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NEWSLETTER

NOTE: If you think your colleagues would benefit from the information contained in this Newsletter, please forward it to them and ask them to reply to me by email for inclusion in this free Newsletter.

Also, if you have a topic you would like me to analyze and discuss, please email me and I would be glad to consider it in a future Newsletter

The dangers of "boilerplate" language in a contract

We all recognize "boilerplate" language in a real estate contract.

In the context of residential real estate contracts, it is the language that is printed into the contract form that hardly ever changes and is also scarcely ever negotiated even if it is read by the parties, their lawyers and the real estate agents. We have all come to accept such language; for if we did not, it would take forever to negotiate an agreement.

"Boilerplate" language is necessary in order to transact business in an orderly and predictable manner. We take for granted its need. Real estate agents and lawyers alike tend to ignore such language when reviewing agreements for our clients. Awareness of, and the repetitive use of boilerplate language contained in a standard Board contract is very helpful in most cases but dependence upon the consistency of such language can occasionally cause you to be caught off guard.

In the context of negotiating residential real estate contracts, ignoring the boilerplate clauses or assuming boilerplate language is all the same can result in getting "burned". Being burned means that your client may have an unanticipated closing expense for which <u>you</u> ultimately may bear responsibility.

What are some common concerns and how they can be avoided?

1. Become familiar with the boilerplate language in the contract form you commonly use. If such a contract incorporates Closing Customs of a particular local Bar Association, then obtain a copy of those closing customs. For example, the New Haven County Bar Association Closing Customs state that, in the case of a sale of a condominium unit, there are no adjustments for special assessments. If payment of all or a portion of a special assessment is due prior to the original contract closing date in the contract, then the seller pays that amount without adjustment.

2. The majority of contracts state in fine print that should the Buyers default, they only lose their deposit and nothing more. This is called a liquidated damages provision. Thus if the deposit is $15,000.00 but the Sellers actually lost $20,000.00 as a result of the default of the Buyers, the Sellers only get $15,000.00 and not $20,000.00 even though they lost an additional $5,000.00 more. HOWEVER, the boilerplate language of some Board contracts contain clauses allowing the Sellers to choose between liquidated damages and actual damages. Therefore, in the example above, the Sellers may choose to sue for the $20,000.00 figure.
3. Be alert if you are listing or selling a home in Meriden or Wallingford. These towns adjust taxes in arrears meaning that the Buyer will get a real estate tax adjustment at closing. Thus, if you represent the Buyer and you make an offer on a Wallingford property using a contract form that says that taxes shall be adjusted on the basis of the Uniform Fiscal Year, you will be making a large mistake.
4. Building inspection contingencies vary from form to form. Some inspection clauses allow the Buyer to back out for simply "dissatisfaction", others only if cost of repair exceeds a set dollar amount. We should all be aware of the differences.
5. Boilerplate mortgage contingency clauses differ from form to form. One form allows only the Buyer to cancel the agreement if a written mortgage commitment cannot be obtained. Other common contract forms allow the Seller or the Buyer to cancel under those circumstances. There is a big difference between the two types of clauses. The first clause protects only the Buyer; the second clause benefits the Seller in addition to the Buyer.

My general advice to real estate agents is that when a listing agent receives an offer written on an unfamiliar contract form, he or she should read and understand the boiler plate language of the offer comparing it to the contract ordinarily used by the agent. Conversely, an agent selling a property in an unfamiliar territory should attempt to discover if the form customarily used by the agent should be modified to any extent if used to purchase property outside the agent's area.

As always, if you have any questions or comments, please do not hesitate to email me or call me.

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William S. Nathanson