

## Playing Lawyer

How many of you thought the title was *Paying Lawyer*? Never mind, we are talking about *playing lawyer*, which I would be the first to acknowledge is not nearly as much fun as playing doctor! But, from my experience on the HotLine, I know that more of you play lawyer than doctor.

Here is an example of what I mean. The buyer's agent received a call about seven months post-settlement from her buyer with an extraordinary complaint. Though the agreement of sale represented that the buyer was purchasing a property serviced by the public sewer system, and though buyer had received and paid public sewer bills, his property was actually connected to a septic system! For a number of reasons, including the malfunction of the system and a recently passed municipal ordinance, the buyer was going to have to connect to the public sewage system. The anticipated cost was \$17,000-\$20,000.

The reason the buyer called his agent was, obviously, to find out whether he had recourse. Is the seller, whom everyone believes had no knowledge that the septic system existed (he too had paid sewer bills for years), liable? The seller did represent in the agreement of sale and his disclosure form that the property was served by a public sewer system. Was the municipality on the hook because it had collected fees and, if it was, did the buyer get a return of his payments or a free hook-up to the public system?

The facts behind this problem, and the specific answers, are not so important. It could be any other post-settlement legal issue that is presented to you by your buyer (more often) or your seller (less often).

The answer, regardless of the specific question or the legal issue, is not to give advice, because to do so probably takes you across the line of practicing law without a license. That alone should keep you from answering the question. But also consider that when you give advice, you become liable if the advice is wrong or incomplete – and you are not even getting paid for that advice! Let's see: increased exposure to liability and no chance of payment, not a good idea.

So what can you do without seeming callous to your client and his/her needs? A call to the HotLine is in order. Of course, we will tell you not to give legal advice, and we will repeat what I have said before in this article about your liability being increased and that you are not earning any additional commission or fee, as if you need to be reminded. But we will discuss the legal issue and give you some insight.

In our example about the sewage system, we look to the Pennsylvania Supreme Court decision in *Bortz v. Noon* which clearly reiterated a longstanding principal that a buyer is entitled to have the transaction rescinded when the purchase was based upon an innocent misrepresentation of a material condition by the seller. The sewage disposal system of a residence is clearly a material condition. Even though the seller was

unaware of the problem, his representation that the property was connected to the public system was in error. The rationale for permitting rescission is that the parties entered into the agreement by mutual mistake, and the buyer should not be penalized for having relied on the representation, despite the fact that seller did not act maliciously, fraudulently or even negligently.

Beyond an analysis of case law and statutory law, lawyers will also discuss with their clients the multiple approaches to the legal problem that may be available. It doesn't make sense for a buyer to spend \$20,000 in legal fees to recover \$20,000 in damages. Is it worth going to mediation? Is there a claim for breach of contract since the agreement of sale indicated that the property was served by public sewage? Does the seller have a defense because the seller was completely unaware and the municipality was charging public sewer fees? And so on. Because even common legal problems are all made unique by their unique set of surrounding facts, lawyering isn't easy. I can say that from firsthand experience after 7-years of post-high school education and 33 years of practice. With all that the answer still is "it depends."

We understand that you have to attend to your former client's problem to maintain a good relationship and to foster the prospect of referrals. On the other hand, your expertise is marketing properties and not the resolution of legal disputes. You may well understand the issue better than some attorneys, but that will not change our advice. Give your client the benefit of your ideas, but make them pledge to pass those ideas along to their legal counsel. If they refuse to go, that is understandable and something that you will have little control over. You can acknowledge their decision without agreeing to it. If possible, follow with a note or email stressing the importance of getting the benefit of a review by legal counsel.

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