

Real Estate Is Not A Side Dish

By Judith Johannsen

Real estate is *big* – it permeates our lives. We own it, rent it, manage it, build on it, use it, play on it, and travel over it daily. In fact, I bet you didn't know that the day after Thanksgiving *everyone* has real estate on their mind – for some it's the incremental yardage on a football field and for others it's that chunk of land known as "the mall".

As both commercial and residential real estate transactions take place every day in every state, we can see that real estate is not just an inconsequential side dish like carrot sticks, it is a main course and a substantial underpinning of our economy. So, to set the table for someone who has never bought or sold a home, here are a few pieces of information to chew on.

The contract. Let the negotiations begin. A buyer submits a written, signed offer to purchase to a seller. If a seller accepts the offer, he signs the agreement. If a seller dislikes parts of the offer, he crosses out or writes in changes, initials the changes, signs the contract and sends it back to the buyer for his approval. When the contract has been signed by both parties and all changes have been initialed by both parties, the contract is considered fully executed.

The deposit. A buyer usually tenders a good faith deposit in the form of a check with his offer to purchase. The check may be made payable to the buyer's agent's company, the listing agent's company or to an attorney, but whoever receives the check must deposit it into an escrow account where it is held in trust for both the buyer and seller. When no contract disputes arise, the deposit check is released to the closing attorney shortly before closing. However, when one party (or his attorney) demands the deposit claiming the other party defaulted, the escrowed money *cannot* be released unless there is an agreement of the parties or an order of the court.

Hubbard clause. This funny sounding clause has nothing with Old Mother Hubbard and is used to condition a buyer's offer when that buyer needs to sell his home before he can purchase another. It allows a buyer to call "dibbs" on a seller's property while trying to sell his own house and allows a seller to continue to entertain offers from other buyers. If a seller wants to accept another buyer's offer, he notifies the buyer who must then tell the seller within a predetermined time whether he can or cannot buy the seller's property without selling his own first. If buyer #1 decides he cannot proceed, his obligation to purchase is voided.

Closing date. A purchase and sale agreement will state a closing date to be on or before a certain date or within a certain number of days from the time the parties signed the contract. A buyer and seller agree to a closing date at the offer and acceptance phase of the contract and, therefore, the date is usually an educated guess as to when the property could close. This date is not written in stone, granite or marble and a buyer and seller should not arrange for moving vans or schedule renovations until the closing date is definite.

Time is of the essence. Watch out for "time is of the essence" written on the contract. This phrase has earned the respect of many a buyer and seller and means that the contract's time frames and deadlines must be strictly adhered to. It may apply to one specific item, like a financing commitment or an inspection, or to the whole contract. Think of this phrase as "do or die" and know that you must heed the agreed to deadlines.

Restrictive covenants. There may be restrictions on what an owner can do with a property and they are often created by a subdivision developer to maintain a certain look and to preserve property values. Ask your agent if the property you are interested in has restrictive covenants and, if so, what they are. They can be listed in an owner's deed, in a title insurance policy, or referred to on a map of the property in the town's land records. Restrictions can require not only exterior finishes to be natural materials (wood and stone) and neutral paint colors, but also a home's minimum square footage, no clotheslines, and no cars on blocks or motor homes in driveways. If you have your heart set on a purple vinyl-sided house, being able to air dry your clothes and park your camper in your driveway, a property with restrictive covenants may not work for you. Oh, and just so you know, neighbors who are subject to the same restrictive covenants can take a property owner who disregards the restrictions to court to enforce them.

With all the national print and talk media pummeling us everyday with glum economic reports and housing statistics, we need to remember that real estate is local and that what's happening in other states is not necessarily what's happening here. California, Nevada, Michigan, Ohio and Florida are leading the pack when it comes to the number of distressed sellers and property foreclosures and are far worse off than Connecticut whose real estate market has slowed down but has not ground to a halt.

Real estate *is* big – it impacts everyone's lives, and buying a home, apart from providing a place to live, remains a prudent investment, so knowing what to look for, ask about, or use in a purchase contract can help you to better understand and negotiate for what you want.

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