

## **Real Estate Checklist for Sellers** **For The Avoidance of Disputes & Litigation** **(For Single Family Residence Only)**

Purpose: The purpose of this checklist is to close the common loopholes buyers and their attorneys attempt to use to get out of a transaction for the purchase of a single family residence. The items in this checklist are not necessarily all required by law, but without them, the buyers are given ammunition to use against a seller if and when they choose to breach. A breach often occurs just prior to closing, creating a stressful and expensive nightmare for a seller, especially because the buyer claims they are entitled to a full return of the earnest money based on their argument that one or more of the items in this checklist was not completed. By covering these items diligently, although some are not required by law, a buyer will be much less likely to breach. Realtors may do everything required by law and the code of ethics, but that could still leave many of these items subject to litigation. Every single item in this checklist is litigated regularly. This checklist, if used properly can save a seller thousands of dollars in legal fees, a lot of stress, and it can save the Realtor's commission. Realize that for each item you have not completed below, you have given the buyer a legal reason to terminate the transaction or refuse to close. This will cost the seller time and money, and it will cost the Realtor the commission.

Caution: This checklist is not intended as a comprehensive checklist for the sale of all residential real estate. This checklist only focuses on the common issues litigated today in Washington. It is still paramount that sellers (and their real estate agents) comply with all necessary requirements for their type of transaction and the kinds of issues uniquely presented in every transaction, including but not limited to disclosure requirements, title issues, liens and encumbrances, easements, condition of the property, environmental issues, remedies, and tax considerations.

### **Common Issues Litigated—Avoid These Pitfalls**

- 1. Is the Purchase & Sale Agreement signed by the husband and wife on all signature lines on all pages, including all Addendums? [very basic but commonly missed]
- 2. Is every page of the Purchase & Sale Agreement initialed by BOTH husband and wife? [also missed regularly]
- 3. Is the legal description complete (meaning it is not the tax assessor's abbreviated legal, it is not the street address, it is not some other abbreviated description that is insufficient)?
- 4. Is the legal description clearly written or typed in the body of the P&S [best]? If not, is the legal description referenced as an exhibit, and does the P&S identify the exhibit for what it is, i.e. "Exhibit A which is a copy of the recorded Statutory Warranty Deed"? It is by far safer to type the legal description into the body of the P&S. Buyers regularly say the exhibit with the legal was not attached. Then it becomes a "he said, she said" argument in court.

- 5. If the legal description is referenced as an exhibit, is it really attached when all parties signed the agreement?
- 6. If the legal description is referenced as an exhibit, is it a good legal description, such as a copy of a deed?
- 7. If the legal description is referenced as an exhibit and is attached as an exhibit and is a good legal, is that page initialed AND dated by both buyers and sellers?
- 8. Is every appropriate Addendum attached, completed and signed by both parties? And are all Addendums listed on page 1?
- 9. Are all pen and ink corrections or changes, initialed by ALL parties and dated by ALL parties? [Be careful about illegible fax copies.]
- 10. Is the Sellers Disclosure Statement (Form 17) properly completed, and have you received the acknowledged signatures of the buyers back? [not required by law, but a nightmare legally if the buyers lie and say they never received it, which happens all the time] If you are faxing a Form 17, do you have confirmation it was faxed and that the buyers received it? Have you saved the fax confirmation sheet? [although also not required by law, failure to do this has killed transactions.]
- 11. Have all contingencies been met or waived, and have you coordinated signatures if they've been met or waived? [Always anticipate that a buyer who has agreed to something verbally, may breach if not in writing and signed and dated.]
- 12. Who is supervising the contract requirements of this transaction? If it is a Realtor, is the Realtor on top of every date, every deadline, every necessary reminder? Has financing been approved, and if not, why? Has repair work required been completed according to the agreement, and if not, why? Is there coordinating to do among the parties or third parties? A Realtor, if assuming the role of supervisor of the transaction, should be making absolutely certain the transaction is air tight and will be ready to close per the contract. A Realtor who desires to get paid should be supervising the transaction.
- 13. If this is land only, and it is to be subdivided, is the legal sufficient? If only a portion of a larger parcel is being purchased, and the property has not been short-platted or long-platted, is the legal description of the portion being purchased sufficient?

- 14. If land must be platted as a condition of closing, who in the agreement specifically has the responsibility to make that happen, and by what dates? Who is supervising these tasks and dates?
  
- 15. If the P&S Agreement (or addendum) has language which requires the seller to plat the property prior to closing, how is it worded, as a “promise” or as a “condition precedent?” If it is worded like a promise, it is enforceable by the buyer under any conditions (specific performance or damages), but if it is worded as a condition precedent and the seller doesn’t get the plat approved because of financial difficulties in meeting requirements, then the buyer cannot enforce the agreement if the plat isn’t approved (although the city or county would approve it but the seller can’t afford to comply with conditions). The following language has been adjudicated to be a condition precedent and the buyer had no remedy:

This Offer *is subject to* Seller providing the final plat approval by City of Tacoma and engineering as-built for this plat and deliver to Buyer (23) buildable lots to include all curbing, paved roadway, and all utilities to the lots.

The Court said, “Although the addendum does not use the express words identified in *Vogt*, the words “subject to” and “contingent upon” leave no doubt that at the time of execution the parties intended that no sale would take place until these conditions were satisfied.”

- 16. If a condition of the contract is breached by the buyer, what is the remedy for the seller? In other words, specifically what teeth are in the agreement to protect the seller from games buyers play? Specifically, what remedy does the seller have if the buyer breaches this condition and that condition, etc.? [Not a generic remedy for any and all defects]
  
- 17. If any of these documents have been faxed, have you kept that copy with the fax cover sheet AND the fax confirmation sheet?
  
- 18. Have you covered the dual agency issue in every way? [breaches are argued even when the brochure is provided and the dual agency is checked on the P&S.]
  
- 19. Has the buyer been informed of everything, including whether there is a homeowners’ association with assessments?
  
- 20. A Realtor can be the cause of a buyer’s breach by giving the buyer ammunition. For example, any of these items not covered gives the buyer ammunition to shoot at the seller or Realtor, or both. Here’s a big one. If the Realtor tries to be a nice person by running around and handling details for any party involved in the transaction, the buyer may claim the Realtor breached the dual agency role, and that the Realtor was negligence in handling or completing that responsibility he or she took on, although it was outside the scope of their job. Realtors must anticipate that a buyer

may shoot at you if you voluntarily agree to do anything outside the narrow scope of your job.

- 21. Does the P&S cover the designated closing date so that it is clear that it is either a true drop dead date or just a target closing date? And are any extensions by addendum covered properly? Partial performance can actually be an extension without an addendum, but you don't want to do that. Everything should be in writing, signed and dated.