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BEST PRACTICES AND RISK MANAGEMENT

I. Commission.

Protect Your Commission. Always protect your commission and, if whenever possible, always have a listing agreement signed when representing a Seller and or an agency document signed if representing a Buyer. If you do not have a listing agreement, then make sure that you are preserving your procuring cause rights by documenting and following up that (1) you brought the parties together, (2) continuously negotiate and execute a contract, keep in communication and be involved with the transaction until closing, and (3) try to prevent any intervening circumstances to get in between the initial contract and closing.

And when representing a Buyer in new home construction or open house, make sure you sign in or register you and your client with the builder or owner.

II. Contract Best Practices.

- A. Make sure the Seller name is correct and obtain the latest copy of the deed conveying the property to get the exact Seller name(s) or entity.
- B. Make sure the Buyer name is correct and make sure all of the Buyer's names appear correctly on the contract. Think through as most Contracts are not assumable.
- C. Include the correct address and county, and if it is a long legal description, do not put "long legal," put "see Exhibit 'A,' attached hereto and made a part hereof" and attach that to the contract, get from deed.
- D. Be detailed as far as the personal property is concerned (what is included and what is excluded). Read and mark up the preprinted items in paragraph. Please note that the personal property is what existed at time the initial offer was made.
- E. Make sure there is ample deposit. Deposits are to cover the Seller's damages in case of Buyer default. Make sure there is enough time before the closing for the deposit check to clear the escrow account.

- F. Be specific in the financing, and make sure the Buyers know there are timeframes within which they have to act and how to act, otherwise they could lose their deposit and be in default of the contract. Put prevailing rates or TBD (to be determined) in spaces if you do not know.
- G. Include “on or before” in the closing date line as the parties may desire to move the closing to a different date or to a business day. The closing date prevails overall other dates establish realistic timeframes.
- H. Make sure you instruct the Buyer to obtain all of their inspections, and make sure there is ample time to obtain those reports. Strictly adhere to all timeframes or that contingency is waived.
- I. When writing additional terms, overreach in simplicity and completeness and avoid vagueness. Draft to level of 1st grader.
- J. Make sure the offer and acceptance dates are filled in and adhered to. Make sure all parties in their relevant capacities sign (such as trustee or officer of an entity).
- K. Make sure all changes and/or addendums are fully signed by all parties and if done after the initial contract closing, do addendum with specific dates and/or initials with specific dates.
- L. Make sure the “Special Assessment” paragraph box is checked appropriately.
- M. Make sure “Permit” sections, are addressed. The warranties can survive closing.
- N. Make sure the Contract, once fully signed, is ‘Delivered’ as this establishes the effective date.
- O. Have Buyer present the contract as an offer with limited times for Seller to respond and same for counteroffers.
- P. Make sure all parties get a copy of fully executed contract (Buyer, Seller, Realtor, Lender, Title Company).
- Q. Make copy of deposit checks and follow up where it is supposed to go and let party know it is received. Follow up on additional deposit.
- R. Fill in all blanks in Contract.
- S. Review and proof-read the Contract once complete and prior to buyer signing.
- T. If foreign Seller explain requirements of FIRPTA and explain liability to Buyer.
- U. Florida Insurance – be aware of the changes that are here and are coming and put in Buyer contingency for reasonable cost for flood insurance in the Contract.

III. Addendums and Special Provisions Best Practices.

- A. Make sure the correct addendums are attached and filled in correctly.
- B. Make sure the addendum adequately references the contract which it is attached to and number them if additional addendums are necessary.
- C. If some provisions in the addendum conflict with any provision in the contract, the provisions in the addendum shall control.
- D. When dealing with affirmative obligations or duties from a Buyer or Seller to perform please take into consideration the following and incorporate into the addendum:
 1. Who pays for what and when?
 2. When the work or duty is to be finished or completed?
 3. If to be done after closing, who holds the money, if any, for escrows and what are the duties and obligations of the escrow agent?

4. Who gets overage and who pays for items that exceed escrow?
- E. Make sure the addendum is dated and signed by all parties, and all changes should be initialed (and dated) by both parties.
- F. Make sure all addendum and special provisions are well thought out and have closure and that there are no open-ended issues.

IV. Post Contract Pre-Closing Considerations.

- A. Create document checklist and time frames and sent to client.
- B. From Buyer's perspective: Go through checklist to confirm whether you, the title company, or Buyer are ordering the various items in the inspections, and how and when it is being paid. Confirm when it is due by to preserve contract rights. Only take on and perform duties that you will follow up with and make happen.
- C. If providing for escrow after closing make sure to have the following provisions:
 1. The amount and who holds the money (preferably the other side, never you).
 2. Provide and set forth all the duties and obligations of all parties (Buyer, Seller, and Escrow Agent).
 3. The time frame within which the duties is to be performed and within which the monies are to be disbursed.
 4. If the duty is not completed, what happens to the money (i.e., disbursed back to one party or the other).
- D. Confirm with your Buyer if they are obtaining financing that they have a very short window in which to obtain financing in order to preserve their contingency. Make sure that a loan commitment letter is given. This is a defined term.
- E. For Seller: Obtain copy of Seller's existing title policy and survey, in order to give to closing company as it might save money and time.
- F. Obtain Seller's current lender payoff information with loan number to give to title company.
- G. Inform Seller as to time frame of moving out and Seller's obligations to fix certain items upon receipt of the inspection, and keep the property clean and neat as possession is given at closing.
- H. Remember, it is not your job to be the Buyer, Seller, or attorney, but to inform them as to their duties. If you decide to perform some of these functions, keep your client informed, and document each step.
- I. Set time for closing, but make sure it is a tentative time, as closing times change depending on things outside of the closing agent's control, such as financing.
- J. Tell client that they will have to wire the proceeds and schedule closing around the appropriate walk-thru.
- K. Review the closing statement and other documents prior to closing for mistakes and changes.
- L. Always recommend that Buyer gets a survey, title insurance, inspections, etc.
- M. If foreign Sellers, make sure FIRPTA requirements met.

V. **Closing.**

- A. Have Seller arrive a little after Buyer, in order to accommodate Buyer's time for financing, if applicable.
- B. Mail aways – prepare in advance. Let all parties know in advance.
- C. Remind all to bring Driver's licenses.
- D. Confirm with Seller on Move out and leaving the required personal property.
- E. Bring deposit check.
- F. Remind the Buyer that they will have to wire the final proceeds.

VI. **Other Considerations.**

- A. Keep detailed records and copies to protect your client and self. Keep phone and conversation log.
- B. Recognize your role – you are not an expert in all fields.
- C. Make sure to be frank and to the point and try to keep it simple, if possible. Ambiguity and confusion always cause problems and tend to make people reluctant to come to an agreement.
- D. It is better to negotiate and settle things early than at the closing table.
- E. Always follow the Golden Rule – do the right thing.
- G. Do not become emotionally involved.
- H. Do not say you have a “contract” when you have an “offer” to present.
- I. Do not say “my seller” or “my Buyer” rather refer to them as Seller or Buyer.
- J. Never raise your voice or send angry communications and always use good manners. It is easier to get what you want with honey rather than vinegar.
- K. Never state anything verbally without following up in writing as pretty much all conditions and terms of the Contract require the communication to be written.
- L. When you communicate do not editorialize - state the facts clearly.
- M. Listen to your clients and all other parties.
- N. Watch what you say. Never say things like “sure thing”, “guaranteed”, “slam dunk”, etcetera.
- O. Closing agent must disperse funds as set forth on the HUD Settlement Statement. If there is a loan, this is mandatory and the law, and if different, it is loan fraud.
- P. Do not participate in money exchanges between yourself, the Buyer, or the Seller “out of” the closing agent presence.
- Q. Always disclose when in doubt. DISCLOSE, DISCLOSE, DISCLOSE.
- R. Do not establish unrealistic timeframes or expectations and realize that closings, especially loan closings, are more complicated, takes longer and might have issues that take time and work to complete.

If you have any questions about protecting your commission, please do not hesitate to call or email me.

With warm regards,
Garret T. Barnes