

REAL ESTATE LAW

Right of entry agreement important

Dan Developer wants to purchase Blackacre, a large tract of raw land, and construct a sizeable multifamily development on it. Sally Seller is the owner of Blackacre.

Dan and Sally commence negotiating a purchase and sale agreement for Sally to sell Blackacre to Dan. During negotiations, Dan and Sally discover the negotiation process will take longer than they originally thought. Unfortunately, Dan is running out of time and even though the purchase and sale agreement has not been finalized, Dan needs to enter onto Blackacre as soon as possible to commence his due diligence analysis of Blackacre.

However, Dan does not have the right to enter onto Blackacre without consent from Sally. How can Dan solve this problem?

Dan and Sally could enter into a right of entry agreement. The agreement will provide Dan the right to enter onto Blackacre for a specific period of time, to conduct a due diligence analysis of Blackacre prior to the execution of the purchase and sale agreement.

The agreement will provide Dan the right of access to enter upon Blackacre and the right to conduct environmental studies, soil tests, drainage studies, surveys, engineering tests, and other various inspections and examinations of Blackacre; therefore, Dan will have the opportunity to ascertain the feasibility of Blackacre for his development purposes while the negotiation for the purchase of Blackacre is ongoing.

In return for allowing Dan the right to inspect Blackacre before the purchase and sale agreement is executed, Sally should insist Dan provide the following:

- Depending upon the situation, Sally may insist upon a fee paid by Dan;
- Dan should indemnify, hold harmless and defend Sally from any and all damages Dan or his agents may cause to Blackacre during the inspection;
- Dan should comply with all federal, state and local laws;
- Dan should obtain any permits, at his sole cost and expense, which may be required.

REAL ESTATE TIP

For IRS, rentals differ from owner-occupied residences

The Internal Revenue Service treats rental property and owner-occupied residences differently.

The Taxpayer Relief Act of 1997 allows married couples who sell their primary home to keep up to \$500,000 in profits tax-free; single filers keep up to

by law in order for him to conduct his due diligence activities on Blackacre;

- Dan and/or his agents should not permit any mechanic's or materialman's liens, or any other liens, to attach to Blackacre as a result of any performance of Dan's due diligence activities during the inspection of Blackacre;

■ Dan should notify Sally if he plans on doing any excessively invasive testing of Blackacre, and Sally should have the right to prevent Dan from doing such testing;

- Dan and any of his third-party consultants (i.e., land surveyors, engineers, etc.) should maintain and provide proof of casualty, liability, worker's

compensation, automobile and any other forms of insurance that Sally reasonably requires. Such insurance should name Sally as an "additional insured" or "insured", and

- Dan must restore Blackacre, in a timely manner and at Dan's expense, to the condition that existed before he was allowed onto Blackacre if his inspection

of Blackacre causes any damage.

Although the aforementioned merely scratches the surface of some of the basic conditions that Sally may insist upon, including in the agreement, such conditions will provide her with a strong foundation by which to negotiate the agreement.

Brett Slobin is an attorney in the Houston law firm of Slobin & Slobin P.C., and he can be reached at b.slobin@slobinlaw.com. His practice focuses on commercial and residential real estate.

The information contained in this article is not intended as legal advice but to provide a general understanding of the law. Readers of this article who have questions are those whose questions are attorneys for advice.



**If you don't,
your heirs will.**

