

Tips for a Successful Home Sale or Purchase

These tips arise from decades of experience with litigation flowing from my representation of buyers, sellers, and brokers in home sales. For most home buyers and sellers, the transaction will concern their largest asset. All properties are unique, so all deals are unique. Careful, practical attention to legal details will limit disputes and make conflicts less expensive to resolve.

- 1. Brokers.** Do hire a broker. A good broker's expertise is worth the money, even for someone like me who closes complex real estate transactions on attorney-drafted contracts.
- 2. Choose the agent carefully.** Spend a LOT of time evaluating your agent/broker before listing or hiring. Interview for (1) how willing the agent is to follow your directions, (2) the agent's problem-solving skills for the inevitable transaction complications, and (3) what services the broker includes in the broker's compensation. Many listing brokers will provide specific marketing, clean up, and repair expenses as part of their listing fee. Also, make sure you have a viable, comfortable connection with at least one broker who owns the firm or manages the branch office. That broker should be a tremendous resource to you as well as your primary agent. That broker is getting part of the commission and will not be afraid to earn it.
- 3. Agent dynamics.** Agents want to close deals. Realize that very well-meaning agents, especially buyer's agents, may still encourage a sale on questionable terms, because they only get paid when a sale happens. If you are a buyer, give your agent very precise instructions of what you want. A good agent will be happy to focus on your exact requirements. Saves time for everyone. Remember, however, that the agent or broker must follow your directions as to sale price and terms. If you feel your primary agent is not completely cooperative, do contact the owner-broker for help.
- 4. Avoid dual agents.** A single agent representing both buyer and seller typically means that neither side receives complete, unbiased representation. If you are a listing party, you should prohibit your agent from representing the buyer unless you approve on a case-by-case basis, and make sure that the listing agreement so states, clearly.
- 5. Learn what your broker can do for you.** If you are selling, be willing to accept your agent's advice on what to do and what not to do to prepare a house for sale. The agent/broker knows more than you do about which repairs and clean-up will pay for themselves in a higher market price. It can be difficult to be objective about your home and treat the sale as a business transaction for profit. Be as responsive to your agent as possible.
- 6. Forms.** Use the CAR offer and sale forms, not the SF Realtors forms. The CAR forms are very good, but they are still written by brokers in part for the benefit of brokers. Whether buyer or seller, you do not have to accept any language printed on the form, and you can add other provisions you want. You can cross out provisions that unreasonably protect brokers, but the CAR forms do not have a lot of these.
- 7. Terms.** On the CAR form, the pre-dispute mediation provision aids neither buyer nor seller. You should strike it. If you are a seller, you want the arbitration provision, because it greatly favors the seller. Buyers should refuse the arbitration provision in all cases.
- 8. "As-is" provisions.** Often it is acceptable to buy "as-is," because California law will not enforce a comprehensive "as-is" provision. ALL sales of anything in California include the seller's obligation to make full disclosure of all known factors material to the decision of a potential buyer.
- 9. Spousal agreements.** If you and your spouse decide to hold real property as anything other than

as “community property,” be sure to have an attorney prepare a marital agreement in proper form. Oral agreements are not enforceable; even written agreements require careful drafting. Make sure the writing is signed before anyone can forget exactly what was agreed.

10. Disclosures. The legal standard for required disclosure is very broad. Any “material” omission can lead to litigation even in an “as-is” sale. If you are a seller, be sure to get your facts right on your disclosures. Don’t rely on memory. Provide copies of the inspection reports created when you bought the house, and of the inspections made by anyone at any previous time you thought about selling or investigated your property. Take your time and do a very thorough job. A legally proper disclosure should include from 50 to 1,000 pages, depending on how long you have owned the property and its history. If you just have 20 pages, you are not done.

If you are the buyer, read between the lines and ask questions. If the sellers disclose they filled in the swimming pool with all proper permits, ask why they filled in the pool. Leaking pools are one of the most common causes of soils failure. (In fact, ask if any neighbor uphill has filled in a pool.) If the sellers disclose their driveway is on a recorded easement over a neighbor’s land, ask if there is a written maintenance agreement and ask how maintenance is handled. For every report of “remodeling,” ask if any repairs were undertaken during the remodeling. Ask how often the sewer line is cleaned. Make written notes of everything the seller or the seller’s agent tells you about the house that is not also on a written disclosure statement. Write down who made the statement and date your notes. Keep your notes.

11. Investigations. Be cautious in using home inspectors from the home inspector industry, unless you have a great rapport with your broker-owner and are satisfied of his/her honest view of a particular inspector. Try to use an actual contractor or other tradesperson. Home inspectors want to disclose everything, which is good, but they often minimize the significance of their findings. If a home inspector sours a deal, the

broker may try a different inspector next time. At a minimum, if a home inspector recommends calling a soils engineer or any other expert for a further look – call a soils engineer or expert for a further look.

12. Title companies and Escrow. In Northern California, the title company is also the escrow agent. This creates a tricky conflict of interest, because you need title insurance and you need your transaction to be handled correctly. Be as careful selecting the escrow agent as your broker. By custom, the buyer will pick the title company, but a seller should ask the buyer to designate an escrow agent, too, and check out that agent. The escrow agent will process the transaction for both buyer and seller, so sellers can object to the escrow agent proposed by the buyer.

13. Insist that the escrow officer does the officer’s job. Always insist on sufficient time to review documents before signing. Do not accept advice on the documents, such as on the language of the deed, from the escrow agent. Talk to your broker (if the broker will talk to you, but most will not for liability reasons) or talk to an attorney. Almost never will the escrow agent know enough about your personal situation to advise you accurately on how you should hold the title.

14. Follow up thoroughly after escrow closes. Make sure you promptly receive copies of all documents from the escrow officer and check them for proper recording. Verify that the escrow agent has properly dispensed all funds and recorded/mailed all documents. Either buyer or seller may be making payments to third parties (brokers, lienholders, creditors) through escrow. Make sure that the payments you directed are received. Make sure that all lienholders formally release all liens. (Escrow agents are insulated by law from liability for failing to ensure that lien releases are recorded, so that critical job falls on you.) If you have an estate-planning revocable trust, you will probably need to move the deed into the trust; if the deed is to one spouse because the other has lousy credit and the house is purchased with community property, get the transfer deed recorded.