

Avoiding Closing Headaches

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Many people think of the closing of the real estate transaction as the calm, smooth completion of a wild ride. Increasingly, this perception has become the exception to the rule. Buyers and sellers can improve their chances of a smooth closing by keeping some points in mind:

- There are a number of reasons why closing problems are on the rise.
- Paper preparation must be complete in order to avoid closing hassles.
- Funding issues must be anticipated.
- Agreement and communication between parties must be clear and respected.

Roots of Increasing Problems

Many experts believe that the greater complexity of today's deals has caused a 50% increase in the length of time it takes to complete a deal. Also, today's hot market tempts inexperienced attorneys to try their hand at closings and experienced attorneys to overwork themselves leading to oversights and errors.

Paper Chase

A major problem area occurs when sellers do not have certificates of occupancy, certificates of completion, and Board of Fire Underwriters certificates. Buyers and lenders will likely ask for these, and getting them is not a one hour situation. If a survey or tax evaluation must be updated or verified, the entire closing will be slowed or stopped until the problem is resolved. This resolution is usually a question of sellers making visits to the local building department before even putting the property on the market. Such visits are also good opportunities to check for conflicts between department records and files and actual situations and structures.

Engineer and termite inspection reports and certificates and lien and title documentation should also be available just in case to verify information and resolve disputes. Another "paper problem" occurs when sellers do not have a pay-off letter stating how much is needed to pay off the home's current mortgage. If a foreclosure process has been initiated in some way, a letter verifying that the process has been stopped will also be needed.

Funding Problems

Closing costs range from 5% to 6% of the loan amount. These costs include attorney fees, bank attorney fee, broker fee, transfer taxes, termite problem correction, and mortgage recording tax. In addition, the seller may have to pay special tax assessments and/or existing liens such as mortgage payments (including prepayment penalties), estate tax liens, income tax liens, unpaid utility bills, unpaid property taxes, and unsatisfied judgments. Repairs and proof of repairs required should be considered as well.

Buyers and sellers also need to be aware of various adjustments which may be required at the time of closing such as accounting for unpaid or prepaid property taxes, water bills, tenant rents, fuel oil, service agreements and, sometimes, homeowner's insurance. Examples of this kind of adjustment are paying for school taxes or mortgage interest payments to cover expenses which the other side will be responsible for despite not actually living in the property yet. As discussed earlier, building certificates may be needed, in which case the filing fees, new survey fees, blue prints, board of Fire Underwriters inspection, and possible zoning approval costs will need to be considered.

The "good faith estimate" which lenders present to buyers should be taken as simply a ballpark estimate and not a written in stone promise. Buyers should have the actual figures faxed to them by the lender a day or two before the closing so as to have the actual, real numbers and not be caught "with their wallets down" at closing.

Buyers need to understand that some so-called "closing costs" are not really closing costs at all, and some actual "closing costs occur on the road to the closing and are not seen as actual closing costs by the buyer although they really are. Most experts see "closing costs" as really two categories of payments. In addition to the major closing costs which are tied to the actual closing, these are escrows, which are really advance installments of such things as property taxes and hazard insurance payments. Termite and radon inspections and surveyor and title costs are paid at closing because invoices for these services are usually sent to the buyer's attorney. No matter the nature of or reason for the payments, the seller or buyer will simply see it as another check to write and therefore another expense to pay.

Agreement and Communication

Many real estate professionals feel that the so-called increase in closing problems is really a matter of an increased need for agreement and communication between buyers and sellers. Perhaps the deals of old allowed a certain distance between these parties until the actual closing date, but increasing complexities and issues in today's deals require that buyers and sellers work out reasonable and clear agreements as to such issues as required repairs and when possession is to actually take place. It is necessary that both parties be accommodating with each other, set aside their egos, and keep their eyes on the prize, which is having as smooth, timely, and efficient closing as possible.

This need for communication also includes the parties and their own attorneys and, of course, between the attorneys themselves. It is necessary to dot I's and cross T's, but it is also helpful if the process and the closing itself are not viewed as just paper pushing or following some worn procedure. All parties need to consider the unique nature of each closing situation and apply common sense.

Conclusion

The closing can be smooth and efficient, but today's complex issues require that all parties involved do the homework necessary and approach the process with the attitude required to make that positive experience happen. In a sense, closing headaches can be avoided with a little preventive medicine.