WHEN BUYERS ACT BADLY

Suppose you sign a contract to sell your home. Then you spend $5,000 doing repairs as requested by the buyer. Of course, you have your home professionally cleaned to give the buyer a pleasant move-in experience. All is good until...

Out of the blue, just before closing, the buyer requests a two week extension. You kindly agree, reasonably asking that he cover your extra carrying cost as a result of his delay. Ridiculously, the buyer grouses about this reasonable request, and then becomes non-communicative.

This happened last week. The buyer's last minute shenanigans and cavalier attitude ticked me off, so I put my attorney hat on and laid down the law to bring him back to reality.

Below is a slightly tweaked copy of the email I sent to the buyer's agent. I am sharing it in this week's article so you know your rights as a home seller when buyers act badly.

Dear XXX,

Our sellers acted in good faith, *relying on your buyer closing the sale today, as scheduled. They performed all requested repairs, moved out timely, and had the home professionally cleaned so your buyer would have a pleasant move-in experience.*

Now it appears your buyer *is not closing on time, and you are having difficulty reaching him. While it's not your fault, your buyer is engaging in reprehensible and inexcusable behavior, and will be dealt with accordingly.*

While I am not acting as an attorney *in this transaction, I am an attorney (and a darn good one). Therefore, I will advise our sellers of their rights and aggressively assist them in enforcing those rights.*

If your buyer does not deposit *the full purchase price and close the sale today, we will send a three-day cure notice (as required by the contract). At that point, we will not consider granting an extension of closing to cure your buyer's contract default.*

If your buyer does not close *the sale during the three-day cure period, I will advise the sellers to take legal action for breach of contract. I will suggest that they demand damages for their daily cost of carrying the property, along with additional damages for diminution in sale price resulting from them having to resell quickly to mitigate the financial burden of making double payments (they purchased another home).*

I will also advise the sellers *to ask for punitive damages because your buyer has become non-cooperative and non-communicative in breach of his obligation of good faith and fair dealing under Arizona law, something courts implore.*

In addition to being liable *for our sellers' actual and punitive damages, your buyer should know that under Arizona law the prevailing party in a breach of contract action is entitled to an award of attorney fees. This means your buyer will pay his own legal fees and our sellers' legal fees too, which could easily exceed $100,000, even if a settlement is reached prior to a court hearing.*

We pride ourselves *on working diligently to make every transaction a pleasant and predictable experience for all parties. This is true regardless of whether we represent both sides. But when buyers act badly, we advise our sellers to enforce their rights strictly and aggressively, and help them do just that. That's what's happening now.*

If your buyer believes *he can escape liability because he does not have a loan in place, this is a miscalculation. He did not comply with his obligation to provide an LSU timely, did not order an appraisal timely, and did not provide his lender with required documentation timely. We checked. These are contract violations, effectively waiving the loan contingency.*

By the way, *I will advise our sellers that you should not be included in the lawsuit because you have been cooperative, acted responsibly, and done your best to facilitate the sale. As the buyer's agent, you did nothing wrong.*

The bottom line? *Your buyer will close the sale today, or sign the closing date extension exactly as I wrote it. This will require an additional $25,000 non-refundable deposit and a $300/day carry cost reimbursement to our sellers. If your buyer does not stop acting badly, be assured that he will look back and wish he had.*

- Greg

It's no fun to be mean. But sometimes we have to be firm to make others be nice. It's true bringing up kids, running a business, and when buyers act badly.

To your best year ever in 2019

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