

SPECIAL CONCERNS FOR CLIENTS WHO ARE “DOWNSIZING”

There are a number of concerns common to real estate clients who are downsizing, particularly if they are paying cash for their new home and/or are moving from a single-family home to a condominium unit. This handout is aimed at helping Realtors® better prepare these clients for the issues that they may face.

A. Cash Purchases

1. All clients, but particularly those who are paying cash for their new home, need to be made aware of possible wire fraud schemes. Realtors® should make certain that their clients understand that there are any number of people out there pretending to be title agency employees sending bogus wire instructions to people who have upcoming real estate closings. Clients should be advised never to wire money until they have verified wire instructions via a telephone call initiated by them. Attached is a handout specifically designed to help advise clients and customers about wire fraud scams.

2. Clients who have lived in their home for many years may be paying artificially low real estate taxes as a result of the Proposal A limitations on taxable value. Under Proposal A, until there is an “uncapping” event, annual increases in the taxable value of a home are limited to 5% or the inflation rate, whichever is less. If property values in an area have increased significantly over the years, a longtime homeowner may be paying real property taxes based on a “value” significantly lower than the actual appraised value of the home today. If they are unaware of this fact, their financial plan for retirement may grossly underestimate the real estate tax amount on their new, smaller home.

3. Clients who are paying cash for their new home should make their purchase agreement contingent upon the home appraising at or below the agreed upon purchase price.

Ordinarily, this contingency is built into a mortgage contingency – *i.e.*, if the property doesn't appraise, the loan will be denied. If there is no mortgage contingency, then a separate appraisal contingency should be part of the purchase agreement.

4. Many otherwise knowledgeable persons do not understand the value of title insurance or how important it can be to have a title insurance commitment reviewed by a knowledgeable attorney. This is always a good idea but is particularly important when there is no lender looking at the condition of title. Buyers should understand that title insurance does not insure title against all defects. A title insurance policy will contain “exceptions” based upon the documents of record. An “exception” is a title “defect” that the title insurance will not cover. Some “exceptions” such as a utility easement are routine; other “exceptions” could, for example, give your clients' neighbors the right to use their property or give them a say in how it is used.

5. In the typical transaction of a single-family home financed with a mortgage, the lender is likely to require a mortgage survey (or location survey). This type of survey will show the location of the home in relation to the apparent boundary lines of the property. Cash buyers should be encouraged to obtain such a survey, or if construction is anticipated, a more detailed (and more expensive) boundary survey.

6. If a client has or will have more than one home, the client needs to carefully consider which home will be their principal residence. Keep in mind that a home is not someone's principal residence just because they declare it so. A principal residence is someone's “true, fixed and permanent home” as evidenced by a person's driver's license, voter registration card, cancelled checks and other records. (When buying a home out of state that is intended to be a second home, a buyer should make certain that the closing agent is aware that the buyer does not wish to make

that home their principal residence. Filing a homestead election elsewhere can result in a loss of the Michigan PRE even if it was unintentional.)

B. Purchasing Condominium Units

If the new home is a condominium unit, the purchase agreement should be contingent upon the purchaser's review and approval of the condominium documents. Realtors® should encourage their clients to have the condominium documents reviewed by a knowledgeable attorney. Clients who are considering purchasing a condominium should be aware of the following:

1. The condominium documents should spell out in detail which repairs are the association's obligation and which repairs are the responsibility of a co-owner. All projects are different, and it is not necessarily the case that if something is referred to as a "common area," it is maintained by the association. Likewise, it is not always the case that all parts of a unit are the co-owners' responsibility to maintain. Financial planning for retirement will require an understanding of not only a co-owner's dues obligation but also their maintenance obligations under the condominium documents.

2. The condominium documents should also spell out in detail what the association's insurance will cover and what a co-owner's insurance should cover. In the case of a fire, the association's insurance may only cover the unit "shell" or may cover the "standard" unit without any upgrades. A purchaser of a condominium unit should make certain that they provide their insurance agent with a copy of the insurance requirements and, if possible, a copy of the association's insurance policy. It is very important that the co-owner's insurance policy cover what the association's policy does not.

3. The condominium documents will typically have detailed restrictions about what improvements can be made to the exterior of a unit. Items like fences and decks may require the approval of the association or even be outright prohibited.

4. A purchaser of a condominium unit should carefully review the use restrictions typically contained in the condominium bylaws. The number and type of pets that a co-owner may have may be regulated, for example. It is also often the case that the leasing of the unit may be regulated or prohibited.

5. Under the Condominium Act, the purchasers of a condominium unit are liable for any condominium dues that the seller owed the association unless they request a written statement as to unpaid dues from the association prior to closing.

6. A purchaser of a condominium unit may wish to ask for copies of the last few years of minutes of meetings of the directors and the membership. A review of more recent minutes may provide some insight as to current operational issues and concerns.

C. Conclusion

Realtors® should never provide clients with legal advice, but they can help their clients recognize when and where legal advice may be important. If there is no new mortgage involved in the purchase of a home, buyers no longer have a loan officer with a checklist involved in the transaction. It is also true that condominium documents are lengthy and complicated, and when it comes to the relative responsibilities of the association and the individual co-owners, no two projects are exactly alike. The information in this article may help a client recognize some concerns and appreciate the usefulness of legal advice.

IMPORTANT REMINDER TO OUR CLIENTS AND CUSTOMERS

While we all appreciate the convenience of transacting business via email, it is very important to remain diligent when doing so.

Unfortunately, the following scenario is not only a real life scenario, but it has occurred on a number of occasions in Michigan alone:

Cash buyer receives closing documents and wiring instructions via email from her buyer's agent. Soon thereafter, the same closing documents and different wiring instructions are received from the same agent. The buyer wires funds in accordance with the second set of wiring instructions only to find that the second email was fraudulent and DID NOT come from her agent. Of course, by the time this is discovered, the money is long gone.

IMPORTANT RULES TO KEEP IN MIND:

1. **If you receive an email containing Wire Transfer Instructions, regardless of who the sender appears to be DO NOT RESPOND TO THE EMAIL! Instead call the Title Company and/or Lender immediately, using previously known contact information and NOT information provided in the email, to verify the Wire Transfer instructions prior to sending funds.**
2. Be suspicious of anyone who suggests that funds should be wired days prior to the closing date.
3. Beware of last minute instructions, particularly if those instructions contradict earlier instructions.
4. Be suspicious of anyone who indicates that they are not available to take telephone calls and can only be reached via text and/or email.
5. Never transfer confidential information over free Wi-Fi.
6. Never trust contact information in unverified emails.
7. When replying to emails, use "Forward" and the addresses from your own address book rather than "Reply" or "Reply All".
8. Review all emails carefully. Remember that a fake email can appear to be from someone you have been corresponding with regularly. Often (but not always) these types of fake emails can be spotted on the basis of style, tone, grammar and/or awkward sentence structure. Trust your instincts. If a message looks at all suspicious, follow up with a phone call and check it out. It only takes a few minutes.