

Storm in the Box Follow-up to Wednesday Minute

Almost as soon as the Wednesday Minute had been emailed, an insurance carrier who specializes in investor policies emailed our office to explain their newly sized “Storm box”. This particular company uses longitude and latitude as their Storm Box. Their notification increased the previous “box” substantially.

Here’s what a “SITB” closing could actually meant to me you –

Before Wilma passed over Florida I had a contract on a property in Lake Worth with a contractor who wanted to rehab the property before moving in, but I refused to allow any construction or fix-up until we closed. No surprise here, except the property did not have storm shutters and it had a screened-in pool. I did allow him to drop a “POD” in the driveway with his personal belongings until we closed.

The closing date was scheduled a day before the storm hit and the closing was postponed. Since it didn’t have shutters, Nancy and I went to the property and used plywood and a power nail gun to secure the windows and 2 x 4’s for the double car garage. Wilma hit Palm Beach County harder than Broward and we ran up to see what damage had been done the next day.

To our utter shock the property hadn’t lost a single roof shingle and seemed virtually untouched. When we walked into the back yard the first think we noticed was the screen pool enclosure has disappeared! It had completely collapsed into the pool and looked like a pair of giant hands had crushed it. So here we are, ready to close and having hurricane damage that should be covered by our insurance – but would the buyer close?

The buyer called to say he had seen the property and understood that he had an “As Is” contract but this was not what he contracted for and he was absolutely correct. In the interest of saving the sale, I said we needed to defer to the contract clause that covered this issue. In the 2004 FAR/BAR contract the clause offered a choice of three “cures” or remedies:

- 1.) Cancel the contract – no fault on either party (the buyer and I didn’t want that),
- 2.) Seller (me) to give buyer a 1.5% of “assessed value” credit at closing (Since the assessed value was 70% of the sale price, I offered 1.5% of the sale price or about \$5,650 as a credit at closing, which essentially reduced my profit, or
- 3.) Buyer would get the proceeds of the insurance claim.

The policy coverage was a standard investor policy from Lloyds of London for uninhabited property. When I requested the claim form I was told to get three estimates for the replacement of the structure and the screening. However, the agent said he did not believe the enclosure was covered for wind and that London would have to make a decision. The estimates were between \$16,500 and \$18,200 which I dutifully send to the insurance agent.

The buyer needed to move into the property since he was living in a hotel and his belongings were in the “POD” in the driveway. I gave him the three options above and explained that the insurance carrier would not tell me if there was any coverage. Had I been in his position, I would have asked for an addendum that gave me the greater of the 1.5% or the insurance proceeds, but his attorney didn’t request it so I didn’t offer. We closed and about three months later the insurance company sent me a check for \$16,500. Knowing what I know now, I should have has a public insurance adjustor re-file the claim for an additional refund. Live and learn!

The other very interesting aspect of this home purchase was that the homeowner was in foreclosure with a \$148,000 final judgment on a property that was worth \$350,000. I know it was worth \$350,000 because I sold it

for \$369,500 1 month later. There was an issue of a \$250,000 lien against the property from a company who claimed the owner had embezzled this amount of money from them. In fact, the homeowner admitted to me to doing exactly that by putting her husband and sons on the payroll when they never worked for the company – and got away with it for three years!

Since the homeowner had not been prosecuted for the embezzlement the lien was invalid. It was put in place by the company to stop the sale of her property. Their attorney should have told them it would be invalid and, by the way, extinguished at the foreclosure sale.

Negotiating with the homeowner was excruciating because she knew the lien was invalid and she had tons of equity, all of which she wanted. She finally said she would rather let the bank have the property than sell it to an investor. The average investor looking at the second lien would assume there was no equity and pass. The shrewder investors would know it would be extinguished and go to the auction to get it, which some did.

So my course was set – I went to the auction, bid and won the property for \$270,000 with the mortgage satisfied, and the lien extinguished. During the 10 day wait I had to get into the property, I went by to see the homeowner and offered her \$500 to leave the appliances and “broom sweep” the property, she did and I paid her \$500 for about \$2,800 worth of appliances that she could have sold.

You know the rest of the story – I sold the property and did very well. But the story doesn't end there - because after the mortgage was satisfied the remaining amount would normally be divided among the additional lien holders (remember the \$250,000?). So when the court-ordered hearing for the disposition of the funds took place, the parties present were the embezzled company's attorney, the sheriff looking to arrest the former homeowner, the homeowner hiding in the bathroom, the attorney for the homeowner, the attorney for the first mortgage, the local newspaper because the homeowner was saying she didn't take the money and called them to help fight the company's claim against her since she was now “sick” and on, and on, and on.

I chose not to go because I just wanted to sell the property and be happy. I never did find out if the embezzler got the “overage” from the sale or if the company was able to stop the distribution of the funds over the final judgment amount of the first mortgage. The company's contention was that the embezzled funds were used to purchase the home. However, she had not been convicted and it was easy to see for the public records that she bought the home before she worked for them. So the question I actually asked her was – “Where did the \$250,000 go?” and she answered “I'm not sure” – yea!

Hope you got some tidbits from this,
Dave Dinkel

Don't forget to take a look at these important software programs:

www.ExcelRESoftware.com (Failure-proof your real estate investing)

www.RequiredFLDocs.com (Must-have disclosure documents for every Florida investor)

www.FSBOAutopilot.com (For Sale by Owner Professional selling system to sell any home in one weekend)

www.StopMyForeclosureMess.com (32 Ways to Instantly Stop Foreclosure)