

LandThink #30  
May 1, 2009

What does a buyer want his real-estate lawyer to do?

By Curtis Seltzer

Landthink contributor

(This is the 25th in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

Most buyers talk to the real-estate lawyer representing them only after they have signed a contract to purchase property. I've always found that odd, like putting the horse behind the cart.

Typically, the buyer signs the contract and then asks his lawyer to check into the seller's deed and chain of title, and be present at closing. Other tasks may arise.

Title work is fairly routine and easy, except when it is not. When title problems are serious – lack of a deeded right of way, mismatch between the calls in the deed and the boundaries established on the ground, a break in the title chain, or disputed ownership issues – the buyer needs a competent lawyer.

A quick look at the seller's deed and title chain prior to placing a contract on the seller's property can often alert buyer, lawyer and seller to deed and title issues in advance of signing an offer. The issues, when known in advance, can modify the offer and give the seller a heads up.

A routine title check looks into documents that are recorded in the local office where deeds are kept. Most lawyers do not make inquiries into the possible presence of unrecorded encumbrances on the seller's property, such as an oral life estate or an agreement that allows a third party to hunt the land. I've even once had a lawyer who I had to tell to for mineral ownership, which he did not routinely do on his own.

I encourage clients to use their lawyer for other matters, principally advice.

Rather than patch in a lawyer after a contract is signed, I encourage buyers to find -- and get comfortable with -- a lawyer as one of their first steps in looking for property in a particular county. Here are some ways a lawyer can help a buyer before a contract is signed:

1. Reasonableness of asking price: Don't expect a lawyer to do a comp analysis or an appraisal. But local lawyers who have been doing real-estate work for a number of years should have an accurate feel for prices, price trends, volatility and current market conditions. Buyers often get a better bead on the reasonableness of a seller's asking price from their lawyer than from an agent representing the seller who may be their first and only source of local market information.
2. Local insight into seller's motivations: Lawyers know their communities, and usually know personally, or know of, individual sellers. Buyers are enormously advantaged when they can learn why a buyer is selling and how intense the motivation is.

3. Problems and issues with particular properties: An experienced local lawyer is likely to know first-hand, or have acquaintance with, many properties in a county, particularly those that have been sold during his years of practice. The more years of practice, the more likely it is that he will know about problems and issues that may or may not be of a strictly legal nature.

4. Lenders and vendors. The buyer's lawyer will also have opinions about local lenders, brokers, agents, title companies, surveyors, excavators, local officials (building inspector, zoning office), appraisers and contractors. If this advice is sound, it's worth a small fortune to a buyer who will be directed to the best local options for each service. It can save a buyer money, time, aggravation and mistakes.

5. Contract terms. Most buyers are shown property by an agent representing the seller and given a standard purchase-offer contract that, in my opinion, is skewed in favor of sellers. A buyer's lawyer should be asked to go over either the standard agent's contract or one the lawyer uses well in advance of a buyer having to read and understand contract terms under pressure. Previous columns have discussed many of these boiler-plate terms and their implications.

6. Local idiosyncrasies: The buyer's lawyer should know something about local politics; local folks and neighborhoods to avoid; and local ground conditions (such as, which areas of the county have dirt that rarely passes a perc test, routinely flood, get lightning strikes, are situated over karst, go dry in August and so on).

I have used the masculine gender to refer to both male and females. I do this because I am old and hate the use of neutral plurals to refer to singular, gender-specific subjects in order to be gender free. I actually prefer working with female lawyers. There, I've now offended everybody, including myself.

These six issues can be covered in an hour or two of face time with a lawyer. It is the best money a buyer will spend when buying real estate.