

## **Critical Legal Errors and How To Avoid Them**

### **Legal Error # 1 – Not Disclosing Everything**

It's the job of every home seller to disclose everything to the potential buyer. If the deal falls through, it falls through. It doesn't matter when compared to the legal nightmare the seller could be in if they don't disclose everything and the buyer slaps the seller with a lawsuit later on. So, what specifically does the seller need to disclose? First, any problems the home has. Additionally, they should point out any repairs that need to be made. This should be done in writing and signed by the buyers and sellers. This will protect the buyer and seller down the road and ensure a worry-free transaction.

### **Legal Error # 2 – Using a Vague Financing Contingency Clause**

Did you know that failure of the financing contingency is the greatest cause for cancellation of a contract for the sale of residential property? It is also the **greatest cause of disputes** because most contract clauses commonly used are too vague and create uncertainty.

Usually the buyer needs a mortgage. If they can't qualify, the financing contingency is the buyer's escape clause. So, your offer should clearly specify the ground rules about financing contingency. If the buyer applies promptly for their mortgage, they should have an answer within 30 days. At All Island Mortgage we offer an extensive pre-approval process. This allows the buyer to obtain a pre-approval certificate, so when shopping for a home they can be confident their mortgage application will have no problems at all.

After the specified time what is required? What does the contract say? A typical loan contingency clause reads: "The buyer may cancel the contract if he is unable to obtain an 80% mortgage for 30 years at 7.50% fixed rate within 30 days." So what happens if the Buyer's loan is rejected? The above clause is vague and doesn't address this important issue. It does not state what notice is required.

A better clause would say the following: "If the Buyer cannot obtain a mortgage within 30 days, Buyer must notify Seller (in writing within 30 days of the date of this contract) of his election to cancel the contract. Failure to give notice of cancellation within such time period constitutes waiver of this financing contingency. This clause is clear; and the Buyer's obligations are clear; so there is no confusion about what is required and when.

### **Legal Error # 3 - Making Your Offer Contingent upon Buyer's Sale**

Once you find the home you would love to buy, inform the seller that the purchase of their home is only possible once your present home sells. You never want to keep this fact from the sellers. Some sellers will not go to contract with this knowledge, they figure

it will take much too long. Other sellers may not be in a hurry to move and have no problem with this.

Your attorney MUST be very clear with this agreement in the contract of sale. You want to be able to get all your deposit money back if your house does not sell and the contract of sale has to be canceled. Many buyers have had to take the seller to court in order to get their deposit back. If the contract of sale is not extremely specific the buyers may not get all their money back, this is truly a sever setback.

Remember: **In writing and very, very specific!**