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Make sure the seller is the legal entity authorized to sell

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(This is the 29th in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

Most would agree that a seller should own the property he's selling. Simple enough. So what happens when a seller is not the legal seller?

When a selling party signs a listing agreement, he (she, they or it) is presumed to be the seller. A listing agent's presumption may be wrong.

A listing agreement must be signed by the legal owner (s) of the property at the time the property is listed. The person sitting in front of the listing agent may or may not be the full legal owner. Here are several examples of what I'm talking about.

Divorce. Let's say the recorded deed shows that Joe and Mary own 50 acres as husband and wife. Joe signs a listing agreement. He fails to tell the agent that he and Mary are divorcing.

This can play out in several ways. Joe does not have the right to sell jointly owned property without Mary's permission. Mary can void the listing and any contract to sell that does not carry her name.

A lawsuit will arise if he sells the property without her knowledge. A bigger lawsuit will arise if he pockets the money from a sale.

A buyer who in good faith gets a signed contract from Joe cannot enforce it if Mary is a legal owner and she has not been party to the listing and contract agreements.

A prenuptial agreement may provide a clear path for determining who owns what, when. If Joe alone were the legal owner, he can sell the acreage, but Mary may be entitled to half the proceeds.

Agents can be blindsided by fluid divorce situations. The deal can blow up and an agent can face an ethics complaint.

Heirs. Country property is often owned by heirs. When a property's ownership has been divided through several generations, the legal seller may be found in, say, 32 "shares," and each of those can involve one person, a husband and wife, an estate or multiple heirs, among other complicating entities. The listing agent and the seller's lawyer have to get each of the 32 interests sorted out so that the rightful owner (s) of each interest signs the listing agreement and contract of sale. With a couple of heirs, this can be easy enough; with 16 or 32 or more, it can be a nightmare. If any one interest is not correctly signed, the listing agreement and contract are invalid.

Sometimes heirs make honest mistakes. Someone in the family thinks he is a fractional owner when he isn't, even though no one challenges the claim. Or an agent includes or excludes a fractional owner incorrectly but not intentionally. In confusing situations, an

agent should insist that the seller (s) have a lawyer search the title to confirm ownership and avoid an error over legal entity that produces a mess.

Take the case where Bill and Betty, his second wife, own a farm where they live. Bill dies. His will leaves half his estate to Betty and the other half to his two children from his first marriage. The kids want to turn all his assets into cash, including the farm. Betty wants to give the children half the value of Bill's estate without selling the farm.

The kids could force a farm sale. But they couldn't sign a listing agreement and give her half of the proceeds.

Where uncertainty exists, those trying to sell can initiate a suit to quiet title. Those coming forward with an ownership claim will have a court decide the merits. At the end of such a suit, the legal ownership will have been sorted out so that a sale can proceed.

Individuals and business entities. It's easy for a listing agent to list the seller as Bob Brown when the legal owner of a property is actually BB LLC, or other such business entity. If the seller is incorrectly written into the documents, neither the listing agreement nor a sale is valid. If a sale is consummated and the buyer discovers that he doesn't own the property because the legal seller didn't sell the property, a lawsuit is likely if things can't be fixed quickly and amicably.

A buyer who discovers the error and who is desperately looking for a way to get out of a contract has found his escape hatch in Bob Brown's signature.

The deed of record and subsequent recorded documents may provide the correct seller entity, but that may not be enough detective work. Ownership can be modified without recording a document.

The listing agent should take as many steps as necessary to protect against a mix up in naming the proper legal entity on the seller's side. A diligent agent may not be able to uncover a seller who is deliberately committing fraud, but diligence will usually reward the agent with the correct answer.