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Alaska REAL ESTATE
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YOUR CAT, AND CONTRACT, CAN EXPIRE

When I studied contract law at the St. George Technical College in New South Wales, Australia, I was fascinated with the elements required for a legally binding contract to exist. Now that I deal with Real Estate Contracts, I find it interesting to see the evolution in how contracts are written. Of course, in ancient days your tribal chief might make agreements in a less formal manner, nothing in writing at all – e.g. a few grunts between tribes and a head of cattle or two exchanged for your next wife, enforceable with a lively party of warriors.

When you look at today's written agreements, enforceable by a court of law, you realize how far society has come in ensuring transactions between parties are fair and just, though good faith is still an essential element for success. Possibly the most important single line in the entire 9 pages of the standard Alaska MLS Purchase and Sale Agreement is tucked away on page 5 as Paragraph 11.

"This sale shall be recorded on:- _ _ _ _ _ (date), or earlier by mutual agreement."

All contracts that I have ever seen have a time element. This is because agreements between 2 parties to do something are useless unless they are performed on a schedule. Would you buy a car with delivery promised at 'an indefinite future date'? How many years would you be willing to wait for your shiny new vehicle to arrive, 25 years? 100 years? – probably not.

The reason for Paragraph 11 is that the purchaser of a piece of real estate will only purchase if the transaction can be accomplished within a specific time frame. Likewise, the seller enters into the agreement to sell, only if the sale can take place within a specific time frame.

One of my friends recently lost their family cat. It hurt them badly. However, your cat lives for a certain time and, eventually, will expire. When the cat is sick, you can sometimes save it, but not once it expires. Your cat, and your real estate contract, can expire. Once the timeframe for recording the sale of real estate passes, the contract is expired, dead! (Resurrection is sometimes possible, but not guaranteed.)

The only exception to this principle is if some additional medicine is introduced to the dying contract, before it dies, by way of language added (Addendum) to alter the contract to provide an extension of the date for recording prior to its death.

The reason I belabor this seemingly inane subject is that I don't think many folks understand that a real estate deal can die so easily. If the buyer makes every decent effort to do his part in submitting information to his lender, but the lender cannot provide documents for the closing to occur on time, the lender has effectively killed the customer's purchase - - - - unless the seller agrees, formally, in an addendum, to extend the time for the recording to take place.

Now, while you may think this could upset a buyer as much as losing a pet, just imagine you are the seller! You waited and worried for 45 to 60 days, you did all the repairs, you paid $700 to the buyer's lender for an appraisal (not so in other States), you incurred other expenses, made your moving plans, arranged for your kids to go to a new school, plus you withdrew your home from the market, only to find that your contract expired. Why? Because the Lender chosen by the buyer failed to deliver an approved loan and closing documents in time for Paragraph 11 to be executed.

Now the seller is sweating! There is no way to force a buyer to proceed on an expired, or 'dead' contract. They even get their earnest money back if they acted in good faith. You need added terms (Addendum) to alter your agreement and extend the date for recording, but this is only possible if the buyer will sign it.

So often, I see Lenders failing to be aware of the expiration date in a real estate contract. Realtors constantly find themselves having to negotiate extensions of agreements, at the 11th hour, to keep the deal alive because for a day or 2 here, and a day or 2 there, the buyer's file sat on some loan processing desk but nobody worked on it. These absentee days add up, one at a time, and this is what results in a dead transaction, or at least a visit to the real estate Emergency Room.

The bottom line is this – Both Realtors, and Lenders, must pay more attention to Paragraph 11. A dying cat makes families sad, but a dying real estate contract could make someone very angry.

The date entered in Paragraph 11 when the offer is made should allow a 'reasonable' time for completion of inspections, repairs and the processing of the borrower's loan application. However, the choice of lender is also a critical element in the negotiation of the contract. Sellers have every right to reject the buyer's choice of a lender if they know them to be less competent in performing than some other lender. Would you fly on an airline that regularly failed to arrive at the destination on time or, worse still, ran out of fuel in the air?

In selecting your lender, you need to be as fussy as selecting your car dealership, airline, real estate licensee, or your veterinary specialist. Ask your Realtor and your friends about their experience with lenders, so you can be sure your plans to purchase (or sell) that piece of real estate will actually come to pass in a timely manner. Out-of-State lenders can be particularly problematic, though not in every case. With local lenders, their reputations build according to performance.

Those who have not been schooled in Law may not understand the legal expression "Time is of the Essence", but we all know that if an ingredient or flavoring 'essence' is left out of our Starbucks latte, we find it difficult to swallow. Time is an essential element, or essence, of a real estate contract (see Paragraph 18 of your Purchase and Sale Agreement), and the failure to recognize its central and vital importance will leave your home purchase, or sale, in ruins.

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