

## Getting Ready to Sell

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Let's get the contract out as soon as possible! There's a buyer, an offer and a deal. All we have to do now is push a button to get the contract done, sign it tomorrow (because everyone's leaving town), get the deposit and then after a while close.

In a seller's perfect world, that's how contracts would work. But they often don't work that way, because the seller hasn't thought ahead enough to this great moment. The deal and the property are never quite as simple as the seller thought. And the contract preparation, negotiation and signing become a mad scramble and potentially even a mess.

It starts when the buyer asks for routine information about the property. Often the seller doesn't have that information readily available. Not only will the buyer expect that information, but they will also want the seller to represent and warrant that it's complete and accurate – at least for information that's within the seller's control or knowledge and could affect the buyer after the closing.

A buyer's agenda in this regard is rather predictable. So a smart seller will start collecting and making lists of everything long before it's time to ask counsel to prepare a contract for the transaction on an emergency basis.

The buyer's agenda starts with leases, of course, but also includes security deposits, letters of credit, service contracts, union contracts, warranties and guaranties, financial records, environmental reports and a few categories of other items. If any document has been modified or supplemented by other agreements, the seller needs to collect them as well and add them to the list. A current title search can help too.

All of this takes time. It's best done when the seller has time – long before the last minute when everyone is in a hurry to sign a contract. If the seller's files are less than ideal, the seller may need significant time to find everything that needs to be disclosed and listed.

Does the property have issues or problems? Chances are, any smart buyer or their counsel will dig around and find those issues or problems. At that point, they become troublesome and potentially even lead to a loss of trust or confidence in the seller. So a "conservative" (full disclosure) seller will often identify those issues, make sure the buyer knows about them and make sure the contract deals with them. Even though this approach to some issues may lead to a lower selling price, it also means the seller is being forthright about what they are selling, and not letting the

buyer think the buyer is getting more than the seller has to sell. It also prevents emergencies when the problem or issue gets "smoked out." Other sellers hide the ball, and that's a perfectly well established tradition in real estate as well. How to approach any problems with the property represents a decision to make early in the selling process, because the "conservative" seller will need to supplement its information delivery accordingly, which takes time.

Preparation of the contract itself will also take time. Rarely is a property so simple that one can just whip out a standard form contract, fill in the identifying details, price and closing date and then sign. There's always something. And even if there's nothing particularly notable about the property itself, a purchase and sale transaction always raises at least a handful of legal issues. The seller will often have opinions on those issues. They may require discussion. And the contract may require adjustment as a result.

This all takes time. So a smart seller and its counsel will get ahead of the game by preparing a draft before the last minute, before an actual offer is in place and before it's an emergency. That gives the seller an opportunity to think about any issues, figure out how to deal with them and get comfortable with what the contract says. A nonemergency conversation about the contract may also help identify issues with the property so that, if the seller wants to, those issues can be handled proactively as suggested above. And it will help the seller understand the usual sequencing, timing and allocation of risks in a deal, so the seller can try to adjust any that cause concern.

The basic essence of a purchase and sale transaction is not all that complicated – a buyer trades money for property. But a few relatively small pieces of any such transaction will raise issues and require thought and adjustments. That's what causes last-minute problems, excessive drafts, negotiations, uncertainty and delays in tying up the deal so the seller knows the property is under contract and the buyer knows it has site control. The seller can mitigate a lot of that by planning ahead.

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