

## WHY LAWYERS MUST HANDLE RESIDENTIAL REAL ESTATE TRANSACTIONS ON AN HOURLY BASIS

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Imagine this conversation between a prospective purchaser of a single-family residence and his lawyer:

"Now, Mr. Attorney, I would like you to handle the purchase of this house for me, and before we start I would like to tell you exactly what I expect from you:

1. I expect you to negotiate this contract because there are a lot of things I don't like. Specifically, the following points should be covered and redrafted so that they are made more favorable to me. They are:

- (a) Absolutely firm closing date;
- (b) Warranties about the house and all the personal property;
- (c) Strong inspection clause;
- (d) Long period to obtain mortgage;
- (e) Guarantee of delivery of possession;
- (f) Investment of my earnest money at interest.

2. There are two other things I must tell you:

(i) I already signed the contract, but the broker said it has an Attorney Approval Rider and you should review and renegotiate it. The Attorney Approval Rider gave me five business days, and there are twelve hours left. I would have been here earlier but the Sox were on tour for three days. In any event, I expect you to drop everything and renegotiate the contract ferociously on my behalf within the next twelve hours.

(ii) Secondly, my cousin is starting a small title company in Rockford and I would like to give him the business, so I want you to close in Rockford.

3. After the contract is negotiated, I expect you to advise me about the current mortgage market and where I can get the best deal. I expect you to help me with all the paperwork and get my divorce decree and four satisfactions of judgments so my credit is approved. I expect you to keep after the lender every day, and of course, if the term for the mortgage set forth in the contract expires, I expect you to obtain and negotiate the necessary extensions of

the mortgage contingency clause, so it doesn't become a cash deal. If the lender doesn't answer the phone, I expect you to go there personally to expedite the loan.

4. This is vitally important because we are selling our house on the morning of August 1st and purchasing this house at 2 p.m. that afternoon. I won't need you at the sale of the house because the broker said there is nothing to it when you sell. However, I must close because my wife is seven months pregnant and has already picked out the wallpaper and will lose the baby from shock if we don't close on the house at 2 p.m., on August 1st.

5. After we get the contract and mortgage all straightened out, I will expect you to clear title. I have six unsatisfied judgments but they are all paid and you just have to get releases. I don't remember the case numbers. I also expect you to go over the figures and set up the closing.

6. I expect you to review all the mortgage documents carefully, which I understand will be available about thirty minutes before closing, and to close the deal.

7. After the closing, I want a written summary and all my papers.

8. Now as to fees: the broker says he can get me a lawyer who will do it for \$175, there is a legal clinic which will do it for \$200, and a young lawyer who just opened up will do it for \$250. However, since you have been the family lawyer for 20 years, we will pay you \$350, which is above the going rate, but you had better do it perfectly."

Fellas, in our heart of hearts, down deep, we know that there is something terribly wrong here. The transaction will take seven to ten hours. Some real estate transactions involve more hostility and anxiety than most trials. They are the biggest purchase an individual will make in his lifetime and there are overwhelming demands on the lawyer. The time frame leads to increasing claims against lawyers, and the clients are totally unforgiving. In light of all of this, we still charge a flat fee of only \$175, \$250, \$350 or \$500 on the average. The real estate broker, however, charges a fee based on the value of the house. Similarly, if you call the plumber, he doesn't say, "I charge \$50 a house." He says, "Let me look it over and we will bill you on an hourly

rate plus overtime." Only the lawyer in the real estate transaction quotes a flat fee unrelated to time commitment, difficulty, or house.

Let's consider the facts:

1. Real estate transactions are most complicated; the loan market is chaotic; and thousands of mortgages hang on strands and chains of commitments which are extended or expiring. These transactions require split-second timing and accelerated drafting by lawyers, as well as increased competence and technical skills.

2. The contracts are more complicated. For instance, the DuPage residential contract has fifteen different riders which can be attached, each with serious legal implications and consequences.

3. The market is explosive, demanding quick action by lawyers so that rates can be maintained, commitments met, and transactions closed.

4. The laws are changing, exposing lawyers to greater liability and claims, and extending liability to third parties. If you have trouble sleeping, don't read: *Gruse v. Belline*, 138 Ill.App.3d 689, 93 Ill.Dec. 297, 486 N.E.2d 398 (1985). Clients are unmerciful and will pursue lawyers because of their expectations.

What is lacking is a sense of professionalism. Lawyers should treat residential closings like every other item of legal service and bill on an hourly basis. They should have a detailed engagement with the client, letters spelling out each party's rights and responsibilities, and pre-printed letters to deal with the Attorney Approval Riders. For example, who is responsible for monitoring the mortgage contingency, so that the transaction doesn't become a cash deal? In a future issue, some of these forms will be reproduced. We should at least be as professional as the plumber.

However, given the enormous scope of the attorney's undertaking and responsibility, the only way a lawyer can do a real estate transaction for such a low price is to cut corners and not do all that should be done. Because lawyers try to do \$1,000 jobs for \$250, there are thousands and thousands of bombshells in lawyers' and lenders' files waiting to explode. And, when the problems start showing up, those lawyers are going to get sued.

Sure, some will, but you don't have to purchase a ticket on the Titanic for \$250. You are better off going fishing.