

REAL ESTATE

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THE REAL DEAL

Real Estate News You Can Use

BY EVI COGLAN



The Twilight Zone

There's a point in every property transaction that can be scary for buyers and sellers alike. It's the period between an accepted offer and the signing of a contract. I call this time the "Twilight Zone," because you never know if the deal you think you've struck will survive – or will turn out to be a mere apparition.

You see, buyers and sellers have been known to play tricks on each other while the inspectors and attorneys are at work. Here's how it goes.

By custom in Fairfield County, there are two steps in the process of making a residential real estate deal. First is the "binder" – an offer to purchase property at a certain price and with certain terms (e.g., when inspections will be completed...whether the offer is contingent on mortgage approval...and the closing date). A 1% deposit usually accompanies this as consideration, although this is something of a formality since this money is not at risk of forfeit. If the price and terms are acceptable, the seller will sign the offer to purchase and, ostensibly, a deal will have been struck.

The second step is the contract – a document drawn by attorneys that's usually accompanied by 10% of the purchase price. This money is at risk of forfeit in the event of a default.

The problem with binders is that they are not totally binding – even though they've been signed by both parties. This has come as a shock to many a horrified party who didn't realize this until they lost a deal.

Buyers wiggle out of accepted offers every day of the week. It's not until the contract is signed by both seller and buyer, and all contingencies are removed, that anyone can feel confident that a deal is safe. Contract signing usually happens about 10 days after a property takes a binder.

Any number of things can cause a buyer to wiggle – from a simple change of heart...to a newly-listed property that looks even better...to a shaky building inspection...to financing that falls through. Even disapproving parents can kill a bindered deal.

Sometimes this is no big loss because there's a lot of interest in the property – or even backup offers queued up behind the wiggling first buyer. But it can be disastrous to the seller who has accepted one buyer's offer in good faith while the only other interested party – who is being relocated from Sheboygan in 30 days and has to make an immediate purchase decision – moves along to another house during the exact 48 hours that it took for the first deal to fall apart.

It's a bit more difficult for a seller to wiggle out of a signed binder, although it frequently does happen. That's because the legal language in binders has been beefed up in the past several years, to the point where the buyer has some legal recourse against a reneging seller. Unfortunately this takes time and money, and many buyers are not willing to do what it takes to stand their ground.

Changing their mind about selling and getting a better offer are the two most common reasons for wiggling to occur on the seller's side. This can be devastating to the buyer who made a hard choice between two great properties, and the other great one is no longer available when the deal on the first-choice house falls apart. The sword cuts both ways.

These anecdotes demonstrate why real estate agents agree that keeping a deal together is often as much – if not more – of a challenge than striking one in the first place. As advocates for our seller or buyer clients, our quest is to obtain a contingency-free contract on your behalf as soon as possible. Getting to contract quickly is especially important to us – and to you – when we have been able to negotiate a very favorable deal on your behalf. That's where we earn our commissions.

Finalizing a contract can be a frustrating process because much of what hap-

pens during this period may be out of the buyer's, seller's – and agents' – control. Inspections may raise issues that take time to sort out. Attorneys may be slow to review documents. Or you may be 3,000 miles away on business at the very moment that your signature is required in downtown Westport in blue ink.

Fortunately, there are things you can do to speed the process along. These include:

1. *Being pre-approved for your financing. "Pre-qualified" is not good enough.* Make sure you know the difference. "No mortgage contingency" offers are fast becoming the norm in Westport and Weston. You may not get a chance to play in the game if yours isn't.
2. *Having lawyers and inspectors lined up in advance.* If your attorney will be particularly busy when you're buying or selling, choose someone else. If you're buying, remember that the best inspectors are not available on a moment's notice. The ones who are may cause more problems than they help you avoid.
3. *Giving your lawyer power of attorney if you travel a lot* – so a contract can be executed while you're away.
4. *Making sure that the agent who represents you will be actively involved and keep on top of things during this part of the process.* This is a question you should ask up front, before signing a listing or buyer agency agreement. While some agents take this responsibility very seriously, others consider their job done once your attorney enters the scene.

In the end, moving quickly and honoring the due dates that you agreed to during negotiations are the surest ways to keep your transaction clear of the Twilight Zone. Better advice only Rod Serling could give.

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