

LandThink #29  
April 24, 2009

What's fair for a buyer to expect of a seller's agent?

By Curtis Seltzer

Landthink contributor

(This is the 24th in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

A client of mine and I looked at a 10-acre organic farm in New Jersey this week. The USDA reports some 20,000 organic farms are currently operating.

I am not a broker and don't provide broker services or act in an agency relationship with clients. I help buyers research property purchases as a consultant.

The agent representing the seller who is associated with a major real-estate brokerage showed up with her seven year old, who, she said, she was home-schooling. The child understandably was not interested in the leaking skylight in the farmhouse or the dozen 4 x 4 props in its basement holding up the first floor. I suggested that we turn on the seller's tv and park the kid in front of "Sponge Bob Square Pants."

She said she was not the listing agent even though her name was the contact on the Internet ad. She had shown the property before and was familiar with the house and the seller. She described herself as "specializing in land." She was not an Accredited Land Consultant.

She came with a copy of the survey, seller-paid home inspection, listing agreement, tax-assessed value and yearly tax, purchase-offer contract and offer-proposal form.

Here's what she did not know:

1. Soil Survey. This the CD or book that contains all the soil maps for the county and indicates which soil types are appropriate and inappropriate for which uses. She said the soils were sandy and loamy, which we had determined before her arrival by digging about 20 test holes.
2. Schedule F. She did not know the IRS schedule on which farms report income and expenses.
3. Copy of deed into the seller. She wasn't sure whether it was a general warranty deed. She did not have deed book and page number, which I found on the survey and provided to her.
4. The seller's purchase price in 2004.
5. The original amount of the seller's mortgage.
6. The remaining principal on the seller's mortgage and mortgage terms.
7. Whether the mortgage was assumable.
8. Name of the lender holding the seller's mortgage.
9. The name of the organization that had certified the farm as meeting its organic standards. She did not have a copy of the farm's current certificate in the file.

10. Date of the last reassessment. Date of the next reassessment.
11. How the asking price was set? Was it based on a competitive market analysis?
12. Number of finished square feet in the residence.
13. Number of bedrooms or square feet the “new” septic system was permitted for.
14. Cost per square foot of new construction in the local area.

Here’s what she was sketchy on, ranging from a little to a lot:

1. Information on the drilled well—depth, capacity, diameter of line to house.
2. Comps for 10 acres of farm land, like that being sold.
3. Comps for house, as a stand-alone property.
4. Minimum lot size and division potential. She thought one division was permitted.
5. Two “offers” now in front of the seller. She did not say whether these were written contract offers or “proposals to offer.” One at \$248,000, she said, was unacceptable. The other was under consideration. Both, she said, had a May deadline. I did not know whether to believe all, some or nothing of what she had just said.
6. Amount of farm revenue the sellers earned from their efforts.
7. Last time farm actually produced crops for sale. It looked to me that the farm had not operated in 2008. The two tractors and chipper were out in the weather, uncovered. The plastic on the two small greenhouses was down. The fields were weedy.

When I asked to see and read a copy of the contract the buyer would be expected to sign, she refused to show it to the buyers or me. Instead, she gave me -- not them -- a seconds-long glance at a “proposal form,” which included an offering price and terms, among things I saw, and other things that I did not have a chance to see. At that point, I suggested that the buyers have their local lawyer draft a contract for them.

John Wooten, the famous UCLA basketball coach, said: “Failing to prepare is preparing to fail.” He was right. The fewer answers this agent had, the more I distrusted the information she provided. We were ready to move forward into a contract; the agent was not.

Is it too much to ask of agents representing sellers to know what they’re selling?