



Impediments to Closing

Fern Epstein, Principal
fepstein@horizonlandservices.com
© 2008 Horizon Land Services LLC

One of the challenges in any real estate market is how to make the real estate transaction process affordable, efficient, secure and transparent for an average consumer. The closing process, prior to and at the closing table, can lead to an array of problems, impediments and potential disasters unless all involved in the transaction are well informed and prepared to close. The following are some guidelines that you as a professional in the real estate world, should utilize when leading your client through this process.

One of the first pitfalls to closing is the lack of attention to the title report. This report sets forth any issues and exceptions that cannot be insured against. An “astute” consumer would ask his mortgage broker, lender and/or attorney if there are any problems contained within the report. At the very least, this question would red-flag the professional to review the report and to deal with the various issues raised as exceptions to title. The onus, however, is on the professional to investigate any potential problems prior to the closing.

As a pre-requisite to closing, the professional should take into consideration open mortgages that have not been properly satisfied of record that show on the report, missing assignment of mortgages, breaks in the chain of title, judgments, federal tax liens, lis pendens and tax liens, to name a few. This procedure should cause the professional to contact the title agent in order to clear these title issues to enable a smooth closing.

Mortgage payoffs and/or any judgment payoffs should be obtained prior to closing with interest figures through the funding date. Foreclosure payoffs should be obtained from the foreclosing attorney and not from the lender. Certain mortgage payoffs, depending on the lender, can take as long as seven days to receive. Federal tax lien payoffs, and real estate tax liens, however, should be worked on in conjunction with the title agent.

Judgments against former owners who transferred title without consideration, should be taken into account when listed in the title report. From a title perspective these judgments are treated as judgments against a current owner. Conveyances of real property for nominal or no consideration may be challenged in court and set aside rendering said judgments currently enforceable against the real property.

A key issue at closings which often adversely affects a closing is deficiency of funds. For the purposes of these guidelines we will address refinance/mortgage transactions. Numerous times borrowers will come to the closing table under the impression that all of their charges, including brokers fees, lenders fees and title fees are fully paid for. Unless the professional has made them aware of the charges that will be taken out (for example: loan origination fees, brokers fees, bank attorney fees, mortgage interest, mortgage tax, real estate taxes), there is always the potential for the client to be short of funds at the closing table. It is common practice for the bank attorney to determine if there are

sufficient funds to close. The responsibility of the mortgage broker or the lender, along with the bank attorney and/or settlement agent is to determine what funds should be brought to the table. Advance notice should be given to the borrower to avoid the shock of seeing that instead of receiving money back from the proceeds of the loan, he/she is in fact paying additional funds to close the loan.

In the “ideal world” all our buyers and sellers would be at closing. There would be no Power of Attorneys used, and everyone would have identification, or we would personally know them. Obviously, this does not happen in the “real” world of real estate closings. As a professional, it is of the utmost importance for you to stress that your seller/purchaser/borrower should personally attend the closing. If this is an impossible feat, a Power of Attorney should be used, or in the case of a seller, the deed can be pre-signed. In either instance, these steps and the forms used, must be approved by the title agent. In most instances, the title agent will require photo identification of the individual, along with other proofs appropriate to the transaction. For purposes of identification, accepted proof should be in the form of a drivers or non-drivers license, or in a form acceptable to the title agent. Many closings have been delayed without proper identification or adjourned due to lack of identification at closing. In addition, signatures without proper identification should not be notarized as it puts the notary public’s license in jeopardy.

Consider this, is the water on the client’s property metered? In the case of a sale, the seller should request a final water meter reading to avoid exorbitant escrows possibly being set by the title agent. We have seen many instances wherein a purchaser has taken exception in the policy to any unbilled or estimated water charges. At times, the escrows held by the attorneys on their behalf have been insufficient. In reality, we are dealing with the “unknown”. Is there any way to determine that the water from the vacant house being sold by an estate is being used to fill the adjoining neighbor’s pool, or in the alternative, has the subject property had excessive water usage pursuant to something so simple as a pipe being broken? If the water meter reading is “estimated” and the property history shows estimated water charges throughout, the purchaser may take substantial monetary risk in allowing a closing to occur without an actual water meter reading being performed.

The title agent has an obligation and duty to help clear issues within the realm of title. At times this can only be accomplished with notice from the professional that there is a problem. At Horizon Land Services we attempt to foresee and address the potential title issues prior to closing. We work with the professionals involved to ensure a smooth closing process. We take the “real” world and transition it to “ideal”.