

Legal Issues for the “For Sale By Owner” Seller

By Joel Ward

First of all, a disclosure: I’m not an attorney and what I’ve written here should not be taken as “legal advice” but rather as general information based only on my experience as a REALTOR and teacher. You need to obtain “legal advice” for your specific situation from your attorney.

Whether a seller chooses to list their home with a REALTOR or not, it’s important for them to be represented by an attorney. However, REALTORS do typically provide a variety of legal forms to their clients. These forms have been approved by a joint committee of the Champaign County Association of REALTORS and the Champaign Bar Association, or are forms provided by the State or National Association of REALTORS. REALTORS are only permitted to fill in the blanks in these standard forms with factual information provided by their clients, but are not allowed to write contract language. Such forms include a Residential Real Property Disclosure Report and the Multiple Listing Residential Sales Contract, with amendments. These forms, together with the MLS Rules and Regulations which govern local custom, make the process of making offers and counter-offers routine for REALTORS and their clients.

The first document the “For Sale By Owner” seller needs to have is the Residential Real Property Disclosure Report. This document is available from your attorney, or I would be happy to send you a copy upon your request. According to the Residential Real Property Disclosure Act (Public Act 88-111) all sellers in the State of Illinois are required to complete this document and deliver it to the buyer before the signing of a sales contract. It is also important to be aware of the provisions of this Act, which places obligations upon the seller in addition to the delivery of the disclosure form. It’s a good idea to discuss the provisions of the Act with your attorney, to make sure you understand what your legal obligations are concerning disclosure. If your home was built prior to 1978, it’s also necessary for you to provide your buyer with a Lead Paint Disclosure form. This form is also available from me upon your request.

The second issue concerns how to facilitate a buyer making an offer on your home. Your best choice here is to contract your attorney, and ask him or her how she would like for you to proceed. Some “For Sale By Owner” sellers work out the details of the offer with their buyer verbally until they have reached an agreement on the major terms of the sale. These terms would include price, closing date, earnest money amount and place of deposit, condition of property, personal property included, home inspection contingency and financing contingency, with deadline dates. If you don’t understand some of these terms, you should contact your attorney to have them explained. Then, after you and the buyer have reached an agreement, you can provide this information to your attorney to have a legally binding contract prepared.

Most buyers these days choose to have a professional home inspection completed, and most wish to make the sale of the home contingent in some way upon this inspection. It's important for your attorney to draft language which protects your interests. Also, you want your buyer to complete their inspection just as quickly as possible. Once the inspection is completed, you may have agreed to either repair some items in your home or provide a credit to the buyer instead. Again, it's important to have a document signed by you and the buyers which details the terms of this additional agreement.

Almost every buyer wants to purchase a home subject to their ability to obtain mortgage financing. This is another common contingency in residential sales contracts. Again, it is in your best interest to have your buyer clear this contingency just as soon as possible, so that you know you have a "firm" transaction. (By the way, you may want to consider not accepting offers from buyers who are unable to produce a "pre-approval" or "pre-qualification" letter from a reputable lender.)

One problem experienced by many "For Sale By Owner" sellers is that after they find a buyer for their home, the transaction never closes. While REALTORS cannot offer legal advice for your specific situation, we can be helpful in providing advice on non-legal matters having to do with the best way to structure the transaction involving the sale of your home. Often times, structuring the transaction is more difficult and time-consuming than marketing the home in the first place. It is one of the many areas in which an experienced REALTOR is a valuable member of your team.