



## DAVE WINDSOR ANSWERS YOUR REAL ESTATE QUESTIONS

### Bill of Sale is a Separate Contract

**Dear Dave:** I was reading your article last week about Amendments to contracts. You talked about Repairs but what about the Bill of Sale?

**Answer:** First, be it known that a Bill of Sale is a contract in its own right, provided it contains all the legal requirements of a valid contract.

The idea of the Bill of Sale in a real estate transaction is to separate the real estate contract from any items being conveyed that are not real estate by definition. After all, your Lender is financing Real Estate only.

Real Estate is the land and anything permanently attached to the land, and anything permanently attached to the attachments. To put it more simply, the house is real estate (if on a permanent foundation) and fixtures inside the structure are real estate. A trailer home, for example, is not real estate, but the trees and plants in the yard are real estate.

Some items you may also be acquiring are not Real Estate but 'Personal Property'. Items such as the refrigerator, washer, dryer, drapes and furniture are not fixtures in the house and, therefore, should be sold by separate contract on a Bill of Sale.

#### **Should you provide the Bill of Sale to the Lender?**

1. If the Bill of Sale is designated in your Purchase and Sale Agreement as an 'Attachment' you must give it to the lender.

2. If it is not designated as an attachment, there is no need to include what is, in fact, a separate contract. However, the Bill of Sale cannot be used to defraud the lender by loading a lot of personal property in your deal for \$1.00 on a Bill of Sale which you are, in fact, financing in the price paid for the house. Any undisclosed Bill of Sale must be for a reasonable price.

3. The MLS standard Bill of Sale form is ill-conceived and not recommended for two reasons. One is that it gives an option to check a dollar value for the personal property being conveyed or to check "no value". A contract for "no value" is an invalid contract since a fundamental condition for a valid contract is that there must be some form of "Consideration" or value exchanged. Otherwise, it could be just a gift. A Bill of Sale for "no value" is an unenforceable contract.

The second problem with the MLS standard form is that it provides for you check items that are part of the real estate as well as personal property checkboxes. This is utterly

confusing because now you have some of the real estate on two contracts with separate terms and conditions.

My policy is to turn over the Bill of Sale to the Lender in every circumstance so that there is no hint of impropriety or illegality. Once the document is fully disclosed, whether it be for \$1 or \$5,000, then you as the buyer are clear of any charges that could be brought to bear. What is common in such cases is that the Lender may well ask that the Bill of Sale be 'removed' from the Purchase and Sale agreement and, at their request, you may do so.

As with the so-called "Repair Amendment", contract law remains in place irrespective of the ignorance of consumers and the poor counsel they may receive from their Realtor. It always pays to use a seasoned professional and, even in that case, you are still personally responsible for contractual commitments. If in any doubt, obtain proper legal counsel.

**Addendums and Amendments:** The consumer is also confused by the choice of boxes on another MLS form attached to, or used after, the initial agreement. Is it an Addendum

or is it an Amendment?

Whilst it can be strongly argued that the content of the form signed by both parties would be enforceable irrespective of what you call it, the following is a simple explanation:-

An addendum is a written expression of conditions that are part of, and attached to, the original agreement. An amendment is usually an alteration to some part of the original agreement at a later time during its execution. When repairs are agreed, an Amendment is generally the designation of that procedure during a real estate transaction.



Dave

Windsor

*The information presented in this column is intended for general informational purposes only and it is not a substitute for situation specific guidance by the appropriate licensed professionals. If you have specific concerns or a situation in which you may require professional help, you should consult with appropriately trained, qualified and licensed specialists. This column, its author, the magazine and publisher are not responsible for the outcome or results of relying upon the contents of this column in any given situation.*