

The Important Role of an Attorney in a Residential Real Estate Transaction

A Step-by-Step Guide to Protect Your Client

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Lawyers' involvement in residential house sales in Minnesota began dwindling in the 1980s with the advent of HUD regulations requiring title insurance for mortgages, secured by residential properties, which were being bundled and sold on the secondary market. Lawyers lost most of the title examination business to title insurance companies and consequently began to lose contact with consumers. In 2005, lawyers are rarely involved in residential transactions. (The usual statutory definition of residential real estate is property occupied by one to four families as their residence.) Over that same time period, residential transactions have become increasingly complicated, to the point where most lawyers do not know how to represent residential clients. Never have so many disclosures been required. We have abdicated our involvement to real estate agents and title companies, neither of which is able to give legal advice to buyer or seller. Your client **can** buy or sell a house without your representation, but is it advisable? The title company may be willing to accept the risk of loss, but is your client?

Lawyers skilled in residential representation believe that lawyers should be involved in every transaction, in order to prevent unnecessary expense, to guide the client through a complicated legal situation and to keep the client out of a future, expensive, lawsuit. This step-by-step guide is intended to help lawyers get back to serving the needs of residential buyers and sellers.

I. WHY A LAWYER'S INVOLVEMENT IS NECESSARY IN RESIDENTIAL TRANSACTIONS

- A. Large amount of money. For most people, a house is the most expensive item they will buy. The average price in the Twin Cities metropolitan area is \$234,000 and going up monthly.
- B. High degree of complexity. The old Miller-Davis purchase agreement was less than one page long. The Minnesota State Bar Association ("MSBA") purchase agreement can be 20 pages or more, including addenda.
- C. Four separate contracts. Most transactions will involve a listing contract, between client and real estate broker, a purchase agreement, between client and buyer/seller, a mortgage, between client and lender, and title insurance between client and title insurer.
- D. Conflicting interests (broker, lender, title company). Client does not have the knowledge or experience to represent his or her own interests . . . only the lawyer can fill that role.
- E. Emotionally draining. Lists of stressful events always have buying or selling a house near the top. Parties represented by a competent lawyer will enjoy more peace-of-mind and avoid improvident spur of the moment decisions.

II. THE LAWYER MUST PROVIDE COMPETENT REPRESENTATION

- A. *Myth: Filling in blanks on a preprinted form does not require legal decisions.* Reality: There is no "simple" residential transaction. Many federal and state real property consumer protection statutes pertain only to residential property and transactions. Many municipalities impose additional requirements. Dual agency is rarely an issue with commercial sales of property, but very often is with residential.
- B. Competency required by ethics code. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Rule 1.1, Minnesota

Rules of Professional Conduct. Industry practices, unchallenged due to the absence of lawyers, have developed which operate to the detriment of the client. The naïve and unlearned lawyer will be no match for the market forces operating in the residential real estate industry. You must know what you are doing!

III. HOW TO JUSTIFY YOUR FEES TO A POTENTIAL CLIENT

- A. *Myth: I cannot afford a lawyer.* Reality: Buyer and seller can hardly afford to not have a lawyer. The purchase agreement forms in common use in Minnesota, prepared by the MSBA and the Minnesota Association of REALTORS® (“MAR”), require decisions on issues of buyer’s and seller’s respective responsibilities, liabilities, financial obligations and timing. Frequently other transactions, such as a purchase by seller or a sale by buyer, will be affected by the particular purchase agreement. The caution on the document to seek legal advice or to consult a lawyer is good advice.
- B. Lawyer’s services often save the client money.
1. Elimination of unwarranted costs.
 - a. A lawyer can save money for a client starting with the listing agreement. The lawyer advises the client regarding an appropriate commission to be charged for the level of service to be required or to be provided by the real estate agent, and the anticipated difficulty of the listing and selling services. Some homes are as good as sold the instant they hit the market. Some homes are in fact sold before they hit the market. Most home sellers are not knowledgeable enough to understand and negotiate these matters.
 - b. A properly negotiated purchase agreement will appropriately and fairly allocate responsibility for real estate taxes, special assessments, deferred taxes, abstracting and costs of closing.
 - c. *Myth: Since the settlement statement is a government form, the expenses shown on it are accurate.* Reality: Closing expenses on the HUD-1 settlement statement are frequently subject to error in either the amount of the expense properly chargeable or the allocation of an expense.
 2. Avoidance of future litigation.
 - a. The lawyer can provide invaluable counsel for seller or buyer regarding the traps that can arise from the disclosure requirements in residential real estate transactions in Minnesota. The lawyer can advise regarding what can realistically be expected from the disclosure, as well as when disclosure should not be made. Real estate agents may require unnecessary representations to enhance the marketability of the property. Such representations could lead to future claims against the seller, only, due to the common practice of requiring the seller to indemnify the listing agent and broker.
 - b. The lawyer can assist seller or buyer in enforcing the purchase agreement or canceling the purchase agreement under the 2004 cancellation statute (Minn. Stat. § 559.217).
 - c. Title insurance is nearly universal in the current mortgage financing universe. The average residential buyer or seller is not sophisticated

enough and informed enough to understand the title insurance policy and what is given and what is taken away and what are the policy's limitations and benefits. In a typical transaction, the buyer does not see the title policy until after its issuance, if then.

- C. Depending on the scope of the lawyer's efforts and representation, fees to a lawyer in a residential transaction will vary widely. If a real estate agent also represents the client, some work will be done by the agent. The lawyer's fees will be less in that event.

Time requirements as follows are typical:

Initial consultation	1 hour
Draft or review purchase agreement	2 hours
Additional negotiations	1 hour
Draft documents for closing	1 hour
Review documents for closing	1/2 hour
Attend closing	2 hours
Post closing	1 hour

Residential real estate transactions perhaps may be billed at a lesser rate than commercial transactions, based on the amount of money involved, complexity, and financial circumstances of the client. Choose a fair and compensatory hourly rate.

- D. Minn. Stat. § 82.23(a) excludes lawyers from the definition of real estate broker and thus appears to permit lawyers representing buyers to collect share of commission.
- E. *Myth: Commissions are standard and not negotiable.* Reality: Commissions on the sale of residential real estate are negotiable. Customary agent's fees in Minnesota supposedly are seven percent of the sale price. (Sale price is itself at times an indefinite term.) In addition, some listing agreements and buyer's broker agreements may call for additional administrative fees, record retention fees, or closing fees. A real estate agent, almost without exception, will agree to a commission of less than seven percent upon the assertion by seller that the commission is to be negotiated. Six percent is a given, five percent is possible. Bob Bruss, a nationally syndicated real estate writer, cites the average nationwide commission as 5.1% (Star Tribune, April 16, 2005). Even with the median/average Twin Cities metropolitan area home price of \$234,000.00, which is a home price for persons of modest means, one percent off the commission saves over two thousand dollars – more than enough to cover any lawyer's fees (except in a troubled transaction) and perhaps enough to cover seller's moving costs. Independent agents that offer limited services which might be appropriate to the transaction, or online MLS listing services, are available. A Multiple Listing Service listing may be obtained for less than \$600. Only with the assistance of a lawyer can these alternatives be fully explored for the benefit of the client.

IV. ADVISING THE CLIENT ABOUT REAL ESTATE BROKERAGE SERVICES

- A. First help client decide whether to sell. The lawyer should determine a client/prospective seller's family status, estate plan status, form of ownership and economic status. What is the income tax bite from the gain on the sale? For a home that has been owned by an elderly client for many years with substantial appreciation in value that would be taxable, is it better to retain ownership and gain the step up in basis? Is seller likely to require medical assistance which would create a lien on the property? Can seller afford not to sell? What is driving the sale – the "need" to move to a nursing home or assisted living, the desire of the kids, or the desires of the client? Is this a reaction to a spouse's death? Does retention of ownership with powers of attorney for sale solve the problem? "Beneficiary Deeds" are on the horizon.

- B. Several types of real estate brokerage services are available to seller. To assist in selling the home, seller can choose from a full service broker, a discount broker, or cafeteria plans (“For Sale by Owner” shops). Obviously, seller is not statutorily required to hire an agent to sell the home. The lawyer can advise seller on what level of service is most advantageous. The client should not choose a particular agent simply because the agent estimated the market value higher than other agents. Using family members as agents is not advisable.
- C. Several types of real estate brokerage services are available to buyer. To assist in buying a home, the buyer can choose a buyer’s agent, defined as an agent who represents sellers but not in this particular transaction, or an exclusive buyer’s agent, defined as an agent who **never** represents sellers. (National Association of Exclusive Buyer Agents website is www.naeba.org.) Obviously, the buyer is not statutorily required to hire an agent to buy a home. The lawyer can advise the buyer on what level of service is most advantageous. Using family members as agents is not advisable.
- D. The client (buyer or seller) should consider asking the agent questions such as:
- How long have you been selling/assisting buyers in this area?
 - How many sales have you had?
 - What are the names, addresses and phone numbers of your five most recent home sellers?
 - What is your written marketing plan for my home?
 - Do you sell real estate full-time? (Part-time agents will give you part-time service.)
 - How many listings do you have? (Beware of agents with too many listings who won’t have personal time for your home sale.)
 - Do you have any office assistants? If so, will I be dealing with you or an assistant?
 - What days of the week do you take off and which agent covers for you when you are gone?
 - Do you plan any vacations during my listing period?
 - Will you be able to sell my home within a 90-day listing period?
 - What is your commission fee schedule?
 - Have you had any ethical complaints made against you?

V. TOOLS OF THE REAL ESTATE LAWYER

- A. Minnesota Title Standards. Published by the Real Property Law Section of the Minnesota State Bar Association and available to its members. They reflect standards of practice adopted by consensus of Minnesota real estate lawyers (“green pages”). Also contains “white pages” which guide lawyers in current transactions. Updated yearly.
- B. Forms.
1. Uniform Conveyancing Blank (UCB) forms.
 - a. Promulgated by state UCB Commission (Minn. Stat. § 507.09).
 - b. Over 100 useful blanks for most real estate conveyancing needs.
 - c. Available in Minn. Stat. Chap. 507; from MSBA at www.practicelaw.org; and from legal publishers such as Miller/Davis Co.
 - d. **Do not** draft your own form when a UCB form will do.

2. MSBA Real Property forms.
 - a. Developed by Residential Real Estate Committee of MSBA Real Property Law Section and adopted by Real Property Council.
 - b. Intended to address all issues commonly encountered in transactions so as to avoid future disputes.
 - c. Available at www.practicelaw.org and from Miller/Davis Co.
 - d. If you choose not to use an MSBA Real Property form, at least review it to become apprised of issues.
- C. Legal description equipment.
 1. Plat (available from Recorder, Registrar of Titles or County Surveyor).
 2. County Surveyor's half-section map.
 3. Protractor, scale and drafting triangle for drawing out legal descriptions.
- D. Other lawyers.
 1. MSBA "Colleague" program will connect you with an experienced real estate lawyer. This service is free to MSBA members.
 2. MSBA Board Certified Real Property Specialist roster.
 3. List serve for MSBA Real Property Law Section members should be up and running soon.
- E. Minnesota Attorney's/Paralegal's/Secretary's Handbook by Mariposa Publishing. Contains phone numbers, addresses and other county, state and federal legal information. Available at www.mariposapublishing.com.
- F. Bar Association membership. Membership in the MSBA Real Property Law Section provides access to the Minnesota Title Standards, www.practicelaw.org, and the Colleague Program.

VI. WHAT SHOULD BE DONE BEFORE THE LISTING AGREEMENT

- A. Determine whether inspection is required or advisable.
 1. The various municipal requirements regarding inspection should be dealt with first. Contact the city in which the property is located to determine if a code compliance or truth-in-housing report is required. It is unclear whether Minnesota's Condition of the Property disclosure law (Minn. Stat. §§ 513.52-.60) allows a municipal code inspection to serve as the third party inspection report. To conclude "yes" is a tenuous judgment.
 2. Neither buyer nor seller should allow his or her attorney or real estate agent to select the inspector. The attorney can assist the client by recommending a few qualified home inspectors, with the client making the ultimate choice. The most popular inspectors may be the ones who find the fewest problems, but their liability may be capped by the terms of their agreement, at the amount paid for

the inspection. Impartial objective inspection and reporting is essential. National organizations with standards for inspectors and inspections include the American Society of Home Inspectors (www.ashi.org) and the National Association of Home Inspectors (www.nahi.org).

- B. Review existing public records at the municipality. Before sellers declare to the world that their property has never, to their knowledge, had a water problem, they should review the public files at the local city, township, or county offices. They may find that their basement was flooded two years before they bought the property. They may also find, for example, that no building permit was issued for their garage and that it is an illegal structure, that there was a prior fire in the house, and that there is a buried septic tank in the back yard. [Reviewing existing public records is good advice for the potential buyer, too.]
- C. Determine Seller's Statutory Disclosure Requirements. Below are summaries of the statutory disclosure requirements. Review the statutes for complete requirements.
1. Condition of the Property. Minn. Stat. §§ 513.52-.60.
 - a. Content: All material facts of which seller is aware that could adversely and significantly affect an ordinary buyer's use and enjoyment of the property or any intended use of the property of which seller is aware. The disclosure must be made in good faith and based upon the best of seller's knowledge at the time of the disclosure. Section 513.55, Subd. 1. (Note the limited definition of residential real property as a single family residence or CIC unit found at Section 513.52, Subd. 4.)
 - b. Timing of Disclosure: Before signing an agreement to sell or transfer the property. Section 513.55, Subd. 1. Seller has continuing obligation to correct inaccuracies in disclosure. Section 513.58, Subd. 1.
 - c. Exceptions: See exceptions in Section 513.34. In addition, under Section 513.56, Subd. 3, seller is not required to disclose information relating to the property if a written report that discloses the information has been prepared by a "qualified third party", as defined, and provided to the prospective buyer, although seller, if provided with a copy of the report, must disclose material facts known by seller that contradict information included in the report.
 - d. Liability: Seller liable to buyer for failing to properly disclose. A person injured may recover damages and other equitable relief. A civil action must be commenced within two years after the date of closing. Section 513.57, Subd. 2.
 - e. Waiver: Yes, see Section 513.60.
 - f. Suggested Form: MSBA Real Property Form No. 15. The state legislature has not approved any form for this disclosure. Form 15 includes a questionnaire regarding matters that may affect an ordinary buyer's use and enjoyment of a property or any intended use of a property. In advising the client, the lawyer for either seller or buyer should keep in mind matters such as radon, Indian burial mounds, noise, odors, area business or development activity, water table contamination, riparian rights, shore land restrictions, insurance losses and experience at the property, water damage (ice dams, wet basements),

environmental concerns, sexual predators, suicide, murder or other criminal activity, diseased trees (Dutch elm is back), mold, etc.

- g. Comments: A refusal to provide a disclosure, whether justified or arbitrary, probably will have a negative impact on the price that might be offered by buyer or even on a prospective buyer's willingness to make an offer.

2. Federal Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards. 24 C.F.R. § 35; 40 C.F.R. § 745. For more information go to www.hud.gov/offices/lead/disclosure/rule/index.cfm.

- a. Content: Seller shall disclose to buyer the presence of any known lead-based paint and/or lead-based paint hazards in the home. 24 C.F.R. § 35.88(a)(2). Seller shall provide buyer with an EPA-approved lead hazard information pamphlet ("Protect Your Family from Lead in Your Home" found at www.epa.gov/opptintr/lead/leadpdf.pdf). 24 C.F.R. § 35.88(a)(1). Seller shall provide any records and reports available to seller pertaining to lead-based paint and/or lead-based paint hazards in the house. 24 C.F.R. § 35.88(a)(4).
- b. Timing of Disclosure: Before the buyer is obligated under any contract to purchase (before signing the purchase agreement). 24 C.F.R. § 35.88(a). The disclosure, however, may be attached to the purchase agreement as an addendum. Seller shall permit buyer a 10-day period to conduct a risk assessment or inspection. 24 C.F.R. § 35.90.
- c. Exceptions: Applies only to housing constructed prior to 1978, 24 C.F.R. § 35.86, and excludes foreclosure sales, 24 C.F.R. § 35.82.
- d. Liability: Seller who knowingly violates this law is liable to buyer for costs, attorney fees and treble damages. 24 C.F.R. § 35.96.
- e. Waiver: Buyer and seller may agree in writing to lengthen or shorten the time period to conduct the risk assessment or inspection. 24 C.F.R. § 35.90. Buyer may waive risk assessment or inspection, but buyer cannot waive seller's disclosure obligations.
- f. HUD Form at www.hud.gov/offices/lead/1018/selr_eng.pdf (underscore between selr and eng).

MSBA Form: Real Property Form No. 11.

3. Location of Wells. Minn. Stat. § 1031.235. (In Washington County, see also Section 1031.236.) For more information go to www.health.state.mn.us/divs/eh/wells/index.html.

- a. Content: Seller must disclose in writing information about the status and location of all known wells on the property. Seller must either deliver a statement that the seller does not know of any wells on the property, or a disclosure statement including a map showing the location of each well. In the disclosure statement, seller must indicate for each well whether the well is in use, not in use, or sealed. Section 1031.235, Subd. 1(a). Purpose is to control ground water contamination.

- b. Timing of disclosure: Before signing an agreement to sell or transfer the real property. Section 103I.235, Subd. 1(a). At the time of closing, known wells must be disclosed on a well disclosure certificate. Section 103I.235, Subd. 1(b).
- c. Exception: Does not apply to sale of severed mineral interests or an individual condominium unit. Section 103I.235, Subd. 1(e).

No new well disclosure certificate is required if the status and number of wells on the property have not changed since the last previously filed well disclosure certificate, but the following statement must be on the deed: "I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate." Section 103I.235, Subd. 1(j). This statement is contained in the UCB deed forms.

- d. Liability: Seller who fails to properly disclose is liable to the buyer for costs relating to sealing of the well and reasonable attorney fees for collection of costs from seller. An action must be commenced within six years after the date of closing. Section 103I.235, Subd. 2.
- e. Waiver: Before the closing, buyer and seller can agree in writing to waive damages, but buyer cannot waive seller's disclosure obligations. Section 103I.235, Subd. 2.
- f. MSBA Form of Well Disclosure Statement: Real Property Form No. 21 (pending).

Form of Well Disclosure Certificate available at
www.health.state.mn.us/divs/eh/wells/disclosures/certificateform.pdf.

- g. Comments: Only wells sealed with a unique well number obtainable from the State Health Department may be properly designated "sealed". Some sellers, particularly where agricultural or recreational land is involved, may improperly claim that wells are sealed because they were buried and are not visible. The potential liability may not be worth any short-term gain.

4. Individual Sewage Treatment System ("ISTS"). Minn. Stat. § 115.55, Subd. 6. For more information go to www.pca.state.mn.us/programs/ists/index.html.

- a. Content: Seller must disclose in writing information on how sewage generated at the property is managed. Seller delivers a statement to buyer that either the sewage goes to a facility permitted by the Minnesota Pollution Control Agency or that it does not go to a permitted facility. If it doesn't, additional information must be disclosed. If the seller has knowledge that an abandoned ISTS exists on the property, the disclosure must include a map showing its location. The seller must indicate whether the ISTS is in use and, to the seller's knowledge, in compliance with applicable sewage treatment laws and rules. Section 115.55, Subd. 6(a).
- b. Timing of disclosure: Before signing an agreement to sell or transfer the property. Section 115.55, Subd. 6(a).

- c. Exceptions: None.
 - d. Liability: A seller who fails to properly disclose is liable to buyer for costs relating to bringing the system into compliance with the individual sewage treatment system rules and for reasonable attorney fees for collection of costs from seller. An action must be commenced within two years after the date of closing. Section 115.55, Subd. 6(b).
 - e. Waiver: Before the closing, buyer and seller can agree in writing to waive damages, but buyer cannot waive seller's disclosure obligations. Section 115.55, Subd. 6(b).
 - f. MSBA Form: Real Property Form No. 14.
- (NEW!) 5. Methamphetamine Disclosure. Minn. Stat. § 152.0275, 2005 Minn. Laws Chapter 136, Article 7, Section 9, effective January 1, 2006.
- a. Content: Seller must disclose in writing if, to seller's knowledge, methamphetamine production has occurred on the property. If it has occurred, seller must disclose whether any "no occupancy" orders have been issued or vacated or, if no order was issued, the status of the removal and remediation of the property. Section 152.0275, Subd. 2(m).
 - b. Timing of Disclosure: Before signing an agreement to sell or transfer the property. Section 152.0275, Subd. 2(m).
 - c. Exceptions: None.
 - d. Liability: A seller who fails to properly disclose is liable to buyer for costs relating to remediation and for reasonable attorney fees for collection of costs from seller. An action must be commenced within six years after the date of closing. Section 152.0275, Subd. 2(n).
 - e. Waiver: Before the closing, buyer and seller can agree in writing to waive damages, but buyer cannot waive seller's disclosure obligations. Section 152.0275, Subd. 2(n).
 - f. MSBA Form: Real Property Form No. 22 (pending).
6. Hazardous waste disposal or contamination. Minn. Stat. § 115B.16.
- a. Contents: If owner knew or should have known the property was used as the site of a hazardous waste disposal facility as defined in section 115A.03, subdivision 10, or which the owner knew or should have known is subject to extensive contamination by release of a hazardous substance, the owner shall record with the county recorder of the county in which the property is located an affidavit containing information set out in the statute. An additional affidavit must be recorded if there is any material change in the disclosed information. Section 115B.16, Subd. 2.
 - b. Timing of Disclosure: Before any transfer of ownership of the property. Section 115B.16, Subd. 2.
 - c. Exceptions: None.

- d. Waiver: None.
 - e. Liability: Person who knowingly fails to record the required affidavit is liable for any release or threatened release of any hazardous substance. Section 115B.16, Subd. 4.
 - f. Form: None.
7. Subdivision of Land. Minn. Stat. § 462.358, Subd. 4a.
- a. Content: If conveying a new parcel of land which, or the plat for which, has not previously been filed or recorded, and which is part of or would constitute a subdivision to which adopted municipal subdivision regulations apply, the seller shall attach to the instrument of conveyance a recordable certification by clerk of municipality that the subdivision regulations do not apply, or that the subdivision has been approved, or restrictions have been waived. In lieu of clerk's certification, seller may attach statement which discloses the identity of the municipality and advises that subdivision and zoning regulations may restrict use or development, and other matters set out in the statute. Section 462.358, Subd. 4a.
 - b. Timing of Disclosure: At the time of or prior to delivery of instrument of conveyance.
 - c. Exceptions: See Section 462.358, Subd. 4b(b).
 - d. Liability: If seller misrepresents or fails to disclose material facts in accordance with statute, buyer may establish a right to damages including costs and punitive damages. Section 462.358, Subd. 4a. In addition, Seller shall forfeit and pay to the municipality a penalty of not less than \$100 for each parcel conveyed. Section 462.358, Subd. 4b(d).
 - e. Waiver: None.
 - f. Forms: None.
8. Condominium re-sale. Minn. Stat. § 515B.4-107. (Sales by declarant addressed in Section 515B.4-101.)
- a. Content: Seller must provide buyer with a copy of the Declaration, Articles of Incorporation, Bylaws, rules, regulations, any amendments, any other association documents, and a resale disclosure certificate containing the information set out in the statute. Section 515B.4-107.
 - b. Timing of Disclosure: Before execution of purchase agreement or before conveyance. Section 515B.4-107(a).
 - c. Exceptions: None.
 - d. Liability: See Section 515B.4-116 as to rights of action.
 - e. Waiver: See 2005 Minn. Laws Chapter 121, Section 39 for revisions to Section 515B.4-108(a) concerning waiver of buyer's 10-day rescission period.

- f. Form: Resale Disclosure Certificate language found at Section 515B.4-107(b); MSBA Real Property Form No. 16.
 - g. Comments: Buyer should be sure that Seller produced all the documents required by statute. The budget and reserve documents may be the most revealing, but are sometimes omitted or not current.
- D. Determine that seller has marketable title.
- 1. Review documents such as the abstract, title opinion or title insurance policy issued when seller bought house, Certificate of Title (if registered property), tract search of County Recorder's records, deed by which client obtained title.
 - 2. Ask client about any encroachments, boundary issues and title problems.
 - 3. Review plat and half-section map for lot dimensions, adjoining vacated streets and dedicated easements.
 - 4. Draw out legal description. If the legal description is defective on its face, for example your client has title to the west 50 feet, and the neighbor owns the east 50 feet, of a lot that was thought to be exactly 100 feet wide, now is the time to address this issue, before the seller receives a title objection letter.
 - 5. Check deeds for adjoining property if description is metes and bounds or part of a lot (see prior paragraph).
 - 6. View the property and look for fences, water boundaries, driveways, alleys, use by neighbors, tree problems.

VII. WORKING WITH AN AGENT

- A. Real estate agency laws found at Minn. Stat. Ch. 82.
- B. Fiduciary Duties of Agent: Loyalty, obedience, disclosure, confidentiality, reasonable care, and accounting. Section 82.22, Subd. 4.
- C. Non-agents ("facilitators") owe no fiduciary duties, except confidentiality, unless other duties are included in a written agreement. Section 82.22, Subd. 4.
- D. Types of Listings.
 - 1. Open listing: Seller can list property with additional brokers and can sell it on own; commission goes only to broker who finds buyer.
 - 2. Exclusive agency listing: One broker has listing but owner retains right to sell on own without paying commission.
 - 3. Exclusive right to sell: One broker has listing and collects commission even if seller finds buyer on own.
- E. Listing agreement.
 - 1. The seller has enormous leverage to dictate the terms. Therefore seller can demand fair and balanced terms and conditions.

2. A listing agreement must be in writing or contractual claim for a commission cannot be enforced. Section 82.18, Subd. 2.
3. Section 82.21, Subd. 2, sets out requirements.
4. The differences between the MAR "Exclusive Right to Sell Listing Contract" and the MSBA "Listing Agreement" include the following:
 - a. MAR form is prepared by MAR and serves MAR. MSBA form is prepared by MSBA and served buyers and sellers in a fair and balanced format.
 - b. MSBA form recognizes seller's bargaining position and seeks to accommodate possible unsophisticated seller and level the playing field with the real estate agent's "expertise".
 - c. MAR form is exclusive right to sell. MSBA form says agent may offer the property for sale.
 - d. MAR form provides exclusive right to sell. MSBA form leaves this open to negotiation and decision.
 - e. Statute mandates specification of expiration date. MSBA form provides mechanism for early termination.
 - f. MAR form recites only the owner's duties. MSBA form specifies duties and obligations of agent, who is being paid the commission.
 - g. MAR form is silent on marketing plan. MSBA form provides for agent to present such a plan.
 - h. MAR form provides commission due on presentation of ready, willing and able buyer. MSBA form provides commission earned upon closing of transaction.
 - i. Override clause in MSBA form offers protection to seller on additional types of prospective buyers and provides appropriate negotiable period within which property sold to trigger commission.
 - j. MSBA form specifies fiduciary duties.
 - k. MSBA form does not provide for assignment of proceeds to secure commission. This is of doubtful validity.
 - l. MSBA form prohibits discriminatory practice by agent.

F. Buyer's broker agreement.

1. To date the MSBA Residential Real Estate Committee has not drafted a Buyer's Broker Agreement. MAR has published its "Contract for Exclusive Right to Represent Buyer". Many of the same issues that arise with a Listing Contract arise also for a prospective home buyer presented by the real estate agent with a Buyer's Broker Agreement.

The prospective buyer needs and should seek, and the lawyer ought to be able to offer, professional legal advice about what is and is not acceptable in any

Buyer's Broker Agreement presented to a client contemplating the purchase of a home. A buyer ready to buy, perhaps even with a home already chosen as the target for purchase, dealing with an agent looking for a customer, has enormous leverage to obtain more favorable terms, and to delete the onerous terms, of a pre-printed Buyer's Broker Agreement.

2. Minn. Stat. § 82.21, Subd. 1, sets out the requirements for a Buyer's Broker Agreement.
 - a. Subsection (a) clearly mandates that a Buyer's Broker Agreement be signed before the real estate licensee performs any act as buyer's representative and before any purchase agreement is signed.
 - b. Subsection (b) specifies mandatory provisions and prohibited provisions.
 - i. Mandatory provisions are: an expiration date; the commission amount or how it is calculated; services of the broker; events that entitle the broker to a commission; cancellation terms; override clause, and requiring a protective list within 72 hours; negotiability of the amount of commission; dual agency disclosure; absolution from override commission if buyer has signed a valid agreement with another licensee and is obligated for the commission.
 - ii. Prohibited provisions are: a holdover clause; automatic extension; an override clause longer than 6 months; an override clause enforcement unless the protective list has been provided within 72 hours. The subsection limits what properties qualify for the broker's protective list, which properties must have [i] "been shown to the buyer" or [ii] "specifically brought to the attention of the buyer" [iii] "during the time the buyer's broker agreement was in effect."
3. With all these protections written into the statute, consider these issues.
 - a. Exclusivity. Buyer gives the broker an exclusive, but buyer does not get an exclusive back from the Broker. Dual agency is authorized, and almost certainly will be recommended by the licensee or broker. Your client/buyer is not exclusive and may not be first in line if broker [agency or licensee] has another customer looking at the same home.
 - b. Duration of Agreement. These might be written for a year. If for a single known target home, a week or two is maximum length. If intended for finding a home and all the searches, 60 to 90 days is reasonable. The statute does not limit duration.
 - c. Cancellation. The statute requires a provision for cancellation. No advance notice ought to be required so long as it does not impair the broker's right to compensation already earned.
 - d. Commission. The Agreement will typically provide that the buyer's Broker can work with and agree with the listing broker for a share of the listing commission. This will be published with the MLS information. This fee is in lieu of any other commission that would be due under the Agreement.

- e. The Agreement ought to also provide that only upon closing is the commission deemed earned, and that the listing commission is the source of the Buyer's Broker's commission. Eliminate all the other vague contingencies that might trigger the buyer's obligation to pay a commission. Stating clearly that the commission is earned upon closing does not exculpate the buyer from a claim for damages (quantum meruit for services performed) if the buyer breaches the agreement and attempts to stiff the broker.
 - f. Unless a broker presents a purchase agreement to seller, without buyer's signature, upon buyer's assurance that the purchase agreement is satisfactory, any claim against buyer for commission based on a "ready, willing and able" seller and transaction is unlikely.
 - g. Override. The statute precludes an override period longer than 6 months; that is not the equivalent of mandating a 180 day period within which the broker is entitled to an override commission. No override period is possible. 30, 60, 90 days is possible and might just be fair and reasonable. The 180 days should not be printed on the form of agreement.
 - h. Arbitration. Some folks love arbitration. Others believe it should not be chosen until the nature of the dispute is known.
4. Buyers should seek advice and attorneys should be prepared to critically review and to advise regarding a Buyer's Broker Agreement.

G. Dual Agency.

- 1. Statutory definition found at Section 82.17, Subd. 5.
- 2. *Myth: Dual agents can provide the same level of service as single agents.*
Reality: Dual agents prohibited by statute from acting exclusively for either party.
- 3. Only advantage is set out in Section 82.22, Subd. 4(3); same advantage can be had without dual agency by hiring a smaller broker; that way you have access as a buyer or a seller to all the buyers and sellers represented by a big broker without giving up any rights you should expect from an agent.
- 4. Disadvantages of dual agency.
 - a. Agents do not understand fiduciary duties of dual agent. Agency relationships are complex; add dual agency and they are even more unclear. Add contradicting statutes and they are incomprehensible.
 - b. Fiduciary duties are greatly reduced.
 - c. Loss of exclusive loyalties and representation limits client's ability to receive the best service.
- 5. *Myth: Agents working in separate offices cannot be dual agents.* All agents working for the same broker represent the same party to the transaction.
- 6. Disclosure of agency. At the "first substantive contact with the consumer" the agent or broker must provide to the consumer an agency disclosure form

substantially as set out in Section 82.22, Subd. 4. This is not the time for the parties to agree to dual agency. That can happen only after informed consent.

7. MSBA Form: Real Property Form No. 52.

VIII. SETTING THE PRICE

- A. Have the property appraised by a licensed and qualified real estate appraiser. The purpose of the appraisal is to determine the fair market value of the house based on an arms length transaction between a willing buyer and a willing seller. The seller should not rely on the appraisal used for a marital dissolution action, or the appraisal used for the refinancing of the home mortgage.
- B. If using a real estate agent, get a written market analysis. But do not rule out an appraisal, also, because the market analysis is likely not as accurate.

IX. THE PURCHASE AGREEMENT

Myths: (a) There is a standard purchase agreement which must be used in Minnesota. (b) Preprinted terms in the purchase agreement are not negotiable. (c) Preprinted terms in a purchase agreement are merely boilerplate. (d) The purchase agreement isn't very important. If you change your mind, you can easily cancel.

- A. All terms of the purchase agreement, even the preprinted ones, are negotiable.
- B. If the following apply, do not allow your client to sign a purchase agreement:
 1. (if representing seller) without knowing how extensively seller's property was marketed (be wary of "in-house" sales or "vest-pocket" listing).
 2. without reading it through with your client line by line.
 3. without approving any terms added by the real estate agents (they are not lawyers).
 4. if your client is relying on a "subject to approval by lawyer" clause.
 5. that authorizes the agent to arrange the closing.
- C. Decide whether sale is to be contingent on any event. For sale contingent on purchase or sale of other house, see MSBA Real Property Form No. 9.
- D. Compare MAR & MSBA (MSBA Real Property Form No. 1) purchase agreements by reading in-depth comparison article at www2.mnbar.org/sections/real-property/forms/paopener.html.

X. FINANCING

Prepare your client to move quickly in submitting to the lender all required and requested documentation in an organized manner. This ability to move quickly and efficiently is particularly important in an environment where interest rates are expected to rise prior to closing. It is also critical to address any unique circumstances of the client early with the potential lender (e.g., significant commission-based income, divorce, change in employment, insurability issues). A number of issues that require the assistance of counsel may arise in the financing aspect of a residential transaction.

- A. Pre-Approval and Preparation of Materials to Submit to Lender. Even prior to selecting a lender and obtaining pre-approval, certain materials must be submitted to a potential lender or mortgage broker. Most lenders or mortgage brokers provide a detailed list of materials required at the pre-approval and final loan approval stages. This list can vary with lender and client circumstances, so care should be taken to satisfy any transaction specific requirements in a timely manner.
- B. Rate Lock. The lender or mortgage broker should be pressed to provide written confirmation of the client's election to lock the interest rate. The confirmation should clearly state the date of the election, the rate and the duration of the rate lock period.
- C. Loan Commitments. Certain residential lenders are providing, and sophisticated sellers are requiring, that a buyer obtain a loan commitment within a certain timeframe prior to closing. Buyer's agreement to obtain such a commitment may have the effect of making buyer's offer to purchase more attractive since a greater level of assurance that buyer's financing contingency will be satisfied is obtained.
- D. Analysis of Good Faith Estimate and Truth-in-Lending Disclosure. Within three days of loan approval, the lender is required to provide a good faith estimate of closing costs to the borrower. Settlement costs of the HUD-1 are explained at www.hud.gov/offices/hsg/sfh/res/sc3secta.cfm.
- E. Purchase Agreement Financing Addenda.
 - 1. Timing Requirements. The MSBA financing addenda (MSBA Real Property Form Nos. 2 - 7) give the parties the option to either specify a date by which buyer is to have obtained financing or require that such financing be secured by the closing date.
 - 2. Failure of Contingency. The failure of the financing contingency would be subject to Minn. Stat. §§ 559.21 or 559.217 (cancellation of purchase agreements).
- F. Obtaining Homeowner's Insurance Coverage.
 - 1. Begin Process Early. Encourage your client to obtain multiple insurance quotes shortly after the purchase agreement is fully signed. A properly structured homeowner's policy binder is an underwriting requirement for all lenders and must be obtained prior to final loan approval. Most, if not all, insurers obtain a "CLUE®" report which discloses the claims history pertaining to a home. These reports are analogous to individual credit reports and a history of claims pertaining to a property can result in denial of coverage or significant increases in premiums. The inability of a buyer to obtain coverage would cause the approval of financing and the closing of the transaction to fail. A disclosure issue also arises if the claims were made during the current seller's ownership of the property (or if seller had knowledge of previous claims) and the conditions giving rise to the claims were not properly disclosed. Note: A seller may be well advised to obtain a copy of the CLUE® report prior to making its disclosure and listing the property (reports can be obtained at www.choicetrust.com). Since these reports are subject to the federal Fair Credit Reporting Act (see 15 U.S.C. § 1681 et seq.; www.ftc.gov), a potential buyer would be unable to obtain a CLUE® report for a home without the written consent of the seller; however, potential insurers may properly obtain those reports and buyers can often request information regarding the report from the insurer in the course of evaluating insurance quotes.

2. Ensure that lender is properly named as loss payee and additional insured on policy. Once the buyer has selected a lender and an insurer, the lender's name and contact information should be incorporated into the policy binder in order to name the lender as loss payee and additional insured under the homeowner's policy. The lender will require this evidence prior to final loan approval.

XI. TITLE MATTERS

Myth: Buyers do not need an owner's policy of title insurance if paying for a lender's policy. It may be painfully obvious to real estate lawyers that a lender's policy of title insurance does not provide coverage to an owner of real estate, but unsophisticated buyers and other parties involved in a transaction may not understand, or worse, minimize, the importance of obtaining an owner's policy of title insurance.

- A. Updated abstract or registered property abstract. It is critical that the parties to a purchase agreement decide what form of title evidence will be provided to buyer. The standard form of purchase agreement gives the parties flexibility to choose whether an updated abstract will be provided to buyer or if a commitment for title insurance will be provided in lieu of an abstract. Although some may minimize the significance of buyer obtaining seller's abstract, reconstructing an abstract where one has been lost or damaged can be costly (typically between \$500 to \$1,000) and buyer, when attempting to sell the property in the future, may be faced with that cost if the subsequent buyer requires that an abstract be provided. If an abstract is obtained by buyer, it should be stored in a safe location (e.g., attorney's office, safe deposit box, or other secure location).
- B. Commitment for title insurance.
 1. Policy rates and charges. Aside from the strong legal incentive to obtain an owner's policy, title companies often provide a financial incentive to obtain such a policy in the form of a discount to the amount charged to the owner when a lender's policy is issued. Further discounts can also be obtained when the new owner's policy is being issued within a certain time (usually five years) of the issuance of an existing owners policy for that property (even where a different title company was used for the prior policy). Charges can vary by issuer and quotes can be obtained prior to obtaining a title commitment.
 2. Confirm Schedule A items. Schedule A of the title commitment should be carefully reviewed to confirm: (a) policy amount (purchase price of property); (b) current vesting of title in the name of the seller (is this consistent with the purchase agreement?); (c) correct legal description of property; and (d) proposed insured (example: confirm husband and wife to hold title as joint tenants).
 3. Mark up to delete exceptions and require 'gap coverage'. The title company can delete typical standard exceptions to the policy by obtaining a Seller's Affidavit, reviewing a survey or plat, or conducting additional due diligence. The effective date of the policy should be revised to be the time and date of recording of the vesting deed such that the title company is insuring the period between closing and the actual recording of the conveyance document.
 4. Obtain copies of underlying Schedule B exception documents. These are often not included with the initial draft of the title commitment and must be requested from the title company.
 5. Review exception matters and render objections. A buyer's attorney should closely review each of the exceptions to the title commitment in order to

determine whether any affects the marketability of title or impacts buyer's intended use of the property. Items related to marketability of title should be objected to in a timely fashion pursuant to the provisions of the purchase agreement. Buyer should also consider whether easements, restrictions, covenants, agreements and other matters of record would interfere with buyer's intended use of the property (e.g., utility easement over or under an area where buyer intends to install a swimming pool). For thorough and detailed discussions of reviewing and opining on title matters, see "How to Examine Title to Real Property", MCLE Press (St. Paul) May, 2005. See also MSBA Real Property Form No. 19 (2005), Addendum to Purchase Agreement: Title Issues.

If the property is registered land, the attorney should compare the Certificate of Title to the title commitment. In addition, Minn. Stat. Chap. 508 requires that the Registrar of Titles not accept certain transfer documents (probate deeds, trustee deeds, dissolution Judgment and Decrees) for filing unless the legal sufficiency of the documents has been certified by the Examiner of Titles. Some title companies will require the Examiner's approval prior to the closing, although this is not a statutory requirement. To facilitate the closing, the attorney should monitor the approval process.

6. Obtain markup at closing and get timing of issuance of policy. Closely monitor the closing process to ensure that the closing agent has properly "marked up" the title commitment to delete standard exceptions and dispose of matters that are satisfied at closing. The final version of the title commitment should address any items that were resolved of record in the title objection and cure procedures under the purchase agreement. Your client should obtain a copy of the final markup at closing and the closer should provide a timeframe in which a policy based upon that markup will be issued and the jacket forwarded to your client.

XII. PRE-CLOSING

- A. *Myth: Title company fees are standard.* Reality: Fees vary considerably. Have client contact three title insurance companies for bids.
- B. Agents cannot require parties to use particular title or closing companies. Minn. Stat. § 82.41, Subd. 9.
- C. Send letters to title companies requesting all documents three days before closing. Settlement statement ("HUD-1") may be inspected by buyer day before closing (12 U.S.C. § 2603).
- D. The following division of fees could be altered in the purchase agreement.
 1. Seller usually pays the following costs at closing:
 - a. Document preparation costs, recording fees, and deed taxes for documents necessary to establish good and marketable title in seller.
 - b. Document preparation costs for seller's deed or contract-for-deed, Certificate of Real Estate Value, seller's affidavit, well disclosure certificate (if required), and any other documents necessary to transfer good and marketable title by seller's deed or contract-for-deed.
 - c. Deed tax on seller's deed and, in the metropolitan area, the Agricultural Preservation Document tax charged under Minn. Stat. §40A.152.

- d. Fees payable to seller's lawyer or to a licensed closer ["title closer"] for conducting the title-transfer portion of the closing. If seller is not providing a lawyer or title closer for the title-transfer portion of the closing and if buyer is obtaining new mortgage financing and the closer's fee is not separated into a "title closing fee" and a "loan closing fee," then seller shall pay one half of the closer's fee or \$_____, whichever amount is less.
 - 2. Buyer usually pays the following costs at closing:
 - a. Document preparation costs, recording fees, and mortgage registry taxes for documents necessary for buyer's mortgage financing.
 - b. Document filing fee for a well disclosure certificate, if applicable.
 - c. The Agricultural Preservation Document tax on Buyer's mortgage deed charged in the metropolitan area under Minn. Stat. §40A.152.
 - d. Loan closer's fee.
 - e. Recording fee for deed, contract for deed, or other instrument of conveyance where buyer is the grantee.
- E. Question all expenses shown on the closing documents.
 - 1. Minn. Stat. § 507.45, Subd. 2, states: "No charge for closing services, except a charge disclosed under Regulation Z, Code of Federal Regulations, title 12, section 226, and except a charge for which an estimate has been given pursuant to the Federal Real Estate Settlement Procedures Act, and regulations thereunder, may be made by a closing agent unless the party to be charged is informed of the charge in writing at least five business days before the closing by or on behalf of the party charging for the closing services."
 - 2. Minn. Stat. § 82.41, Subd. 7, states: "A real estate closing agent may not charge a fee for closing services to a borrower, and a borrower may not be required to pay such a fee at settlement, if the fee was not previously disclosed in writing at least one business day before the settlement. This disclosure requirement will be considered satisfied if a disclosure is made or an estimate given under section 507.45."
- F. An explanation of settlement costs on the HUD-1 can be found at www.hud.gov/offices/hsg/sfh/res/sc3secta.cfm.
- G. *Myth: The buyer doesn't need to review the deed because only the seller signs it.*
 Reality: Review deed to determine accuracy of seller's name, buyer's name, legal description and nature of tenancy. Countless errors are made on deeds and finding the seller months after closing to get a new deed may be difficult.
- H. Have client do "walk-through" on way to closing. The purpose is to determine that the property is in the same condition as at the signing of the purchase agreement, that all promised repairs have been made, and that all personal property and fixtures included in the sale are still in the house.

XIII. CLOSING

- A. *Myth: If an attorney has reviewed the deed and HUD-1 before the closing, he or she does not need to attend the closing.* Realty: To properly represent the client, the attorney should attend the closing.
1. Without the attorney present, the client is without representation.
 - a. Neither the real estate agent nor the closer can give legal advice.
 - b. Both the real estate agent and the closer have conflicts of interest (in fact, one local title services company candidly states in its Compliance Agreement that the title services company “. . . represents neither the Seller(s) nor the Buyer(s)”, a fact which clients could be excused from understanding given the fees paid to, and the services being performed by, the title services company).
 2. Documents are often presented to the client for execution for the first time at closing and the combination of the lack of experience and teaching, the excitement of purchasing a new home, and the lack of representation results in clients signing documents without any understanding of the impact of those documents.
- B. Closing documents fall into one of two categories.
1. The “real estate closing documents”, which deal with the transfer of title, are usually prepared by the closing company or companies (if the seller has chosen a title services company different than that chosen by the buyer) and include the following:
 - a. Title Commitment;
 - b. HUD-1;
 - c. Deed (warranty or otherwise);
 - d. Certificate of Real Estate Value;
 - e. Affidavit Regarding Seller;
 - f. 1099S Informational Disclosure Statement; and
 - g. Various other title services company “in-house” documents.
 2. The “loan closing documents” are, for the most part, prepared by the lender and forwarded to the closer shortly (and sometimes a matter of minutes) prior to the closing and include the following:
 - a. Promissory Note;
 - b. Mortgage Deed (with various Riders);
 - c. Truth-in-Lending Disclosures; and
 - d. Other disclosures and representations required by the lender.
- C. While all of these documents should be reviewed for accuracy and to verify that they reflect the agreement of the parties, the documents of greatest concern are the “in-

house” documents which are of differing title, form, and substance depending on the title services company.

1. These documents (sometimes titled “Compliance Agreement” or “Compliance Agreement and Hold Harmless” or “Closing Acknowledgment”) often have been cobbled together over time and include non sequiturs and conflicting language.
 2. Of more concern, however, is that these documents usually seek to unilaterally:
 - a. impose obligations on seller and buyer which are not necessary for seller and buyer to fulfill their respective obligations under the purchase agreement or are otherwise than as agreed to by seller and buyer; and
 - b. relieve the title services company of liability for errors on the part of the title services company in performing the closing.
 3. Some examples taken directly from such documents include (with emphasis added):
 - a. “The undersigned Seller(s) and Purchaser(s) do hereby individually and jointly agree to fully protect, defend and hold harmless [**Title Services Company**] and Real Estate Broker (if applicable) from any and all loss, cost, damages, attorney’s fees and expenses of every kind and nature which it may suffer, expend or incur, under or by reason of this closing.” *(Even if due to the title services company’s error or omission?)*
 - b. “The undersigned Seller(s) and Buyer(s) also acknowledge that [Title Services Company] . . . is closing this transaction as an agent of [Title Company] **and does not represent the Lender, the Buyer(s) or the Seller(s).**” *(At least the title services company is forthright.)*
 - c. “The Seller(s) **and/or** Buyer(s) agree to pay all special assessments, real estate taxes and liens and utilities associated with the above property, as agreed upon in the Purchase Agreement and to hold harmless and indemnify the **Purchasers**, Closer, and any title company or real estate brokers involved in the transaction against any such special assessments, real estate taxes and liens, and utilities or legal costs to remove the same. . . **Seller(s)** agree to reimburse [Title Services Company] for additional funds not accounted for in Settlement Statement including but not limited to Mortgage Registration Tax and State Deed Tax owed by the buyer and seller, respectively, to the County prior to recording the respective documents, also including . . .” *(And, why should seller [and/or buyer] agree to do this without regard to whether it is the responsibility of seller [and/or buyer]?)*
 4. In addition, all of these types of documents require the parties to sign unseen documents in the future without regard to whether or not such requirement, or the documents to be signed in the future, change the obligations or liabilities of the parties under the terms of the purchase agreement.
- D. Be sure to receive at the conclusion of the closing copies of all of the documents pertaining to your client.
1. Closing files can go into never-never land with the result that originals and copies are never filed and lost.

2. This provides for easy follow-up response should it be required.

XIV. POST-CLOSING

- A. Prepare a "Post-Closing Checklist" of all items that remain to be completed along with a time line for such completion, including the following.
 1. Verify that all documents have been recorded promptly.
 - a. Some documents are not presented for recording for a year or more after the closing.
 - b. Registered property documents are mistakenly recorded in abstract office and consequently do not affect the registered land.
 - c. Clients only find out when they try to refinance or obtain a home-equity loan.
 2. Verify that the client has filed for Homestead status.
 3. Verify payment of real estate taxes and special assessments.
 4. Verify timely payment of prior mortgage loans and the filing of mortgage satisfactions.
 5. Verify that the client has received a refund of all amounts escrowed with any prior mortgagee.
 6. Verify that the final owner's policy is in accordance with the terms of the marked-up title commitment.
 7. Verify that the client has retained a copy of the HUD-1 for tax purposes.
 8. Verify that the client has not discovered any latent defects after closing.
 9. Such other matters as were left unresolved at the time of closing.
- B. Send a letter to the client with this "Post-Closing Checklist" and confirm with the client who is performing which items by when and then confirm that such items are ultimately completed.