

I Was Actually at a Loss for Words

It can't be said that very often I am at a loss for words, but twice in the last week I was flabbergasted and couldn't get the words out I wanted to. The first situation occurred when I was reviewing a closing statement that I had to sign for a closing that same evening. I always review the charges on the HUD-1 and review the title commitment to see what surprises are hiding in the B-1 exclusions and the lien letters.

A while back I reviewed the lien letters for a closing and saw they were sent to the wrong city. The city had replied the property was not in their jurisdiction. However, the closing agent never noticed this and was using these lien letters for the title policy work.

Depending on the closing agent, we generally see closing fees in the range of \$350 to \$500 and the title policy rates at the promulgated rates of \$575 per \$100,000. A definite trend is happening with closing companies that are fairly new to the business, that being the closing costs and title insurance fees are all over the place.

These title companies either multiply by cell division, or they have been around and never been a player in the market. Most are a few employees who were former mortgage agents or brokers and seldom have an attorney on staff. Often, an attorney isn't even the owner of the business. Anyone who passes a background check can become a title agent in Florida if they can find a title insurance company to issue coverage for them – and many have.

Some may be very capable at what they are doing, but our personal experience has not proven that out. As a matter of fact, our "Wall of Shame" as we call it, includes closing agents and realtors who should be ashamed of themselves, and it is growing at almost exponential proportions. We have to ask ourselves, "Where have these guys/gals been all this time?" The answer is, "We don't know!" They are here now and our experience is that their title work is minimally OK but only because their title company's underwriter tells them what to do at every turn.

Here is another problem, their fees and expenses can be astronomical. In one case we had two weeks ago the closing agent's fees were \$995 and the seller's side was \$695. Another company had a \$195 Notary Fee on the closing statement and \$200 for FedEx charges when there were no FedEx packages except for the courier to the courthouse. In this case I said I would come along with the student to the closing and notarize the docs to save the fee. Their response was, "As long as I was an attorney it was OK." In fact when we closed, they didn't ask me to notarize the docs and they didn't charge the fee and the notary was not an attorney – just a clerk in the office.

But my loss for words yesterday came when we received a closing statement for a homeowner's closing agent who is a well-known local attorney. His charge was \$1,995 for the seller's side and \$850 for the buyer's side (us). And you can throw out the idea that attorneys should charge you the promulgated rate for title insurance (remember they get a 70% or 80% commission on this charge). The promulgated rate is the

minimum rate that can be charged by Florida State statute. Always check your title insurance rate (\$575/\$100,000 of purchase price) to see if you are being charged correctly. Any fee on the closing statement can be changed by reducing it, charging the opposite side the fee, or deleting it altogether, **but only if the closing agent agrees because he doesn't want to lose the deal by not closing** – I hope you get my point here.

I am no longer surprised at what can happen before a closing in terms of deal killers. The small things like water bills (\$2,500+) that are not yet liens seem to always be overlooked by some title companies because they are exceptions to the title policies because they aren't listed in the public record and lien letters don't mention them. Before we started having our attorneys shadow every REO closing we would go back and fight when these water bills surfaced. Then we started checking with the utility companies (water and sewage) ourselves, as did our attorneys shadowing our deals. What we didn't want to do was check for title defects including bad service on foreclosures – hence our attorneys shadowing our deals.

Recently, one such title deficiency that shadowing uncovered was an obvious (to our attorneys) foreclosure by an entity that was not entitled to do the foreclosure! There was a solution and the appropriate documents were prepared by our attorneys and sent to the factory REO closing machine (know who I mean?).

At first they denied it vehemently, but finally relented and tried to fix the problem. The persons who had to sign the documents would not sign and an exchange of profanities lasted for almost two weeks. Finally, the seller, knowing they had a major title defect (remember, they weren't entitled to do the foreclosure) cancelled the deal. They later came back with the problem what they called "fixed" which wasn't and we declined again. We may still get this deal. I hope for everyone's sake that no one else inherits this tar pit of problems – even the city where it is located.

I guess what I see as the height of arrogance, and what we often hear is, "Close on the property and make a title claim later if you aren't satisfied." This is somewhat akin to saying, "Stick your foot in this bear trap and if it hurts too much, scream louder until someone hears you." Then what, all you need is a good attorney, a lot of time and money with no sure chance of getting anything except a giant headache.

What they are selling is an insurable title and not a marketable title. The difference is astronomical and I have mentioned the difference many times before. I guess I see it like a new car that was flooded by a hurricane surge of saltwater and is later repaired and sold as slightly used. It looks great for the price but soon starts to rust away before it can be used long or re-sold to another unwary buyer. Unfortunately, many newbie and experienced investors are getting scammed by REO asset managers passing along title defects by having buyers sign disclaimers and lose their rights.

Anyway, be careful out there and dispute your closing costs, it could save you money on your next deal!

To your limitless success,

Dave Dinkel

PS – As a side note, I write an article every day as a way for me to start exercising my brain; my muscles have long since slowed down. Anyway, I publish them on ezinearticles.com and on my Facebook and Twitter accounts. I even publish some articles on these social networking sites that are not on ezinearticles.com because the editorial staff doesn't allow my speaking of my mind – hard to believe in America, but it happens. So some days you'll get to see inside stuff that I don't have in my Weekly Insights. Many articles are basic, some are advanced and some are just plain "me". All are worth reading at least once.

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