

Who Is Reading Your Tea Leaves?

April 14, 2013

Negotiating the purchase or sale of real estate involves gathering information, processing data and reading the tea leaves. Of these components, reading the tea leaves is the aspect of negotiation that is likely to save you the most money.

Gathering information and processing data about the property concerned are foundational to making your case in an offer, or making your case as a seller, but reading the tea leaves (i.e. intuiting the motivation of the other party in the transaction) is what will determine the ultimate price and terms agreed more than any other factor.

When purchasing or selling real estate, there is no substitute for your own intuition supplemented by the negotiation skills of a real estate professional who represents you, either as buyer or seller.

Only under exceptional circumstances should you waive your right to be represented by a real estate licensee for this very reason. A skilled Realtor can not only give you data to process but can conduct the negotiation of your real estate deal.

The Alaska Statutes provide for licensees to either (1) represent you (buyer or seller), (2) simply give “specific assistance” without representation, or (3) to be entirely “neutral”, giving assistance but not representing either party.

Number 3 was considered such a questionable position that Statute writers required you as a buyer or seller to formally “Waive” your Right to Representation on a form boldly titled “Waiver of Right to be Represented”. Before ever signing this authorization for a licensee to proceed in a “Neutral Capacity” always ask yourself why you might want to give up the right to be represented.

Waiving your right to representation is somewhat akin to a boxer going into a fight without a coach or, more accurately, since both parties (buyer and seller) must agree to waive this right, like 2 boxers going into the ring with the same coach!

There are some exceptional circumstances where allowing a licensee to act in a neutral capacity with the execution of a waiver is to your benefit. However, in negotiating a transaction aggressively, you are far better off to insist on representation.

This applies even more to buyers purchasing new construction where it is beyond reason to expect the Listing Licensee to practice “neutrality” when their relationship to the builder involves multiple transactions for the same builder (seller) which provides most, if not all, of their income.

Now we have boiled the water, let’s pour the tea. Think about it. The other party in your real estate transaction will be seeking the best financial outcome for themselves, be it seller or buyer.

In my view, interviewing a Realtor who will represent you should include a discussion of their negotiating approach and philosophy. This is one of the most valuable tools your licensee can provide, since it will put thousands of dollars in your pocket.

Now, if you don't care how much the purchase price amounts to, or who pays what closing costs, and what other terms are negotiated, then a licensee in a "neutral capacity" is exactly what you want. Plenty of information, plenty of data processing, but don't ask them to read the tea leaves and plan any strategy that advances your greatest financial interest.

There are a handful of courageous licensees in town that refuse to serve buyer and seller in the same transaction. I am not one of those because there are certain rare circumstances under which your "Waiver" may in fact benefit both parties. Nevertheless, I admire the ethical stand of these Realtors.

Alaska's Real Estate Statutes are rather unique in the United States replacing some 10 years ago, the tried and tested Law of Principal and Agent. Prior to the new Statutes, written by local real estate zealots, your Realtor was either Buyer's Agent, Seller's Agent or Dual Agent. This was easily understood.

The new laws rather muddied the waters, providing for 4 kinds of relationship and, more importantly, altering the legal status and liability of real estate practitioners. To be fair, it also made more specific their responsibilities.

The bottom line is this:- What sporting event can you name, in any age group or field, where each team does not have their own coach planning and executing a strategy to win the competition with the other team? The best coaches are those who can not only train their team, but intuit the opposing teams strengths and weaknesses.

A Purchase and Sale Agreement for Real Estate results from an Offer being made and Counter Offers moving back and forth between the parties, like the ball in a football game, until terms are agreed and signed off.

Waiving your right to be represented in this life altering event is something you should think long and hard about. The match up could cost you more than a black eye, and a cup of tea won't fix it!