



Selling the Ol' Homestead

By Christopher G. Weigl, Esq.

Probably the most important aspect of selling your home is contracting with the best real estate broker as your listing agent and pricing the property correctly for the market. One successful approach that I have encountered personally is the setting of a listing price at or slightly below fair market value. This technique engenders a flurry of early activity and bids and many times a bidding war that achieves a sale price above and beyond expectations. Other approaches may better suit your own philosophy and personal financial circumstances.

Your broker will provide you with any and all written offers submitted and signed by prospective purchasers, whether through the listing agent or a participating broker on the other side. If acceptable to you as seller, you will sign the offer, thereby creating a contract subject to attorney review – a procedure unique to New Jersey transactions initiated by real estate brokers. The brokers will arrange for the delivery of the signed contracts to the respective attorneys for each of the parties, to commence attorney review. A \$1,000.00 binder is typically paid by the buyer at this point as good faith money.

Attorney review typically lasts three (3) days, but can be shorter or longer depending upon how quickly the parties can agree upon and execute the attorneys' work product. During this time, counsel for either of the parties may either accept or reject the form contract, or, in the vast majority of cases, propose amendments by way of a rider and/or a letter amendment setting forth revisions to the form contract. If the contract remains viable after this period by the attorneys' agreeing upon and the parties' accepting and signing such revisions, and the amendments being disseminated, attorney review is deemed successfully concluded. Any party may terminate the contract during the period of attorney review, for any reason or for no reason. In sellers' markets, this opens up the prospect of a higher offer being made to and accepted by the seller. In buyers' markets, the seller runs the risk of the buyer's grasping a perceived better opportunity elsewhere.

The additional deposit in most cases is paid within ten (10) days of the date of completion of attorney review.

The home inspection in most cases represents the last bastion of seller's control over whether the deal becomes firm and closes. Once the buyer's inspection report is received, the attorneys negotiate repairs and/or credits against the purchase price in lieu of repairs, sometimes assisted by estimates. Terms of the resolution should be confirmed by letter by and between counsel. At this juncture, the only remaining contingency is buyer's receipt of the mortgage commitment; in "all cash" deals, the deal becomes firm and noncontingent once the inspection contingency is satisfied.

Once the title searches, and, if necessary, the survey -- ordered by the buyer's attorney -- are in hand, and the buyer's committed mortgage lender, if any, authorizes it, a closing date is now set between attorneys after consultation with their clients. Before coming to the closing, a

final walk-through inspection is arranged by the participating broker; a credit or escrow will handle any eleventh-hour problems.

At closing, the title documents (e.g., deed, affidavits and municipal approval) are delivered by seller in exchange for the net sale proceeds from buyer. A federally-approved form settlement statement ("HUD-1 RESPA") is signed by all parties. Any and all mortgage balances of the seller and any and all liens against the premises are deducted from the seller's funds at closing, as well as the brokers' commissions and attorney's fees. In addition, New Jersey realty transfer tax (paid to the county and shared with the State) is charged to the seller at closing. Unless a senior is involved as a seller, entitling the seller to a partial exemption, this tax is exacted on a sliding scale and, by way of example, amounts to \$4,175 on a \$500,000 sale and to \$9,575 on a \$1,000,000 sale at current rates.

A common practice is for the seller to sign title documents in advance of closing, giving seller's attorney a written Power of Attorney to sign the HUD-1 RESPA (which is prepared at the eleventh hour by buyer's attorney) at closing on seller's behalf and to receive the net sale proceeds. This enables a smoother move and/or possibly saves a sick day or vacation day from work.

After closing, make sure you don't spend all your money in one place!

Mr. Weigl serves as Chancellor of the Ridgewood Knights of Columbus and is a member of the Ridgewood Chamber of Commerce. He has served as Chairman of the General Practice Section of the NJ State Bar Association ("NJSBA") and sits as a member of the Executive Committee of the St. Joseph Regional H.S. Alumni Association. He is a former Pastoral Council member of Our Lady of Mt. Carmel R.C. Church, a past Treasurer of and legal counsel to Ridgewood First Night and a coach and sponsor of youth softball and basketball teams. Mr. Weigl also lectures and publishes on the law.

A native and life-long resident of Bergen County, Mr. Weigl is a graduate of St. Joseph Regional H.S., Fairfield University and Rutgers School of Law, all on scholarship. He is admitted to the bars of NJ and NY, is a member of the NJ State and Bergen County Bar Associations and has been honored as General Practitioner of the Year 2000 by NJSBA.

CHRISTOPHER G. WEIGL
Attorney at Law
145 Prospect Street
Ridgewood, New Jersey
07450
(201) 689-7772