgetta, Esq.

The Women's Council of Realtors Empire Local Westchester hosted a panel discussion on July 9th entitled "Deal Breakers". It was a privilege to be part of the panel and to listen to the panelists' invaluable insight into the many issues which need to be carefully understood in connection with a real estate transaction. This article highlights the important issues that exist and how the team of real estate professionals can work together to cause the successful consummation of a real estate transaction.

Teamwork is Key!

Each party in a transaction has a distinct and critical role, however, it is key that all the parties work together effectively. Teamwork is extremely important. A real estate transaction involves a buyer and seller, a real estate agent and attorney, and also the home inspector, lender or mortgage representative, title insurance company, appraiser, engineer, surveyor, and, when necessary, even a credit repair specialist. It is essential for real estate professionals to have an exceptional referral network readily available so any issues can be addressed immediately.

Effective Communication and Knowledge of the Issues is Essential

Lack of communication is a common cause of issues in a real estate transaction. Real estate professionals must effectively communicate to their buyer or seller clients about all aspects of the transaction. It is imperative that these professionals not only be experts in their field, but also have a basic working knowledge of the entire process, including the potential issues and pitfalls which could arise in the transaction. These individuals must be able to recognize and discuss the process and related issues intelligently, and must be able to relay all pertinent information, in a clear and concise manner, to their respective clients as well as to the other professionals involved in a transaction.

Managing Expectations is Critical

It is critical for the professionals to manage the expectations of the clients as well as others involved in the process. One major issue that negatively affects a transaction is the lack of clarity regarding time frames relating to closing dates, mortgage commitments dates, interest rate expiration dates and other contingency dates in a contract. Often the sellers and purchasers do not understand how long a transaction may take to close. It is important to make it clear to the buyer and seller that the closing will not occur overnight.

The average time frame for a closing in Westchester, Rockland, Putnam, Orange, New York City and the surrounding counties is usually sixty to ninety days (and that is if everything goes smoothly). The buyer and seller must be informed so there are no unreasonable expectations. The agent and attorney need to discuss with their clients any specific goals or issues they may have regarding the deal or the closing date.

It is not uncommon for a prospective purchaser or seller to indicate that they were told by their real estate agent or mortgage representative that a transaction can close within thirty or forty days, or that they have an “automatic 30-day” extension if they are unable to close by the proposed closing date. In New York, unfortunately, this is not the case and this misinformation can cause problems.

The Real Estate Agent: “The Quarterback”

The real estate agent plays a significant role in a real estate transaction. Since the agents are commonly the first to be contacted by a seller or purchaser, they are in a unique position to take on the role of “quarterback”. The agent is usually the one who refers the client to an attorney, lender, home inspection company or engineer, or homeowner’s insurance agent. Therefore, it is crucial that the agent have a referral network of knowledgeable professionals so that the client is in great hands.

The agent can also have the most influence over the speed with which a real estate transaction proceeds and closes. When the agent first meets with the seller client, the agent should obtain, at a minimum, three important documents relating to the property being sold, namely: (1) the seller’s original title insurance policy (and original title search, if available); (2) an existing survey of the property, if available; and (3) a copy of seller’s deed to the property (and other intervening deeds, as applicable). These documents are essential in discerning the basic information required to list a property, such as (1) any easements, covenants or restrictions that may be contained in the title insurance policy or title search; (2) issues (such as encroachments or improvements) on an existing survey; and (3) the legal owner of the property, to be included in a listing agreement and contract of sale.

Not only are these documents useful to the real estate agent, but once obtained, these documents can be made readily available to the attorney, so that when inspections have been completed and an offer is accepted, the attorney can prepare contracts quickly. This information will ultimately be helpful to the buyer and buyer’s attorney and will assist in expediting the closing process and title search. The agent and attorney should also obtain copies of any certificates of occupancy or certificates of compliance filed with the town for all improvements made to the premises.

If the deal involves a condominium or cooperative apartment, the agent should also obtain copies of: (1) seller’s stock certificate to the shares in the cooperative corporation and the proprietary lease to the apartment; (2) the Offering Plan, and any Amendments, relating to the condominium or cooperative corporation; (3) the Rules and Regulations of the condominium or cooperative corporation; (4) the name and contact information for Management Agent and/or Transfer Agent; and (5) the condominium’s or cooperative corporation’s purchase application for the buyer.

The Role of Lender

Mortgage representatives should also be aware of the critical dates in a contract, such as the commitment date and estimated closing date. It usually takes a lender anywhere from twenty

to forty-five days to obtain a mortgage commitment. A buyer must be aware that if a diligent and good faith effort is not made in obtaining a mortgage commitment, the down payment could be forfeited. It is incumbent upon the lender to adhere to the requirements of the contract of sale and order any appraisal quickly, so that a commitment can be issued within the required time frames.

In addition, once a mortgage commitment is issued, the lender must make certain that the commitment remains valid for a sufficient period (i.e., no less than sixty days after the projected closing date contained in the contract). However, many times, mortgage commitments expire only a week or two after issuance and prior to the projected closing date. If a transaction cannot close before the commitment expires or before an interest rate lock expires, the buyer may incur extensive fees to reapply or to extend the interest rate lock. A buyer could also be held in default if there are extensive delays, and again, could potentially forfeit the down payment. Buyers should also be instructed *not* to lock in any interest rate until speaking with their attorney, who should in turn have a conversation with the mortgage representative.

It is also important for the mortgage representative, as well as the real estate agent, to explain to the buyer that a “Pre-Approval” letter is not the same thing as a “Mortgage Commitment.” An agent must also know and inform the seller client that a “Pre-Approval” does not mean that the purchaser is approved. A lender’s underwriting process is rigorous and borrowers, even those who have been issued a “Pre-Approval Letter”, could be declined for a mortgage.

Knowing the Client

It is important for professionals to know their clients, what their clients’ expectations are and whether there are critical issues or dates that are of concern to them, so these issues can be addressed adequately by each team member in a real estate transaction. It is important to ask the buyer or seller client about:

- specific moving dates;
- rental status (whether they are bound by a lease and if there are deadlines that need to be considered);
- whether a purchase or sale is contingent on the sale of another property;
- whether the client(s) will be moving to another state; and
- whether the client(s) will need a Power of Attorney to close (and, if a Power of Attorney is going to be utilized by a buyer, whether the lender will allow it, since many lenders do not).

Real estate agents and attorneys who represent sellers must also ask their clients about issues relating to the home that they may be aware of which could cause a delay. Many sellers believe that if they say nothing about the buried oil tank, illegal finished basement, or extension, deck or shed that was installed without obtaining the proper approvals and for which there is no certificate of occupancy or compliance from the town, these issues will simply be overlooked or not discovered.

Not only will these issues likely be discovered by an appraiser, bank attorney, title insurance company, or inspection company, they will certainly add significant delays to a transaction. The seller could also be in default under the contract. A seller must be informed that if there are any issues, they should be addressed early in the process (i.e., prior to listing the property or entering into contract, if possible). Even if sellers are not legally obligated to disclose certain issues to a prospective purchaser, they should seriously consider addressing such issues so that the transaction moves ahead quickly.

Thorough Inspections: Another Important Factor

Another factor in having a successful transaction is a thorough inspection. It is also the reason why a deal may fall apart. In the Westchester, New York City and local areas it is customary for inspections to be conducted before entering into a formal contract. This means that if any issues do come up and a purchaser decides not to proceed, the costs incurred for the inspections will not be reimbursed to the purchaser by the seller. The agent must ensure that the purchaser is aware of this.

The buyer must be made aware of all the inspections that should be conducted, in addition to the standard “home inspection”, which inspections are: well and water, radon, oil tank (for both underground and/or above ground tanks – and sometimes even recommend a metal detector test to locate the whereabouts of unknown tanks), lead paint, septic, asbestos, mold, and termite. If all the required inspections are conducted up front, it will make for a much smoother transaction.

Let’s Close This Deal!

There are so many aspects of a real estate transaction that need to fall into place in order to have a successful closing. Each member of the “team” of real estate professionals is crucial to the success of a transaction. If the parties are able to work together with an open line of communication, the closing process will move forward quickly to an ultimate closing. Managing the expectations of the parties involved will reduce anxiety. It is important for the professionals and clients to be informed of the issues that exist or that may potentially arise. Once an exceptional team is in place, the closing will get done, and will get done quickly.

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Legal Column author John Dolgetta, Esq. is the principal of the law firm of Dolgetta Law, PLLC. For information about Dolgetta Law, PLLC and John Dolgetta, Esq., please visit <http://www.dolgettalaw.com>.

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