

CAVEAT EMPTOR
(Buyer Beware)
By: Bradley S. Dornish, Esquire
Dornish & Scolieri, P.C

Just when I thought I might run out of articles to write, and have to recycle a few oldies but goodies, or do a cliché article on giving for the season, real estate law takes turns we wouldn't expect and gives me enough material for whole seminars, let alone articles. For those who attended the November seminar on "Quick-Turn in Pa. The Legal Way", this is old news. But for those who missed that class, a brief update.'

My October trip to the Dominican Republic wasn't all about international real estate investing. A large part was spent networking with investors from other states and a few who were also Real Estate Attorneys, like Ohio's John Hyre. We talked about what was going on in legislatures and courts in different parts of the country, and how real estate investors, especially those who deal in options and assign those options for profit, were on the firing line.

Last month's newsletter had an article about some of what was happening in other states, so I won't repeat that. What you want and need to know is what is happening here in Pennsylvania, from Philadelphia to Scranton to Harrisburg and Pittsburgh.

I've contacted Attorney Bob Diamond from the Philadelphia area and John Hyre knows about some of the events elsewhere. The real estate section of the Pennsylvania Bar Association has a great lobbyist, and so does PROA, if they will share information with me.

But right here in Western Pennsylvania, we have a case being pursued by the Attorney General which is causing the AG to draft new legislation headed for Harrisburg. And that legislation is designed to restrict or eliminate certain forms of real estate investing in Pennsylvania. I've talked to the Assistant Attorney General who is both handling the case and writing the new law, and she has a serious desire to prevent investors who don't own a property

from taking an assignable option and reselling or assigning the option for profit. She sees installment land contract assignments as the same “problem”, and wants to eliminate these types of contracts in Pennsylvania. I’ll keep ACRE and other Pennsylvania real estate investors posted as I learn more about the legislation and litigation. I hope to be able to convince the AG that not all option and installment land contract Buyers are out to trick or swindle Sellers and assignees, but it will be an uphill battle.

For now though, the law in Pennsylvania hasn’t been changed by a court decision or a new statute. Installment Land Contracts are legal. That is why we have an “Install Land Contract Act”. And options to control property are also legal IF THEY ARE USED CORRECTLY.

To list and sell real estate you don’t own in Pennsylvania, like most other states, you have to be a licensed real estate agent working through a licensed broker, or a licensed broker yourself. (There is an exception for attorneys however, go figure.)

If you use an option, or an installment land contract, pay little or nothing up front, no regular payments, and advertise that you have a bunch of properties you don’t own “available” or “listed”, it sure smells, looks and feels like you are acting as a real estate agent. And agents, who have taken their classes, passed their tests, work under and share commissions with their brokers, don’t like it that you are skipping all of those steps, and are an unregulated and illegal competitor. They can and will complain to the Real Estate Commission and you’ll be investigated. If you are found to have been practicing real estate without a license, you will be fined and penalized.

Avoiding these problems starts by paying more money for your options, actually buying some keepers for yourself, assuming responsibilities for the property an agent never would and

then convincing the investigator you aren't trying to skirt the rules.

Another hot topic for real estate investors is internet sales or auctions of real estate. I'm not convinced that E-bay isn't a real estate broker without a license just like you if you post other peoples' properties on the internet and solicit Buyers for those properties at a profit for you. So far, E-bay has avoided the guns of the Real Estate Commission, and lawsuits in this area, but I have several clients who have not been so lucky.

One Buyer bought a property on E-bay without a title search or title insurance, but got the deed so the Seller had performed. The property was subject to an old mortgage that the Seller didn't know about or disclose to the Buyer and the Seller gave only a special warranty deed, not a general warranty deed. This means Seller did not warrant to Buyer that there were no old mortgages on the property predating Seller's purchase of the property. But the mortgage is still there, and to resolve it, Buyer will have to pay more than the property is worth, or walk away from the money Buyer already has in the property. Not a good choice, but one that could have been avoided with a title search and title insurance.

Another internet auction problem I have is for an out of state Buyer who bought on the internet and turned around and sold on the internet. He never came to town or saw the property, and gave his Buyer all the information his Seller had given him. The ultimate Buyer, however, has sued my client, claiming he violated the Seller Disclosure Law by not giving a Seller Disclosure Form to the Buyer. My client may not have given the form, but if he had, he would have had no knowledge of the property whatsoever, and no information to fill in on the form.

That case hasn't been decided yet, and I'll keep you updated on its progress. For now, just know to follow all of the Pennsylvania real estate laws when you are buying or selling real estate in Pennsylvania over the internet, including the Seller Disclosure, Lead Paint Disclosure,

and who can receive a commission on real estate (real estate brokers), etc., etc.

And whenever you engage in these transactions, CAVEAT EMPTOR - Buyer Beware.