

The Savvy Buyer in a Buyer's Market

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There are many savvy people who relish a temporary down turn of the residential real estate market, because they finally get the opportunity to distinguish themselves from the herd. During the real estate bull market, the herd did not have time to make considered decisions. Sellers were receiving multiple, over-asking-price offers, and buyers had to be quick, have money, and be a little foolish. Now, the market is cooling down, sellers are more humble and buyers have more time to investigate and analyze a target piece of property through due diligence.

The best strategy for buying a home, no matter the market, is to find a highly motivated seller. Even with a record numbers of properties on the market, finding a highly motivated seller may not be easy, especially without the help of the right real estate agency.

Many sellers put their homes on the market simply to capture the top price ahead of the declining cycle. If they get their price, great; if not, it doesn't matter since they are just as happy continuing to live there. This is not the motivation any buyer seeks in a seller, but these sellers are helpful to the savvy buyer for two reasons. First, they increase the number of available homes, affecting the equilibrium of supply and demand in favor of the buyer; and second, these additional homes make it difficult and time consuming for the highly motivated seller to find any buyer for their property.

Recognizing a highly motivated seller is where the services of a professional can really add value. Without the right professional help, the un-savvy buyer either is frustrated out of the market before finding the highly motivated seller, or buys a home from the seller capturing the top of the market.

The savvy buyer expects her real estate agency to discharge an obligation of investigation and analysis of a target piece of property through the exercise of due diligence. This method may provide the savvy buyer with information about the seller's motivation, along with other information, giving her a negotiating advantage. This process is similar to the due diligence provided by investment bank brokers for their merger and acquisition clients. Just think of merger as another word for "seller", and acquisition as another word for "buyer".

The savvy buyer uses a real estate agency capable of bringing the same high level of service and benefits to the residential real estate transaction. Finding this real estate agency can be a challenge, given the large and rapidly changing choices of residential real estate agencies. It helps to know some real estate terminology. For instance, the words "client" and "customer" are terms of art, each having a distinct meaning. The savvy buyer is always a client, never a customer. The reason for this is that as a client, the real estate agent's duty to the buyer is that of an agent acting on behalf of

a principal, also known as a "fiduciary duty". The savvy buyer's agent is a fiduciary, who has ".....without limitation, the following fiduciary duties: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and a duty to account." (NY Real Property Law, Section 443).

The duty owed a customer is limited to "... a) exercise reasonable skill and care in performance of the agent's duties; b) deal honestly, fairly and in good faith; and disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law." (NY Real Property Law, Section 443) The duty owed a customer does not include undivided loyalty, confidentiality, full disclosure, obedience or a duty to account.

A fiduciary is a person who is required to act for the benefit of another person on all matters within the scope of their relationship. Fiduciaries include executors of estates, trustees of trusts, guardians of persons or property and real estate agents of clients. Furthermore, the fiduciary must avoid conflicts of interest, self-dealing and generally must place the interests of the client, first. Therefore, it is not possible for a fiduciary to carry out his or her fiduciary duties to two principals having competing interests in the transaction.

The savvy buyer knows there is a conflict of interest if the seller's agency also represents the buyer, since a fiduciary cannot serve the competing interests of both seller and buyer. Although the real property law under certain circumstances permits an agency to represent both sides of the transaction, the savvy buyer is not willing to waive the benefit of any fiduciary duty owed by the agent, nor accept less than all of the services a real estate agency should provide.

Designated agent and dual agency are terms used to accommodate real estate agencies, and describe the diminished duties owed the clients when the agency represents both sides of the transaction. Besides reducing the services usually provided by the agent, dual agency also reduces the value a savvy buyer expects the agent to bring to the transaction. For example, the buyer's ability to obtain a negotiating advantage is diminished, if not completely eliminated, when the designated agent no longer has the duty of full disclosure, and is no longer permitted to provide relevant information about the seller's motivation, without first obtaining seller's permission to do so.

For most of us, deciding when and where to buy a residence are personal considerations, usually arrived at by circumstances, financial and otherwise. Help with locating and deciding upon which residence to buy requires the services of a real estate agency capable of providing value to the client. Whatever the market, no buyer should overpay for a home.

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