**REAL ESTATE CONTRACTS - PAY ATTENTION TO DETAILS**

**BY: WILLIAM G. MORRIS, ESQ.**

Much can go wrong with a real estate transaction, but the majority of problems with real estate transactions arise from the contract. Buyers and sellers do not pay enough attention and sign incomplete documents or contracts with provisions with which they are unfamiliar. This column will highlight some of the areas that are most often problematic in real estate sale contracts.

First and foremost, a real estate sales contract must be in writing to be enforceable. Handshake deals and oral agreements will not work under the statute of frauds.

Perhaps the second most important aspect of a real estate sale contract is description of the property. Street address may be sufficient, but if the number is wrong there is no contract because there is no meeting of the minds. There may be an argument when an addresses used and the seller is not selling all of the contiguous property owned by the seller on that street. Buyer may think property next door is included but the seller disagrees. Good description of the property will avoid the argument.

All of the owners of the property should sign the contract. If a corporation, LLC or trust is a seller, all properly authorized and necessary representatives should sign. If this important first step is missed, the contract may prove unenforceable or end up in a lawsuit. Getting all the buyers to sign may not be so important, but only those signing the contract will be liable.

Most real estate sales contracts are preprinted forms. All of the blank should be completed. All details of the transaction need not be included in a contract for an enforceable agreement, but the parties must agree on all essential terms. If one of the blanks is part of an essential term and is incomplete, there may be no meeting of the minds and no contract. And, most people do not know the difference between essential term and those which may be implied by law.

Everyone worries about purchase price, but sometimes the amount of the deposit is even more important. The seller will want the deposit to be large. A large deposit shows the buyer is truly interested, likely has the ability to proceed and in most real estate sales contracts the seller’s sole remedy if the buyer defaults is to forfeit the deposit. The buyer wants to show the seller that the buyer is substantial but the buyer will likely want a small deposit. That is especially true if the contract provides the buyer’s deposit is forfeited if the buyer defaults.

Contract contingencies are a big deal. Will the buyer be allowed inspections or is the sale “as is? Is there enough time to complete inspection? If the buyer has inspection rights, will the seller be obligated to make repairs or give the buyer a credit? Some real estate contracts mandate the seller repair material defects up to a certain percentage of the contract price. Other contracts allow the buyer to request repairs but give the seller the option to refuse, after which the buyer may terminate the contract. The parties need to know what the contract says about inspections or the property condition.

Is the transaction a cash deal or will the buyer get a mortgage? If the buyer is getting a mortgage, is closing contingent on obtaining a mortgage. Some financing contingencies remain open until closing at which time the buyer can terminate if financing was not obtained. Other contracts require the buyer to terminate the contract by a certain date if the buyer has not obtained financing or is not comfortable with the financing status. Both parties need to know how any financing contingency operates.

Deadlines can be critical. Will the buyer have to apply for a mortgage? What is the time for inspections, title search and other important matters? Are the deadlines set in stone, which means time is of the essence? If the deadlines are set and a deadline is missed, will it allow one party to terminate the contract? All of these matters can be addressed within the contract should be understood by the parties before signing.

Closing expenses should be addressed. In Collier County, a seller pays documentary stamps on the deed at $7 per thousand dollars purchase price and the buyer pays title insurance starting at $5.75 per thousand for the first $100,000 of purchase price. Other than sales commission, documentary stamps and title insurance are usually the 2 biggest closing expenses but there are others such as survey, estoppel letters, permit searches and recording. Allocation of these expenses between the parties can make a big difference in the bottom line.

Who is going to pay assessments against the property that come due after closing? Who is going to pay a special assessment by a condominium association that is adopted after the parties signed the contract but before closing? Those issues should be addressed as they are frequently present.

Is the furniture included? If it is, the contract should have a detailed inventory so that there is no argument about what is included. Southwest Florida is a relatively unique real estate market in which most residential property sells furnished. Lenders do not like to loan on furniture, and including furniture in the sales contract can be problematic if the buyer is getting a mortgage. That issue can be addressed with a separate personal property sales contract, but the time to worry about how to deal with furniture is before the contract is signed not after the buyer has trouble getting a loan.

Real estate sales contracts are the source of problems whenever the contract fails to include necessary details or the parties have not bothered to read and understand it. In those situations, the written document not confirm a meeting of the minds. The buyer or seller may be able to terminate contract because of a deficiency but the parties may also be stuck with the deal. The time for vigilance is prior to signing and that is when the buyer and seller should consult with their attorney.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***