Steps to Your Front Door – Simple Process for Buying a Home in Illinois

A simple closing; well, not so fast.   Closing a home can be simple when everyone involved knows how to do their jobs and no one has made false assumptions or missed a step. Closings have become increasingly complicated as the government and Freddie Mac/Fannie Mae/FHA continue to enact regulation changes . A tough economy made lender's and their underwriters even more critical of borrower's credit and sellers often struggle to deliver clean title.

This article aims to educate buyers and sellers in the process and is written from the prospective of a buyer. The buyer has more hoops to jump through – and what effects buyers also impact sellers. The seller's preparations will also be addressed in full as well.

The most critical factor in having a great outcome in the real estate buyer and seller process is the team assembled to assist the parties. The lender, realtor, inspector and attorney are critical.

Pre-Approval (Buyer) –

Pre-approval and Home Selection (below) can be simultaneous.   Pre-approval answers the question of what you can afford and confirms this in writing. A proper approval reflects the lender's confirmation of three of the big four factors in issuing firm loan commitment – credit rating, debt ratios, and down-payment. The last of the four, the value of the home / collateral is confirmed by an appraisal and condominium questionnaire, if applicable. Just because you can borrow up to a certain limit does not necessarily that you will want to do that.   You want to be comfortable with the payment now and any increases in maintenance, insurance and taxes. The more home you buy, the less reserves you will have on hand. Think of this as the difference between frozen pizza and going out for pizza. Sometimes, getting as much home as you can afford makes sense, as you can enjoy the home now and in the future as your needs change and fewer moves.

The key to the process, the lender, makes all the difference.

Ask the lender about their process and if they are familiar with your specific deal (FHA, condo, or Chicago properties or new construction or will require a CO when we know the city does not always issue them in certain circumstances). At the 11th hour, you do not want to scramble to find a new lender, because the first lender (whether it be a bank or a mortgage broker) was not comfortable with the project, they buyer or the type of loan and just plain doesn't have the appropriate options.

Pre-Approval (Seller) –

Why would we include a pre-approval for the Seller? Sellers do not get pre-approved. Yes they do! Sellers must be sure that their homes are saleable. Let us explain. Repair flaws in the condominium association before you list or ask about the common one before you make an offer. For example, lawsuits, special assessments, low reserves, rights of first refusal, excessive delinquent assessments, bad budgets, high rental percentages, low presales, improper insurance and high commercial percentage can make approval impossible even if the buyer has perfect credit and a large down-payment. Also, for condominiums, gather the 22.1 Condominium Disclosures ahead of time. This includes minutes and budgets. Sometimes, the attorney delays in responding to the request or the association delays in issuing the disclosures. This can lead to the deal being cancelled down the line by the buyer. *Nikolopulos vs. Balourdos* holds that the disclosure is a contingency of the deal, whether stated or not, and the purchase has an implied right to terminate based on the disclosures. Word to the wise seller - extinguish the cancellation right by providing the disclosures as soon as possible.

In a house sale, some municipalities require a home inspection to ensure that no health and safety code violations exist. Have this code inspection prior to listing the home or as soon as possible in the communities that require the inspection. Further, in Chicago, every single family home through 5 unit building must have a zoning certification, which should be ordered well in advance of the closing. If the agent does not want to order it, have the Seller's attorney get it fast. For example, I represented a purchaser on a property where the MLS listing sheet showed a 4 flat and the Seller's attorney even agreed in the attorney review to provide a 4 flat Zoning Certification, but it turned out that in the last building permit of record reflected only 2 units. Absent an expensive zoning change or going to a review process, the transaction could not go forward, and all the effort and expense was wasted on the day of the closing.

Home Selection-

The home selection process begins with identifying your needs and preferences. It also challenges some assumptions you may have about features on your "must have" list or neighborhood you are targeting for your search, even the type of home you may purchase. A great realtor knows how to counsel you on these factors find value and steer you away from trouble. A great realtor knows which buildings or homes not to consider and what questions to ask before showing you a listing to make sure the building is eligible for a mortgage. For example, a realtor should know the basic criteria lenders look for such as owner occupancy, special assessments, retail concentration, and flood zones, among other factors. Even if the buyer has excels in the big three categories address above, lenders may not make loans because the building has characteristics lenders avoid as a rule.

Contract Signing-

Getting a contract signed can take rounds and round of negotiation. Often deals can be struck with creativity in closing dates, possession, closing costs or extra items included like surround sound speakers and patio furniture. If things seem too complicated or confusing, call your attorney. Also, be sure that the contract contains an attorney review clause (see contingencies below) so that the transaction can be unwound if it is not in your best interests.

As far as price is concerned, buyers and sellers both want to make sure the price is in line with similar properties. If not, the parties will be back at the bargaining table when the lender cannot get the appraisal to match the sales price. On the other hand, if the parties are a small percentage away on price, this amount may not make a real difference, especially if the buyer will own the property for the long term or if the property is otherwise unique.

Contingencies-

The contract generally contains several safety nets for the buyer. It is not until each and every one of the contingencies below get met or waived, that the contract can be termed "non-contingent."   Sellers want a "hard" contract, one without any contingencies while buyers want an "out" if circumstances change in the future.

Inspection Contingency. The inspection contingency provides an out for homes that require maintenance beyond what the buyer expected. Generally, the buyer waives the inspection because no material defects exist, cancels the contract based on the inspection as the items prove too large, or asks for a repair or a credit to repair the defect. It is a natural reaction for a buyer, out of precaution and fear, to make seemingly large and unwarranted request for a minor repair items. After all, if it was so minor, why was it not fixed? With that said, the attorneys generally negotiate acceptable terms, but sometimes the issues are complex and further specific inspections may be required for exterior, electric, plumbing and HVAC issues and the agents get involved to find a solution. It is often a good idea for a seller to get a contractor in to repair routine issues before listing the home so that little issues do not lead to a cancellation. A confused mind says no, so too many little items may bother a buyer to such a point that the buyer cancels under this contingency.

Attorney Approval. This contingency allows the attorney to look at the contract and the parties' particular circumstances and request modifications to form contracts in order to suit the parties' needs or the particular nuances of the transaction. Attorney's look if the contract was completed properly, the tax proration provision makes sense, among other things. If the attorneys can work out terms, the contract is approved and the transaction moves forward, otherwise the contract can be cancelled. Buyers must be sure that the review clause allows negotiation or cancellation of the contract.

Financing Contingency. This contingency allows the buyer to cancel if financing is not obtainable within a certain amount of time and within certain parameters such as down payment and interest rate. Buyers should alert their attorney if they cannot meet these dates or if issues arise that are beyond routine. The attorney and the lender should be communicating from the start as lending issues continue to complicate the process. If the timeframe for this contingency cannot be met, the buyer's attorney then asks for an extension of the contingency or cancels the transaction of the issue is insurmountable. Often the seller will have an opportunity to select a lender to assist under this contingency. Often times, the first lender does not end up to be the lender at the closing as not all lenders have comfort zones for the specific issue encountered on a particular transaction. Some lenders shy away from new construction and others from FHA or co-ops. See the Buyer Pre-approval section above for other thoughts on this contingency.

Well / Septic / Radon. Depending on your municipality and on the contract, different certifications may need to be obtained. Well / Septic tests and Radon test tend to be the most typical.

The Closing Table –

Think of the closing as two simultaneous closings. Conceptually, you will sign a note and mortgage and Truth in Lending and a host of other document that the lender sends to the title company (first closing). Then the buyer used the loan funds from the first closing to complete the closing with the Seller and get the deed recorded in the buyer's name (second closing). The title company acts as the escrow agent for the parties and the provider of the title policy. The title company follows the lengthy closing instructions from the buyer's lender, notarizes the documents (mortgage and deed etc.), purchases the transfer stamps, determines that the title clearance documents provided by the seller are in proper order and issues the title policy. Think of the title company as the hub of a three spoke wheel, handling the requirements of the lender, the buyer and the seller.

What the Buyer Needs to Bring

Before the buyer gets to the closing appointment, several considerations and documents must be ready.

1. Identification (ID). Normally, the buyer needs a non-expired photo ID issued by the government (state ID card, driver's license, passport) and some lenders need a secondary photo ID with signature and your legal name.

2. Funds to Close. Also known as the "bottom line" or the "cash to close," must be wired to the title company if its $50,000 or greater (do not use a $49,000 check and another). The title company can provide the lender or the attorney the wiring instructions for the buyer's use (make sure the title company escrow number is on the wire). The Illinois Good Funds Rule requires wires for larger

amounts. Amounts lower than $50,000 can be by cashier's check, but if your "bottom line" is more than $49,999, then a combination of checks and wires are not acceptable, and only a wire can be accepted.

If a cashier's check is permitted, the check should be payable to yourself (no not "Yourself" which we have seen, but in your actual name.

Do not wait to liquidate funds if they are in an investment account and not liquid.

For wires, make arrangements ahead of time as some banks require the buyer to physically be in the bank with ID to make the transfer.

3. Insurance. In a single family home, home owner's insurance must be provided to the lender ahead of time so the lender can approve it and use it in their truth in lending (TIL) calculations. Usually the lender needs a paid receipt. Bring a paper copy of the insurance certificate and the receipt to the closing even if the lender has it (these can get lost in the lender's file). In a condominium, the building will have insurance for the structure, but many do not include interior improvements (cabinets, floors and decorating, etc.) known as HO6 coverage. Lenders require HO6 if the association does not provide it and they need proof of such just like a single family home.

4. Your Spouse. Unless specifically approved by the lender, married couples must have their spouse at the closing even if the spouse will not be in title. The signing spouse will need the same type of identification as noted above. The reason is that the spouse must waive Homestead Rights they have under Illinois law – without which, the lender will have difficulty foreclosing – because of the spouses rights in the real estate.

5. Anything else your lender asked you to bring.

Sellers Preparations and Information

1. Count Your Cash. Work with your attorney to truly know what you will net at the closing. Few seller's realize that seller pay interest and taxes in arrears. This means that sellers are a month behind in interest payments to the bank. For example, if your closing is on January 25th, at the closing you will owe the balance of the loan plus 26 days (the day of closing plus one day to get the funds to the lender) of January interest (your January 1st payment only paid for the interest that accrued in the month of December. Sellers also must give a credit for the taxes that have accrued but have not been paid. Using the January 25th example, the seller owes the taxes for the prior year and 25 days of taxes on a per diem basis.

2. Count Your Cash Again. Your municipal government may also require a transfer tax. In Chicago, it amounts to $3 per $1,000 plus the State and County tax of a combined $1.50 per thousand. So on a $100,000 home, you will pay $4.50 per $100,000 or $450 for State, County and City transfer taxes. The seller also pays a commission which may also include a realtor processing fee, a recording fee to release the mortgages of about $40 per mortgage, express mail fees to get the payoff funds to the lender(s),

title insurance costs which vary based on the price of the property, and attorney's fees. Single family homes and non condominium townhomes require a survey which can cost about $400, while condominiums require paid assessment letters and disclosure fees which vary by association. Please make sure the association has been paid in full if they require a fee for issuing the paid assessment letter.

3. Moving Day. Sellers should be careful upon moving out that they leave items specifically identified in the contract as included (look at the checked boxes on the standard contract as well as the specific inclusions). Items such as mirrors, swing sets, smoke/carbon monoxide detectors, satellite dishes, window treatments, planter boxes, shelving cause fireworks. Related to this, Sellers should not leave behind or clarify items that the buyer does not want like old paint cans and freestanding items like non-attached shelving and extra house parts. Sellers should have this conversation with their agent to avoid incorrect assumptions.

4. Utilities. Sellers should transfer the utilities but be sure to provide enough time for the buyer to establish the service in their names. Do not shut the gas off early as inspections cannot be done without running water and gas service. We have seen utilities cut off early causing pipes to burst and outdoors spas rendered useless. In some communities like Chicago, generally the water bill must be paid in full. Chicago can take weeks, so do not delay in getting started on this. Lack of a water certification can stop the closing.

5. Receipts for Repairs. Sellers must remember the inspection contingency obligations that the attorneys negotiated within the first week or so of the contract signing. Have those receipts ready for the walkthrough before closing. Sellers do not want a buyer asking for a large credit or an escrow set up.

What the Seller's Lawyer Needs to Bring

Recent title Commitment – The title will show all recordings against the properties and what title objections the attorney must cure. Most items on the title are routine, like current loans that can be solved with a payoff letter (below), tax payments and covenants (utility easements) or condominium declarations. Others can be problematic and need to be dealt with ahead of time.

Deed, Affidavit of Title, Bill of Sale. These transfer the property to the buyer. The deed places the buyer in title and gets recorded in the county where the home is located, and is made part of the public record. The Bill of Sale transfers the personal property to the buyer, such as the appliances. The Seller's statement that the title has not been negatively impacted since the title report was issued is contained in the Affidavit of Title.

Payoff Letters. Each lender that has a mortgage recorded need a current payoff letter, telling the title company the amount of funds required to extinguish their mortgage lien. The most misunderstood payoff is the home equity line that some sellers do not want closed. While it is understandable that sellers would like to have the flexibility of continuing to use the line, since it is secured by the home and a lien on the home, it must be closed and paid off.

Water Certification / Inspections. Each municipality has its own requirements that must be met before the recorder of deeds will record the deed. Almost every municipality requires the water meter to be read and the bill paid in full. In Chicago, even condominiums must have a water certification, even though the city does not read the meter. For condominiums, the city requires a statement from the association that the water bill has been paid by the association and the water account number. Some communities require a physical inspection of the home to make sure the home has no code or health and safety violations. This inspection should be done ahead of listing the home, if possible, so the transaction will not be delayed by inspection items.

Zoning Certification. In Chicago, single family homes (SFH) and 2 to 5 flats need certifications of the number of legal units. Order the Chicago Zoning Certification as soon as possible, for 22-5 unit homes. If your agent does not want to order it, have your closing attorney get it fast.

Survey. All non-condominium properties require a survey showing the boundary and dimensions of the lot and a representation of the improvements with measurements. If the home or garage encroaches over the property line, arrangements need to be made with the title insurer to determine how to resolve the issue.

Paid Assessment Letter. The condominium association must issue a letter that the dues are paid and that the right of 1st refusal has been waived, if any, as a prerequisite to each condominium closing. The letter should state that the water is paid through the association and the account number.

Building Insurance. For condominiums, the seller provides a certificate of insurance for the structure and general liability of the association. Often the association does not insure the interior improvements and the buyer will be required to get condominiums owner's insurance called HO-6. Even if the association has this coverage, the buyer must get contents insurance for their possessions.

Transfer Tax Declarations. State, County and municipal taxes (if any) are due at the closing. Outside Chicago, the local city transfer tax must be brought to the closing. Some of these cannot be purchased until the water bill and fines have been paid, the home inspected and sometimes the contact or deed presented. Call the city before trying to get the stamps with plenty of time depending on the local procedures.

Wiring instructions for Seller's Proceeds. The seller's bank may not immediately allow the use of funds deposited into their account. Our firm recommends that the title company wires the proceeds into our client's account so that the funds are immediately available.

Tax ID # and forwarding Address. Title company forms require the reporting of this information.

1031 Documents. Consider a 1031 Exchange for non-owner occupied properties if a tax free trade is contemplated. Sellers of investment property should consider a tax-deferred exchange to avoid capital gains taxes. The exact procedure and considerations of an exchange is beyond the scope of this article, but if you have not lived in the home two of the last five years, an exchange should be considered.

What the Buyer will Sign

Note. The note is your obligation to pay back the loan, which sets forth the interest rate %, the loan amount, the note's due date, prepayment penalties and remedies for non-payment. If you have elected an adjustable rate mortgage, the note will also set forth the date that the the rate adjusts.

Mortgage. The mortgage is the document that is recorded with the recorder of deeds. It does two basic things – prevents the seller from selling the property without paying off the debt and allows the foreclosure for non-payment.

RESPA / HUD-1/Closing Statement.   The financial statement shows all the financial dealings connected to the transaction. In summary, for the buyer, it takes the purchase price, adds the closing costs to it and then deducts the various credits for the loan amount, earnest money, tax prorations, and then shows the cash to close or "bottom line." For the Seller, it shows the purchase price, less the closing costs and commission and then shows the net proceeds of the sale.

Truth In Lending Statement. This often confusing looking document is quite simple. It displays a number of boxes, which display the annual percentage rate (APR), the total payments and the total interest paid over the life of the loan. The APR represents the interest rate on the Note PLUS certain closing costs that are expressed in the form of a % rather than $. Borrowers can compare the APR with other lenders to see whose combination of rate and fees is the lowest. I like to say it's like looking at the cost per ounce of different containers in a grocery store.

You and your lender need to be conscious about closing costs. An increase of more than .125% in the APR from the initial Truth in Lending Disclosure (TIL) requires the TIL disclosure to be revised and reissued to the homebuyer. The homebuyer must receive a revised TIL disclosure at least 3 business days before closing, providing the homebuyer with the time required to determine if the homebuyer is comfortable with his or her loan choice. If mailed, the TIL disclosure is considered "received" 3 business days after mailing.

Other. Loan Application (1003), tax authorization forms, certifications, notifications about appraisal, flood zone, taxes, insurance, Equal Credit Opportunity forms, negative credit reporting disclosure, and other such certifications and disclosures.

What the Buyer Will Receive / What the Seller Will Give

The Buyer will receive the following documents and keys after the closing:

1. Deed. A copy of the deed that transfers title from the owner to the buyer. The original deed document gets recorded by the title company and the original sent back to the person designated on the deed to receive it.   As your life changes, you need to update the title to your home. In general,

married couples should hold title as tenants by the entirety (survivorship plus protection from your spouse's creditors), joint tenancy (survivorship) or tenant in common (no title passes to the other owner on death). Tenants in common or unmarried couples or groups in joint tenancy should have a co-tenancy buy sell agreement that specifies what happens during separation or death.2. Affidavit of Title and Bill of Sale. These are the Seller's representations that they own the property free of title defects not appearing on the title commitment and that the transfer of personal property contained in the home (appliances etc.).

3. Copy of the RESPA / HUD-1 Settlement Statement. See details in inspection above.

4. Copy of the Survey (non-condominiums). See details in inspection above.

5. Building Registration or City Inspection. Depending on municipality and whether its condominium property.

6. Insurance Certificate (Structure) – Condominiums only.

7. Title Mark-Up or Title Policy. The title company guarantees title to the home subject to certain clearly stated exceptions.

8. Loan Documents. A copy of all of the loan documents that the buyer signs at closing.

9. Keys. At the closing table, the buyer should receive all keys, including garage door openers, mailbox keys and fobs.

10. Funds. The buyer should get a check for the overage of the cashier check or wire.