Keith Eliou,

Broker and Owner of A LA CARTE REAL ESTATE COMPANY

Proudly presents

REVEALING *the* SECRETS — *of How to* REDUCE *or* ELIMINATE THOUSANDS — *of* DOLLARS *in* REAL ESTATE COMMISSIONS

The traditional REAL ESTATE COMMISSION is the SINGLE BIGGEST COST in the sale of your home and in the past was the only option that real estate companies offered but a new option exists that permits Sellers to save money and pay only for the services that they choose. Throughout this book, ask yourself WHAT DOES THE VALUE OF YOUR HOME HAVE TO DO WITH THE PRICE THAT YOU PAY TO SELL IT?

Become an educated Seller by investing about AN HOUR in this practical guide and learn:

- The three services that you need in order to sell your home and how to get experts to provide higher quality at lower prices than offered by an individual real estate agent alone;
- The advantages of the “unbundled ” fee for services model over the traditional “bundled services” full commission based model;
- Learn how to entice real estate agents to sell your home instead of the home of your competition.

Follow the roadmap in this book designed in a reader friendly checklist style and save Thousands of Dollars in the cost to sell your home.

Revealing the Secrets of How to Reduce or Eliminate Thousands of Dollars in Real Estate Commissions

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Here's What's Inside…

Disclaimer

Disclaimer: This book is not intended to provide legal advice and is general in nature. Generalizations have been made in some instances for the purpose of brevity. Nothing contained herein should be relied upon by the readers. Specific questions should be addressed to the appropriate professional advisor. A La Carte Real Estate Company, Advocate Mortgage Services Inc., Advocate Insurance Agency Inc., Keith Eliou, Esq. and any affiliates or related parties specifically disclaim any and all liability for the use of the contents of this book.

How to use this book

This book is not meant to be all-inclusive; it focuses on practices associated with residential real estate in Pennsylvania, primarily in the counties surrounding Pittsburgh. It should be used in conjunction with advice from a real estate professional. It is intended help the reader make educated choices by knowing which questions to ask, who to ask, and the available options for services.

The Tale Of Two Commissions: The Key Concept You Must Understand To Save Money On The Cost Of Real Estate Commissions And False Premises Held By Sellers

The real estate commission really consists of **TWO** parts: the Listing Agency Commission and the Selling Agency Commission. Confusion among sellers exists—and is perpetuated by the industry—sometimes because the listing agent and selling agent are from the same company. Therefore, the entire commission is paid to one company. When two different companies are involved in the sale, the two parts of the commission can be readily observed at closing; these costs are itemized separately on the Closing Disclosure (formerly called the Settlement Sheet).

This is a key point: understand that the company and agent who lists your home for sale has a different task than the company and agent who introduces the buyer and sells your home. For example, if a real estate agent brings a buyer to see your property (and if the buyer purchases the property), it will benefit you. But it's also a service to the buyer; the agent of the selling agency will be paid half of the commission for bringing the buyer. Although the seller pays the selling agency half of the commission, it is being paid to compensate the agent who brings the buyer. Bringing a buyer is all about the selling agency side of the commission; the listing agent's job is to help to set the sale price, help the seller with the process and paperwork, and expose the home to the market. This book will concentrate on the tasks required when a company and agent lists your home for sale.

Sellers commonly hold several false premises about how to sell their home.

1. **They need to list their home with Company A because they "sell all the homes in the area."** No matter which company lists your home, all companies participating in the Multiple Listing Service (aka MLS or multi-list) can sell the home, and be paid the Selling Agency Commission. You can only list your home with one agent from one agency, but any one of the hundreds of agents from dozens of companies can bring a buyer and be the selling agent or agency; they will be paid the Selling Commission. You should want to entice and encourage all of those other agents to bring buyers to your home instead of taking their buyers to other homes on the market, i.e. your competition. Therefore, if a particular agent or agency actually sells all of the homes in an area (many claim they do with varying statistics), the selling agency

will be paid to do so. **The selling agency has no idea what you paid the listing agency to get into the multi-list; the selling agency only knows what it will be paid.** This is the question a seller should be asking: How much do I have to pay to list my home for sale?" Sellers can now control the listing services they want and how much to pay.

2. If they use the traditional commission-based model but the home doesn't sell, it doesn't cost anything; they save money.
3. They can elect to sell their home as a For Sale By Owner (FSBO pronounced "fizz-bo") and benefit financially because they will pay no commission to sell their home.

These are the problems with those premises:

1. The only way the traditional commission-based model costs you zero is if it doesn't work, and you don't sell your home. If it does work, you have just paid retail and more than in the unbundled model. Ask yourself, "Is my goal NOT to sell my home?"
2. FSBO sellers think they are saving money by not paying a real estate commission, but they miss marketing to a HUGE chunk of the market. Most buyers look for homes with agents; if the agents won't get paid, they will not bring buyers to your

home. Therefore, as a FSBO, the seller doesn't know if she could have sold the home for more money and still netted more money, even after payment of the commission, by listing the home with a real estate company. In fact, many FSBOs overprice their property and go to the extreme of not spending <u>any</u> money for help in pricing their home. They won't even pay a $400 fee for a professional appraisal that could be used in negotiation with the buyer if it supported their price (a terrific bargaining tool)—or not use if it didn't. **How do you know if you have left money on the table or priced yourself out of the market without a professional opinion?**

Extra: Another false premise is the seller's assumption that the company or agent willing to list their home at the highest price is the right company to choose. Some agents will list a home for whatever price a seller wants, despite the sales data indicating the seller is asking too much. While this usually wins business for the real estate agent, this is not always in the seller's best interest. If a seller prices the home at a higher price than dictated by sales in the area (the euphemism is called "challenging the market"), the seller may miss a buyer who would have paid what the market would bear in an early stage of the process; the seller waits for a long time, if ever, to attract a buyer at the price the earlier buyer would have paid. Make certain you are priced competitively with the market, and educate yourself on what the market will bear for your home.

Choosing to follow the advice of a real estate agent for the choice of service providers is not always a good idea; it may cost you more than any available price on the open market. Sometimes, sellers are directed to an in-house lender or closing company by their agent; they may feel obligated to use those services. Many agents and/or their companies have a financial interest in lenders and closing companies, or receive fees from them, such as renting desk space in their office. Although these relationships are required to be disclosed in a clear and conspicuous manner, that is not always the case.

Your agent should not insist on your selections for an inspector, mortgage company, or closing company. You pay for those services, not the agent. While there is no law against having financial interests in other affiliated companies (also called CBAs for Controlled Business Arrangements), you should be informed of those CBAs and any potential conflict of interest. If these are not disclosed to you up front, you should not sign any form giving notice of the relationship, especially at closing. Also, you should contact an attorney about potential violations of Section 8 of the Real Estate Settlement and Procedure Act which prohibits kickbacks.

Why Homes Don't Sell

The number one reason a home sells or doesn't sell is its price. If you don't get an appraisal to help you set the sales price of your home, at least (and we don't recommend sellers take on this task) you must impartially review **all** of the actual sales in the last 12 months of comparable houses in your market, and then make a decision on the price to ask. In our opinion, analyzing sales data and making adjustments to values is best left to professional appraisers.

A second reason homes don't sell is the residential real estate market is not as fluid and liquid as the stock market. With relative certainty, you can tell the price you will get for your stock, and obtain your proceeds almost immediately. This is not the case with real estate. Not all times of the year have an equal amount of buyers. There tend to be many buyers in the summertime when school is out. Meanwhile, there are fewer buyers in wintertime and during holidays, but keep in mind these buyers may be more motivated and primed to buy. Buyers enter and leave the market constantly. Your goal is to attract one buyer who is in the market to buy your home while you are trying to sell.

How the Traditional Real Estate Commission Model Works

To understand how to save on the cost of real estate commissions, you must understand how commissions work under the traditional "bundled services" real estate commission model. (Keep in mind that this is a bit of a generalization.)

Let's assume you have listed your home for $300,000, and have agreed to pay a 6% real estate commission of $18,000. Company A, with whom you signed a contract to sell your home, is called the Listing Agency; the agent is called the Listing Agent. The standard listing contract states that you are giving the right to sell your home to company A "*and all subscribers of the multi-list*" (the other member companies). Most sellers miss this significant part, because many sellers mistakenly believe that their listing agent will bring the buyer; that's not really the case. Once you sign the contract with company A, that company will turn around and solicit all of the other multi-list subscribers to bring buyers and offer to pay them half of the total commission you agreed to pay. Notice that they don't agree to split the commission with you if you find a buyer, which is a key reason to consider using the unbundled services model. This is an UGLY aspect of the traditional full commission-based model that we will address shortly.

Continuing with the above scenario, once you sign the listing contract with the agent from company A, that agent inputs the information into the MLS system. An agent from company B may then see the new listing and bring a buyer who purchases your home. Company A would then get 3% of the commission ($9,000) while company B would get the other 3% ($9,000). In turn, each agent of each company would get a portion of the $9,000, which could be anywhere from 50% ($4,500) to almost 100% (the full $9,000). If the portion approaches the full $9,000 mark, the model of the real estate company most likely requires the agent to pay a monthly fee to the company as opposed to only sharing the commission.

If the same listing agent brings the buyer (now called a "dual agent" who works for both the seller and the buyer), then the total commission is typically split between the listing company and the listing agent. This split could mean the agent gets anywhere from 50% to almost 100% of the commission, depending on what deal has been made between the agent and the company.

If a different agent from the listing agent's same company brings a buyer, there could be an "in-house commission difference", wherein each agent gets one-third and the company takes a third. This gives agents the incentive to sell the company's listings instead of selling the competition's listings (i.e. other companies). This incentive system <u>does</u> work and can be used by sellers when listing their home with a company offering unbundled services. In the unbundled world, some of the cost savings gained from listing the home for a flat or hourly fee instead of the 3% could be used to offer a higher commission to a real estate agent (the selling agent) who brings a buyer to their house over the competition (more about this strategy later).

Here is the ugly part of the traditional commission deal. Let's say after telling your fellow co-workers at the office about your home for sale, you actually find a buyer; you are still obligated to pay the full (6%) commission and it's a windfall for your agent and the company. We understand the financial reward to the listing agent and company makes it hard for them to willingly give this up. However, if the listing company is willing to share the commission with other real estate companies if they find a buyer, why should that incentive be taken away from you? Do they owe you a higher duty to procure a buyer if they take away your financial incentive to help? Again, if you list your home with a model which unbundles the services, you only have to pay a selling agent commission if a selling agent brings a buyer. If you procure your own buyer, **you don't pay the other half of the commission!**

How the Unbundled Real Estate Services Model Works and the Three Essential Services You Need to Sell Your Home

Now that you understand the TWO commissions you pay (listing and selling) to sell your home, you should also understand these amounts don't have to be equal. Your goal should be to purchase the listing services at the lowest possible cost. Instead of a 3% listing commission, you should be able to buy the listing services at a flat fee or hourly rate. Then you should only have to pay the selling agency commission to an agent who brings a buyer. If you find a buyer without an agent, then you should not have to pay a commission. You can use the savings from the listing side to entice all agents to bring buyers by offering more than the standard 3% selling agency commission, while paying less overall than the traditional commission model, and get a higher level of expertise.

Most sellers don't know how to shop for services because they don't know what services they need. Let's examine the three types of services required by the listing side:

A) Property valuation;

B) Paperwork and process assistance; and

C) Marketing/exposure of the home to potential buyers.

These are all typically provided by the real estate agent who lists your home for sale. What if you could break up those services? For example, instead of buying all of the services in a bundle from the listing agent (a generalist), you could save money and get help from separate experts in each are by using the unbundled model . You could hire an appraiser to deal with the value, an attorney to help with the paperwork and process, and a real estate company to list your home in the local MLS. Now you have three different professionals to assist you in their particular area of expertise at an overall lower cost. Let's look at each service in more detail.

A. Valuation Of The Property

1. Appraisal

To value the property for selling purposes, you need **two reports,** an **appraisal** and **home inspection**. A professional appraiser currently charges about $400; one can be found with a quick Internet search or through the state licensing authority. Before hiring, you should ask if the appraiser will include six recent sales (homes which have sold and closed within the last 12 months) and three current listings (other competitive properties currently for sale). This provides substantial support for the ultimate value determined in the report. Standard Fannie Mae and Freddie Mac guidelines require mortgage appraisals to include as few as three recent sales and no current listings. Also, we suggest you ask them to take fifteen minutes to explain the report, so you fully understand how the opinion of value was determined. For example, sometimes the appraiser will weight one of the comparable homes more heavily than the others used in the report, because it requires the fewest adjustments to the value.

An appraisal's BIGGEST advantage is as powerful and persuasive evidence to provide to a buyer when the sellers are presented with an offer below the appraised value. Typically, without an appraisal, the seller's agent may present his "comps" (comparable recent sales or listings) while the buyer's agent presents her "comps". Since no two houses are exactly the same, sellers and buyers are left with only the agents' opinions of why one of the comps is more persuasive than the other. Furthermore, the comps presented by agents may or may not be comparable. Just because someone calls a recent sale a 'comp'—worse yet, an "unsold listing" because listing the house at a certain number doesn't mean a buyer will pay that price—doesn't make it so. For example, the comps may be comparing the Seller's home with a finished basement to a home without any basement, a smaller home, or a home in worse condition. Any opinion of value by a real estate agent who is not a licensed appraiser is not an appraisal; it is a Comparative Market Analysis ("CMA") that does not carry nearly as much weight as an appraisal done by a licensed professional. There is no commonly accepted methodology for how CMAs are prepared as exists for the preparation of appraisals; therefore, they are less reliable indicators of value.

We suggest you neither try to be the expert in valuing your home nor accept the generalist agent's opinion. Spend the money for an appraisal, completed by an expert in valuation, who will make many appropriate adjustments to the properties cited in the appraisal report in order to present one final number, which is the professional opinion of value. The appraisal provides independent evidence of the home's value and obliges the buyer to justify the offered price. Keep in mind that, the appraisal does not have to be entirely independent.You can request the appraiser to complete the appraisal to justify the highest possible value within the scope of the Fannie/Freddie guidelines. While this is a legitimate, rational approach, it is not necessarily objective and independent.

A professional real estate appraisal can also be used to rebut an appraisal with a low value which was obtained by the buyer in order to satisfy an appraisal or mortgage contingency. Bidding wars can also lead to appraisal issues. Sellers should carefully consider whether to accept or modify appraisal or mortgage contingencies, included in agreements submitted with prices above the asking price, since there is an increased possibility that the home will not appraise as high as the sales price. That could make the buyer's purchase voidable at the option of the buyer.

2. Setting the price yourself with the use of comparable sales and listings

As mentioned above, appraisers will make comparisons and adjustments for various characteristics in order to come up with a value. While we don't recommend that sellers assume this task, if an appraisal is not obtained, at least do the following to establish a price:

First, list the characteristics of your home in an UNBIASED manner. For example, you should list:

- Size: meaning the above ground square footage as well as the number of rooms;
- Effective age: not only from the time it was built but if it was updated, it might be able to be compared to newer homes;
- Condition: compared to elements of other similar homes (i.e. roof, furnace, carpeting, updated kitchen & baths);
- Style: two-story, ranch, split entry;
- Garage Type: attached, detached, integral;
- Street Type: heavily traveled main street or private with cul-de-sac;
- Backyard Type: level, sloped, or not easily usable;

- Fireplaces: number and type (gas or log-burning);
- Basement: finished with a bath or unfinished (below-grade square footage is valued differently than above-grade);

Other upgrades should be listed, but excessive improvements made far in excess of what is common or customary for the area (aka ‘over-improvements’) can be viewed negatively. Also, rarely does the value of your home rise dollar-for-dollar for what you put into your home. A fifty-thousand-dollar kitchen most likely won’t add $50,000 to the value of your home.

Next, define the market in which you will compete (your neighborhood, school district, or zip code which might present similar options to a buyer), and compare your home to other sold homes in your market. Review homes currently on the market because they are the competition for the buyers you wish to attract. Your competition changes over time as homes are withdrawn from the market, purchased, or arrive on the market. Fewer homes on the market means less competition for you. Additionally, unique homes which appeal only to certain buyers may sit on the market until that type of buyer appears.

Knowing the characteristics of your home, and other homes that have recently been added to the market or sold, will give you the necessary ammunition to convince a buyer that your home is worth your asking price.

3. The Home Inspection

The **other report** needed to help you accurately value the property would be a **home inspection**. Typically, this includes inspections for pests and radon. The report provides detailed information about the condition of the property. Currently, no licensing is required of home inspectors in Pennsylvania, but legislation has been proposed. We suggest you obtain a professional home inspection by a member of a professional association such as ASHI, the American Society of Home Inspectors. It usually costs about $500 dollars. Because of the additional cost on top of the real estate commission plus administrative fees currently charged by companies, we believe the inspection is rarely done in the traditional real estate commissioned model, but it is worth every dollar.

Almost always, an inspection is a contingency in the buyer's offer to purchase your home; a home inspection issue is the number one reason home sales fall apart after the agreement is signed. Don't stick your head in the sand. Be proactive, get a home inspection, and find out what your ultimate buyer will find out two or three weeks after you THINK you sold your home for a certain price (only to be faced with a request for repairs, credits, or agreement termination). Home inspectors have no incentive to sugarcoat reports and face potential lawsuits and fee refund requests if they don't address possible issues with the property. Small deficiencies can be interpreted by buyers as huge problems because of the phrasing in the report. After you purchase a home but before you move, you could find yourself in a position of either having to address thousands of dollars in requested repairs (or credits for the repairs), or choosing to terminate both the agreement on your sale and the purchase agreement on your new home.

At that point, you may have to pay premium prices for contractors to make the requested repairs, due to the limited time frames in both agreements. Don't put yourself in this position. Give the buyer the home inspection up front and disclose any deficiency, no matter how slight, on the required Pennsylvania Seller Disclosure form. Let the buyer know up front that the price of the home included these conditions. Specifically condition your purchase agreement upon the buyer's acceptance of all of the disclosed conditions. If the buyer chooses to do a second inspection, it is less likely for you to face the choice of (in effect) either reselling the property for a lower price by thousands of dollars, or letting your agreement fall through.

i. Selling Your Home "AS IS" and Government Mortgages

As a seller, be aware that some of your home's conditions could be an issue for a buyer attempting to get a mortgage insured by the Federal Housing Administration (FHA) or the Veterans Administration (VA). Even though a buyer may agree to purchase the home without repairs, she may not be able to obtain the mortgage listed as a condition in the contract. Water in the basement, peeling paint inside or out, and foundation-level cracks usually present issues for government mortgages, which need to be corrected prior to closing.

Also, if a buyer is obtaining a mortgage, the utilities must be turned on for the appraiser to confirm they are in working order. This can be an issue if a home is winterized.

ii. Radon and Pest Inspections

If any radon testing has been done on your property, locate the test results because the standard agreement calls for that information. Additionally, if any type of mitigation system has been installed, you should provide that information to the buyer. Pest inspections are usually part of a standard agreement and required for government mortgages. If there is evidence of infestation, the property needs to be treated at the seller's expense; sometimes a structural engineering report is required if damage is found.

In summary, if you obtain an appraisal and home inspection, you have one-third of the necessary services to sell your home, [i.e. the value of the home in its current condition]. Again, the total should not exceed $1,000.

B. Paperwork and Questions

To sell your home, the second type of service you will need includes assistance with the questions and paperwork you will have. As an attorney, I can tell you that this advice and support, in a residential real estate transaction, routinely costs less than one thousand dollars. If a real estate agent does anything more than fill in the blanks on the pre-printed form agreement of sale, that can be construed as the unauthorized practice of law and therefore, clauses which could be added to protect the seller may not be included. I would also suggest that, because of the required education, training and experience, a real estate attorney is a much better source for information and representation than a real estate agent or broker.

You can find a real estate attorney by calling a local county bar association or closing/title company, or by conducting an Internet search. The key is to select an attorney who routinely works in the residential real estate business because it is essential to understand the fast pace of a transaction. An offer can pop up without any notice. You should retain an attorney in advance so he can be available to help you quickly review and respond to any offers. Ask the attorney if she can respond within the same day or the next day if you are presented with an offer.

The standard agreement of sale, created by the Pennsylvania Association of Realtors ("PAR"), is prepared and presented to the seller by the buyer in almost all residential transactions. The seller does not typically draft the initial contract. Moreover, the standard PAR agreement is not necessarily the agreement a seller would have prepared for assurance that the buyer would have no other choice than completion of the transaction under any circumstance. You could ask an attorney to create that type of contract, but you would have two issues:

1) It would be very costly, maybe thousands of dollars, and;
2) Most likely, the buyer would not sign it.

The standard agreement is not perfect. That is an even stronger reason to ensure the buyer knows the condition of the property up front, so buyer's remorse doesn't compel the buyer to review the home inspection clause and void the deal (which can happen with the standard contract). However, it is cost-effective, and fewer litigation issues come from terms of the agreement than from the failure of sellers to disclose conditions of the property.

As a side note, if you ever read the contract, you'll notice several provisions protecting the real estate agents who are not parties to the contract, no doubt as a result of the contract being drafted by a realtors' association. Those provisions are not required, and may be stricken.

Between the help in property valuation, paperwork, and questions, you are into the transaction for about $2,000. Remember the $18,000 commission; now you can see about $16,000 (88%) is for marketing.

C. Marketing The Home For Sale

No matter which agent you choose, the number one piece of marketing your real estate agent will do for you is to place your property in the Multi-List. That's right. Agents don't have a pool of secret buyers just waiting to buy your home. Buyers are usually not obtained from the realtor tour, nor the twilight or Sunday open house, and certainly not because of the flyer with photos of your home. Again, the number one piece of effective marketing used by agents to sell your home is to place your home for sale in the Multi-List. That can be done for a flat fee of as little as $399.00!

Agents usually create a marketing piece including some photos and gratuitous descriptions of your home. Most sellers can do this in less than two hours, and agents have templates to create these quickly.

Hosting open houses typically doesn't result in the sale of a seller's home. Some agents use the realtor's tour as a marketing tool because sellers tend to equate that traffic to the potential of buyers. Agents agree, at times, to assist each other by taking turns and visiting each other's tours. Often food must be provided to persuade realtors to show up at a tour home. A realtor's tour is not the only opportunity for agents to see your home. All MLS agents have information, multiple home photos within the listing, and access to your home via a lockbox or any means you select.

As for ' open houses, it's a common industry belief that nosey neighbors typically use that as an opportunity to see your home. It's also a tool for real estate agents to meet potential buyers and sign them up as clients. Remember that this is a bit of a generalization, in no way meant to denigrate the work of the agents (who will probably agree with my suggestion that while it's possible, it's atypical, for an open house to result in a sale). A recent local publication even featured a story of how attending open houses was a great way to go on a "free date". Think of an open house like going bear hunting in North Park; a few bears have been found over the past decades, but it's probably not the best place to spend your bear-hunting time and resources.

So far, the total has reached about $2,000 for the valuation and paperwork help, and $399 for the marketing instead of $18,000. You should only have to pay a selling agent if they bring a buyer.

Therefore, if your efforts lead to the procurement of a buyer, then you reap the reward without paying any selling agent.

The Three Essential Services Are Currently Delivered Via a “Generalist” In The Traditional Bundled Services Model

Traditionally, the three essential services (valuation, [paperwork and questions], and marketing) are all delivered by a generalist real estate agent. The single agent is selected to list your property instead of, as in the unbundled model, obtaining the services from experts in the three essential areas .

Since most sellers don’t understand the typical type of work performed by agents, many sellers overpay for the value and amount of time involved. Here is a behind-the-scenes look at what agents do in general:

A. Valuation

Real estate agents are not experts in the valuation of properties; by law, they are not permitted to perform an appraisal. The valuation of the property is provided via CMA, a document put together by real estate agents with varying amounts of experience, who may not have specific in-depth education and training in the valuation of homes. By contrast, an appraiser must pass several levels of exams and possess a great amount of experience in specifically valuing properties. Unlike appraisals, there is no nationally recognized standard methodology used by every real estate agent, whose opinion may be influenced by subjective factors such as a desire to give numbers that please the seller.

Typically there is no research into the condition of the property as would be disclosed by a home inspection. The lack of an inspection creates a risk; once signed, an agreement may be terminated when the results are obtained. We think this is poor practice and puts the transaction in needless jeopardy. Even if potential issues are discussed, regarding the condition of the property, unless the agent is a licensed general contractor or specialty contractor (plumber, electrician, roofer or HVAC professional), he will be the wrong person to address ways to deal with deficiencies in the structure.

B. Paperwork and Process Information

Real estate agents are not licensed to practice law. Again, any more than filling in the blanks on a standard agreement of sale has resulted in threats of lawsuits for the unlicensed practice of law. This limits the number of provisions a seller may insert to protect themselves in the contract. The unbundled model gives the seller the option of selecting an experienced real estate attorney who is licensed to draft and negotiate contracts. Also, if a problem with the contract arises, the agent will tell you to call an attorney, so why not hire one from the beginning? A seller will be better served and represented by an experienced real estate attorney, especially after considering the unknown variable of experience, training, and skill among real estate agents. Some agents may actually have twenty years of experience, but some may have one year of experience repeated twenty times.

Agents routinely obtain feedback from other agents whose clients viewed their listings. This can be valuable information since it could disclose a common objection by potential buyers which a seller could address. They can also take calls from other agents who may ask for specifics about your home not included in the listing information. This has real value, but the seller could directly provide the same information since it doesn't require any special knowledge or training.

Removing conditions from the agreement of sale after inspection is another important administrative task performed by agents with significant value. Typical conditions are for the appraisal, mortgage, home inspections (radon, pest and home), and home sale. Again, an attorney would be an alternative professional to perform this task, but in many cases, the seller and buyer could do it alone.

The final walkthrough, by the buyer prior to closing, is standard practice. The purpose of the walkthrough is for the buyer to confirm that the condition of the home has not changed since the signing of the contract, and all of the items included in the sale actually remained in the home.

The agent for the buyer should be involved in this step, not the seller or the listing agent, unless there is an issue. Remember, the agent working for the buyer will be paid the selling half of the commission. It is mentioned here because the listing agent may also be the selling agent, but the agent will be compensated for this task by way of the selling agency side of the commission, not the listing side. To provide more detail about this task, the walkthrough should be done twice, once within enough time to correct any issue which may be found, and once on the day of closing, as confirmation that nothing has changed. The agent is not essential for this last step, which can be done by the seller. In most cases, the walkthrough should take less than an hour.

An agent's attendance at closing is more ceremonial than in the past. Legal changes now require all paperwork be completed prior to closing. At closing, realtors typically receive the commission checks and sellers receive their proceeds. The sellers should call the closing company in advance of closing, to make sure that the closing company has all of the information required to complete the transaction. They should also bring the house keys and any warranty documentation for appliances included in the sale. If sellers attend, the closing usually takes less than an hour, but attendance is not required; documents can be pre-signed and proceeds wired into the seller's bank account.

C. Marketing Tasks Provided by Real Estate Agents

- Completion of the listing forms and information input to the MLS system. This has great value as the single most important service the seller needs and pays for. The estimated time is most likely two to four hours, depending on the time needed to gather the information from the seller.
- Professional yard signage is placed. This is also very important, but takes very little of the agent's time because it usually involves a simple form completion.
- Preparation of a flyer with photos and descriptions. This may take an hour or two to snap photos, upload them, and write descriptions; its value is relatively minor. The MLS printout, generated when your home information is added to the MLS system, can accomplish ninety percent of the flyer's purpose. The seller, or anyone familiar with basic computer programs, can complete this task.

- Lockbox installation. This takes relatively little time but offers above-average value because other realtors will use this to access your home. Comparable access can be arranged by purchasing a similar type of lockbox device at a home improvement store, at a very minor cost. The disadvantage of the other box is that you, the seller, most likely will have to monitor and change the code to access the key in the box.
- Conducting a tour for realtors. This has very low value because, as mentioned earlier, agents have lockbox keys to access the property. Often a lunch must be served in order to attract realtors. As the seller, you can hold the open house if you see value.
- Holding an open house for buyers on the weekend. As expressed earlier, this has very low to no value, serving the interests of bored or nosey neighbors. Very little skill is involved. Relative to the potential for damage or theft, this lowers the value added.
- The agent may take out an advertisement in a local newspaper or magazine at their expense. With your savings from using the unbundled model, you could do this yourself.

The Rest Of The Information You Need To Know To Be An Educated Seller

A. The Standard Costs In The Sale Of A Home

The single biggest cost in the sale of a home is the real estate commission. Below are the standard and more significant costs that you can expect in the sale of your home.

Real estate commission. If you engage a realtor under the traditional commission-based model, you should expect to pay five to seven percent of the sales price. **Additionally**, many companies are adding an additional **administrative charge** for retaining the file ($200 to $500).

Transfer taxes. These taxes, charged by the government for the privilege of transferring property, currently range from one to four percent of the sale price, and are typically split between the seller and buyer. This is usually the second-largest expense. The state of Pennsylvania charges one percent; your local township and school district will charge between one and three percent more. Call your school and local township tax collectors for the charge in your area, or find this information through a local title company.

Moving costs. Although not usually calculated by real estate agents as a cost on the "Seller

Return”, this can be substantial. Shop for this service early, and try to book your required time in advance as far as possible.

Deed preparation. Traditionally, a seller should expect to pay between $150 and $200 because it is the seller’s obligation to convey the title. No, you don’t hand over the deed you received after buying the home. You must get a new deed prepared that transfers the home from you to the new buyer, just as your current deed transferred the property from your seller to you.

Settlement fee to the closing (aka) title or escrow company. Standard charges by the title company range from $150 to 200, for performing services required by the seller. However, sellers typically don’t know what to do; it is more expeditious for the closing company to handle the matter, since they know what to look for and can find it relatively quickly. For example, you need to show that your property has no unfiled liens placed against it and all of the real estate taxes have been paid for the past three years. The settlement company will obtain those certifications on your behalf. Often, with your assistance, the company will also order your mortgage payoff letter.

Certifications from the water/sewage/ municipal/zoning authority. Expect to be charged between $100 and $150 for these items. These are charges by the actual governmental authority for the documents obtained by the settlement company.

Dye test, if required by your township. The fee should be around $100. This test shows the government whether or not the storm water from your property is improperly running into the sewage system, which the government incurs costs to treat. The form is usually obtained from the township and the test is performed by a licensed plumber. The settlement company is also a good source to find out if you need this test, since the township will not release the lien letters to the settlement company until test results are provided.

Seller Assist. If you elect to pay any of your buyer's closing costs to help them purchase your home (there are limitations on contribution amounts), you should deduct these from the gross offer by the buyer to calculate what you will receive. You would agree to pay these costs in order to help the buyer purchase your home. Your net figure, after payment for the buyer's closing costs, is what you are paid, but it essentially permits the buyer to finance some of her closing costs. Keep in mind, after calculating your net price (i.e. the gross amount minus buyer's costs that you pay), you still have to deduct your own standard closing costs (such as your share of the transfer tax) to arrive at the proceeds you will receive at closing.

Home warranty. This is an optional expense, currently about $500. A seller would agree to pay for this on behalf of a buyer, to overcome the buyer's concern regarding the length of life left in items such as the furnace, roof or other appliances. You can obtain information on the details with a Google search of home warranty companies.

Prorated payments of your real estate taxes with the buyer. This could either result in returned funds or a requirement to pay your proportionate share of taxes. Typically, the local and school tax bills are prorated on a calendar year and the school taxes are prorated on a school year. The division is spelled out in the standard agreement and can be altered by you in the contract.

Resale certificate from your homeowners association. Call your association for the fees. This provides legally required information for your buyer regarding the status of the reserve fund, and required monthly and up-front assessments to be paid to the homeowners association. The contract is voidable by the buyer prior to the receipt of this paperwork, and usually for a time period afterward. Homeowners associations often will charge buyers several months of monthly dues as an initial assessment. As a side note, the failure of the association to maintain at least a 10% reserve fund can prevent mortgage financing under standard Fannie Mae and Freddie Mac guidelines. Your buyer may also need a copy of the **Master Insurance Declaration** page for the association to obtain a mortgage.

Overnight fees for your mortgage payoff(s). This is cheaper than paying the daily interest (which continues to tick until the loan is paid off); typically, the closing company will overnight the payoff check or wire the funds, which may require a wire fee.

Repair fees. Once a home inspection is performed by a buyer, you may be faced with a request to pay for repairs or provide a credit to the buyer at closing. The credit should be labeled as payment for the buyer's closing costs/prepaids and not for repairs, because the buyer's mortgage company will most likely require completion for any items labeled as "repairs" before closing, which can be problematic. This can mean paying for contractors at premium prices because of time pressures from your moving plans, the buyer's moving plans, or the terms of the contract.

Private transfer fees. Must be disclosed to the buyer and comes into play largely with builders. Check your deed or other legal documentation if you can't remember whether or not you agreed to this.

B. Preparation Is Most Of The Work

There should almost never be a real estate EMERGENCY in which you need to immediately talk to the agent, the mortgage company, the moving company, the closing company, or anyone else. If you think you have encountered an emergency, it is most likely the result of poor preparation.

Most of the work in selling your home is front-loaded preparation to sell. IF YOU PREPARE PROPERLY, YOU'LL PUT YOURSELF IN THE BEST POSITION FOR SUCCESS IN SELLING YOUR HOME FOR THE MOST MONEY, IN THE LEAST AMOUNT OF TIME. Don't discount this step, as many sellers do.

1. Know What You Own

This seems straightforward, but keep in mind that anyone named on the deed as an owner will have to sign the new deed in order to sell the property. For example, if you had a family member cosign a mortgage when you purchased the property, and that family member was listed as an owner on the deed, he or she will have to sign the deed to convey the property. While not usually an issue, he may be out of state or she may have gone through a divorce, which could be problematic. The deed you received after purchasing the property is not the deed used to sell the property to a new buyer. The original deed was recorded in the county's Recorder of Deeds Office. A copy can easily be obtained for a minimal cost. The buyer's closing company will generally prepare the new deed, conveying the property from seller to buyer, and the customary charge is around $200.

If you intend to list your home in the MLS, find out the dimensions of the property and room sizes along with the floor locations (upper, main, or lower level).

If you are currently separated (not yet officially divorced), your soon-to-be ex-spouse will have to convey his or her marital interest by signing the deed; this can be true even if you owned the property individually, before you were married. If you are buying a home, before you are divorced, your soon-to-be ex-spouse may have to sign documents for your mortgage approval, which would include an agreement to subordinate any marital interest the ex-spouse might possess to that of the new mortgage company.

If you are representing an estate, obtain the paperwork (called Letters Testamentary or Letters of Administration) giving you the authority to sign the sales agreement on behalf of the estate. These Letters are issued by the Register of Wills. You may also need the death certificate and possibly a short certificate.

If you live on a private road or have a shared driveway, mortgage companies for your buyer will require documentation to show that legal access is available and the persons responsible for maintenance.

If you own several lots and intend to convey all of them, again, check to see if they are encumbered in any manner.

Condominiums and Planned Unit Developments are similar but have different types of common ownership; this issue can be important from an ownership perspective and for mortgage purposes. If you own a condominium, you own a percentage interest in the project. That differs from a unit in a planned unit development, in which you own the unit in fee simple and pay a monthly fee to take care of common areas such as pool houses and tennis courts. At a minimum, you will have to obtain a **Resale Certificate** from the homeowners association and deliver it to the buyer as soon as possible because the agreement is voidable for five days after the buyer's receipt. It contains information about the financial status of the project, monthly fees, and other assessments. Since projects can have significant initial assessments for the buyers, take care to disclose those assessments early on. Additionally, the buyer may need your assistance in requesting a questionnaire completion by the officer of the homeowners' association, so the condo can be approved for financing.

A standard PAR (Pennsylvania Association of Realtors) addendum to the agreement of sale addresses whether or not the seller intends to transfer oil, gas, and mineral rights. Most sellers don't know if they own them. A buyer would need a specific search done for those rights, which is separate from the typical title search because it is more costly and time-consuming. If you believe you own those rights and intend to make them available for sale, you may want to get search results before placing your property for sale, to be certain you know what you own.

If you have any information about potential environmental issues on your property, such as buried oil tanks, contact the appropriate governmental authority for information about their requirements when your home is transferred. You may want to start with your local township or borough compliance office.

2. Know What You Owe (Which Is Or May Be Liened) Against The Property

A seller is required to provide a free and clear title to the buyer, which means any mortgages or judgments attached to the property must be paid off by (or on the day of) closing. You may ask the closing company to order your payoff letters; also, you should check the payoffs for charges, including a pre-payment penalty on your mortgage. If you owe back federal income taxes or child support, typically those payments must be paid no later than the date of closing. Payoff letters can take some time to obtain. Some self-employed business owners may have signed a Note for a loan and agreed to include the house as collateral; this would be a lien which would have to be released by the closing.

Find out your county, local, and school real estate tax information, your home's valuation by the county for tax assessment purposes, and your zoning classification. Your tax information can be obtained from the local and school tax collector, while the county tax and assessment amount can usually be obtained from the county website. Also, obtain your tax identification number from the real estate tax collectors (sometimes called the 'lot and block number') and zoning classification. This information will be needed when listing your home, as it is required by the standard agreement of sale.

The buyers will need to have your utilities (water, electric, telephone, sewage, trash, gas) transferred into their names as of the day of closing. If unpaid, some water and/or sewage bills can create liens against the property. Work with your buyer to coordinate the transfer. Don't necessarily turn off any of them. For example, an inspection may be required to turn the gas back on, and if a leak is detected, the furnace may be "red tagged" and unable to be turned back on without repairs. This could create some last-minute issues, especially in the winter. Buyers may also want to know the average cost of your utilities, so having the last 12 months of these bills available is a good practice.

3. Know And Comply With Your Township Rules

You may want to contact your township manager with questions about the following:

i. Sewage Dye Tests

In some townships, sellers must have a plumber complete a test to confirm that the storm water from the roof is not draining into the sewage system. This should be completed early. If needed, the fix can be relatively inexpensive, such as having some minor landscaping done to slant the water away from the house.

ii. Call Your Local Township Wage Tax Collector

Local tax collectors are contacted by the closing company to verify there are no unfiled liens. However, the collectors usually refuse to provide the information if any local wages are thought to be due. This can happen after a divorce if the collector still believes your ex-spouse is a resident, or if you get K1 income from a business and the amount you paid on local wage tax differs from the amount listed on your tax return.

iii. Wells, Septic Systems, And Zoning Compliance

There are several types of tests for wells and septic systems which are customary (but not always required) for mortgage purposes. Consult your local township code enforcement officers to ask about their requirements in the transfer of the property, and to make sure your property is in compliance with any zoning rules (unrelated to wells or septic systems), such as the requirement of handrails for steps from a porch to a landing.

4. Know Your Forms

i. The Seller Disclosure

In Pennsylvania, a form called the **Seller Disclosure** is required (with a few minor exceptions) for completion by owners when they are selling their home, to be given to potential buyers. Failure to provide this detailed, ten-page form to buyers can lead to liability for any actual damages experienced by the buyers, which were not disclosed for two years after closing. The form may take some time to complete, but it is a great way for you to protect yourself from liability to a buyer who finds a problem after closing. (Another good practice is to offer your buyer a home warranty; the cost is currently about $500.) You can find it by searching online for a Pennsylvania Seller Disclosure form.

This form also must be updated upon the finding of any new issue with the property. You should disclose any possible flaw and reflect that in your asking price. You may elect to go a step further and include a statement in the agreement of sale, should the buyer condition the purchase on a home inspection, in which the buyer's offer takes into account any items included in the disclosure. The provision should state that the disclosed items may not be cited as 'defects' as a result of the home inspection. As mentioned earlier, real estate agents should not draft this language because, most likely, it would constitute the unauthorized practice of law.

ii. Listing Contract—What You Need To Know About The Contract

To get maximum exposure on the market, it is essential to list your property with a company that is an MLS member. The particular company you choose is a secondary consideration, because once it is listed, any member of the multi-list can bring a buyer.

The **<u>LISTING CONTRACT</u>** is what you sign to offer your property for sale with a member of the local MLS. As stated earlier, although the contract is between you (the seller) and your real estate broker, the contract GIVES PERMISSION TO ALL SUBSCRIBERS OF THE MLS TO SELL YOUR HOME. Essentially, you are hiring not just one real estate company, but all of the members of the listing service. It authorizes sharing of the listing commission. The standard listing contract does permit the seller to authorize subagents to show your property, but you really don’t want to be bound by their conduct for a lot of reasons (that we won’t get into here). The way to handle this is not to offer any compensation sharing to sub-agents, which will most likely cause agents to bring their clients as a buyer’s agent or transactional licensee and you are not bound by things that they say to the buyer.

Length of the contract

Read the three-page listing contract before you sign it. The standard length of the listing contract period is one year. This is a considerable time for several reasons, including the effort and costs a traditional commission-based real estate company incurs when they list your home. A point just as significant, if not more so, is that buyers may not be in the market for your home right away. Even if your home is extremely desirable and priced right, if no buyer is in the market for your home, it won’t sell. If you have patience and price your home competitively, when buyers emerge for homes with which you compete, you put yourself in a good position to sell your home.

Modifying the length of the contract

You can provide for a shorter period to terminate the contract, but you must give the real estate agency 10 days' notice if you elect to exercise the termination option.

Excluding parties

Prior to signing a listing contract, if other parties expressed interest in buying your home, it is possible to exclude them from your listing contract. This means you would not have to pay a commission if one of them bought your home.

Selling to someone who viewed the property during the listing period

If you sell your home to anyone who viewed it within six months after the contract expired or has been terminated, you may owe a commission to the prior listing company:

Other clauses in the standard listing contract with which you should be familiar:

If a buyer defaults, you may have to share any handmoney (a deposit check included by a buyer) the buyer would lose with the broker:

If your property is taken by the government, you may have to pay a commission:

If you sell the home under an installment sale contract, you may have to pay the entire commission up front even though you only get a partial payment;

The handmoney is required to be cashed and kept in an escrow account. Many buyers think the check is kept uncashed, but that would be problematic if they elected to default and stop payment on the check.

Those who sign the listing contract represent that they can convey a good and marketable title with a few reservations. Therefore, make sure all of the owners (including parents and/or ex-spouses if necessary) sign the contract.

iii. Agreement Of Sale

You, the seller, should also obtain a copy of the Pennsylvania Realtors Standard **Agreement of Sale ("Sales Agreement")** for residential property; currently, it's about 10 pages long. Additionally, get a booklet entitled the "Consumers' Guide to the PAR Agreement of Sale". This form is almost universally used by buyers to present an offer; don't get into a position of trying to figure out what the terms mean when a buyer gives you the offer.

Using the PAR agreement is a cost-effective way to draft an agreement of sale, not necessarily the best or the only way to write an agreement for the sale of residential property. The Sales Agreement has some limitations and provisions that may not apply to your particular transaction, and other characteristics that could be viewed as flaws. For example, it is possible for a buyer to change his mind and to legitimately void the agreement, mainly via the inspection contingencies clauses. However, it is a widely accepted form, and the provisions are relatively well known and understood by the professionals in a transaction.

You should obtain and read a few of the standard addendums: the Appraisal Contingency, Home Sale Contingency (three versions), the Oil and Gas Addendum, the Lead Based Paint addendum, and the Reply to the Home Inspection addendum. Others exist, but you should be at least be familiar with these . It may sound overwhelming, but you will have to read them at some time so it's best to do it when you are not under pressure. (Problems often arise when sellers and buyers sign these forms without reading them.)

When you are looking to buy a property, take great care when reading any non-standard addendums to the agreement of sale. For example, builders sometime draft addendums requiring the buyer to pay all of the transfer taxes associated with the sale, unless the buyer uses the mortgage company owned by the builder. That type of clause is really a penalty for not using the company-owned mortgage provider. While this is legally permissible, it is not legal if presented in a misleading manner. Portraying a split of the transfer taxes as a benefit, if that is actually a normal practice, could be viewed as a violation of the Unfair Consumer Trade Practices Act in Pennsylvania.

Also, relocation companies and banks selling foreclosures have many conditions and stipulations. Before taking the time to view these properties, you may want to read the typically non-negotiable addendums. For example, if the bank seller has not completed the process for obtaining the title, the company may not be able to close by the date in the agreement. The agreement may provide a penalty for you (as a buyer) for not closing by a certain date. However, the seller/bank often has no such liability, and can walk away from the transaction after you wait months to close.

iv. Consumer Notice

This simple two-page form explains the type of relationships you can have with a real estate agent and her company. An agent is required to give this form to sellers and buyers before having any substantive conversation about real estate services. This is important, because it tells you who represents you and who does not.

5. Know Your Legal Documents

i. Title Policy

Shortly after you closed on the purchase of your home, you should have received an Owner's Policy, which protects you from any potential liens. For instance, your seller may have had a mortgage which should have been paid off when you closed on the property, but the mortgage lien at the courthouse may not have been "satisfied of record" (i.e., the mortgage company didn't file the paper at the courthouse to tell the world the mortgage was paid off). This lien can prohibit you from closing on the sale to a buyer. If you present the title policy to the new closing company, a representative should be able to seek an indemnification from the prior title insurance issuer, which would solve the issue.

ii. Leases

If there are any existing property leases for oil, gas, or mineral rights, you should prepare copies to give to the buyer along with any agreement. If you are reserving rights, this reservation must be included as a condition of the sale in the agreement.

iii. Staging And Photos

This has become a niche business and can be as basic as a one-time consultation, to an extended relationship with the stager providing home furnishings.

This is an overview of some basic suggestions:

- Curb Appeal: Your home makes a first impression, so cut the grass, add fresh paint, and replace your worn doormat;
- The Interior: Remove “your stuff” (items on floors, tables, and countertops) or excess furniture, which may make the rooms appear smaller;
- Add fresh aromas;
- Paint Appeal: Neutral paint colors appeal to more people;

- Functional Lights: Make certain that your porch and closet lights are in good working order;
- Garage Space: Clear out unneeded items in the garage to make room for cars.
- Once your home is staged, now it is time to take photos to include in the MLS.

C. During The Period Your Home Is Listed For Sale:

1. Get Feedback From Potential Purchasers

After a person views your home, ask your agent to follow up with their real estate agent for feedback about how they viewed the positive and negative aspects of your property. If something becomes a common theme, it can be remedied.

2. Make Your Home Easily Accessible

Make every effort to have the home available for viewing at the convenience of the potential buyers and their agents. The more impediments that exist in gaining access to your home, the more buyers and agents will skip it and go on to your competitors.

3. Lockboxes

If selling on your own, you can purchase lockboxes at most large home supply stores. If you list the home under a full-service listing in the MLS, a lockbox is normally provided by the real estate broker. Usually, this device attaches to a door handle; you place a door key inside the box for any person who wants to access your home (appraiser, home inspector, etc.) and you give them the code to obtain the key. Afterward, you can change the code. The lockbox of the real estate agent is accessed by agents with multi-list keys.

D. Types Of Buyers

You can view buyers on a scale from ‘great’ to ‘lousy’:

A. Great = Full Price with cash and no contingencies. If you don’t accept this offer, not only are you crazy but probably also liable for the real estate commission (read the contract).

B. Lousy = Low offer from a buyer with a home to sell, inspection contingency, and in need of an FHA/VA type of mortgage. If you don’t have any other choice, I’d still think about it before accepting this offer.

Between choices A and B, buyers will vary depending on whether they have a home to sell, the contingencies, and the amount of either “non-refundable” handmoney or willingness to skip the liquidated damages clause. Handmoney, unless specified as non-refundable, must be refunded to the buyer for any unsatisfied contingencies that protect the buyer.

E. Negotiation Of The Contract

The following paragraphs address issues related to reviewing an agreement of sale presented to you by a buyer. The main thing to remember is that the contract is 10 pages long, don't start to negotiate any single term, especially the price, until you have a WRITTEN OFFER.

1. Every Offer Should Be Appreciated

As a rule, sellers don't have a gun pointed at their heads when they are presented with an offer. Lack of information is the principal reason why a prospective buyer makes an unacceptably low or otherwise unreasonable offer. Be prepared to justify your asking price with independent evidence such as an appraisal (verifying the value) and home inspection (verifying the condition). Don't take it personally and be appreciative of the compliment that they want to buy your home.

2. A Buyer Presents An Offer By Way Of An Agreement Of Sale

The buyer is obligated to present the offer. While a buyer may do that verbally, it is not legally enforceable until it is reduced to writing and signed by all parties. Many sellers, when faced with the verbal offer, decide to take on the responsibility of drafting the contract, only to find out the buyer has changed his mind and the seller is left with the legal bill for drafting the unaccepted contract. At a minimum, have the buyers split any fee required to prepare an agreement. Also, at the time the buyers presents the offer, they should include handmoney of three to five percent of the sale price; this could be more for cash deal, or less if the buyer needs the cash from the sale of their home. Also, the offer should include a pre-approval letter from a mortgage company (if the offer is subject to a mortgage), and a copy of a listing agreement if it is subject to the sale of their home.

3. Reviewing The Contingencies In The Agreement

i. Appraisal Contingency

Even if the offer is for cash with no mortgage contingency, the agreement may still impose a risk upon the seller (that the home may appraise for less than the sale price), and make the contract voidable at the election of the buyer. If the offer is subject to a mortgage, an appraisal will be performed in most cases. However, Fannie Mae is approving more mortgages without requiring an appraisal. Therefore, an appraisal contingency could result in the buyer voiding the transaction, even though the lower appraised value does not result in a mortgage denial.

ii. Mortgage Contingency

HOW QUICKLY CAN THE MORTGAGE BE OBTAINED? WHAT HAPPENS IF THE DATE IS MISSED?

Buyer preparation is key to obtaining not only a quick pre-approval but also a firm commitment from a lender. Currently, it is a common practice to be pre-approved for a mortgage before you make an offer. Indeed, there is no good reason not to be pre-approved; it can come in different levels. Most commonly, a buyer calls a bank or mortgage company and will relay her information on income, debt, and cash available, so the loan officer can issue a pre-approval based upon that information.

A word of warning: all loan officers are not created equal, and this is not iron-clad proof of qualification. At the present time, loan officers for banks can be unemployed students who graduated yesterday and became loan officers today at a bank. Under the current law, bank loan officers do not need to have any training, education, or experience. Loan officers for mortgage companies do need to have training and education, and pass state and national exams.

The next level of pre-approval occurs when buyers submit their income and asset paperwork to a loan officer, obtain a credit report, and put the information through the Fannie Mae or Freddie Mac automated underwriting engine (for a much more reliable pre-approval). This also can speed a firm commitment and permit a buyer to include a very short commitment date in an agreement, if they are competing against other potential purchases.

When negotiating an agreement subject to a mortgage, you may ask the buyer to obtain a mortgage commitment in a short period of time—two to three weeks—so if an issue arises, your property is tied up and off the market for a limited period of time. The standard agreement makes all dates "of the essence," so if a contingency does not occur, it is a default under the contract. Keep in mind, if the issue seems curable, dates can be extended by mutual agreement.

Additionally, if a buyer is very confident of their ability to obtain a mortgage, they may elect to waive the contingency and assume that risk. They can still obtain a mortgage but failure to do so is not a valid reason for voiding the contract.

iii. Contingency For The Buyer To Sell Their Home Or Other Property

The three standard home sale contingency riders have been mentioned earlier. The question becomes, can buyers qualify for a mortgage (or otherwise purchase your property) without the sale of their current home? While a buyer may not want to elect that option, if you have other potential buyers, they may be willing to agree to waive this contingency. To soften the potential impact of carrying two mortgages (current and new), you could offer a "delayed closing", meaning you could push your closing date out to three or four months, giving them more time to sell their home. On the other hand, this could create a different issue for the buyer because mortgage rates typically come with the best pricing options in the form of a 45 or 60-day lock.

If you elect to take an offer with a contingency that a buyer sells her own home before purchasing yours, you can select an option called the Continue to Market addendum. In this case, you, the seller, can accept this contract, but if you elect to accept another agreement from a buyer without a home to sell, the former contract automatically terminates. You retain the right to approve the agreement between your buyer and their buyer, and can also set a date by which your buyer must sell their property. All in all, not a bad option.

There also exists an addendum with a Timed Kick Out clause. This addendum lets you accept an agreement from a buyer who either is about to list or has listed their property for sale, but it is not yet under agreement. This clause is a little better for a buyer, because you must give the buyer notice that you are about to accept another agreement (so he has the option of removing the contingency), before terminating the existing agreement. From the seller's point of view, the problem is that a lot of agents and buyers will not put in the effort of making an offer on a house which may only serve the seller by motivating the first buyer to get off of the pot and remove the home sale contingnecy, thus wasting the time of the second buyers and their agent.

The least desirable “standard” home sale contingency clause permits the buyer to list their home, in an attempt to sell it by a certain date; if that date passes, then the seller may void the contract. This ties up the seller’s property until the date specified, no matter if other offers are made to the seller.

iv. Buyer’s Request For Closing Cost Assistance Or A Home Warranty?

Buyers often structure the mortgage financing, by requesting the seller to pay three to six percent of the sale price toward their closing costs. This merely reduces the gross amount to the seller; therefore, you should calculate the net offer. This helps the buyer, because they can essentially finance some of the closing costs. Often, sellers will agree to provide a home warranty to a buyer who may have concerns about problems with the home or appliances after closing. These usually run about $500 and can be found in a quick Internet search.

v. Inclusions And Exclusions

One of the early paragraphs in the standard agreement of sale lists which items will be included and excluded in the sale. When drafting the agreement, take care to exclude any items you want to take. Also, make certain that when the buyer does the final walkthrough, just before closing, all included items remain at the property.

vi. Selling A Condo Which Might Need To Be Approved For Financing

The mortgage contingency clause can present a special issue for sellers of condominiums. Not all condos are approved for financing through Fannie Mae, Freddie Mac, FHA or VA. This could be an issue for a buyer who wants to purchase your property. The primary issue involved in the condo mortgage approval revolves around who is in control of the homeowners association, the homeowners or the developer; one of the decisive factors in this is whether or not the construction is complete.. Condos in the hands of the developer are harder to finance. The buyer will also need your help to get the homeowners association to complete a condo questionnaire, and possibly obtain other documents such as: the master deed, budget, bylaws, master insurance, and condo resale certificate.

vii. How Much Handmoney And Does It Matter?

Generally, the more handmoney you obtain from the buyer, the better. If it’s a cash deal, meaning the buyer has the cash without using the equity from their current home, then we would suggest 10% of the sale price. Ordinarily, the rule of thumb is three to five percent, but less is sometimes appropriate. As a seller, you want to make it hard for a buyer to walk away from the deposit. In reality, if there is a home inspection contingency, the standard agreement gives a buyer wide latitude to void the contract.

viii. The Liquidated Damages Clause

This clause limits the amount of money that the seller can retain as damages, for a buyer's default, to the amount of the handmoney (less the agreed amount to be paid to the real estate company). Theoretically, buyers could show up at closing, tell the seller that they were not going to close because they found another house, and the seller's only recourse would be to keep the handmoney. If the buyer wants the seller to agree to that clause, I suggest that the buyer should be forced to agree to the same type of provision; either the seller's liability should be limited to the amount of the handmoney (if they elect to sell the property to someone else who will pay them more money) or the clause should be stricken.

ix. Who Holds The Handmoney

If you are selling directly without any agents, either you or your attorney or the closing company can hold the handmoney; the check should be cashed, and if the buyer requests it, you can open a bank escrow account to hold the money. If agents are involved, typically the agency for the buyer will hold the funds in escrow(but in some areas of the state, the listing company will hold the handmoney).

4. Negotiation Tips

The number one negotiation consideration is to decide how badly you want to sell your home to the buyer presenting the offer. If you are desperate because no other viable options exist, you don't have a lot of leverage, so you may have to take more risks. By risks, I mean that the buyer will not be able to perform by obtaining a mortgage, or the buyer may obtain a home inspection and elect to terminate the agreement. That's right, in the standard agreement, the buyer can do a home inspection and for almost any inspection-related reason, elect not to buy the property. Read the agreement once you are preparing to sell.

You may be able to negotiate the contingencies more effectively than the price. If the buyer is not willing to raise his offer, perhaps request a shorter period of time for any of the inspections, mortgage approval, and/or closing. If your buyer can't perform under the agreement, at least your home will be off the market for a shorter period of time. You can also request the buyer's agreement to absorb a certain dollar figure as a deductible, if the home inspection discloses defects which need to be repaired, or you could accept the home inspection contingency but only if it is for buyer's information purposes. In the latter case,you would not make any repairs or provide credit to a seller, and the agreement could not be voided because of the inspection. This all depends on how much you want to sell your property to the buyer, and if you have other offers. Remember, real estate agents are not authorized to practice law; their company may not permit them to draft this language.

There are different ways to proceed with multiple offers, including asking all buyers for their “best offer” (i.e. highest price), fewest contingencies, and quickest closing. Even if you don’t care about the closing time, closing sooner is always better because the sale is complete.If necessary, you could request to rent back your home, such as, if you need time to move out. Be careful here about accepting an offer only because it is the highest price. As explained earlier, you could still find the buyer with the highest price who has a mortgage or appraisal contingency. If the appraisal comes in lower than the sale price, the buyer may not be able or willing to buy at the agreed-upon price. Also, if the buyers have checked the “liquidated damages” clause, as mentioned above, then they could theoretically show up at closing, tell you they changed their mind, and keep the handmoney because they found another house.

If you are presented with several offers, one or more may contain a Price Escalation Addendum to Agreement of Sale. This addendum allows a buyer to make one final offer of a certain dollar amount higher than the highest competitor, up to a certain dollar amount. It requires the seller to give the buyer a copy of the other offer, with names redacted, as proof of the amount of the other offer.

5. Back-Up Offers

If you have multiple offers, it's always wise to accept a back-up offer, contingent upon the release of the current agreement. If you don't elect this option, at least keep the contact information for the unsuccessful buyers, so you can reach out to them if the accepted deal falls through. Back-up offers should be done with the help of a skilled attorney.

F. The Top Three Reasons Sales Agreements Fall Apart

These are the top three reasons sales agreements fall apart and fail to close:

1) Buyer fails to obtain a mortgage;
2) Home inspections disclose problems; and
3) Home fails to appraise as high as the sales price.

These are all preventable problems.

First, buyers presenting an offer should also show some documentation that they have spoken to a loan officer and gotten pre-qualified, if not pre-approved.

Second, obtain a home inspection before listing your property on the market. Again, by having a home inspection, you are armed with the detailed current condition of your property, which will reap you benefits in several ways.

- You will have the choice of making repairs or disclosing the defects in your "required" Seller Disclosure form, to inform the potential buyers you have priced the house in consideration of the defects.
- If you disclose the issues, your buyers should make their offer based upon the condition of the property disclosed.
- It is less likely for them to terminate the agreement after their home inspection because they weren't told about the problems up front.

You and or your agent should clarify with the buyers that any defects disclosed up front are not subject to negotiation after the buyers obtain their home inspection. Many contracts are negotiated twice, once with the initial offer and again after the home inspection. You want to avoid this double negotiation. By doing your own home inspection before listing the property for sale, if you do make repairs, you have time to shop for the most cost-effective solution without being pressured to pay premium prices for a repair because of the contract's short time limits, and other practical matters. In the long run, you will save yourself more than the cost of the home inspection while navigating a less stressful transaction, because of the worry and uncertainty of not knowing if the transaction will close after the home inspection.

Related to the property's condition, you may want to engage someone to assist you in "staging" your home. As mentioned in "Staging and Photos", make certain your home has curb appeal: cut the grass cut, remove debris, store scattered items (unclutter your home), and paint some areas or rooms in neutral colors.

Third, obtain an appraisal in compliance with Fannie Mae/Freddie Mac guidelines, which are followed by mortgage companies almost universally. As discussed, this is more persuasive and reliable than the CMA, which real estate agents typically provide, because licensed appraisers must follow a set of uniform rules and methodology.

G. Mortgage Pre-Approval

Sellers should almost always get pre-approved in anticipation of needing a mortgage after the sale of their home. You don't want to sell your home and then find out that you will have trouble getting a mortgage. Along with the home inspection and appraisal, these are typical contingencies in residential transactions.

Pre-approvals come in several levels. You can verbally give your information to a licensed loan officer, who can tell you if you qualify, based upon your self-reported income and debts. In another higher and better level of pre-approval, you provide your income tax returns, paystubs, and bank statements to a loan officer who pulls a tri-merged credit report. This is much better because the loan officer can actually verify the information and catch potential issues. This is especially true for self-employed people, commissioned workers, or those going through divorces including alimony or child support.

In preparation for obtaining a mortgage, below is a checklist of items you may want to gather:

- Paystubs: The most recent 30 days of paystubs noting your name, the company name, year-to-date information, and a breakdown of listed deductions.[If they are not clear from the notation, expect an underwriter to request proof of whether or not they are recurring debts, such as child support, and the duration and balance];
- Taxes: The federal income tax returns with all schedules and w2s (or 1099s) for the last two years. [If you own 25% or more of a business, include the business returns and copies of business licenses];
- Driver's Licenses;
- Bank Statements: The most recent two months of bank or brokerage statements, all pages, from any accounts which you may draw from for the down payment;
- Student Loans: If you have deferred student loans, obtain the documentation

showing the estimated payment. [Typically these count unless you can prove deferment for an extended period of time, which is usually not possible. Student loans in "defaulted status" can actually prevent a mortgage approval, even if new payment arrangements have been made];

- Family Documents: Divorce decree, child support order and/or settlement agreement, if applicable;
- Employment Details: Obtain the fax or email information for the human resources contact who can verify your employment details via a form;
- Insurance: Provide contact information for your homeowners' insurance agent, and let them know you will need replacement coverage;
- Closing Disclosure: Provide a copy if you recently sold a home;
- Other Properties: Provide most recent tax and insurance receipts for any other owned properties and the corresponding mortgage statements, if applicable;
- Bankruptcy: If applicable, provide all paperwork relating to and confirming the dates of a past bankruptcy (petition and discharge), foreclosure, or short sale.

From the IRS, order your own income tax transcripts for the last two years. This has been a mortgage issue in recent years because of increased mortgage scrutiny. These are a summary of the returns you filed with the IRS. The mortgage underwriters want to see that thetax returns which you provided match those you filed with the IRS. More often than you would think, mortgage companies are told that the transcripts can only be released to the taxpayer, sometimes due to issues relating to claims, or suspicion of identity theft. There can also be a verification delay because the return was only recently filed (this happens a lot in March and April), or the IRS has no record of the filing. Anticipate this potential issue and discuss the potential impact of filing your tax return when you are about to apply for a mortgage.

H. Final Walkthrough

A final walkthrough of the property occurs shortly before closing, to make certain the condition of the property has not worsened, and all included items in the sale are still there.

I. Closing

In Pennsylvania, we typically have an in-person meeting—which takes 30 to 60 minutes—of the sellers, buyers, agents, and closing officer. The seller signs the deed ,other documents of conveyance and the closing disclosure shows the final costs.. The buyer brings money, along with funds sent by the mortgage company, to pay the seller for the purchase. Sellers themselves do not have to attend the closing and can pre-sign most of the documents. They can either appoint an agent to sign the final closing disclosure, or on the day of closing, have the form emailed or faxed over for their signature.

Post-Closing

Typically, you'll get a refund of any amount held by your current mortgage company for taxes and insurance, once the mortgage company receives the payoff from the closing company. This can take up to 30 days. You should notify them of your new address so that they know where to send the funds..

A Checklist To Sell Your Home

Your mission, as a seller, should be to place your property for sale in the BEST possible condition at the MOST competitive price and appeal to the MOST potential buyers.

Earlier sections of this book provide details relating to the following checklist. Although these are suggested steps, many transactions occur without performing every item listed, even if real estate agents are involved in the transaction.

Some apply only if you are selling your primary residence, while others may only apply to a particular type of property, such as a townhome and condominium. Still others only apply if your home possesses certain characteristics, such as a well or septic system.

1. Set the sale price

a. APPRAISAL: Ask to include six recent sales and three current listings

b. HOME INSPECTION: Use the information to complete the Seller Disclosure

2. Complete the Seller Disclosure

3. Gather and compile specific information needed to list your home:

a. Lot Dimensions (on deed, survey, or county website);

b. Tax parcel ID/Lot & Block Number and Assessed Value. Obtain these from the township tax collector. This lets the buyer calculate the potential change in taxes based upon a new price;

c. Real Estate Tax Amounts (county, local and school);

d. Zoning Classification;

e. Measurements of each room and location in the home (upper, main or lower);

f. Utility phone and account numbers (to help buyer transfer);

g. Copy of current deed (confirm owners and obtain any necessary documents to prove authority to sign an agreement) and new deed (letters of administration, court order, marital agreement, power of attorney);

h. Current leases, residential, oil, gas, etc.; and
i. Title insurance policy.

4. Call your township:

a. Do you need a sewage drain dye test?
b. Do they have a record of all local wages taxes paid up to date?
c. Do they have any requirements (for a well or septic system) when you sell?
d. Do you need a compliance officer to inspect the property for building code violations, etc.?

5. Stage your home

a. Curb appeal on the outside and no clutter on the inside

6. Photos

a. The multi-list usually permits about 25 photos

7. Call moving companies

a. End-of-month dates are in high demand, so plan early

8. Get pre-approved for a mortgage and order your own IRS transcripts for the last two years

9. Call your homeowners' insurance agent

a. Obtain quote with premium, coverages, and deductibles for the home you are buying;

b. Upon closing on your sale, cancel and obtain refund of unused premium

10. Read your forms in advance:

a. Listing contract, agreement of sale, and addendums

11. Put your property on the market, either as FSBO or in the local MLS with a real estate company

a. Place For Sale signs strategically;

b. Ask township about rules on placement of Open House signs not on your property;

c. Access to the home for the appraisal, mortgage, inspection

d. The appraiser needs access to your home during daytime hours to take exterior photos.

12. Obtain offer and sign agreement

a. Typical time frame from signing to closing is 45 to 60 days

13. Post-signing of the agreement

a. Confirm buyers' application for financing and set up inspections, if applicable;

b. Negotiate home inspection issues;

c. Remove contingencies in writing;

d. Call buyer's closing company to coordinate required items and to prepare deed (ask for documents in advance if you cannot attend closing);

e. Permit a buyer to move in prior to closing [if you permit this, have a lease executed in addition to the agreement of sale. All conditions in the contract should be removed and the buyer should present proof of insurance];

f. Final walkthrough;

g. The closing; and

h. Refund of tax escrow account.

Terms And Parties That You Usually Encounter In The Home Selling Process

AFFILIATED BUSINESS RELATIONSHIPS/CBAs/CONTROLLED BUSINESS ARRANGEMENTS. Frequently, the real estate company and/or the individual agents will have a financial interest or incentive in a mortgage, appraisal, insurance and/or closing company. These relationships should be disclosed upon the initial meeting.

APPRAISER is the professional who provides a private valuation of the home for the buyer and the buyer's mortgage company. This should not be confused with the assessor, who determines the assessment for the government to be used in setting the real estate taxes.

CLOSING/SETTLEMENT/ESCROW/TITLE COMPANY will conduct the closing, make disbursements, record the legal documents, and issue the title insurance policy. A 'closing officer', sometimes an attorney, will conduct the closing. The closing company is typically chosen by the mortgage company for the buyer, or by the buyer herself. Sometimes agents will want to select the company; the agent may have a financial or other incentive to choose the company.

DEED is the document that must be signed by all owners of a property to transfer the legal interest to buyers. The original deed is recorded at the Recorder Of Deeds office, and an owner can obtain a copy through that office for a minimal charge.

DESIGNATED AGENCY. When a dual agency exists, the broker of the real estate agent for the seller designates a different agent to represent the buyer.

DUAL AGENCY. This type of relationship exists when the agent for the seller is also the agent for the buyer.

ESCROW ACCOUNT is typically an account set up by the buyer's mortgage company to collect and disburse real estate taxes and homeowners insurance. A different type of escrow account is sometimes established when a property is in need of repairs, which will not be completed prior to closing.

HOME/FLOOD INSURANCE AGENT is the agent who will provide homeowners and/or flood insurance to the buyer and their mortgage company. They will need to contact the mortgage company for the correct mortgagee clause. Replacement coverage is typically required.

HOME INSPECTOR (such as a member of ASHI, American Society of Home Inspectors) is the person who will perform an optional report to determine the condition of the property, as opposed to the value. Inspections usually also include tests for pests such as termites and radon gas.

HOMEOWNERS ASSOCIATION of a plan or condominium will need to be contacted for paperwork such as the Resale Certificate, questionnaire for a buyer's mortgage company, and possibly the Master Insurance Policy (which should show replacement coverage for the common area structures).

HOME WARRANTY COMPANY can provide an insurance policy to the buyer of a home to cover certain repairs. The seller may agree to pay for the cost of the warranty to ease buyers' concerns regarding the condition of the property.

LIEN LETTERS/WATER/SEWAGE letters are issued by various water, sewage, and municipal authorities to disclose any unpaid bills; some may be lienable against the property if not paid.

LISTING AGENT/ AGENCY. The company which contracts with sellers to place their home for sale in the local Multi-List. This may not be the same as the 'selling agency' company that brings the buyer.

LISTING CONTRACT is the document the seller signs with the "company" hired to place the home for sale. It is not a contract between the agent and the seller.

MORTGAGE COMPANY for the **SELLER** provides payoff letters and refunds of escrow account to the seller. Sellers sometimes get confused between the mortgage company they are paying, the mortgage company providing their new mortgage, and the mortgage company providing a mortgage to their buyers;

MORTGAGE COMPANY for the **BUYER** will issue the commitment/approval letter for the buyer and coordinate the closing with the Closing/Settlement/Title/Escrow company.

Mortgage Payoff is the unpaid balance of your mortgage, plus interest calculated from the date of the last payment forward to the date of receipt of the payoff check, plus charges for the satisfaction piece and recording charges at the courthouse.

MULTIPLE LISTING SERVICE—also known as the MLS or Multi-List. A group of member real estate companies that belong to the organization, and also agree to cooperate in the sale of properties placed in the MLS system.

PENNSYLVANIA ASSOCIATION OF REALTORS (PAR) is the state trade association of which most residential real estate agents and brokers are members. The national association is NAR, the National Association of Realtors.

REAL ESTATE AGENT VS BROKER. A real estate broker must have considerable experience and pass a brokers' exam. A broker may be the owner of a real estate company.

REAL ESTATE TAX COLLECTORS provide a certification of the current county, local, and school tax amounts, and documentation of the last three years of payments. If not paid, these taxes can be a lien against the property.

RECORDER OF DEEDS is the government office that records the original deed and mortgage, which can issue a certified copy of either if needed.

SELLER DISCLOSURE is a form required by the state to be completed by sellers of residential real estate, to disclose any deficiencies with a property they are selling.

SELLER'S RETURN is a summary of the expected costs and net proceeds to the seller, which a real estate agent should provide.

SELLING AGENT/AGENCY. The company that procures the buyer. This can be the same company which contracts with the seller, the listing agency, or a different member company.

STAGING PROFESSIONAL is becoming more popular in transactions. These professionals help to present the property in the best possible light. In some cases, they will even provide furnishings, which would be reflected in the cost of the service.

SUB-AGENT OF THE SELLER is an agent who brings a buyer, but actually represents only the seller and can bind the seller to representations. Because of potential liability, this is not something a seller would typically desire.

SURVEY is a drawing of the location of the dwelling on a property and its boundary lines.

This is not typically a requirement of a mortgage or closing company unless issues are disclosed, therefore, it is optional for a buyer.

TOWNSHIP/MUNICIPALITY/CITY will issue municipal lien letters. They may have a Code Enforcement/Compliance Officer verify there are no municipal infractions, and the property is in acceptable condition.

TRANSACTION LICENSEE is an agent who does not represent the seller or buyer but facilitates a transaction.

TRANSFER TAX is 1% of the price listed on the deed and charged by the state of Pennsylvania. Another 1% to 3% of the sale price is charged by the township and school district for the privilege of transferring the property from one owner to the next. The total is typically split between buyers and sellers but can be altered by contract. Some transfers, such as between immediate family members, are exempt.

Contact Information

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Helpful Websites (subject to change)

Pennsylvania Association of Realtors:
www.parealtor.org

Allegheny county website:
www2.alleghenycounty.us/realestate

Washington county website:
www.tyler.washcopa.org

Westmoreland county website:
www.westmorelandweb400.us:8088

Butler County website:
http://maps.co.butler.pa.us

Beaver County website:
www.beavercountypa.go

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Masters of Business Administration
Real Estate Broker
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Advocate Mortgage Services, Inc., President
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Attorney Keith L. Eliou graduated from Duquesne University School of Law in 1983 after which he earned his MBA from the same university. He is a Real Estate Broker and owner of A La Carte Real Estate Company in Pittsburgh as well as an attorney approved to issue title insurance. He owns Advocate Mortgage Services and has originated himself hundreds of millions of dollars in mortgages of all types. Over the decades of experience in real estate, he has participated one way or another in thousands of transactions. In addition to real estate, he has litigated in the area of employment law and focuses on protecting assets for the elderly from costs of long term care.

ASSET PROTECTION PLANNING

ATTORNEY, KEITH L. ELIOU can assist business owners, professionals and those in or about to go into nursing home in the protection of their assets from creditors and predators.

MORTGAGES

ADVOCATE MORTGAGE SERVICES is a low price leader for all types of mortgages and is owned and operated by Keith Eliou.

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