

## Three Current Questions, Three Good Answers

By Judith I. Johannsen

The global economic turmoil we have experienced has spawned a very different real estate market in our state than that of just two years ago, so new questions have arisen from sellers, buyers and tenants. Here are a few.

**A Seller's Question:** How come the price I want to list my house for is so much higher than what the Realtors® I've interviewed think is a good list price? It's not exactly rocket science, right? I based my number on how much I paid for my home years ago, then added the cost of all the improvements I made, adjusted for cost of living increase and inflation, then added a real estate commission and how much it will cost me to move.

**The Answer:** Realtors® know that a home's listing price is not determined by adding up all of your costs – it's estimated on what comparable homes have sold for in your area. In other words, a reasonable buyer would not pay a higher price for a home that was similar to other properties that have sold for less, unless it was extraordinarily superior in its construction, finishes, and location. That being said, even though you list and sell your home at a price you believe is too low, you will also be able to take advantage of lower house prices when you purchase a replacement property for less than you would have paid for that property just two years ago.

**A Buyer's Question:** I'm a buyer and don't want to overpay for a property, so how do I know how much I should offer?

**The Answer:** When a Realtor® represents a buyer in a real estate transaction, the Realtor® has an ethical obligation to promote and protect that buyer's interests. Part of that responsibility is helping the buyer understand a property's estimated fair market value so the buyer can make an informed offer. The Realtor® should provide a list of recent property sales in the area to the buyer so the buyer can see how those other properties that sold compare to the one the buyer wants to buy.

Secondly, when a buyer applies for a mortgage, the lender hires an appraiser to estimate fair market value. If the appraised value is lower than the purchase price the buyer and seller have agreed to, the lender may decide not to lend the amount of money the buyer needs to purchase. Why? If the mortgage goes into foreclosure, the lender will want to be able to sell the property to recoup its money. So, if it has loaned more than the property can bring on the market, the lender loses.

**A Tenant's Question:** If I am a tenant with a written lease and my landlord goes into foreclosure, do I have to move out right away?

**The Answer:** There are two new laws – a federal law that became effective May 20, 2009 and a state law, effective October 1, 2010 – that provide protections for tenants leasing property from landlords that are going through foreclosure.

Prior to the new federal law (Public Law 111-22, Title 7), a tenancy was treated like any other encumbrance that was junior to the mortgage and was foreclosed out. The lender then obtained an "ejectment" which entitled the lender to possession of the property. However, if the tenant could work out an occupancy agreement with the lender for a shorter lease term, higher rent or greater security requirements, the tenant could stay; otherwise, the tenant had to leave.

This new law applies in foreclosures of "federally-related" mortgages on a dwelling and requires a foreclosing lender to honor the remaining term of a bona fide lease entered into before the foreclosure began, requires the new owner to give the tenant 90 days notice before he has to vacate, and requires the new owner to assume any existing Section 8 contract. Note that the lender can terminate the tenancy early only upon 90 days notice and then, only if the property has been sold to a purchaser who will occupy the property as his principal residence. In short, leases survive unless the new owner wants to move in.

The new state law (Public Act 10-181) clarifies the “cash for keys” statute. New owners (could be the lender) have given tenants incentives to vacate the premises – they’ve offered cash, in return for which the tenant relinquishes the keys. Sometimes the amount offered was minimal and the tenant, not knowing any better, accepted it and moved out.

This new law clarifies that the amount offered as an incentive to a tenant must be at least the higher of two month’s rent or \$2,000, or for a tenant who has paid a security deposit, must be at least two times the security deposit plus interest.

Tenants in Connecticut who have received notice of a foreclosure should consult with their attorney about the protections they may be entitled to under the new law.

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