



Bank Manipulation: Mistakes Can Be Expensive

By Sue Saunders, NVAR General Counsel

We are all struggling with the bank owned property sales and the endless maneuvers and conditions the banks are making in listing and selling their foreclosed properties.

Today I heard from a buyer's agent of yet another bank manipulation. This agent told me that the seller bank wants the buyer to begin the due diligence BEFORE the seller bank had actually signed the contract. Seller bank wanted the buyer to open escrow by depositing the earnest money deposit and to begin spending money on inspections BEFORE the seller bank had actually signed the purchase agreement.

This is very risky for the buyer. Nevada law only offers protection to the buyer in a contract for the purchase of real property if the seller has signed the contract. NRS 111.210 specifically states,

NRS 111.210 Contracts for sale or lease of land for periods in excess of 1 year void unless in writing.

1. Every contract for the leasing for a longer period than 1 year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

2. Every instrument required to be subscribed by any person under subsection 1 may be subscribed by the agent of the party lawfully authorized.

[57:9:1861; B § 285; BH § 2626; C § 2696; RL § 1071; NCL § 1529] + [58:9:1861; B § 286; BH § 2627; C § 2697; RL § 1072; NCL § 1530]

This means what it says. A purchase contract for real property is void unless it is in writing and signed by the seller.

So, let's say that Buyer 1 makes an offer and the seller bank verbally says they accept, but the want him to start due diligence before he has their signed contract. So Buyer 1 does his inspections before seller bank signs the purchase agreement, then seller bank gets a better offer. Seller bank could accept Buyer 2's better offer and tell Buyer 1 to "kiss off". Buyer 1 has no recourse because he did not have a signed contract. Buyer 1's contract with seller bank is void. Buyer 1 is out hundreds of dollars for the inspection costs. And, if Buyer 1 opened escrow, he probably has a very long wait to get his earnest money deposit (EMD) refunded (since we all know it takes REOs very long periods of time to get documents signed to release the EMD).

Buyer 1 does have arguments to force the bank to sell the property to him, such as detrimental reliance (Buyer 1 spent money for inspections in reliance on seller bank's verbal promise); but that requires a law suit to enforce.



Most importantly, INFORM YOUR BUYERS of the risks of spending money on inspections before the contract is signed by the seller bank.

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