

# *A Legal Update*

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## **BUYER AND SELLER BEWARE**

To say the electronic age is upon us is, as one mortgage broker likes to say, “the biggest no-brainer since the history of earth”. The “e-“words such as “e-trade” and “e-commerce” have become so common that they now appear in dictionaries. Enter the word “e-mortgage” in a Google search and it will return over 160,000 entries.

### **Modern Lending Practices**

So what does this mean for home buyers and sellers? Long gone are the days when most homebuyers obtained mortgages from their local bank or credit union. Today, almost 70 percent of all loans go to independent mortgage brokers who do not provide the money to fund the loans. When you apply for a loan with them, they shop the mortgage market (including sub-prime lenders – who will lend to borrowers with poor credit) to find the best deal for them, not for you.

While the competition among lenders has a tendency to keep rates competitive, there are risks. First, sub-prime lenders and low documentation requirements (little paperwork to verify the borrower can afford the loan) allow more unqualified people to obtain a loan. One result of these lending practices is a soaring foreclosure rate, which has caused some sub-prime lenders to fail and not honor their mortgage commitments. Another risky lending practice occurs when mortgage brokers (in an effort to maximize their fee) do not place the loan with the actual lender until the day of closing. These are lending practices that put both the buyer and seller at risk.

### **Problems for Home Buyers and Sellers**

By way of example, let’s review the case of Mr. & Mrs. Seller. Due to a new addition to the family, the Sellers have placed their house on the market and started the search for a larger home. Eventually the Sellers entered into an agreement to sell their house to the Buyers and their real estate broker took a \$20,000 deposit. After the Buyers received notice that they qualified for a mortgage, the Sellers entered into an

agreement to purchase their dream home the same day (back-to-back purchase and sale) and put down a \$30,000.00 deposit.

Fast forward to the day of closing when the Sellers learned that the Buyers have not received the funds to purchase their home. Maybe the mortgage broker had placed the loan with one of the many sub-prime lenders who have failed or just waited too long to place the loan. Regardless, all of the Sellers' belongings are packed in a truck headed for Pittsfield and they are out \$10,000.00!

### **Reducing Your Risks**

Although you cannot plan for every contingency (like a bank failure), there some steps you can take to minimize your risks. Are you familiar with your lender? Is it a local bank or credit union? If not then ask questions about them and their lending procedures. Ask your mortgage broker about his or her background and experience, and ask how they will choose a lender for your loan. Remember most buyer/borrowers will have many choices available for their mortgage loan.

If you are contemplating buying and/or selling a home, Russell, McTernan, McTernan & Fruci, LLP would be more than happy to assist. Please remember, a written Offer to Purchase is a very important part of the process, so contact us before you sign it.



### **Finding the Right Elder Care and Support**

Elder law is a primary practice area of our law firm. We are members of the National Academy of Elder Law Attorneys. In our daily work, we assist our clients and their families with the difficult issues raised when elders lose their independence and require services both at home and outside their homes. Our work necessarily focuses on the legal and financial concerns of our clients and families. We know however that the care issues are paramount and that most families are unprepared to deal with them.

#### State, Regional and Local Assistance

The good news is that help is available through a combination of non-profit and private organizations servicing different geographic areas. These organizations are overseen by a state agency known as the **Massachusetts Office of Elder Affairs**. This agency provides statewide information regarding care for the elderly and support for caregivers of the elderly. Massachusetts also has twenty seven **Aging Service Access Points**. These organizations provide free information concerning a range of services and resources available to elders; coordinate the Massachusetts Home Care

Program for those who need assistance but want to remain in their home; and provide support, information and counseling for the caregivers. In the local area, the Aging Service Access Point is the Health and Social Services Consortium, known as HESSCO. HESSCO services are provided in the area towns of Canton, Dedham, Foxboro, Medfield, Millis, Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood, and Wrentham.

Most cities and towns in Massachusetts also are served by **Councils on Aging**. The councils typically offer information and referral services, transportation, outreach, meals, health screening and fitness and recreation programs. There are many other services available at some of the Councils

The **Office of Elder Affairs**, the **Aging Services Access Points** and the **Councils on Aging** are often considered gateway agencies. They will provide the information, referrals and support necessary to ensure that the elders and their caregivers obtain the services required.

At Russell, McTernan, McTernan & Fruci, LLP, we are always willing to help our clients and their families find the right resources to address any elder care problem.