Attorney’s Corner-Legal Tip of the Month

**ISSUES TO ANTICIPATE WHEN YOUR LISTING WILL INVOLVE AN ABSENTEE SELLER AT CLOSING**

As closing attorneys, we see more and more instances of  absentee sellers for residential real estate closings these days. There are several issues to anticipate when you have a listing and know that the seller will not be in attendance at closing.

First, do you want to plan for a “mail away” closing to the seller, or arrange for someone to sign by power of  attorney. Because a power of attorney will need to be witnessed and notarized, consider that it may be just as easy to have the few documents that the seller will need to sign emailed to the seller to execute. The seller will need to execute the documents in the presence of a witness and notary, but can avoid involving a third party to appear at closing on the seller’s behalf.

If a power of attorney is to be used, be sure that the closing attorney is made aware of this well in advance and that the power of attorney is a specific power of attorney (specific to the transaction, referencing the specific property), either prepared by the closing attorney or approved by the closing attorney and the title insurance company. Only in very limited circumstances will a general power of attorney be allowed. The title insurance company may require a doctor’s letter of incompetency to use a durable general power of attorney.

If your seller is not in the U.S. at the time of execution of the power of attorney or closing documents, you will need to carefully coordinate the appropriate documentation of the official witness or notary from a foreign country with the closing attorney. An Apostille, which is a document evidencing the authority of a foreign notary from a country that is a participant in the Apostille Convention (Hague Treaty Convention), may be required. See <https://www.gsccca.org/notary-and-apostilles/apostilles/hague-apostille-country-list> for a list of countries that participate.

With respect to an out of state seller, there may be a 3% Georgia withholding tax deducted from the seller’s proceeds and remitted to the Georgia Department of  Revenue. This is not required if the seller occupied the property as his or her principal residence for 2 out of the last 5 years preceding closing, or if the property is being sold at a loss from a tax standpoint, or under other very limited circumstances. Exploring the possible exemptions for your seller in advance of closing is advised.

If your seller is a non-resident alien, there may be 10% of the sales price (not gain) withheld at closing and remitted to the IRS under the Foreign Investment in Real Property Tax Act (“FIRPTA”). There are exceptions, but this is something you will want to explore with your closing attorney even prior to listing  a property to avoid a surprise at the time of closing. The requirement to remit 10% of the sales price can make the difference in the seller being upside down and needing to bring cash to closing.

Anticipating these issues and discussing them with your closing attorney well in advance can make all the difference in completing a smooth closing when your seller will not be present.

**October 2014 Existing Housing Sales Reach the Greatest Level in 13 Months**

*Source: Dr. Ted C. Jones*

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October 2014 existing home sales ran counter to typical seasonality, posting the greatest number of sales year-to-date, coming in at a seasonally-adjusted annualized rate of 5.26 million properties according to the National Association of Realtors® (NAR).   [Read more >>](http://blog.stewart.com/stewart/2014/11/21/october-2014-existing-housing-sales-reach-the-greatest-level-in-13-months/)

**Housing sales inventory continues to grow in October**

*Source: Housingwire.com*

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The number of homes for sale continued to increase across the U.S. in October, a good sign for buyers, but mainly for those on the higher end, according to the latest data from Zillow (Z) Real Estate Markets report for October.

[Read more >>](http://www.housingwire.com/articles/32135-housing-sales-inventory-continues-to-grow-in-october)

**Mortgage Applications Up in Holiday-Adjusted Survey**

*Source: Themreport.com*

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Mortgage loan applications rose nearly 5 percent last week on a surge in home purchase activity, according to figures released Wednesday.    [Read more >>](http://themreport.com/news/origination/11-19-2014/mortgage-applications-holiday-adjusted-survey)