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SELLING: Divorcing sellers

BY BARBARA BALLINGER

Happily ever after (the sale)

When Darryl Bodle II represented a divorced couple in the sale of their once happy home, the experience was somewhat reminiscent of the 1989 movie "War of the Roses." He remembers—not so fondly—when the husband, who wanted total control of the sale, insisted that only his name should appear on the listing agreement. "He said he held sole title to the house, which he had purchased before he was married," recalls Bodle, a broker with John L. Scott Real Estate in Lake Oswego, Ore. The wife balked, explaining that her attorney had attached a rider to the deed before the wedding.

After a title search was completed, the wife learned that her attorney hadn't dotted all the rider's i's or crossed its t's. Moreover, he hadn't attached it to the tax records. Still, when the attorney produced evidence of the rider, he secured his client's stake.

During the negotiations with the buyer, Bodle felt like the human equivalent of a Ping-Pong ball. "She'd call me thinking she was being ripped off. He'd call and say that I was on the buyers' side. I was just doing my job, but there was so much spite between them," he says.

Such acrimony often occurs when the family home gets dragged into the tug-of-war over who gets what in a divorce. Many times it's put up for sale since it represents the greatest financial asset. It's also often the centerpiece of the couple's emotional struggle, second only to custody of any children.

Keeping negotiations on track so that you achieve your sellers' goal of moving forward with their new lives may seem like a Herculean task. But do a stellar job, and you may get to sell each client a new home. Here are nine tips to bear in mind when you sell in a marital war zone:

1. Be sure you have both sellers' authority if they're co-owners. From the get-go, check the title and deed so you know whose name or names belong on the listing agreement so the sale is legal, says Barry Schatz, a Chicago matrimonial lawyer with the firm Kalcheim, Schatz & Berger. Your state may also have laws that give a spouse a legal interest in a marital property, even if their name isn't on the deed or title.

2. Offer advice that keeps you neutral. Even though you didn't sign up to be a

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marriage counselor, you may occasionally have to assume that role. “One side is usually easier to deal with than the other, but you have to walk a tightrope,” says Honore Frumentino, CRS®, a broker-associate with Koenig & Strey GMAC, in Deerfield, Ill.

3. Hear their individual objectives but get them to agree to one agenda. Divorcing couples have several options: sell and divide the proceeds according to the divorce decree; agree that one spouse will buy out the other; or share ownership until some future time even though only one may live in the home, says Leona Orphanos, with RE/MAX Real Estate Center in Foxboro, Mass. You may have to discuss the possibilities with each side separately. Encourage compromise. “Stress that the more cooperative they are, the more likely you can maximize profits,” Frumentino says.

4. Get them up to speed on tax law changes. Make sure divorcing sellers know about the tax rules, enacted in 1997, governing the sale of a principal residence. These rules provide much more flexibility for sellers than prior law. Under the new rules, “if the couple’s house has been a primary residence for both of them for two of the last five years, each automatically receives a \$250,000 exclusion,” says Anju D. Jessani, a divorce and family mediator in Hoboken, N.J. “If one of them hasn’t resided in the house for that period, yet the divorce decree specifies that the other be allowed to remain in the house, the nonresident is also allowed the exclusion.”

More important, sellers are no longer required to purchase a home of the same or greater value. The provision can be used for sales as often as every two years, and there are no longer age requirements that limit eligibility for excluding gains from tax.

Be sure you recommend that your sellers have their attorneys and a tax adviser explain these rules.

5. Add contingencies. Leave nothing to chance to avoid “he said, she said” disagreements. For example, you could suggest a provision in the listing agreement that if an offer is made within a certain percentage of the listing price it must be accepted, Schatz says. This keeps the couple from arguing over a small dollar amount and losing the offer.

6. Keep mum. Avoid talking about why the house is listed. “You don’t want buyers to think it’s a fire sale,” says Frumentino.

7. Keep clients busy—and apart. Ask one to take charge of gathering warranties; the other to list competent service providers they’ve used.

8. Bring in the sellers’ divorce lawyers only when necessary. When the sides really can’t agree, call in their attorneys, but beware. Edward A. Hester, with Dream Town Realty Inc. in Chicago, had sellers who each brought in a divorce and a personal lawyer. “There were seven of us plus the buyers. The buyers were disgusted and finally said, ‘If this doesn’t close, I’m walking away.’ The deal got done, but everyone left miserable,” Hester says.

9. Handhold ’til the end. To keep the deal from cratering, Frumentino often segregates sellers at the closing. The husband and his attorney are in one room and the wife and her

attorney are in another. Both are separate from the buyers. “If you’ve got two people looking like they’re at a funeral, it’ll dampen the buyers’ moment,” she says.

The silver lining to all this, Frumentino adds, is that most divorced sellers adjust their priorities, and find happiness and a new home.



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