

12 Ways to Foul Up a Real Estate Transaction

Life would be a lot simpler if you could buy or sell real estate as easily as buying or selling a used car. When you buy or sell a used car, the seller sets the price, the buyer finds a car she wants to buy, they haggle over the price and, eventually, agree, money is paid and every one is happy. That model doesn't work too well when buying or selling real estate. Each state, county and city has special rules, regulations, taxes, forms, and procedures that must be followed. These not only regulate the sale of real estate but protect the parties involved. And if the purchase involves a mortgage a lot more rules and regulations (some of which are federal) come into play.

Here are 12 common ways to completely foul up a real estate transaction:

1. If the seller does not have authority to sell the property the deal will be fouled up. It should be obvious that you cannot sell what you do not own. This sounds simple but if there is a trust, a community property agreement, a family corporation, or even an expired power of attorney things quickly get both complicated and possibly unpleasant.
2. If the description of the property to be bought/sold is incomplete or legally inadequate the deal will be fouled up. Note: A mailing address is not an adequate description of the property. You absolutely must use the entire lengthy and convoluted legal description on the purchase and sale agreement for it to be enforceable.
3. If zoning is inconsistent with intended use. This is not merely *caveat emptor*. If the buyer specifically tells the seller what she intends and the seller indicates that the zoning is appropriate, the deal will be fouled up. Both parties should check and be sure.
4. If the buyer fails to pay earnest money or follow earnest money provisions. These provisions are there so the buyer can show good faith. If the contract requires that money be paid or financing be obtained by a specific date, it is a breach of the contract to fail to live up to these terms. Sellers can then accept other offers if they so choose.
5. If both parties do not expressly accept any changes to the initial offer. There is no contract unless both parties expressly accept the changes arrived at after negotiation. Acceptance is shown by, *e.g.*, both parties' initials.
6. If the note and deed of trust are not attached to the sales contract. Unless the purchase is for cash, the land will be purchased by a loan which is secured by a

KAUFMAN LAW, A Professional Corporation
11350 Random Hills Rd. Suite 800
Fairfax, VA 22030
703.764.9080
703.764-0014 (fax)
David@dzklaw.com

deed of trust. These documents, showing the principal, payment terms and interests, should be made a part of the purchase and sale agreement. This is a classic method of voiding a sale.

7. If everything is not in writing. There can be no side agreements or “understandings”. And be sure that there is an “integration” clause saying that the purchase and sale agreement is the entire agreement and any changes must be in writing and signed by both parties.
8. If the seller disclosure form is not filled out correctly. It is a legal requirement in most jurisdictions that the seller of real estate certify that any existing defects in the property have been disclosed and any prior defects have been properly repaired. Frequently, sellers massage the facts, or indicate that they “don’t know” if there have ever been any defects. Generally, the test is whether a seller knew or should have known of defect in the ordinary course of events. If the seller’s answers on a disclosure appear to be vague or unresponsive, it is a good idea to wonder why.
9. If the buyer allows the seller to stay in possession after closing. If you are going to do this, be sure there is a specific, time limited, rental clause. This clause should also the consequences to the seller if she stays beyond the agreed date¹
10. If there is no explicit agreement spelling out what the seller takes with her. Much time and money has been spent in litigation over whether the seller was entitled to take her chandelier, washer, dryer, range, oven, or refrigerator.
11. If the property is commercial or has ever had an oil furnace or an underground oil tank and you do not get an environmental survey done. Fixing the environmental problems that a leaking oil tank or furnace can cause could cost thousands of dollars.
12. If the parties do not explicitly include a clause ensuring that post-closing obligations will survive. For example, if the sellers agree to be responsible for hauling away the old cars in the back yard, be sure that there is something in the sales contract that clearly requires them to do so.

¹ Further, the buyer should get insurance that specifically covers liability relating to the seller’s occupancy.