

SELLING YOUR HOME? HOW TO AVOID UNPLEASANT SURPRISES

By Joseph A. Bollhofer, Esq.

Whether you use a real estate agent or try it on your own, there are certain things you should know before marketing your house for sale. First, know the market and price your sale realistically. Houses that stay on the market too long, usually because they are overpriced, tend to get a “bad reputation.” House hunters might think there is something wrong with the house other than the asking price.

Decide what if anything you will do to make your house more attractive. Modest cosmetic improvements often can go a long way. A good real estate agent will be very helpful in this regard. He or she also will screen potential buyers carefully. If you do not use an agent, you must do this yourself.

When a price is agreed upon, you must know whether the buyer intends to get a mortgage (and if so, how much) and whether he or she needs to sell a house in order to buy yours. An all-cash buyer with no house to sell of course is best. If your buyer needs a mortgage and/or needs to sell a house, hard questions must be asked. This is where a good real estate agent is invaluable.

If a buyer has been “pre-approved” for a mortgage of a certain amount, that is helpful. However, a “pre-approval” letter is not a mortgage commitment and is not something you can completely rely on. It also might only be based on verbal information from the buyer. Verification of income and credit by the lender makes the pre-approval more valuable.

However, no mortgage commitment will be certain without an approved appraisal. If the lender’s appraisal of the house’s value is not high enough, the buyer might not be approved for the entire mortgage amount he or she seeks. This danger increases as the value of the mortgage gets closer to the sales price. Unfortunately, usually the appraisal issue is not resolved until late in the process. An unsatisfactory appraisal could result in the deal being cancelled and the buyer receiving the return of the contract deposit 30 or 60 days after the contract date. Since you cannot contract to sell your house to a second buyer until the first contract is cancelled, you might lose out on a sale to another buyer in the interim. Although a good real estate attorney will include as many safeguards as possible in a contract for your benefit, the attorney cannot control the appraiser’s opinion of the house value.

The attorney also cannot control other contingencies, such as the buyer losing his or her job after contract signing, and therefore being denied the mortgage, or any of a number of possibilities that can keep you from reaching the closing table. Therefore, asking a potential buyer pointed questions before completely agreeing to an offer is extremely important. In addition to the questions stated above, you also should consider getting answers to the following questions before a contract is drawn: “How much money

do you make” and “Where do you work?” You can then make a more realistic evaluation of the chances that the deal will close. Obviously, if you know that a potential buyer’s employer is in financial trouble, that should “raise your antenna” as to whether he or she might soon be out of a job, and denied a mortgage.

I have explained how to screen potential buyers. However, in order to successfully close title, you must also know that you are ready and able to give a valid deed (“clear title”) to the buyer. While it might sound obvious, you must know that you are the owner as shown on the last deed recorded with the municipal recording office.

Additionally, be prepared to pay off all mortgages on record from the money at the closing. If you paid off a mortgage before closing, be sure that the “Satisfaction of Mortgage” is recorded with the recording office, or that you have the original document ready to be recorded. Often, clients state that there are no mortgages (a “home equity line of credit” is also a mortgage), but the title search still shows one. The all-important Satisfaction of Mortgage document never found its way to the recording office. The mortgage is therefore still a “lien” on the property record and a new Satisfaction must be obtained and recorded in order to clear that matter up.

A buyer’s title search also will show if there are any other problems that you need to take care of. Unpleasant surprises could include a judgment, tax lien or mechanic’s lien.

Additionally, make sure that you have Certificates of Occupancy or Certificates of Compliance for all “structures” that are required by the municipality to have them. These include additions to buildings, interior conversions, in-ground pools, decks and, essentially, everything that the municipality defines as a “structure.” Unfortunately, on Long Island municipal regulations vary. One municipality may define a wooden deck flush on the surface as a “structure” requiring a Certificate of Compliance, while another municipality might not. It is generally the seller’s obligation to have all required certificates.

Boundary line disputes occur from time to time, usually when a new survey is drawn. You should make sure that any fence separating your property from adjoining properties is within one foot of the legal boundary, or that a valid boundary line agreement is signed and ready for recording with the recording office. Of course, you should make sure that none of your structures “encroach” on to adjoining properties, and no structures from adjoining properties “encroach” on to your property.

This summary identifies the main concerns in selling a house, and how to deal with them. However, there is no substitute for getting competent legal assistance early. My experiences have also shown that sellers who hire a competent real estate agent are more likely to have a successful closing with no unpleasant surprises.

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Editor’s Note:

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