

11-11-2009

Does the Closing Agent Really Matter?

The question I get frequently is “Does the closing agent really matter?” The simple answer is definitely “Yes!” The closing agent is important for a number of reasons, not the least of which is you want to make sure he will close the deal for you if you are selling and that he “gets it right” if you are buying.

Let’s define the job of the three entities that are involved in a closing for the legal side:

- Closing Agent – does the actual document preparation and oversees getting the proper documents and the signing and transfer of these documents to the correct recipients – seller, buyer, public recordings, lender, IRS, title agent, escrow agent, etc.
- Escrow Agent – the contractually (Purchase and Sale Agreement) authorized entity who holds the escrow deposit until it is authorized for release by both parties to the purchase/sale.
- Title Agent – is the entity who prepares all the information necessary for the application and issuance of the title policy for the property, including doing all the lien and judgment searches required to issue a title policy.

You are probably used to dealing with a single agent for your closings or at the most two. Your closing may be done by an attorney, a title company, or an attorney-owned title company. There is a difference and in our state, you do not have to be an attorney to own a title company and issue title insurance. This varies from state to state and is different for each of the title companies. Attorneys have malpractice insurance if they make mistakes but un-insured title companies have no such insurance if there is malfeasance.

In most contracting there is a line for the escrow agent to be designated. The closing agent should be designated by you if you want to know what is happening in the transaction and to get “insider info” if there is a problem so you have a “head’s up” to get it resolved before the closing. We always instruct our students to list a specific escrow agent (better the money in friendly hands), and the closing agent even if we don’t pay for the title policy.

Depending on the opposing party’s motivation, they may well pay for the title policy and you still choose the closing agent. In case this offends anyone, this practice is fairly common in REO closings, if you want the deal, you pay for the title policy and they choose the closing agent. There is no law that says “Whoever pays for the title policy chooses the closing agent”. Having the opposing party pay for the title policy while you choose the closing agent has made us tens of thousands of additional dollars at our closings. If the buyer/seller complains, just offer to split it with him – this only happens about 5% of the time.

Let's get back to something that you may not have picked up on that happened to us this past week. A student has a property he is closing on and his net profit on the deal will be about \$95,000+ on a \$275,000 sale price. This property was a great purchase, great rehab and a good deal for the buyer. Speaking of the buyer, he is an attorney from out-of-state.

The student's closing agent called him and said the "title agent" had called to alert him that he would be doing the title policy. The student's answer was "But the Purchase and Sale Contract stipulated you as the closing agent". Remember, there are potentially three "Agents" involved in any transaction – closing, title and escrow! There could be one, often there are two and very, very, very seldom are there three separate agents.

When the student called me to ask what to do, he also asked had it happened to me before and I said "never". I asked Bill and Jan and Jan remembered it happening once to them – with my deals and their deals we have over 3,000 closings under our "combined belts" so it is rare. It does happen so ask your attorney how to handle it or here is what we will be doing from here on out – "Escrow, closing and title agent to be _____".

Is this a big deal? Well now the buyer's attorney will do the title work and possibly tell his client that the student bought the property for \$130,000 only 110 days ago and he is selling it for \$280,000 – there must be a problem! To the uninformed, it screams fraud, these include the average closing agent, title underwriter, bank officer, and all the people that don't understand that it is an American right to buy low and sell high. It also overlooks the issue of rehab costs that were very extensive in this case.

Here is the exact question the student got from a local lender for another buyer (I was on the phone on the conference call) "Why would a seller give away their home when the market value was obviously much higher?" Actually the seller was asking \$275,000. The seller was motivated to sell and knew that DOM's ("Days on the Market") for properties in the neighborhood, was in excess of 300 days. She didn't want to wait and wanted to sell because the property needed extensive renovations and was deteriorating daily.

It took her three weeks to take his offer over the others she received. Despite the truth, the bank's underwriter said she didn't believe us and wanted to see the repair receipts which we offered to send her. I asked her "Will it really make a difference if we spent \$40,000 or \$50,000 for repairs?" and her answer was "I don't think so." So this lender "rejected" the buyer with no accompanying excuse. I would hope that some day this \$15/hour clerk takes the time to understand that she too could be doing deals as an investor, not ripping off widows and orphans, and get unstuck from her JOB.

To your limitless success,
Dave Dinkel