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Don't Just GET THE DEED - The Infamous "Kitchen Table Closing"

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Q: Hi Lou, I have a property under contract that I want to resell/flip as-is to a rehabber/renovator, but I may have to purchase it quickly and simply record the Quit Claim Deed, without using a closing attorney or waiting for a title exam. I need your advice.

The seller just called me and left a msg on my voice mail stating she did not want to sell to me because she received a better offer. Now I do have it under contract, with a signed purchase and sales agreement from her, and I had her sign a Quit Claim deed, too. I did that because she was fighting with her sister over ownership of this property, which was given to her by her mom who passed away 2 years ago. The deed is in her name alone, not the sister's, moms or anyone else. I did see the deed and made a copy of it.

So, I thought I should get the Quitclaim deed, just in case I needed to record the deed because of the family issues, and she agreed as well. She said she just wanted to get rid of this property. I also filed at the court house an Affidavit for the property showing I had it under contract, as you all recommended. I'm in the process of getting a title check done by title company.

Now what do you recommend I do? Should I go back to the court house and record the Quitclaim deed or wait until the title search is done and record the deed, or walk away, or what? If I chose to wait and schedule an attorney to do the closing, would they except the title search done by the title company?

Thank you, G.

A: Hi G., what you're describing is a little risky, yet it's done pretty often. It's a VERY good idea to get title exam run first, before doing a "kitchen table closing" and getting a Quitclaim Deed (QCD) from Seller, if you're not using/hiring a closing attorney to do a formal closing....

Normally we wouldn't recommend you do your own closing, but since you're rushing your purchase so you can "preserve" your deal before the other Buyer moves in and buys it, and/or before the sister does anything rash... just be sure that the transaction has been up front, and that you truly intend to move forward as you agreed. I think that I would go ahead and file/record the QCD. I don't see that you have anything to lose, and a lot to gain.

I would let the seller know that she can not sell to someone else because she already has a binding agreement to sell to you, and you already "technically" own the house (since you recorded the QCD), and that your plan is to review the deal like you had already

agreed with her, and if you decide not to do the regular closing as described in your Purchase & Sale Agreement, then you will release the house (ie YOU'D have to sign and record another QCD, canceling the prior QCD from her to you) for her to sell to whomever she likes.

It was great that you already recorded your "Affadavit of Contract", putting yourself into the chain of title, showing that you have a contract to buy the house. Now if all of this "blows up" and you're not able to, or choose not to record the QCD for some reason, the Affadavit you recorded will protect you, and allow you to still purchase the house in the future (if the Seller tries to sell to someone else or tries to refinance the house).

By filing the QCD you become the official owner of the property. No one can take the deal away from you. Since you're buying it "subject-to" any loans, you will need to start making the payments on any loans (call the lenders to get a "statement of account" to make sure there are no surprise back payments or penalties you're "inheriting"). I'm assuming you gave her no/low equity/cash at this point, so you don't have any funds invested, or at risk with the seller. Now you've got time to evaluate all the financials and make an informed decision. If in the end, you do not want it, you can always Quit Claim the property back to the current owner, as you told her earlier.

**Note to all my fellow investors : you don't want to even play this "kitchen table closing" game, unless you have a strong indication that this is a good deal and you're 90% sure you're going to go all the way with this deal. Taking ownership via a quick recording of a QCD, and then bouncing ownership back to the original seller with another QCD later when you've "had a chance" to do your due diligence – is not a cool game to play. We're only walking through it in this example, because the investor is trying to rush to protect his good deal from being "sold again" fraudulently, by the seller to another buyer.

But you also don't want to suddenly own a property where you have some potentially unknown, overlooked liens that may be attached to the house, that you'd have to pay off before you re-sold or refinanced the house, and no ability to insure yourself via title insurance,. So consider these 3 risks you've got with a "get the deed, kitchen table closing" --

1) You probably won't have the Seller sign the standard "Owners affadavit" and "Gap affadavit" that attorneys use, where the seller warrants that no other "bad stuff, liens, judgements, etc." exist against him or the property, other than what the title examiner has found.. AND even though Seller signs those Affadavits, we've had some sign knowing they're lying and committing fraud. Title insurance would cover you, if Seller lied, but you can't get that (see #3).

2) title examiners are human and make mistakes and overlook title stuff (liens, judgements) b/c they get too busy, too tired, etc.

3) You CAN'T get owner's title insurance to cover all of the above issues if you close the deal yourself at a "kitchen table", because an attorney at a closing can sell that policy to you and you DO need to buy one.

We have had several instances where either the seller has lied about other not-yet-filed judgements and loans (see #1), or title examiner has missed a significant lien during the title exam (see #2) and we've been covered by our title insurance policies.

If you have those types of title problems and NO title ins. policy, you've got to pay all the legal fees and/or pay off the liens, etc. before you can re-sell the property. Soooo, unless you're a serious gambler :-) close with an attorney so you can get the Seller to

sign the 2 Affidavits and get yourself an Owner's Title Insurance policy.

And yes, about 50% of the time attorneys will buy a previously done (must be within last 30 days usually) title exam and use it for the closing--just ask your attorney in advance.

Now, if the new Buyer stills wants the property, they can buy it directly from you. The current homeowner, is of course, going to be upset and is probably going to say you did something illegal.

Q: Can the title company issue a Limited Warranty Deed, if not who provides a limited Warranty Deed that I have seen other wholesaler issue to the rehabbers?

A: The closing attorney can fill out a Limited Warranty Deed on your behalf as the seller (when you resell the property), saying basically that you warrant that ownership of the property was "valid" during the *limited* time period that you owned the house.

Best of success & abundance,

Lou Castillo

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