

REAL ESTATE Connection

IT'S ALL ABOUT HAVING THE RIGHT CONNECTIONS

FRIDAY, SEPTEMBER 19, 2008

THE PRESS OF ATLANTIC CITY



A Lawyer's Perspective

Be a grunt in the trenches

BY DENNIS SCARDILLI

The “ah-ha” moment of my role as a professional came several years ago at a Washington DC function held to honor fellow Wheaton College alum, and then-Speaker of the U.S. House of Representatives, Dennis Hastert. After hearing from an ambassador, members of congress and a representative of the President, I had a conversation with the alumni association director, a former executive assistant to a U.S. Attorney General. I pointed out that I was just a grunt in the trenches, not a big shot like most of the luminaries at the function. She responded by saying that work performed by grunts in the trenches is at least as important, if not more so, than work performed by luminaries.

In light of Washington and Wall Street consternation over Fannie, Freddie, Lehmann, Merrill Lynch, et al, there are very few of us who can affect this situation at the luminary level. Almost everyone reading this column has the capacity to be a change agent as a grunt in the trenches.

An attorney colleague of my age pointed out that most Philadelphia regional banks and S&Ls, his clients when he began his career, have been gobbled up by out-of-the-area financial institutions. Very few banking decisions are made on Main Street any more. Your role is to self-police the global lending market by only working with a lender who gives you straight-talk and doesn't try to put you in a mortgage that is at the apogee of your credit rating and liquidity.

When a Realtor suggests a listing price that causes heartburn, don't ask your friends for a Realtor who could “get you more.” Review the Competitive Market Analysis with the Realtor, but understand that a CMA is not an independent estimate of value. Hire a state-regulated real estate appraiser if you feel that you need an independent valuation of your property. That's

the appraiser's role, not the Realtor's.

As I suggested last week, don't try to get your Realtor to act as a financial consultant, lawyer, planner, engineer, construction analyst or whatever, all for free. Realtors work on commission, for better or worse, and I have seen too many lawsuits against them in today's litigious world. Respect their role in the real estate market as the “dealmaker” and hire other professionals if you have concerns beyond that aspect.

In a negotiation seminar at Pepperdine Law several years ago, I heard the best description of the role of “transactional lawyers”, i.e. lawyers who provide legal advice on real estate transactions. They are risk analysts. No one calls their insurance underwriter a “deal breaker”. However, I have heard that pejorative used too often to describe a residential three-day attorney review letter as well as vigorous negotiations involving a commercial transaction. If you see red flags in a real estate transaction, as a buyer, seller, builder or developer, then hire a knowledgeable attorney for the role of risk analyst.

Almost every mortgage broker, appraiser, lawyer and real estate licensee that I have ever known in over 37 years of involvement in real estate is honest. Recently, however, federal and state authorities have charged some mortgage brokers, appraisers, lawyers and real estate licensees with violations of various federal and state laws that boil down to mortgage and appraisal fraud. Help support the overwhelming majority of the honest professionals by using your role as a consumer to stop even the appearance of mortgage or appraisal fraud.

If you are a taxpayer or a voter, take the time to thank political candidates, or their representatives, for their dedication to public service when they knock on your door this fall. Tell them your own ideas on how

we can address the current mortgage and real estate market problems. Then carry out your role as a citizen by following up to make sure that they are doing something to address this issue.

Ask elected officials to start now to make incremental changes in reforming the state's property tax system. Demand careful scrutiny of any new state spending as stated in recent *Press* editorials. New Jersey's highest-in-the-nation tax burden requires us all to play a role in changing the system that shifts hundreds, even thousands, of your household budget dollars from mortgage and rental payments to taxes.

Housing costs in this state are among the highest in the nation, in part because land use approvals require more time, money and documentation than in other parts of the country. Tell state, county and municipal officials to take on the role of change agents by coordinating regulations and review processes among the various levels of government as a means of lowering the cost of new housing and job-creating commercial development, while still protecting the environment and our quality of life.

Fannie, Freddie, Lehmann and Merrill Lynch's problems began where you and I live, work and play, in the local real estate market. That is where the solution will be found. Don't wait for Washington or Trenton or City Hall. Accept your role in that change. Be a grunt in the trenches.

Dennis Scardilli practices as an attorney-at-law in the Atlantic City area. The information in this article has been provided only for informational and educational purposes and is not intended to provide legal advice. For legal advice on this, or any other, topic contact a qualified attorney.