ATTORNEY WRITES

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"Tips for Sellers of Waterfront Property"

Potential buyers of waterfront property are not the only ones who face a sometimes daunting task, particularly with regard to "due diligence" investigations. Sellers of waterfront property must also be very careful.

Perhaps the best advice that can be given to someone contemplating the sale of a waterfront property is not to exaggerate or misrepresent any of the characteristics of the property. Should that occur, in many cases, it will come back to "bite" the seller, either in the form of a lawsuit or a bitter purchaser (or both!). For example, if the property involved is a backlot with a shared lake access site, the seller should not advertise or indicate that the property has "deeded access," riparian rights, or similar potential misrepresentation. Use fully truthful language. Full disclosure (within reason) regarding any problems or "issues" associated with the property is usually the best avenue.

If "deeded access" is normally not a legally-appropriate phrase, what language should the seller of a backlot or off-lake property near the water use to indicate that a nearby lake access is available? Perhaps the best wording is simply to indicate that "limited lake access to Marble Lake is located nearby." Any language that states or implies that the particular backlot has its own exclusive lake access device, that the backlot has permanent docking and boat mooring privileges, or that the backlot has a lake access device where virtually any use can occur thereon, can get a seller (and potentially, a realtor or real estate agent) in trouble if the wording is not true or fully accurate. This is one area where exaggeration (or what the seller might consider "puffery") can get a person into trouble.

Prospective buyers are not the only ones who have to be careful regarding the language of the negotiated purchase/sales agreement—sellers must be equally cautious. If there are too many contingencies contained in the written agreement in favor of the buyer, it will make it easier for the buyer to back out of the closing without penalty.

Sellers should make sure that any contract for the sale of their waterfront property contains the appropriate "**As-Is**" language that makes it clear to the prospective purchaser that there are no warranties, guarantees, representations, promises, etc., being made regarding the waterfront property except, perhaps, the warranties of title to be given in the warranty deed or land contract. A good real estate attorney can assist the seller of a waterfront property with the appropriate language to limit the seller's liability exposure should the purchaser discover something that he/she does not like about the property after closing.

Given all the "toys" associated with most waterfront properties, it is also very important for the seller (as well as the buyer) to specify in the purchase/sales agreement exactly which specific outdoor items (if any) are included within the sale and sales price. The contract should address such items as dock sections, swim rafts, boat hoists, lawn furniture, boats, sheds, and any other waterfront paraphernalia. With regard to the interior of the house or cottage, movable or removable items such as a washer, dryer, freezer, refrigerator, water softener, trash compactor, and similar items should also be specifically addressed in the purchase/sales agreement.[1]

The seller's realtor or real estate agent can assist the seller with setting a proposed (and realistic) sales price for the waterfront property involved. If the seller wants to obtain a second opinion regarding the price at which the property should be listed, the seller can retain a third-party real estate appraiser to give a more in-depth analysis of the true fair market value of the waterfront property.

If the seller will be retaining ownership of an adjoining lot or parcel after the sale of the land at issue, the seller may want to consider putting one or more recorded deed restrictions or restrictive covenants on the land to be sold (in order to protect the property being kept by the seller). Such restrictions could include prohibitions on mobile homes, further division of the land, setback minimums, a minimum size requirement for any new dwelling, and other restrictions on use. Any such restrictions should be in place before a purchase/sales agreement is signed (or be inserted into such an agreement) and drafted by a competent real estate attorney.

While much of the advertising today for the sale of waterfront properties occurs via the internet, social media, virtual tours, and other techniques in the ethersphere, sellers, realtors, and real estate agents still use temporary outdoor real estate signs fairly extensively for sales. Such signs can be an effective tool for helping to sell real estate. However, it should also be kept in mind that many real estate signs violate not only local municipal sign regulation ordinances, but also potentially the property rights of others, depending on the sign's location.

Almost all local municipalities have sign regulations. For some municipalities, those regulations are found in the municipality's zoning ordinance. In other municipalities, the sign ordinance is a "standalone" ordinance separate from the zoning ordinance. Typically, municipal sign regulations allow one or two outdoor real estate "for sale" signs if installed on the property that is listed for sale. Placing a real estate "for sale" sign on any property other than the property being offered for sale (for example, down the road at a street intersection) is often a violation of the local municipal sign regulations. In addition, placing real estate signs on utility poles or installing signs directing prospective buyers to a property located some distance away is almost always unlawful under the local municipality's sign regulations.

Even apart from municipal sign regulations, placing a real estate sign on the property of another without permission is an unlawful trespass. Some sellers are also under the mistaken assumption that it is permissible to place a real estate sign in the public road right-of-way adjacent to another person's property without permission, as the public right-of-way normally

[1] It is generally also advisable for the parties to execute a "bill of sale" at closing with regard to any non-real estate items that are part of the sale (such as furniture, appliances, docks, swim rafts, etc.). Such a document might be helpful not only for tax purposes, but also for future reference or documentation of the transaction. The seller should also include an "as-is" clause in the bill of sale.

extends 10 to 20 feet into the lawn of an adjoining property. However, that too would usually be a trespass, unless done with the permission of the adjoining property owner. In most cases, the public road right-of-way is akin to an easement to be used for road purposes only and the adjoining property owner typically still owns the land under the public road easement and has the authority to disallow the private signs of others without permission.

Finally, placing real estate signs at intersections can be downright dangerous, as such signs can interfere with the clear sight distances necessary for motorist visibility and safety.

All real estate transactions have potential tax (local, state, and federal) consequences, particularly for the seller of real property. Issues regarding income taxes, capital gains, and other taxes relating to a lakefront real estate transaction are beyond the scope of this article. Nevertheless, sellers and buyers should consult with the appropriate tax professional early on in the property sale or purchase process.