

REIX

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When It's Hot and When It's Not

We all know that what goes up, must come down.

But we seem to forget that truism when the real estate market is hot, leading us to another painful truth: mistakes made during a hot market come back down to haunt you in a downturn.

The main culprits? Poor record-keeping and deals done with no conditions – both which can turn into lawsuits when the market turns.

At REIX, we've seen all sorts of scenarios that speak to the importance of calmer heads during hotter markets. Here are a few to consider:

Refusing Subject to Sale

As a buyer's agent, you have a buyer that's already lost out on several offers and is keen to secure this latest house, so much so that he refuses to add any conditions to the deal, despite your best advice.

In the haste to make the deal, you fail to get the buyer to sign a waiver indicating they chose to close with no conditions.

In this scenario, the most important condition he refused was accepting the offer subject to the sale of his own property. The

buyer thinks that, in such a hot market, his own home will be gone in a matter of days. Then the market cools.

The buyer won't reduce his price because he needs every last dollar of equity to close on the property he's just purchased. The next couple of months roll by and nothing happens.

Eventually, the closing date arrives and he has to walk away from the deal and forfeit his deposit.

But his troubles – and yours – are just beginning. The seller is now stuck selling their property in a declining market. Months go by and they eventually sell, but for substantially less than they had on the first deal.

The result? They sue the first buyer and the buyer's agent, you.

No Home Inspection

In another, equally problematic scenario, a buyer refuses to get a property inspected, fearing she'll lose the deal to other offers. Although you advise against this, warning of what surprises she may find after taking possession if she foregoes an inspection, she insists on proceeding.

Here's where the problems arise: you fail to document your warnings and her instructions. You also fail to have the buyer sign a waiver that states that the buyer's agent/brokerage has explained the implications of not completing a home inspection and the buyer has still chosen to proceed without it.

Later, after closing, the defects become apparent and you are included with the seller in the subsequent lawsuit.

Lost Deposits

In a third scenario, you're working with a condo developer and experiencing good interest on the latest project, with deposits collected on 25% of the units. Then the market turns and the developer goes under.

The buyers sue for the lost deposits that were processed through your brokerage and turned over to the developer to start construction – and you're unable to recoup that money.

Take Time – and Notes

These are just a few of the common scenarios we see during a

hot market, where haste and cutting corners have come back to haunt subscribers later on.

Here are a couple of suggestions that may help you prevent lawsuits in the future:

1. Slow down, at least long enough to double check your work. Are the terms and conditions worded properly and do they reflect the intention of the parties to the contract?

2. Take a minute to send an email to the buyer acknowledging their instructions to proceed with no conditions on the offer and have them sign a waiver. Reiterate why this is not your recommendation and what the consequences could be if their house does not sell on time or if they find defects in the house they are buying later on, and then keep a record of this communication.

Enjoy a hot market while it lasts, but make sure you're careful at all times so that when the slowdown comes (and it will) you won't look back on the good times with regret.

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