

Carrying Paper Can Come Back To Bite You

December 14, 2014

Dear Mr. Windsor: My wife and I are anticipating selling our home of 26 years in Juneau and carrying the first mortgage with 20% down. Is there a danger of losing our equity if the buyer can't make the payments? Can a mortgage be written with protection in it?

Answer: If you own your home outright you can sell it with Owner Finance, just as you suggested. In this instance, you become the Lender in place of a regular lending institution. A Deed of Trust can be prepared through a Title Company, and contain as much protection as you want. You can have the same protective provisions that a mortgage company would include.

First, this means that, should the buyer fail to make payments, you can foreclose on the buyer and regain title to your property. With 20% down, this would actually work to your advantage. You received 20% on the first sale and get to sell it all over again. Also, be sure to insist that the Deed of Trust include a "Right to Sue on the Note" clause, which will enable you to sue the buyer based on the "promise to pay" as well as having foreclosure rights. A title company will not necessarily include this second protection unless it is specifically requested and agreed to between the parties.

A third defensive clause you should require is a "Due on Sale" clause which, in a nutshell, prevents the buyer from transferring title to yet another party, who takes over the payments, or "wraps" the mortgage, without your written permission. In other words, if the buyer sells it, the total amount "Due" to you is immediately payable.

As your question involves legal issues, I also recommend that you obtain the advice of an Attorney. Owner Finance can provide benefits to both buyer and seller. Sellers can obtain a monthly income in the form of mortgage payments, usually at an above standard rate. Sellers can also sell property this way which might otherwise not qualify for financing due to property condition. Buyers also can purchase property with owner finance, even if their credit or other issues prevent them from obtaining regular financing.

However, an owner financed deal should only be entered into with full awareness of all its consequences. Otherwise, carrying paper can come back to bite you.

Dear Dave: We recently bought a home in Anchorage and it turned out that an easement exists on our property, but not shown on the as-built survey. We tried to make a claim on our Title Insurance, but it was not covered - your comments, please?

Answer: Owner's Title Insurance does not cover a number of scenarios which are covered in the Lender's (ALTA) Policy. One of these exceptions is discrepancies on the as-built survey. If a buyer wishes to include the same extended coverage that a lender has, it will cost an additional 30% premium to the standard owner's policy. However, the title company will also require a sophisticated 'ALTA Survey' which, on a residential property, will cost anything from \$2,000 to \$5,000, or more.

In other words, it is very rare for buyers to obtain the extended coverage on an owner's title policy - it just costs too much.

It is, therefore, critical that buyers make every effort to ensure the accuracy of the as-built survey themselves, before closing. Ask your Realtor to insist, next time, on a re-certification of the survey by a competent surveyor. (The quality of survey work varies, just like the quality of Real Estate services, so be careful also about your choice of surveyor). The standard MLS Purchase and Sale Agreement used by Realtors in Anchorage has a place for this condition to be inserted, and I recommend that you always take advantage of it.

You may want to read your title insurance policy also, which generally lists about 7 exceptions to the coverage, survey irregularities being one of them. Hopefully, the easement you discovered is not a severe hardship to you.

Dear Dave: My son just got married and I am trying to encourage him to buy a home rather than rent. He thinks it is too hard to obtain finance. What can I say?

Answer: Alaska has some of the most flexible rules for granting home loans that you will find anywhere in America. There are programs for people with low incomes, credit problems and other personal difficulties.

As well as traditional FHA, VA and Conventional financing, this State has made it possible for thousands of people to purchase homes through Alaska Housing Finance Corporation, Neighborworks , Cook Inlet Housing Authority and other In-State organizations.

I would say that if you can buy a home anywhere, Alaska is as easy a place as you will find. Furthermore, the United States of America as a whole has done more to make the home ownership dream come true than almost any other country in the world. That's why over 70% of all Americans own their own homes.

Tell your son to make an appointment with a Lender this week. Even if he and his wife do not qualify (I bet they do!), the Lender will give them a roadmap of how to become qualified in the next few months. Also advise him that current interest rates, at record lows, will most certainly increase by mid - 2015.