

Real Estate Reality

-Debbie Yost

Buying or selling a home is not unlike the process of getting married. The bride and groom are excited and set a date to be married. As they proceed through the myriad details of arrangements for the big day, they receive well meaning advice from friends and family while meeting with caterers, choosing a location for the ceremony, arranging for the reception, selecting food, music, choosing their own and the wedding party's attire. By the time they get to the big day, many wish they had chosen to elope. They still want to get married; they just don't appreciate all the details and frustrations of the process.

The process of buying or selling a home can be similar. The buyer and seller are excited and happy at the initial point of contract acceptance. Then the process of inspections, appraisals, and loan approval begin and with each twist and turn, each further negotiation, the parties become overwhelmed. In our current hot real estate market the parties become so irritated with the process, that nearly 20% of the transactions are canceling before they get to close of escrow.

The Arizona Association of Realtors (AAR) provides standardized contracts and addendas for it's Realtor members to use to facilitate the sales process. A typical residential sales contract contains contract, addendas and disclosures of 15 to 25 pages. These are so extensive because it attempts to cover any possible situation, disagreement or issue that can arise during the process of getting to close of escrow, without requiring the parties to seek legal intervention in the case of a dispute.

AAR just unveiled a completely updated purchase contract and new set of addenda's for use in Arizona. This is the first major revision since 2000 and contains major changes that address the problems being experienced in today's fast paced market such as appraisals coming in low, loan approvals delaying closing, and inspection issues. This revision was a result of months of work by a task forced comprised of not only Realtors and attorneys, but also mortgage company, title company and home inspector representatives.

In the '80's the prevailing legal theory regarding real estate was "Caveat Emptor" meaning "let the buyer beware." All Realtors represented the seller and the buyer had no legal representation. The '90's saw a change in this underlying legal theory wherein sellers became legally responsible for disclosing any material defects in the property and buyer representation or "agency" came into practice. Today the legal atmosphere is one where both buyer and seller have responsibilities for proper disclosure, as well as performing their own investigations of property condition and neighborhood and governmental conditions and both are typically represented by their own Realtor.

One of the underlying themes of the new contract is that both buyer and seller have certain responsibilities as active participants in the home buying/selling process. The contract provides a mechanism for giving notice to the non-performing party that they have 3 days to "cure" their non-performance or the other party has the ability to cancel the contract. Buyers and sellers who have been "stuck" in a contract where the other party is refusing to perform will cheer this change.

There are too many changes to be addressed here but some of the highlights include:

Loan approval now means approval "without conditions. There are new forms for buyers and lenders to accurately describe exactly what stage of the loan approval process the buyer is in.

All parties are now required to sign all documents and deposit all funds into escrow three days prior to close of escrow. All required seller repairs must also be completed three days prior to closing and the buyer has the right to inspect those repairs.

If the appraisal value comes in low, the buyer has five days to notify the seller that they will not buy the property at the agreed upon price. If there is no action on the part of the buyer the buyer must close at the contract sales price, and must bring the difference between the appraised value and sales price to closing in cash.

During the inspection period the buyer may now terminate the contract for any reason, rather than requiring a "reasonable" reason for cancellation, as was the case with the prior contract.

Realtors across Arizona are now being trained on the new purchase contract. Buyers and sellers have more rights and obligations under this new contract and want to be sure their Realtor is using the newest version of the contract, which has the date of 5/05 noted on the very bottom of each page.

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