

**Without Good Faith Only Lawyers Prosper**  
**September 21, 2014**

**Dear Dave:** Sometimes I worry about society. I sold my home and, after inspection and appraisal, the buyer simply walked away, no particular reason. His agent said that he changed his mind. My agent is now fighting for the \$3,000 earnest money but that hardly compensates me. What else can I do?

**Answer:** You can sue the buyer for 'Specific Performance', but is it worth your trouble and stress? The bottom line is that, without good faith, only lawyers prosper.

I have discovered over many years of real estate practice that, unless both parties to a contract choose to act honorably, and in accordance with their written promises, there really isn't a lot you can do. Attorneys have told me that unless your suit is for \$50,000 damages or more it's not worth hiring the legal profession to go to court.

I have previously recommended higher amounts of earnest money, which perhaps should be passed over to the seller early in the contract, and this is the strongest action I can suggest to keep buyers motivated.

Otherwise, business still functions on a degree of trust, and you have to keep believing that the majority out there in 'society' do keep their word, and do follow through with commitments made.

**Dear Dave:** When we left Idaho and sold our home there we gave the buyers keys on the day they closed on the property. Now we're buying a house in Alaska but have to wait 4 days until recording to gain access to the home we just closed on. What's wrong here?

**Answer:** There is no Alaska Statute, or Federal Law, that governs keys or when they are handed over in a real estate transaction. The parties to the sale can make whatever arrangements they wish to make.

However, there are some legal principles about ownership which probably were at the bottom of your 4 day waiting period. When you say that you 'closed' on the new home, this means you signed papers at the Title Company and paid your money, right? Did you also sign 'Escrow Instructions' authorizing the title company to proceed? I'm sure you did.

In those papers it was made clear (and the escrow officer should have told you) that closing is not considered complete, and recording cannot take place, until all funds are received and all signatures obtained.

Title transfer, and your ownership, are only consummated when the Deed is recorded at the local Public Recorder's Office and, until that moment, you do not own the property. If a seller hands over keys prior to recording he is taking a rather substantial risk in allowing you to occupy a property which you do not own.

There can be many reasons why a transaction may not record, even after closing. You may have signed the papers, and paid the amount due with a Cashier's Check, but the seller might not yet sign, or maybe the seller's ex-wife makes a claim (lis pendens) on the title.

Other liens may have just been filed against the property, such as a lien by a contractor who recently worked on repairs at the home, or a lien by the Child Support Enforcement Agency. These liens may only be discovered when the title representative attends the Recorder's Office with the Deed.

Other delays, or even cancellations, can be caused by the Lender refusing to fund the loan. Your 4 day delay is not untypical when dealing, say, with an Out-of-State lender who needs review time after the closing papers are signed.

Homebuyers need to realize that closing and recording are separate events, and should not make plans to move until the recording date can be fairly well projected.

**Dear Dave:** My husband and I enjoy your column and try to read it every week. We have a question. We bought a townhome this year, built in 1984, and it was in such good shape that we waived our right to a home inspection. Everything turned out fine but our friends say we were stupid not to have an inspection. The previous owners were really nice people and it was obvious to us that everything was kept up. We'd be interested in your comments.

**Answer:** When I lived in Australia I had a home on 5 acres in Tamworth, New South Wales, and was in the habit of backing out my car every morning into a huge, empty turnaround area outside the gate.

On my wife's birthday I took off as usual, forgetting that friends of hers had stayed overnight. They were really nice people too, but they parked in my turnaround. Like yourselves, I didn't perform an inspection, and reversed into a big heap of trouble!

You should always have a home inspection. Even the most meticulous of homeowners may not know that the railings on their deck are unsafe for your children, or that Carbon Monoxide detectors are required by law in the hallway outside bedrooms.

I cannot imagine any circumstance in which a homebuyer would not want to invest \$350 in a home inspection. Furthermore, if standard documentation is used, by not performing an inspection you are deemed to find the property acceptable, and this would severely weaken your claim at a later date against the seller if something was in fact awry at the home.