

LandThink #60
November 27, 2009

Broker acting badly: What explains screwing the seller?

By Curtis Seltzer
LandThink contributor

When I returned late Friday night from a business trip, I had a message from a new client. He'd found 300 acres with a functional house on a mix of timberland and old fields at about \$500,000. He wanted me to help him research it in advance of making an offer.

I talked with him on Saturday morning. We agreed on what I should do and the pay. He struck me as a decent, knowledgeable individual in his mid-50s who was looking for a place to retire in a few years. He lives about eight hours from the property in question. I live about a three-hour drive away and knew some folks in that county.

I started immediately, reviewing the legal documents and timber cruise the seller's broker provided. I saw nothing in the deeds that were yellow lights—the minerals conveyed with the surface; no easements; no problems with boundaries; no acreage issues or disputes. Most of the property was covered by a recorded survey; a small parcel had been tacked on five years ago.

The timber cruise was different. The seller's forester had counted all the volume in 12 and 14" diameters as fully priced sawtimber. The majority of sawtimber volume was in these two classifications. The cruise showed about \$65,000 in merchantable value. Deducting the phony value of the 12s and 14s, I came up with maybe \$30,000 as the real merchantable value of the property's timber. I asked this forester whether local mills paid full value for 12s and 14s and which specific mills they might be. He did not respond to my email, which answered my questions.

I checked out the dirt with the USDA NRCS soil scientist in the county. The dirt would easily perc if things came to that. The site indices for the timber dirt were between 60 and 80 for red oak, as the marker species. This was fair to good productivity, and better than I expected. The site's characteristics fit my client's long-term timber plans.

I put a phone call into the county's sanitarian to determine whether the house was hooked up to an approved septic system, and, if so, its capacity, age and design. A cess pool or a pipe straight into the creek are not approved septic systems.

I looked into comps, to see whether the property was priced at market. The seller had about \$250,000 in the property over ten years and was asking about twice that. I checked out tax-assessed values, adjusting as necessary. The asking price was in the ballpark, and the client and I talked over an offering price.

On Monday morning, my client phoned the broker. He was informed that another offer was coming in. My client then called me and said that he wanted to get an offer in too. He asked me to help pull the offer together.

I found a local lawyer. I liked the guy. Lawyers hate getting cold-called from people they don't know and asked to start doing work on the assumption that the client will pay. But I provided enough information to make this lawyer comfortable. The broker used his own contract that was, the lawyer said, heavily biased in favor of the seller. We came up with a contract that protected the buyer.

I emailed the broker at 11:34 a.m. on Monday. I introduced myself, telling him that I was a consultant, not a broker or agent, working on an hourly basis and had no claim on his commission. In addition to asking him some questions, I wrote:

[My client] has hired me to help him research the [property]. In your conversation with him this morning, you indicated that an offer had been submitted. [My client] would like to submit an offer as well. That is what we will be working on today and tomorrow.

We need to know the time limit on the other offer so that we can get ours in front of the sellers at the same time. So, the first question is, how much time do we have to submit an offer?

...[my client] is prepared to submit an offer without a financing contingency....

(Bold-face added.)

I followed this email with several phone calls, all of which went unanswered. My client and I were puzzled. The broker did not seem interested in seeing a second offer. I emailed the broker again, later in the afternoon. He said by email that he would respond at 4:30 p.m. That deadline passed. I phoned again, asking for him to contact me that night.

I phoned again the next morning. The broker informed me that the seller had accepted the other offer on Monday. He did not say whether the seller had been informed that my client's offer was being prepared on Monday [and was ready on Tuesday morning]. His reason for not communicating with me or my client on Monday was that his secretary, he said, had the swine flu.

What conclusions might be drawn from this broker's behavior? I don't know the facts on his side, only that he knew my client was getting an offer together and that he stonewalled that effort until it was too late.

My client's lawyer had seen similar behavior from this broker in the past.

We were angry. My client's offer was close to the asking price and would have contained a vanilla house-inspection contingency and a timber contingency. We already had a good sense of the timber value.

An all-cash offer close to the asking price with a buyer who would have paid the asking price was blown off by a broker who was supposed to be acting in the best interests of the seller. While the buyer got screwed, it's likely that this broker also screwed his own client, the seller. Two offers would only put the seller in a more advantageous position.

A buyer in this position can complain to the state's real estate board or the seller directly. But few of us like to get mixed up in something that's likely to be a big, time-consuming mess. So my client moved past.

This broker pulled a fast one, in my opinion. And I'm still grumbling about it.