How to Make Sure Sellers and Buyers Come to Closing

By Dave Dinkel 2019©

Introduction

It has been estimated that nearly one third of all real estate closings don't happen timely or close at all. Some closing agents who deal with investors have claimed that it can be as high as 40% of all deals they see. These are staggering figures and until a deal doesn't close for you, they may seem very distant and not probable.

Ask yourself this, how can this number be so large (33% to 40+%) when all the players (sellers, buyers, closing agents, lenders, appraisers, inspection company and listing agents) are so intensely involved in getting it closed so everyone gets paid? Maybe it's too many fingers in the pie? Usually nearly all the above "professionals" are needed for most closings so what are the real problems?

Frankly, "Stuff" happens and in this White Sheet Report I'll disclose the common issues and how to cope with them before the closings fail. Most can be resolved but a very few can not be "cured" in any reasonable time period or possibly not at all. Ironically, the bigger the problems usually the bigger the profits.

If you are reading this and thinking that you have never had a problem closing your transactions that's great but, frankly, you haven't done enough deals. The more successful you become the more issue you'll face closing your transactions. The most successful investors expect to have issues and are diligent in quickly finding solutions.

You may have heard investors say that *"Every deal is different!"* and for the most part that's very true. When the sellers and buyers get close to closing all kinds of things can go wrong. The more experienced you and your closing agent are the better chance you have at handling these problems.

With potentially all sorts of title issues, last-minute buyer or seller remorse, with hard money lenders being unpredictable, and other issues it is surprising that only 33% of all deals fail.

However, the most subversive risk to closing a deal is what most investors don't expect or think it couldn't happen to them. This is what I call Black Hat Wholesalers and it is a threat to the entire real estate investor industry. Losses to deal theft are estimated to be $4,500,000,000+ ($4.5+ BILLION) annually! Ironically, most investors aren't aware it has happened to them at all or until it is too late. There are solutions to this skyrocketing problem, and you'll see them shortly.

While I am numbering the "problems" below, the importance of each issue may be different for each investor. Make sure you review every one of these Problems/Solutions with an open mind BEFORE it happens to you and costs you Thousands of Dollars! The solutions to many of these potential issues are the same but read all of them so you aren't surprised when one happens to you.

I am also putting the same solution into each Problem where it fits. This is especially true of "Good Communications" with your Seller or Buyer. In some cases, communication with a Buyer or Seller may not be possible but try as hard as you can to get a real answer as to why either party is not coming to closing. If the closing agent tells you a reason, I suggest you get a second opinion by passing the problem by another closing agent or attorney for a second opinion.

I just had one situation where the investor's profit was over $75,000 net on a pending wholesale double closing. The closing agent who was not an attorney, (allowable in many states) said he couldn't close it because it had a Notice of Interest ("NOI") recorded in the Public Record. I referred the investor/Student to an attorney who we use, and he closed it by simply "writing over" the NOI.

What this "writing over" entails are having a legal reason that the NOI or other issue is invalid to clouding the chain of title. In this example, a Black Hat Wholesaler offered the Seller more money AFTER the Seller had signed a contract with my Student. The Black Hatter then recorded the NOI in the public record. This "sequence" of recording and contract signing invalidated the NOI. This may not be your issue (case) so always consult a knowledgeable attorney about what you can do legally.

I will be addressing each "Problem" with a specific solution that we have used to overcome these issues in our closings, closings for our Students, and transactional funding closings nationwide. Not all Solutions may apply to every State, but they should to the majority. Just because a closing agent says something like, *"It can't be done"* doesn't mean another attorney or closing agent can't do it.

Your BEST BET is to find an investor friendly closing agent/attorney who is a member of a local Real Estate Investment Association ("REIA") or by a referral from a local investor who does closings on a regular basis. You can look at the

local REIA's website under "Vendors" to find investor-friendly and seasoned closing firms. Any time you decide to use an unknown agent/attorney ask them first, *"Do you do double closings for investors?"*

If he starts mumbling about you not being able to use your end-buyer's money calmly explain that you will pay with your own money (transactional borrowed money) for your purchase. If he is still belligerent, find another closing agent/attorney who understands investor real estate closings! I have had several closing agents in California who believe that double closings are illegal. However, there are far more knowledgeable ones who can do them!

In the following text the "**Reasons Sellers/Buyers Don't Come to Closings"** are highlighted in **Red** text, a brief overview ("**INSIGHT**") of the issue follows in black text and the suggested "**SOLUTION"** is highlighted in Blue.

Problem #1

Seller Remorse So He Doesn't Come to Closing

INSIGHT –
While this may not be the most common problem it certainly stops the entire closing process. The reasons can be numerous but the most common ones we experience are:

Seller Remorse – The Seller simply talked himself out of selling, his reason for selling has changed, or someone else like a relative or neighbor may have made him a higher offer than yours. Shortly we'll cover another investor making him a higher offer.

The Seller or his listing agent (Realtor®) informs you that your contract has been cancelled for whatever reason – this reason is irreverent. Neither the Seller or the Realtor® can simply cancel your contract assuming it has been written correctly and you have complied with depositing the Earnest Money Deposit ("EMD") timely.

You should try and get a reason for the proposed cancellation just to be clear and to see if the issue can be quickly resolved. But if you can't get in touch with the Seller, or the Realtor® gives you any excuse that is NOT a contract violation (Breach of Contract) your contract can't be cancelled.

One common reason that Sellers cancel is they have found out you are reselling the property and you didn't disclose this to them. It doesn't matter what you will do when you close as it is your property and you can sell, hold or burn it down. Some Sellers may say to you that they don't want you to resell the property to an investor.

That "request" doesn't matter unless it's in writing in the contract. However, most investors simply do a double closing, so the Seller doesn't know at the closing that you resold his property. This is another reason that assigning a contract can kill a closing because the Seller and Buyer know how much you make at the closing and in the above case, that you didn't do as the Seller asked.

When you get the news that the Seller isn't coming to closing, you now must decide to solve the "real" issue for the cancellation or renegotiate with the Seller as to price, allow him to walk away or **enforce your contract**.

This problem of Sellers cancelling usually has clues it's coming. The first big clue is that you can't reach the Seller by phone, email or text. The more frustrated you get the more time you have wasted and the harder it will be to fix the problem.

SOLUTION –
If the Seller admits he got another offer you could try getting a "cash me out" offer of ½ of the higher amount he will be receiving. Otherwise he will have to face paying an attorney to defend his undefendable position (cancellation because of a higher offer).

If the Seller or Realtor® says the Seller got a higher offer, and your contract is invalid or some other goofy excuse you should immediately file one of the following documents in the public record:

1. **Notice of Interest** – Seller doesn't have to sign but you are the signatory and this document will have to be notarized to be recorded in the public record.

2. **Memorandum of Contract** – This document is signed by the Seller usually when you have your Purchase Contract signed. It is ineffective unless you can record it in the public record – meaning a notarized copy. You accomplish this by dragging an impartial "traveling notary" with you to signings OR you put your signature area below the Seller's and when a notary notarizes the document it can be recorded in the public record with the Seller's signature on it. The notary is NOT notarizing the Seller's signature, only yours.

3. **Affidavit** – Because of investor abuse in filing unwarranted NOI's and the State's subsequent reaction to this issue, we had to change the name of the document so it could be recorded. Before you call the Clerk of the Court to find out if one of the above can be recorded just go and try recording one –that will save you time and misinformation!

   These are essentially all the same documents with different names, but each document clearly should say that you have a valid Purchase Contract and are willing to defend your position in court.

4. **Breach of Contract ("Specific Performance")** – While this is the most often threatened action by Sellers and Buyers it is the least effective of the legal steps you can take.

   Unfortunately, the court system takes time to review Motions and set hearing dates. If the Seller or Buyer don't come to the hearing you will get a Default Judgment which is "sort of" a win. The next problem is to be able to collect on the judgment you got. This is the weak link in this legal battle, so it is mostly a scare tactic at best.

5. **Mediation** – If your Seller it is telling you the truth that he changed his mind, your contract should call for Mediation. Homemade contracts won't have this but "good" contracts to protect the Seller and Buyer will always have a Mediation. A mediation is not cheap and can be very expensive if the Seller doesn't abide by the mediator's ruling. If the Seller agrees to a mediation, file an Affidavit to make sure the Seller isn't just stalling for time while he sells and closes with another closing agent.

6. **Injunction to Halt Sale** – This little-known legal action can be done quickly but it will require a hearing with a judge and the posting of a bond when the injunction is issued which should be the same day you are at the courthouse. Again, these legal actions should not be done on your own or consequences could result that could be expensive.

7. **File a *Lis Pendens*** – The one action that will QUICKLY stop any further transfer of the property to another Buyer or to bring the Seller back to the closing is to file a Breach of Contract and *Lis Pendens* simultaneously. The meaning of *lis pendens* is a "legal filing" and it does not have to be to foreclose on a defaulted mortgage. Do not try this on your own and find an attorney who understands this unique legal process.

Most attorneys will tell you it can't be done – we typically do 10 – 15+ a year with spectacular results. Find an attorney who has done this special legal action because if he isn't familiar with the correct process your motion will be thrown out and you will have attorney fees and lose your filing fees.

What we experience when using a *lis pendens* is that the Seller comes back to the closing table in 75% of the cases within days, the others go to trial and we win the case, get the house and our attorney's fees paid by the Seller. This process is what I call the "Thor's Hammer" of stopping Sellers who decide not to come to closing and it works even better for REO properties where the Asset Manager suddenly decided to cancel your Purchase Contract.

Warning – Filing a *lis pendens* will not work in short sales and the lender's approval letter allows the lender to cancel the transaction up to and on the day of closing. While your contact is with the property owner, the lender has the final say of what amount they will reduce the amount owed and even if they will close.

We have not lost a case yet. However, we have come in contract with investors and their attorneys trying to file a *lis pendens* who didn't know what they were doing. We recently had one case in Pensacola where the attorney filed the *lis pendens* as a mechanic's lien. Our attorney had it thrown out in a few minutes because our Student was wholesaling, and the Seller decided to try and take a higher price from a Black Hatter. The Black Hatter was the one who filed the *lis pendens*.

In another recent case the judge "required" my Student to do a mediation before he ruled on the *lis pendens* case. I hadn't seen the property previously but when I analyzed it I realized that it wasn't worth what the Student had offered. I suggested he request an offer of settlement for $10,000 which was granted. The seller later couldn't get the other investor to buy the property and had another $10,000 plus his attorney's fees added to his cost basis.

You can try renegotiating with the Seller especially if he comes back after learning how much his cost could be to defend himself against the *lis pendens*. If a Realtor® is involved, you need to report him/her to the State Board of Realtors® and the State's Bureau of Ethical Standards or whatever it is called in your state. Don't be shy in telling the listing agent what you will be doing.

POSITIVE ACTION REQUIRED –
When a Seller goes "quiet" and you can't get him to return your call, get in contact with the Seller directly even if he has a listing agent. He may hide or tell you he doesn't want to talk but contacting him is a prelude to whatever court

action you may have to take. Don't set yourself up for getting the Police called but try to get info from him as to why he is cancelling. Usually women are better at doing this detective work.

I suggest your first course of action is to go to his property and knock on his door and ask him, "What's up?" If there is one thing you take away from this discussion, I would like it to be:
"Sellers are liars and Buyers are liars!"

Whatever the Seller tells you can be powerful in an upcoming trial. Deliver a flyer to his door, send a letter, send a UPS letter without a return address or whatever you can do to show you tried contacting him. Your text messages from him can also be very useful in court. In fact, that's how my Student in the above mediation won his case – repetitive text messages every few days. The Seller told the Judge that the Student never contacted him!

If you can't resolve it quickly the Seller may be stalling to get the Black Hat investor to close. So you have to take ACTION and quickly, otherwise you'll lose the deal with no recourse.

I was recently told by an attorney in another County that I couldn't file a *lis pendens* because I didn't have an original signed Note and Mortgage. I told him we have been doing it for years and he proceeded to tell me that it couldn't be done. He explained that he had 30 years' experience as an attorney and his wife was a judge with 25 years on the bench and bragged that it couldn't be done. He works for a large closing company as an in-house counsel.

As we have done before I filed the *lis pendens* and after seven months I got the Final Judgment including my principal, accelerated interest and attorney's fees. The guys I foreclosed on (defendants) ran through two attorneys both of whom quit after two hearings each.

At the foreclosure auction I bid up to my Final Judgment amount and the winning bid was 53 cents higher – I planned it that way. So, this "overage" from the sale went back to the guys who tried to steal my money. I got $73,000+ and they got 53 cents.

Problem #2
Seller Gets a Higher Offer from Another Investor

INSIGHT –
An unfortunate trend in our industry in when an investor gets a property under contract and advertises it to his Buyers List and then another investor goes directly to the Seller with a higher offer. The Seller is coerced into believing the investor's contract is illegal, can be cancelled and the Black Hatter is the "good guy." This is usually followed by the property owner signing a contract with the Black Hatter and/or the listing agent calling the investor and "cancelling" the contract.

I discussed this issue above and nothing has changed except now the property owner has someone on his side (Black Hatter and/or listing agent) who believes he knows the law. Realtors® are particularly adept at practicing law without a license. Other investors can be VERY persuasive at saying how your offer was too low and your contract is invalid.

SOLUTION –
What is seldom discussed because it's after the fact is that the new contract with the property was fraudulently induced and the investor and property owner can be held liable.

What we have had to revert to in some cases is a DISCLOSURE for the Seller to sign that clearly states what will happen if the Seller signs another contract with an investor. Make sure you title the document STATE of _____, PROPERTY OWNER DISCLOSURE and go into detail what the Seller should expect when another investor makes him an offer. I have even included a REWARD leading to the conviction of the investor.

Refer to Numbers 1 – 7 in the above example. Use whichever of these legal maneuvers that it takes to get your deal back or that gets you money for your time.

Problem #3

Seller Hasn't Heard From You So He Sold It To Someone Else

INSIGHT –
Ironically this is a very common excuse for Sellers cancelling a Short Sale. Unfortunately, when a short sale is necessary to get a price where the property can be resold for a profit (enhance the equity), the lender involved makes this final decision as to the reduction off the amount owed.

This person is called a Loss Mitigation Representative or “Loss Mitt.” I once asked a Loss Mitt how many files she was working and she said, “I’m a little slow now I’m down to 425.” The point is they are very busy and don’t really care about an investor making a profit on the resale of the property.

Your best bet to do profitable short sales is to find a person who does them for a living. If the person you are interviewing says they have a 99% completion rate – look elsewhere. This negotiator is only interested in getting a lender approval. These approvals are used by Realtors® as their listing price and they are only interested in making a commission, not getting a discount large enough to resell the property immediately.

Poor Communication between Investor and Seller is the main cause of this type of cancellation. What is “poor” is different to different people. Some people want a phone call every day while a few souls may not require as much attention. This issue happens because of the Loss Mitt not telling anyone what’s happening until the file is complete which could be 3 – 4 months.

HINT – Short sales that are in a probate will usually take a couple of weeks and are often associated with Reverse Mortgages. These can be very profitable deals if handled properly especially since the loans are government guaranteed and consequently difficult to negotiate.

SOLUTION –
Our experience in keeping Sellers and Buyers in the fold is to contact them as often as you have an update on the scheduled closing. If you aren’t hearing something from the closing agent, negotiator or the Loss Mitt, email or call everyone to see what’s happening.

This “constant contact” instills confidence with the Seller and Buyer that you are focused on the closing. It also is very helpful in giving you an early warning that something is going wrong with the Seller’s or Buyer’s interest in closing. The Seller could be using you and the short sale process to extend his “free mortgage payments” and not actually be intent on closing.

One thing you can offer the Seller or Buyer is to have a traveling notary (electronic signatures in some states) come to them. This does two things, first it makes it very easy for the participants to do the closing especially if they are a good distance away.
Secondly, it instills confidence that you are trying to make it easy on them and the closing will be happening.

An “unseen” advantage is that you don’t have to meet with the Seller and Buyer at the closing table. One thing we learned after thousands of closings is that there is no advantage to sitting at the closing table with the Seller and haggling about minor items that they “just discovered.” Most often instead of fixing these annoying issues you have to give them a credit at closing. Not attending may sound counter-intuitive but we have many more closings under our belt than you will have in your entire career.

If you are not present at the closing the closing agent can’t answer for you, and the closing simply happens. But what if you wanted to get a written testimonial from the Seller? Have it prepared (write it yourself) and have the agent put it in the closing package for the Seller to sign it with the rest of the closing documents.

Problem #4
DEATH OF THE SELLER

INSIGHT -
We have had this happen a small number of times so I thought I would mention it. It is not a deal killer, but your signed contract is invalid. If the Seller and his spouse signed the contract you have a ½ valid contract at worst. The spouse will inherit the other ½ of the property, but he/she only signed for his/her half previously.

This may seem like a technicality, but it could be very important if the spouse decides not to sell.

SOLUTION –
Your best is to try to get the spouse or any other beneficiaries to sign a new Purchase Contract as soon as is appropriate because your original contract died with the seller. If there is a spouse, the title to the property passes to him/her and the property shouldn’t need a probate.

Most real estate for couples is held is what is designated as Joint \Tenants with Rights of Survivorship (**JT/WROS**) or “Joint Tenants” in the public record. In a few cases the property could have been titled as Joint Tenant in Common (**JTIC**). This tenancy means that if one person passes the other gets ½ of the property and the other ½ goes into the probate process of the deceased.

One issue to take care of before something unforeseen happens is whenever there is more than one beneficiary, have all the known beneficiaries sign your Purchase Contract and if necessary, add an Addendum page so everyone has a place to sign. If only the Court designated Personal Representative or Executor of the estate signs the contract before the Probate Court Judge designates him/her as the PR or Executor, it is

not a binding Contract on the other beneficiaries. Too often one beneficiary doesn't want to sell and sometimes not at any price!

However, in the final analysis each Beneficiary will have to sign a Quitclaim Deed to release all his rights to the property. If one or more decide not to sign, the sale of the property can be stalled. In this case your contract will be for the prorated amount of the estate of the Beneficiaries who did or will sign. If there are three beneficiaries and two sign, you now are purchasing 2/3 of the property!

If you have a holdout who will not sign for any reasonable price –
Have your attorney file a Motion to the Court to Partition the Estate. This will force the sale of the property on the MLS®. Whatever the proceeds, each partial owner will get his 1/3 as in the above example. This is often a huge opportunity to get a big discount from the Beneficiaries who want to sell and can't because of the person holding out.

Problem #5

Buyer Doesn't Come to Closing

INSIGHT –
The usual reasons a Buyer doesn't come to closing are:
Buyer's Remorse, Buyer tried to resell the property and failed,
Poor Communication between Investor and Buyer or the Death of Buyer (unavoidable).

The reason you'll be confronted with most often is the Buyer tried to resell and couldn't.
Your Buyer is another wholesaler who put your property under contact and then his Buyers List failed him.

Just as when Sellers are defaulting, Buyers give clues to their pending situation. The first indication is they don't put up their Earnest Money Deposit ("EMD") timely or at all. If they have an Escrow letter from their closing agent or attorney call this party and confirm it's there. If it is there have the agent/attorney email you a confirmation as this potentially makes the agent/attorney liable later.

SOLUTION –
The best you can do here is to default the End-buyer for not closing and demand his EMD from the closing agent. If he never gave an EMD you can move forward with a Breach of Contract lawsuit and take a chance on getting a judgment against him. Collectability will be the issue, but it is not impossible that he has, or WILL HAVE, money in the future.

Follow your attorney's instructions and if the amount is below a certain limit (different in each State) you may be able to go to Small Claims Court. In most states any entity involved in a lawsuit must be represented by an attorney. Usually the EMD is the limit of liability that a Buyer has, and it must be stated in your Purchase or Sale Contract to be valid.

VERY IMPORTANT –
When you send out a Purchase Contract to a Seller you sign it and initial it where appropriate. When the Seller signs you have a valid contract. However, when you send out a Sale Contract to your Buyer you **SHOULD NEVER** sign the contract before you receive it back signed and with an EMD.

The reason is very simple and legally powerful. When the Buyer gets a signed contract by a Seller (just as you do), he has a valid contract as soon as he signs. If your End-buyer is unscrupulous he doesn't have to sign your contract until he gets good and ready – which may be never. This End-buyer can hold you up from selling to another investor even if you have given him a **Cancellation Notice** and you never received his EMD.

You, your attorney or your closing agent, your broker or your real estate guru, all the guys/gals at your local REIA or your best buddies, don't have to agree with me. However, when or they close over 7,000 transactions, then they can come back and argue with me that something can or can't happen. Until then take it on faith that I am trying to help you get ready for the unexpected that can be very expensive.

Problem #6

End-Buyer's Funding Doesn't Happen Timely or at All

INSIGHT –
The common reasons Buyers have issues with funding and closing are: Buyer's funds are not in the US and he can only transfer "smaller amounts" at a time or he finds out he can't transfer any funds without a HUGE penalty (up to 30% of the amount he would send), or if he is using hard money to close, his hard money lender comes up with excuses at the last minute for not closing or delays closing, and the deals collapses. Sometimes the hard money lender will ask that the Investor-Buyer ("B") be shown on title before he will fund the second leg or "B – C" transaction.

This “delayed closing” can stop the double closing in its tracks or the investor “B” will need extended transactional funding for the days until the hard money lender will close.
MOST transactional funders have stopped doing extended funding because of fraud and the high probability that the hard money lender will not close.

SOLUTION –
Your best solution is a preemptive request for a Proof of Funds (“POF”) from the End-buyer. A POF is a Bank Statement that shows a cash balance of at least what’s needed to purchase the property from you. Any letter from a hard money lender stating that the funds are available and that he is ready to close is virtually worthless.

Remember, your End-buyer is the one getting financing and he picked the hard money lender which is not a good sign in most cases. Ask to speak to the lender and be candid about whether he can close the Same Day as you close on your first leg of the Double Closing. If he says you have to wait for any number of days, find another End-buyer or find another lender for your End-buyer!

Problem #7

End-Buyer or Seller Didn’t Sign Documents Timely or They are not Endorsed Properly

INSIGHT –
Some things are so obvious in life that they are referred to as “No-brainers”. However, when it comes to signing legal documents most people do not read them carefully before signing. Often, they only look at blank lines to sign and even sign in the wrong places.

Typically, when documents aren’t signed properly it is not intentional. However, Seller or Buyer remorse can set in if the closing isn’t within the scheduled time frame set by the closing company. This issue is especially true in probates when the beneficiaries want their share of the proceeds as quickly as possible.

SOLUTION –
When you get into a situation where your Seller or End-buyer messed up signing the required documents act fast! To begin with, assume that they simply made a mistake and are sincere about moving forward. Explain to the party involved what happened and that you will be resending the documents back as quickly as possible (mail away closings).

If the Seller or Buyer is local, offer to come out and meet them to resign – if a notary isn't needed. If a notary is needed, send a traveling notary as soon as possible and stay in touch with all parties all the time.

Don't be ashamed of blaming the closing agent rather than blaming the Seller or Buyer. Reassure them that all is well, and you'll close on schedule.

Problem #8

Unknown Lien Issues or Code Violations

INSIGHT –
Once you get a property under contract you will move to closing. The closing agent has two different times to do the title work – 1.) If he knows you are going to wholesale, it he can wait until you have a contract with an End-buyer or 2.) he can do the title work as soon as you give him the A – B contract.

The issue becomes that if 33%+ of deals don't close then he must pay for title work for which he can't get reimbursed. Therefore, the safe method is to wait for the B – C contract to come to him and then run the title work so he has no out of pocket expenses if it doesn't close.

The closing agent will also need to get what are called "Lien Letters" from cities or counties that may have unrecorded code issues or violations that are not yet in the public record. These 'hidden" potential problems can be sitting on the desk of a Code Enforcement Officer and not yet Liens recorded in the public record. But they still must be resolved by the property owner or any buyer of the property.

Unfortunately, some time the B – C contract comes to him very close to closing and when he runs the title work, he can find Liens, code violations or title issues that may or may not be able to be resolved before the closing.

SOLUTION –
The solution is to look at each issue and resolve what can be completed before the closing. For example, a "Pit Bull Lien" is not a Safety Issue and can be negotiated with the issuing entity at 5% to 10% or less of what is owed. Having an unpermitted structure (enclosed carport) is considered a Safety Issue and may have to be remediated before or after the closing and a penalty must be paid.

Many times, when a problem can't be resolved before the closing, we **Fully Disclose** the issue to the End-buyer and have him sign a "Hold Harmless Disclosure" at the closing. Most of the time this is not an issue for seasoned rehabbers and contractors. However, it can be a deal killer for other End-buyers.

If you knowingly hide the issue from an End-buyer, you have created fraud and could be sued and lose in court. If your End-buyer cancels because of these unknown items, you probably should allow it even though you had him sign an "As Is" contract. Use the same logic to cancel your contract with the Seller by calling the issue an Undisclosed Major Deficiency.

Problem #9

Chain of Title Has Breaks or Deficiencies

INSIGHT –
The transfer of ownership of a property relies heavily on the "Chain of Title" of previous owners. When a new buyer for a property comes along, he should get title insurance. This is truly "insurance" that guarantees the seller is the proper owner and the title will be transferred to the new owner free and clear of any title defects. If a lender is involved in funding the purchase, a title policy is required to safeguard the lender's interest.

SOLUTION –
Your title company will find every deficiency that needs to be cured and they will explain what can or can not be done. Some will be simple such as proving that a judgment in the public is not the Seller's responsibility. Some will require a probate because a former owner died and one of his beneficiaries simply moved into the property and is now trying to sell it.

Others may seem insurmountable because of the inability to get former owners to cooperate or even find them. But there are solutions to these issues:

1.) Buy the property from the "Owner of Record" and do a Quiet Title Action through the court system to clear the title. All former parties in the chain of title must be contacted and asked to come forward if they believe they have a claim to the title.
2.) Buy the property and sit on it for the period required in your state to exempt the property from former title claims – in many states this period is 5 years.

The big benefit is that a motivated seller will take way below market value to unload his 'headache" and you can solve his problem and get paid very well for it…

Problem #10

Buyer Doesn't Come to Closing And Gives Feeble Excuses

INSIGHT –
While I have covered most of the reasons Buyers decide not to close, there are others. Whether they admit the truth or not you will be faced with having to find another buyer at the last minute or defaulting on your A – B contract.

SOLUTION –
If the End-buyer defaults with some time before closing and after his inspection period expired (this should be "0" days!) you should try to remarket the property. When you are originally selling it you can take backup contracts and when you know of the default you can go back to any interested parties and say, "My Buyer is having partner problems, are you still interested?"

You have a business decision to make – should you risk your EMD and move to closing all the time looking for another Buyer, or should you cancel your contract and focus on getting your End-buyer's EMD?

The first thing to try is to ask for an extension from the Seller and if he isn't cooperative then make the decision to risk your EMD and move to closing. Most Sellers will cooperate if you explain that your funding partner hasn't had time to do his due diligence and you need an extra week.

What's MOST IMPORTANT is that your risk is limited to your EMD on this transaction. No matter what a listing agent or Seller says about suing you, it's trash talk! If you are at all concerned about this issue, READ the contract you signed with the Seller and you'll find your Limit of Liability.

Problem #11

Power of Attorney Doesn't Work

INSIGHT –

This can be a complicated issue as a Limited Power of Attorney (LPOA) to sell a property can be cancelled in seconds. Regardless of the reason for the LPOA the property owner will have to sign a Quitclaim Deed at closing – even if he/she is in the hospital. If the property owner can not sign anything, the court will have to appoint an administrator if one has not been appointed already.

SOLUTION –
Defer to the closing agent for what is needed and what has to be done to close. Do whatever is needed to get a Quitclaim Deed signed by the property owner so you know the person with the POA is not stealing the property from the rightful owner.

We had a case last year where the Seller had a POA for his wife since he wasn't on title. At the last minute when the closing agent asked for a Quitclaim Deed the POA holder said his wife would sign but she was in Nigeria.

We explained she could travel to the closest American Consulate and have the documents needed signed and notarized. The POA holder said "no" she would only sign if we flew her to the United States. We said "no" and filed a lis pendens to bring the POA holder back to the closing table.

He never responded and it took about 9 months for the Court to rule that we had the right to purchase the property. In addition, the property owner was required to pay our attorney's fees which amounted to over $14,000. The net profit on this "impossible" deal for our Student was over $46,000 net.

Problem #12

Seller is Offering a Quitclaim Deed and Buyer Cannot Get Title Insurance

INSIGHT –
A Quitclaim Deed transfers the title of a property to a Buyer, but it also transfers all the problems of the property to the Buyer. An investor selling a property and offering it by Quitclaim Deed transfer only, can be VERY harmful to the Buyer!

Most often you see properties that were acquired by a tax deed sale resold by Quitclaim Deed. Tax deed sales wipe out all liens on a property but not necessarily city or county code liens – you must check local regulations to see what happens to items on title before you invest in any.

WARNING – there is a great deal of misinformation about tax certificates and tax deeds online and being sold by "Gurus". Be very careful and do your own investigation before you invest. The best real source is your local county's website.

SOLUTION –
Have a closing agent or title company do a title search on any property you are considering buying that is being offered by a Quitclaim Deed. Especially important is whether there are code violations and liens that you will have to assume. The big problem can be that code liens are cross collateralized with other properties you may own and are trying to sell.

For example, you decide to sell your personal residence and at closing the closing agent shows you a HUD statement that shows you having to pay $100,000 to the county to resolve a lien issue on the property you bought via a Quitclaim Deed for a few thousand dollars.

I mentioned a Quiet Title Action and you should expect to have to do one in most Quitclaim Deed transfers. They do take months and you run the risk that someone comes forward with a valid claim to the title. When you bought it your closing agent would not issue you title insurance, so you are risking your entire investment if you aren't careful!

Problem #13

Scheduling Closing Date Too Soon to Complete Title Work

INSIGHT –
Some investors use language in their ads that state "We can close in 24 hours!" Is this realistic? It is if you consider that what they really mean is they can close in 24 hours AFTER the title work has been completed.

How long the title work takes depends on where you are in the country. In some states/counties/cities who have all their public records online for public access, it can be very quick. However, title work doesn't just include what's in the public record of the county or city. It also includes judgments against the individual who is the property owner. These judgments have to be negotiated if possible and paid off at closing.

Does this boarder on deceptive advertising? Well, yes, but it does get Seller's attention and if the 24-hour concept is explained once the investor gets in front of the Seller, it can work. Sometimes the Seller knows something that he doesn't want the Buyer to know and pushes to close quicker so be wary even if you have a 15-day closing. Don't close without getting title work done.

SOLUTION –
Title companies and attorneys pay for the title work to be done by title insurance companies who will use the information to insure the title is free and clear of deficiencies or what is called "Fee Simple". There are advantages to buying a property at a large discount knowing there is a defective title but that the issues can be "cured" in time.

These title companies can do a quick search ("Pencil Search") that will in minutes bring up the same information that will come up late for the closing, except the pencil search documentation is not "insurable". Don't worry about the details just ask a potential closing agent if he will do a quick search and how much will he charge you. Again, this search will not include any issues where the code enforcement officer has not yet made a pending violation into a lien that was recorded in the public record.

Whether you promised something you couldn't deliver, or "stuff" happened, you can talk to the Seller and put the blame where it is due – closing agent, yourself or your End-buyer. To cover yourself you should have a clause in your Purchase Contract to the effect of "Seller agrees to allow the closing agent to extend the closing up to 14 days if necessary, to complete all title work."

Problem #14
Surprise Probates

INSIGHT _
Sometimes a person who is deceased remained on title simply because his beneficiaries didn't go to the trouble of probating his estate. Sometimes it is a monetary issue and other times the beneficiary didn't want to have siblings get part of the estate. Whatever the reason, as you go to buy the property and the title work is done you find out that the person on title may not be entitled to the ownership of the property.

A very common occurrence is when a parent is very ill or on their death bed, his children have him sign a Quitclaim Deed. They record it and believe they are the owners since that's what it shows in the public record. Weeks, months or years

later the person on title goes to sell and the closing agent discovers there was no probate to determine ownership.

These individuals often start saying that they were the only child and they are entitled. Often there are other children or a new spouse who had ownership rights. The Seller knows this but pushed you to close. If you close you have a broken chain of title when you try to sell later and only partial ownership of the property.

SOLUTION –
While the Seller may complain and say they aren't closing with you they still have a contract they must fulfill. Focus their energy on the closing agent and let him explain what must happen. If you rush to close you will likely discover you bought only part or NONE of the property because of fraudulent conveyance. Listen to the closing agent and get a title policy at closing (the title policy becomes effective when the Deed is recorded).

We had a case where I did a contract with the Seller who appeared to be on title. It was his father on title, but he had assumed his name. Besides the father having died, his wife had died, the Seller's brother had died and while he had divorced his spouse and this brother had two daughters – all of whom had a legal interest in the property.

It took 364 days to complete the sale with all the probates taken care of and all beneficiaries being paid their prorations. Had we bought from him directly because he was on title and believed him to be the owner, we would likely have lost all our money.

Problem #15

Buyer's and/or Seller's Lack of Patience for Closing Delays

INSIGHT –
This lack of patience by a Seller usually occurs when you are doing short sales, but "regular" closings can have their title issues that delay the closing. Your contract with the Seller should stipulate you will get a Clear and Marketable title at closing. In some situations, this is not possible, and the title company will make these special issues "Exceptions" to the title policy.

Besides short sales this can be a common issue with probates. We once had one with eight (8) beneficiaries that were scattered around the world and it took months to get everyone to sign their Quitclaim Deed and have each one notarized.

SOLUTION –
Have the closing agent explain to the Seller what the problem is and what their expectation is for the closing date. Often the Seller can speed up necessary signatures and keep the process moving. If there is a holdout Seller as part of the closing the Seller may have to take legal action to get this holdout to sign. This action is called "Partitioning the Estate" and I mentioned it previously.

If you use a closing date of "on or about" on your Purchase Contract this won't be as much of a problem. You also have the Thor's Hammer option to file a lis pendens to stop the Seller from selling to another investor.

You have very powerful legal rights when you get a signed contract, but you must be prepared to defend them. HOWEVER, remember that when you are the Seller your Buyer has the same powerful legal rights so be prepared to protect yourself against deal predators.

Problem #16

Not Disclosing It's a "Wholesale Flip" to the Seller or End-Buyer

INSIGHT –
When a Seller sells you his property there can be a good deal of his liking you and picking you over other investors. These other investors may have even offered more money, but he went with you because he believed you would stay in the property and not wholesale it to an investor. However, you did go ahead and advertise it for sale to other investors and the Seller found out.

Most often the Seller finds out because another investor informs him of your advertising and this investor tries to get your deal. The Seller will threaten or call and "cancel" your contract, but he can't.

The same thing can happen with your End-buyer but often this is because he found out what you paid, and he wants a discount. The same issue just for a different reason.

SOLUTION –
You are not required to tell the Seller or End-buyer what you are doing with the property or how much you paid for it. If you try and assign your contract, then BOTH the Seller the End-buyer will know what you are making as a profit on the deal. Assigning contracts have one MAJOR issue, it opens you up to one or both parties cancelling your contracts because your "**profit is too large**".

Too large a profit is in the eyes of the Seller and the End-buyer, not you! For some Sellers a $1,000- profit is too large while your End-buyer will often want you to make a couple thousand dollars at most!

Unless your contract specifically stipulates you cannot assign or resell for a specific time period then you can. While you may not want to take legal action, you will likely have to, or your deal will not close. The Seller may be angry, but he was satisfied with your price and he should move on.

If the Buyer defaults (cancels) your only recourse is to take his EMD. This leaves you with some money, but you no longer have an End-buyer! If a prospect for buying your deal EVER asks what you paid, tell him he should know better than to ask, It is none one of his business and he is asking you specifically to ask for a price reduction, He is a pro at doing this so don't be duped into answering him.

If you want to give him a figure because he presses you, add $5k to $10k+ to your purchase price so you have a buffer to come down in price. He won't see what you paid until he looks in the public record weeks later.

MOST IMPORTANTLY –
Remember that "***Sellers are Liars and Buyers are Liars!***" The repair estimate he gives you is likely inflated, again so he can get your offering price lowered. That's only so he makes more money and not you!

Problem #17
Assignment Fee Is Too High

INSIGHT –

I somewhat covered this above, but this is a very common occurrence. New investors watch YouTube® videos of Gurus explaining that all you must do is assign your contracts and you have "0" money in a deal. That's true – if it works and you are willing to accept minimal profits.

But when you assign a contract your Seller and End-buyer will see what profit you are making and if they say it's "too high" they may not close. Often each one contacts the other and the Seller and the End-buyer get higher/lower prices without you.

I agree, there is a point where you can't double close and still make money. This is a function of your Buyers List and how good you are at getting the best possible Seller's price.

I had an investor approach me at our club's monthly meeting and say, "I closed 110 deals in the past two years." I responded that he didn't need my help, but he went on to explain that he made a maximum of $1,500 per deal. While that sounds good ($1,500 x 110 = $165,000) he said he lost money after his expenses and a nominal salary. He was at the meeting because he had been seeing my Students' average wholesale profits at $20,000 to $22,000 per deal.

He knew that 110 x $20,000 was $2,200,000 and he wanted to know how we did it. While we don't do deals in the traditional manner, we do them legally and ethically. He was too cheap to join our Program, so I never did tell him how we do it.

This is a prime example of an investor who works for other power wholesalers but is relegated to being paid little ("Bird Dogging") or at least not enough to make a living. All these deals were assignments that he learned to do off YouTube® videos. I would call this an **expensive education** for which he paid nothing.

SOLUTION –
The two most direct solutions are to keep building your Buyers List and stay away from Whale buyers who will dictate your every profit. Secondly, you need to practice how to get discounts from Sellers before you get to closing. Building a massive buyers list is a matter of consistently searching for new cash buyers. Getting discounts requires practice and understanding the Seller's motivation to leave the property.

When dealing with listing agents you NEVER ask for a price reduction. They immediately multiple that figure times their commission and say "No" in most cases. Instead you should ask for a Repair Credit on the HUD Closing

Statement. This repair credit allows the Realtor® to receive his commission on the sale amount and opens him up to asking the Seller for the price reduction which instantly increases your profit.

You will never make a decent living making a few thousand dollars on each wholesale transaction. If you can find deals for others, you only need a larger Buyer List to do your own deals directly with End-buyers who are willing to pay more than other cheapskate wholesalers.

Problem #18

Allowing the Seller or End-Buyer to Pick the Closing Company

INSIGHT –
When a Seller picks his own closing agent you have the right to have him pay for the title insurance. This is a small dollar saving to you but a big loss of control of the closing of the deal. The Seller almost NEVER has a closing agent in mind unless he is another investor, or his listing agent suggested it.

When a listing agent suggests it to the Seller it's because his firm often owns the title company and the agent may be making a fee for the referral. While you can't see this directly, the listing agent will have the Seller sign a Disclosure to that effect.

The BIG ISSUE is that the "alien" closing company may not do a double closing, they will alert the listing agent that you intend to wholesale it, and they are generally uncooperative with you about what's happening before the closing. You are not their customer and they may act like it including telling you "things" that may be their own internal procedures that are not required by other closing agents.

SOLUTION –
The best solution is to pick your title company by paying for the title insurance which in most states gives you the right to choose. If that's not workable because their title company is a contingent on you getting the contract, you'll need to get ready for a double closing at two different agents.

We have our preferred closing agents "Shadow" the A – B closing so we know what is happening. The next issue that arises is that your B – C closing agent will need to see the A - B Deed recorded to do the B – C closing. In some cases,

the recording can be done electronically or by sending a courier on the same day of the A – B closing to the courthouse. More likely it will take a day or two to do the second closing which means "Extended Transactional Funding" to close.

Most transactional funders have stopped doing extended fundings because of the high risk of the B – C leg not closing. The usual problem on this leg (B – C) is the End-buyer's lender doesn't close or sometimes the End-buyer just gets remorse and doesn't close.

Problem #19

Seller is Unduly Influenced by His Realtor®

INSIGHT –
There are two types of Realtors®, ones who understand investors and what we do and all the others. The longer you are in the business and the longer you deal with Realtors® the more you will understand why they have been called, "The biggest single threat to every closing."

It is amazing to me that so many of them go out of their way to unknowingly kill a deal – at or before the closing. It may be an ego thing where they want to be in charge or maybe they make so little money they are desperate. Sound harsh? Actually, it's a fact of life and I am always amazed that a listing agent can so intimidate a Seller that a closing doesn't happen.

The most successful Realtors® have made their fortunes from acting as investors and investing and rehabbing properties – not their commission business. Investors call the Realtors® commission business as working for "tips" and it's true.

SOLUTION –
Know going into any listed transaction that the listing agent is NOT your friend. However, your best bet is to get "kissy-kissy" with them and to insure them that you will be closing and if you rehab the property, they MIGHT be able to list it.

Frankly, the agents are in control and do whatever it takes (within reason) to win their hearts. Tell them you understand how hard they work for so little and how you appreciate their help. This may not help with the arrogant ones but try it anyway.

Above all, remember that they have the last word in influencing the Seller so don't try and win small battles (prove you are right) and lose the "war"! Some

day you will realize that by putting your ego aside, “It is better to be Happy than Right”

Problem #20

Closing Agent Believes Wholesaling is Illegal

INSIGHT –
While this may sound impossible, I run across it about once a month! These people are mostly new closing agents that have been licensed but take orders from the owners of the closing firm.

To be fair, the biggest issue is the investor (“B”) using the End-buyer’s funds to close the A – B leg of the double closing. In some states it is illegal, in other states it can be Ok if Seller and End-buyer are fully disclosed that it will happen and how much the investor is making.

In all the above states there are rogue closing agents and attorneys who use the End-buyer’s funds to fund the “A” leg of the wholesale transaction. If you ask them why they are breaking the law their answer is, “Everyone else is and I have to compete” that’s until they are caught and lose their Title insurer.

The worst action I have seen is a Deed Rescission where the Seller was a lender (REO Property) who came back and rescinded their deed and took the property back. This became a horrible mess for everyone involved in the original transaction.

SOLUTION –
First try to get another closing agent and second try to understand what objection the closing agent has. For example, in REO sales the owner (lender) will not allow a double closing and that is the lender’s Rule and it’s inflexible. Think what a bank Supervisor reviewing closed sales sees when an investor buys a property and minutes later resells it for thousands of dollars more! That would probably be the end of that Asset Manager. Some attorney closing agents don’t do a lot of real estate closings as the profit margin is small.
They can get you out of paying a ticket but can’t understand a HUD Statement.

Make sure you know before you start the closing process whether the closing agent will do a double closing – that will confirm he is on board or not. If not, he will tell you why and you have saved yourself a lot of grief.

I want to say, “Thank you for reading this eBook and I am certain you will use this material!” Real estate investing is exciting, dynamic and the sky is the limit for your success. But it will require perseverance and it does have stressful times, but it will be worth it.

I wish you limitless success in all that you do,
Dave Dinkel
www.DaveDinkel.com

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