

Checklist and Best Practices for Real Estate Agents

Help your transactions run smoothly and avoid the most common pitfalls with these best practices:

- Confirm both buyer and seller have signed the final version of the contract. Make sure there have been no changes between signatures.
- Track your deadlines: inspection deadline; financing deadline (if applicable); title deadline; title objection deadline; survey deadline.
- Attach all required riders to the contract: for instance, the HOA rider; Condo rider, lead paint disclosure; etc.
- Make sure to allocate Association assessments as your client intends.
- Confirm the state of pending special assessments.
- Don't forget the flood disclosure, which is now required.
- Control title and use an attorney. The old days of trying to insist the "other side" pay for title are long gone. When your client controls title, your client picks who does the closing. Ensure the person doing the closing is an attorney who works for your client, not the other side.
- Protect your commissions – make sure your buyer signs a buyer-broker agreement; and make sure the contract and commission agreements clearly confirm you are getting paid
- Head off the risk of wire fraud by discussing wire fraud with your buyer before you submit or accept any offer.
- Resist the urge to answer legal questions. It is perfectly appropriate to say "I am not an attorney" and/or "I don't know."
- Don't speculate about the property, its condition, or its history. It is perfectly okay to insist your client or the other party conduct their own due diligence.
- Buyers should always get a survey (unless buying a condo in which case the concept of a survey is inapplicable). It has become far too common to hear "surveys don't apply in cash deals." While a survey is not required in a cash transaction, it is still best practice to get one
- If your client is buying new construction or pre-construction, suggest they get an attorney involved before signing a contract. Once the contract is signed, the damage may be done. Builder/developer contracts tend to heavily favor the developer at the expense of the buyer.

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- Be especially careful if the seller is a foreign citizen or otherwise subject to FIRPTA. FIRPTA creates unusual risks for buyers, not just sellers.
- As a general rule, a larger deposit increases the likelihood that a transaction will close.
- Understand tax portability, the tax exemption for sale of a primary residence, and the homestead exemption. These factors may provide a strong incentive to buy or sell sooner rather than later.
- Know the difference between a trust and an estate; and a trustee versus a personal representative. The different concepts have very different consequences. If you encounter them, get a closing attorney involved sooner rather than later.
- If dealing with simultaneous closings – where one party is selling a home and buying another near the same time – consider keeping both closings at the same closing office
- Be aware of lurking property tax issues if the seller abandoned a homestead last year, in which case property taxes may increase dramatically for the buyer later this year.
- Beware special assessments may be hiding on the tax rolls, which a seller may be obligated to pay in full if not allocated to the buyer.
- Remember that all contingencies expire. If your buyer needs to cancel on account of any contingency, make sure to timely deliver written notice of cancellation.
- Is the property tenant occupied? If so, this affects the title.
- The law requires sellers to disclose known, latent, material defects.
- Obtain an escrow letter evidencing the buyer's deposit (s).
- When representing a buyer in a finance deal, notify the lender early of the financing deadline, and remind the lender to let you know before the end of the financing period if the loan is not ready.
- Be thoughtful about personal property, e.g. furniture, appliances, window treatments, etc.
- Ensure the buyer timely makes application to the Association
- Ensure the buyer timely receives all HOA or condo documents as required.