

Few Buyers & Sellers Fully Understand the Buying & Selling Process

Let's face it — while my colleagues and I may participate in the buying and selling of homes every week, most buyers and sellers — unless they're investors — only buy or sell a home every several years. Consequently, I'm pleasantly surprised when a client is knowledgeable about the stages of their real estate transaction.

So this week's column is a short tutorial on those stages.

Reaching agreement on the selling price and getting under contract is the easy part. My one piece of advice here is to remember that the MLS listing does not govern the contract. If the MLS said the pool table was included or that there's a one-year home warranty, make sure it is in the contract. Every aspect of the transaction is governed by the contract, not the MLS. If the refrigerator was excluded in the MLS,

but the contract doesn't say so, it's included unless you get a signed counterproposal excluding it.

After getting under contract, the first big hurdle is inspection. Advertising that the house is sold "as is" is meaningless. The buyer can still terminate based on inspection issues, but he'll more likely demand the replacement of that furnace spewing carbon monoxide, and the seller would be stupid to let the contract fall instead of replacing it. Remember, sellers and their brokers must, by law, disclose any known defects in the house, so they will have to disclose to the next buyer any defects they learned about from this buyer. That's why buyers are smart to attach the full inspection report to their inspection notice.

Minutes of recent HOA meetings and HOA financial statements

must be provided to buyers and can present a problem if, for example, the meetings are very contentious or there is litigation against the HOA. As a seller, be cognizant about what these documents will reveal to your buyer.

The proximity of registered sex offenders can be a deal killer, but sellers and their brokers are not obligated to disclose that fact. Buyers need to make inquiries of local law enforcement authorities. But realize that not all sex offenders are dangerous. Find out the nature of the offense and ask other neighbors (not the seller) if there is any reason for concern.

Title work and title insurance cause much confusion for buyers and sellers. The purpose of title insurance is to guarantee clear title for the buyer. The seller pays for this coverage, but the buyer must pay for the "piggyback" policy providing the same coverage for his lender. Costs for

both policies can vary greatly.

In Colorado, the title company is also the "escrow" or "closing" entity, and the charges for these ministerial tasks can also vary greatly. I have seen closing fees as low as \$125 and as high as \$350 for both the real estate closing and the closing of each loan. Although the listing agent will try to name the title company for the transaction, it can be negotiated in the contract, just like everything else, so ask some questions. If the title company is in the same building as the real estate company, the agent probably did not choose it because of its lower fees for his clients.

Appraisal is usually the last big hurdle in a transaction and has become more of a problem under

the "HVCC" rules which I've written about before. If you try to sell your house for more than it's likely to appraise for and get it under contract for that price, you are asking for trouble. You could win, but you more likely will lose, and the contract may fall if you don't lower your contract price to match the appraised value.

Lastly, there is the loan conditions deadline, usually just before closing, which freely allows the buyer to terminate the contract because he is unhappy with the terms of his loan — no explanation required! This rarely happens, but the contract does allow for it.

Call or email Jim Smith to receive this column each week by email.

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