

AVOIDING MALPRACTICE

by Harold I. Levine

My best client, but I mean my very best client, called me one day with a favor to ask. His son and daughter-in-law were buying a home and selling their current home. Would I handle it? Certainly! No problem. When I looked at the contract, I realized that I was looking at a blueprint for disaster. They had contracted to sell their existing residence and buy a new home on the same day. There was absolutely no possession after closing on the house they sold, whether or not their purchase came through. If for any reason they did not buy and sell with clockwork precision on the same day, they would either be living with their in-laws or be in default. What happened subsequently justified my worst fears and brings to mind these points.

If the client is buying and selling and intends to sell his or her house at one o'clock, get the proceeds check and purchase the other home at three o'clock, advise the client at the outset as follows:

1. It probably won't work. It requires you, as their lawyer, to coordinate two title companies, two sets of lawyers, two lenders, and two escrow agents to pull off the turnaround closing on the same day. Given the problems of the ordinary real estate closing and the problem of coordinating the eight parties listed above, it is easier to launch a NASA missile. Tell your client at once that the chances are slim.
2. Insist that your client be able to retain possession after closing on the home the client is selling, so that if there is a problem with the purchase, the client is not on the street or facing a heavy possession penalty.
3. Insist that the contract for the sale of your client's home be a strong one: plenty of earnest money, strong penalties; after all, on the strength of this contract, the client is purchasing another home.
4. Immediately have your client arrange a gap or swing loan on the present home so that if the sale of that residence fails, your client has a source of funds to purchase the home contracted for without losing the earnest money.

Above all, tell the client that to predict a month or two in advance that you will be able to sell your house, get a proceeds check, walk across the street, purchase another house with the proceeds, is the exception and not the rule.

This brings up the other problem, which is related to "that time of the month." The last week of each month has been described by one lawyer as a "bad Fellini movie" in terms of getting an appointment and getting closed.

I called a title company on July 20th for a July 31st closing and asked to set it up. First there was silence, and then wild bursts of laughter, as if I had come from another planet. Gleefully, I was told that the first opening was on August 7, downtown, but I could close in Palos Heights on August 2nd, Rockford on August 1st, or if I really needed to close, I could close in Kankakee on the 31st. The moral of this story is two-fold:

1. Remember that the last week of every month is a zoo in terms of commercial escrow and title companies. You have to plan long in advance. Therefore, whenever possible, try to close in the beginning or the middle of the month, especially on complicated transactions where closing problems are likely to occur.

2. The benefit of Attorneys' Title is never more obvious than at the end of the month. When the end of the month comes, and you can't get near the escrow company, think of the convenience of closing in your office, and savor what Peter Birnbaum says is a bad Fellini movie.