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UNDERSTANDING FOR SALE BY OWNER (“FSBO”) TRANSACTIONS

WHAT IS A FOR SALE BY OWNER (“FSBO”) REAL ESTATE TRANSACTION AND HOW DOES IT DIFFER?

A FSBO (For Sale By Owner) is a common real estate transaction where a property owner markets and sells his or her property (often a home) without employing a real estate agent (Realtor). A FSBO transaction operates just like any other real estate transaction, with the exception that a commission is not paid by the seller to a real estate agent and the seller does not have a real estate agent to represent him or her in the transaction.

WHAT ARE THE ADVANTAGES OF A FSBO?

A FSBO has the significant advantage of eliminating the commission paid by the seller. In many transactions, the elimination of this commission can provide a tremendous savings. However, since a FSBO seller does not have a real estate agent to prepare and review documents or counteroffers and facilitate the transaction, it is often very helpful for a seller in a FSBO transaction to obtain the advice of a real estate attorney who can prepare contract documents, provide legal advice to the Seller to avoid potential legal liability resulting from the sale, and to otherwise facilitate the transaction.

In many instances, the cost of retaining a real estate attorney to represent a FSBO Seller of property can be substantially less than the cost of the commission to the seller’s real estate agent, while also providing the significant added value of legal advice regarding the transaction that only can be provided by an attorney. Amongst other services, a real estate attorney can provide legal advice regarding the structure and terms of the contract (such as terms that protect the sellers’ rights, limit the sellers’ liability, and limit the grounds for which the contract can be terminated) and the negotiation and fulfillment of the contract. Due to the legal implications of the sale of real estate, the potential for liability from the transaction, and the need for contract terms to be drafted to protect a seller’s legal rights as well to result in a successful outcome to the sale, even property sellers represented by a real estate agent should strongly consider retaining an attorney to represent and protect their interests in a real estate transaction. In a FSBO sale, a seller can receive all of the benefits of legal advice from a real estate attorney without the added cost of a real estate agent’s commission.

WHAT SERVICES CAN A REAL ESTATE ATTORNEY PROVIDE IN A FSBO TRANSACTION?

A real estate attorney can provide a wide-range of services associated with a FSBO real estate transaction, many of which constitute legal advice that only an attorney can provide. Additionally, the range of services a real estate attorney can provide a seller in a FSBO

transaction can easily facilitate the transaction without the need—and associated costs—of a seller’s real estate agent. The services available include:

- (1) Reviewing purchase offers and providing legal advice regarding the offer and potential responses or counteroffers, logistical consequences or business consequences (i.e. reasonableness of timeliness in the offer; the amount of earnest money (deposit); unusual contract terms; the commercial reasonableness of the offer’s terms, local real estate practices, such as the typical allocation of closing costs, etc.).
- (2) Drafting and reviewing counteroffers and real estate contracts to ensure terms are included to protect the seller and limit his or her liability.
- (3) Assisting with property marketing issues such as pre-qualifying potential buyers and preparing the property for marketing, showing and sale.
- (4) Providing strategy regarding negotiations and counteroffers.
- (5) Directly negotiating the transaction, offers and counteroffers for the Client.
- (6) Assisting with objections raised by the buyer prior to closing (including title matters, boundary issues, property conditions, property disclosures, HOA document disclosures, etc.) and negotiate resolutions for any such issues.
- (7) Advising the seller regarding both legally-required disclosures and contractually-required disclosures and ensuring that all disclosures required by both the contract and the law are properly made to avoid future liability associated with the sale.
- (8) Reviewing real estate contract, closing and title documents prepared by the title company to ensure the seller’s rights are protected, to ensure the title documents are accurate and consistent with the contract and to ensure that the seller is getting paid the correct amount out of closing and any existing mortgages are getting property paid off and released.
- (9) Representing the seller at the closing.
- (10) In instances where the seller is interested in financing the buyer’s sale of the property (also called an owner carry), a real estate attorney’s involvement is even more crucial as an attorney can prepare the loan and mortgage documents and undertake due diligence regarding the buyer’s ability to repay. An attorney can also prepare documents for alternative financing arrangements (e.g. option to buy).
- (11) A real estate attorney can also be of significant assistance in transactions that involve special or unique contract terms and can draft real estate contracts to fit the specifics needs and wishes of the parties involved in the transaction.

WHY SHOULD YOU RETAIN A REAL ESTATE ATTORNEY IN A FSBO TRANSACTION?

The sale of real estate is a transaction involving a significant asset and a great deal of variables that can greatly impact the protection of your legal rights, the successful outcome of the transaction, and your current and future liability. A successful real estate transaction requires the exercise of great diligence to ensure that all crucial aspects of the sale are fully and adequately addressed. In a FSBO transaction, obtaining the legal advice and assistance of an attorney specializing in real estate law can be a cost-effective method to both realize the savings of not using a real estate agent while at the same time receiving the assistance of a real estate professional who facilitate the transaction, but also, more importantly, provide you with legal advice regarding the sale.

HOW CAN I GET HELP WITH A FSBO TRANSACTION?

If you have further questions about real estate transactions or need representation, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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