

LISTING CONTRACTS – VERIFY THE OWNERS OF PROPERTY

You receive a phone call from Mrs. Manicotti who tells you it is time for her to sell her home. Her children are grown and have moved away and she is ready to downsize and put the property on the market for sale. You meet with her, review your agency disclosure requirements, provide a comparative market analysis and she signs your exclusive right to sell listing contract. The property is marketed, open houses are conducted and a prospective purchaser is obtained. Mrs. Manicotti retains the services of an attorney (preferably our firm) and in the course of performing the seller's due diligence it is discovered that Mrs. Manicotti is not the owner of the property, in fact, Mr. Manicotti is the listed owner and he died years ago. Furthermore, Mr. Manicotti did not have a Last Will and Testament which tells us the property is now owned by his surviving wife and two adult children, one of whom is questioning the contract sales price and she retains an attorney to protect her interest. As a result, the entire transaction, which has not gone to contract, is in jeopardy. All of the agent's hard work and time could have been avoided had a search been conducted when the agent was first retained.

There is no excuse for an agent to fail to obtain the requisite documentation to verify the owners of the property. If it is a house or a condominium, in most instances this information can be found online on the website of the office of the county clerk. If the property is a cooperative apartment, ask the seller for a copy of the stock certificate and/or proprietary lease for purposes of verification.

There are two other scenarios which should be addressed in this article. 1) If the person signing the listing contract claims to hold a power of attorney (POA) on behalf of the seller, the agent needs to request a copy of the POA for the file, confirm the person signing the contract is the person listed in the POA and further confirm that the POA is still in effect. Remember that upon the death of the principal, a POA is automatically terminated. 2) If the person signing the listing contract is the executor or administrator of the pre-deceased seller, the agent should request a copy of the court authorization that confirms the status of the fiduciary. The fact that the signor has shown the agent a copy of the Will which names the signor as the executor of the estate is of no consequence. Being named the executor in the Will is different than the Surrogate's Court authorizing the signor to act in that capacity.

In many instances, agents become pre-occupied with the due diligence process when representing a purchaser; however, the same level of due diligence should

be observed when representing a seller in a transaction. Determine the owners of the property, confirm that the items you are representing in the listing are legal and accurate and obtain all requisite disclosures...failure to do so will result in broker/agent liability and much heartache...so direct yourself accordingly.

Submitted by Alfred M. Fazio, Esq. of Capuder Fazio Giacoia LLP. Visit our website at CFGNY.com for copies of recent articles as well as other areas of interest to the real estate community. If you would like to be added to our mailing list and receive future articles, please click the link below.

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