

Buying a Foreclosed Property Could Entail "Unconscionable" Addendum

Last week a couple whom I was serving as buyer's agent decided they would buy a foreclosed home on the slopes of North Table Mountain. It is a new, never-occupied home which was completed inside and out, but has no certificate of occupancy from the City of Golden because of multiple problems with the site. A detention pond has not been built, retaining walls have not received the required engineer's stamp, the very steep driveway has not been graded and paved, and much more — possibly \$50-100,000 of work. Still, the property looks like a steal. It is valued by the county assessor at \$550,980 (presuming completion and legal occupancy), and had a \$412,200 loan that went into default, but the bank has it listed "as is" for only \$300,000.

After reviewing the City's thick file documenting site issues that must

be resolved to get a certificate of occupancy, my buyers decided that, with a three-week inspection period, they were willing to go under contract knowing that if further study revealed it was unfeasible to resolve these issues, they could terminate the contract and get their earnest money back.

So I prepared a \$280,000 offer and got a verbal counter of \$295,000, which my buyers accepted. But when I received the actual counterproposal at \$295,000, it included a non-negotiable addendum that superseded virtually all provisions of the contract — even price. A blank copy of the addendum in 8-point type (this is 10-point) was attached and we were promised that after my clients signed the counterproposal, the bank would sign the counterproposal and furnish the filled-in addendum.

The addendum was amazing. A

highly respected real estate lawyer, Russ Sindt, reviewed it for me later and deemed it "unconscionable, both in procedure and content" and "over-reaching." He thought I was right in advising my clients to walk away from the deal, which they did.

The addendum basically rewrote the entire contract, voiding all the buyer protections of the state-mandated contract. The inspection period was reduced to 10 days. The buyer must obtain a certificate of occupancy prior to closing or be in default. If the home burned down, the bank could rebuild as they saw fit and the buyer would still have to buy. The seller could terminate the contract without penalty at any time, but the buyer couldn't without losing all earnest money (\$6,000). Regardless of closing date, the buyer would pay \$100 per day penalty if he didn't close within 5 days of loan approval. Contrary to any provisions of the contract, the buyer would pay all closing costs, including title policy.

Read the addendum for yourself at www.JimSmithColumns.com.

REAL ESTATE TODAY



By **JIM SMITH,**
Realtor®

This Week's Featured New Listing:

Immaculate Fairmount Home on Cul-de-Sac

I've seen many homes that I would describe as "immaculate" but rarely are homes immaculate before the decluttering and staging has been done to prepare them for market.

This home is different. The seller keeps this home super immaculate anyway, as a matter of choice. I'm sure my socks didn't even get dirty when I walked around the open unfinished basement!

If you're looking for a newer home in a quiet neighborhood, look no further. I am proud to be the listing agent for this home. Here are the details: 3 bedrooms, 2 baths, 1,965 main floor square footage. 1,834 square feet unfinished basement. 3-car garage with one tall door. Built in 1994. Central air conditioning. Look for it to be on the MLS by the end of January. Meanwhile, visit the website above for more details, photos and a video tour.



GOLDEN REAL ESTATE
Hometown Service, Delivered with Integrity
 Promoting and Modeling Environmental Responsibility

Jim Smith Broker/Owner
Golden Real Estate, Inc.
 DIRECT: 303-525-1851
 OFFICE: 303-302-3636
 17695 South Golden Road, Golden 80401
 EMAIL: Jim@GoldenRealEstate.com
 Search MLS at www.GoldenRealEstate.com