Real Estate Practice

DANIEL E. FAJERSTEIN
Matlin & Fajerstein
Northbrook

JULIE M. BORDO
Julie M. Bordo, LLC
 Evanston
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I. [5.1] SCOPE OF CHAPTER

If you are just beginning your legal practice, you may consider real estate law as a bread-and-butter business that always has a market. Many practitioners develop an expertise in this area because, if done well and efficiently, it can provide a constant stream of business and/or give you a great deal of flexibility in developing your practice. This chapter gives the inexperienced attorney an overview of the area of residential real estate law, focusing on transactions involving single-family homes.

If you are interested in acquiring in-depth knowledge of this practice area, please consult RESIDENTIAL REAL ESTATE (IICLE, 2003).

II. [5.2] DEVELOPING YOUR PRACTICE

A real estate transaction is usually the first time in most people’s lives that they feel they need a lawyer. It can also be the happiest circumstance under which a client engages your services. There are two parties involved: one who wants to sell a house and another who wants to buy it. They simply need someone to negotiate the terms and effect the legal transfer of the property. This is where you come in.

While this is not the most lucrative area of the law, if you perform your job well, clients will come to you for other legal services, they will refer other clients to you, and they will become the backbone of your business. This makes it vitally important that you give your client high quality services. Although the competition in this field is stiff, the number of qualified, attentive lawyers is much smaller, so the field of competition is likewise reduced. Effectively, by competently handling the real estate closing, you might be able to secure your employment as the family’s lawyer — the person they consult for all of their legal needs.

A. [5.3] Initial Contact

As with any professional relationship, communication is the key. At the initial meeting you should inform the client of your fees. The fee information should be confirmed in writing through an engagement letter following the meeting. Also, at the meeting you should introduce the clients to your paralegal or secretary and indicate that he or she may be contacting them as well as you. After you have been retained, the best thing you can do is be accessible to your client and perform your services diligently and professionally. This can be especially difficult because the amount of time you expend on one client may well exceed your fee. Just keep in mind that the long-term rate of return could be much greater. Also, if you establish efficient office procedures and policies, you will be able to minimize your time without undermining the quality of service you provide.

Some important considerations in making you the most attractive option for a prospective client are flexibility and a good sales pitch. Most real estate clients are not available during traditional work hours since they too are working, so advertising that you offer a flexible schedule
will certainly be an asset. Giving the client a sense of what is entailed in the representation as well as how you would handle it will instill a sense of confidence in your abilities. Plus, promoting the competence of your office staff who will likely be communicating with the client will help to seal the deal.

B. [5.4] Setting Up Office Procedures

Most successful real estate attorneys have strong office policies and procedures that are implemented by a very competent staff. In order to make real estate practice profitable, you must have efficient office systems in place. For instance, you must have a checklist procedure to follow, starting with the client interview and continuing through post-closing; also important is an office-wide docketing and filing system that charts the expiration of contingency periods, such as attorney review, inspection, and mortgage contingency and dates by which documents must be acquired, as well as closing dates. The checklist should be attached to the front of each file upon opening. There are computer docket-management systems that can assist you in this organizational process.

Additionally, having all of the necessary documents on your computer, so that to the greatest extent possible you are able to “cut and paste” during document preparation, will also be an asset. You should maintain computer form letters for the engagement letter and requests for title insurance, payoff letters, inspections, the survey, and tax revenue stamps. There are also spreadsheet programs available to produce closing statements. However, do not neglect the proofing and editing process simply because you have a strong computer form system in place. Nothing is foolproof, and neglecting proofing is how simple and costly errors can be made.

One of the most common and costly errors is in reproducing the legal description of the property. The legal description is provided on the title documents and should be reproduced verbatim from there. Many offices simply photocopy that description and attach it as a rider to the appropriate closing documents. However, please note this may increase recording costs on some documents as there is usually a per page charge for recording. Additionally, the attorney should review the legal description to ensure that it is accurate, that it is consistent with the description on the survey, and that it makes sense. It is not unheard of that title insurers or surveyors make errors.

The one pitfall that many real estate lawyers fall into is in overusing their paralegal. Since we are constantly walking the fine line between cost-efficiency and providing quality legal representation, some attorneys fall too far out of the process after the contract is negotiated. This is at its worst when attorneys consider that they have attended a client’s closing simply by being present in their office yet barely engaging with the parties during the closing. It is imperative that attorneys handle all legal matters while the paralegal handles only the procedural matters. This strikes a balance between efficiency and competent legal representation.
C. Establishing Business Relationships

1. [5.5] Real Estate Agents and Brokers

Oftentimes clients will have had contact with a real estate agent before they have contacted an attorney. Accordingly, it is important to have established strong professional relationships with real estate agents who are in a position to recommend you to their clients.

Real estate agents are licensed under the Real Estate License Act of 2000, 225 ILCS 454/1-1, et seq. Under Illinois law a client is required to execute a written agreement with the broker. This agreement must include a complete description of the duties to be performed by the broker and the fee to be paid. It must also include an automatic expiration date. Once you have been retained, you should ask clients if they have entered into any agreements with regard to the property or the transaction and review these agreements to make sure they comply with Illinois law.

Additionally, you should pay close attention to the terms of the marketing agreement. It is quite common that the printed forms contain overly burdensome conditions such as indemnity and “hold harmless” clauses. These terms require the client to assume the risk of torts occurring at the real estate broker’s office when it is connected to a home showing.

Moreover, the attorney should make sure that the broker’s commission is only payable if the deal actually closes. The only time a commission should be due on a failed transaction is if the seller defaults. Under the terms of the real estate sales contract, the commission will ultimately be due from the defaulting seller.

In some cases, brokers are providing title insurance as part of the marketing agreement. Certain agents and their brokers are even trying to freeze the attorney out of the real estate transaction by offering the services of in-house paralegals and counsel. However, there are serious legal and ethical ramifications of such an arrangement.

If your client has hired the agent before the lawyer reviews the marketing agreement, the lawyer should explain the agreement and attempt to alter any unfavorable terms if at all possible. The optimum situation is that the client has not yet hired an agent so you can review any marketing agreements and negotiate the terms before your client executes the agreement.

a. [5.6] Seller’s Broker or Agent

The seller’s (“listing”) broker or agent prepares the preliminary real estate contract for the buyer to sign. Most contracts are form contracts generated by the local real estate broker’s association. In recent years, the Illinois Real Estate Lawyer’s Association (IRELA) has developed a form contract that is now widely used by local real estate boards. Agents usually provide and have their clients complete the requisite disclosure documents, such as the residential real property disclosure form in compliance with the Residential Real Property Disclosure Act, 765 ILCS 77/1, et seq., and the lead-based paint disclosure form. Obviously, the seller’s broker’s job is to sell the property as soon as possible for the highest price.
Real estate agents often consider attorneys to be potential deal killers. The attorney review period can be a very anxious time for real estate agents. Usually, the clients communicate with their respective agents and the agents communicate with each other. It is important to maintain a professional relationship with sellers’ agents, communicating only when necessary and never compromising the interests of your client to whom you owe an ethical and legal duty of loyalty.

b. [5.7] Buyer’s Broker or Agent

The buyer’s (“selling”) agent’s main objective is to secure the best deal for the buyer, which includes the lowest price. This broker usually obtains a pro rata commission on the deal that, interestingly enough, provides a disincentive to obtaining the lowest price. Yet their duty of loyalty to the buyer requires them to work to garner the lowest price for their client regardless.

Oftentimes the buyer’s agent will go over the disclosure forms provided to the buyer by the seller. The buyer’s agent will also generate the initial real estate contract with the client, completing the requisite terms and obtaining the proper signatures. At this point, it is the buyer’s agent’s job to communicate with the listing agent on the buyer’s behalf to finalize the terms of the sale. Once the contract is fully executed, it is submitted to the respective attorneys for approval if the contract so provides. Again, although your loyalty is to the client, you should maintain a positive, professional relationship with the agents involved so that they become a referral source for you.

2. [5.8] Title Insurance Providers

It is important to get a good title company with favorable rates and claims procedures for your client. In order to consolidate and simplify the real estate transaction, as well as increase profitability in the field, many attorneys are engaging with a title insurance provider and providing title services as well as legal representation for each transaction. Such arrangements must be disclosed to the client. See Disclosure Statement — Controlled Business Arrangement at §5.60 below. Depending on the arrangement, such an affiliation with a title insurer can substantially increase the fees you receive per transaction. Yet be mindful that it can also increase the workload and your potential liability with regard to the transaction.

D. [5.9] Initial Contact with Your Clients

Since any modifications made by the attorney may constitute a counteroffer that would terminate the contract if not accepted, you must make sure that the changes you are seeking are absolutely necessary and that the client supports the change. In today’s real estate climate, particularly if you are in a hot market, an attorney must be wary of sellers and buyers who in bad faith try to weasel out of contracts to either accept a better offer or to move on to another property. This could put you in a very tenuous position if you are responsible for modifying the contract without input from your client.

Consequently, at the initial meeting it is very important to get some background on the deal. You should ascertain from the client and from the broker or agent, if possible, how committed they are to the deal, whether there are other prospective buyers waiting in the wings, and what the level of interest or commitment is on the part of the buyer.
1. [5.10] Seller

If you are representing the seller, you will likely not be retained until after a contract for sale has been executed on the property. The standard attorney approval period is five days, so whenever you are retained you will be under the gun. Many attorneys’ first course of action is to seek a short extension of the attorney approval period to allow ample time for review. This should be confirmed in writing and in accordance with the terms of the contract.

If you are retained prior to the execution of a contract, you should make sure that the client properly and accurately completes all disclosure forms. The Illinois Residential Real Property Disclosure Act, which was enacted in 1994, requires all sellers of real property to complete a disclosure form. This form, while designed to reduce litigation, can be the source of litigation between the parties after closing, so it is important that it is completed accurately and honestly.

The client should provide as much documentation as possible. Copies of old title insurance policies, any surveys, mortgage information including account number and contact information, and the most recent tax bill would be a great start. Also, you must be provided with the complete contract, the marketing agreement and any riders, the real property disclosure statement, and the lead paint disclosure. Finally, the attorney should have all client contact information, including day and evening telephone and cellular phone numbers.

In this meeting, the attorney should review the course of the transaction, the walk-through inspection and closing requirements, and whether the client is interested in attending the closing or being represented by granting power of attorney to another, including the attorney.

2. [5.11] Buyer

It is likely that a buyer will not retain an attorney until after the real estate contract has been executed. Likewise, with a five-day attorney approval period, you may want to seek an extension as discussed in §5.10 above. As the buyer’s attorney, you need to inform the client that he or she is exposed to the most risk in the deal. In signing the contract, the buyer has accepted the obligation to spend more money than he or she will likely spend in any other single transaction in his or her entire life. The mortgage, amortized over 30 years, will likely require the buyer to pay a greater amount of interest than the actual loan itself. This is a daunting prospect, so buyers have to be made aware of all of the consequences. The buyer may consult you on reputable title companies, lenders, home insurance providers, and inspection services.

As with the seller, in the meeting the attorney should review the course of the transaction, walk-through inspection and closing requirements, and whether the client will have any trouble with the closing date or if it is possible to be represented by granting power of attorney to another, including the attorney. The attorney should also obtain the buyer’s lender’s information. The buyer should be reminded to apply for the mortgage right away as most contracts require application for a loan within seven days.
III. [5.12] THE REAL ESTATE PURCHASE CONTRACT

The real estate contract is rarely drafted by an attorney. Historically, the form contract has been generated by the brokers or agents involved. More recently, the Illinois Real Estate Lawyers Association has generated a form contract that is now widely used in the greater Chicagoland area. A sample of the IRELA real estate contract is available at www.reallaw.org/resources.asp and is reproduced in §2.92 of RESIDENTIAL REAL ESTATE (IICLE, 2003). In the rare instance when an attorney is retained before the contract is executed, you must ensure that you have included all of the requisite provisions in the contract. Using the IRELA contract to provide a checklist is helpful. The biggest concern is that you fully review the contract. Many disputes or complications occur because of careless omissions or mistakes in the contract.

A. Basic Contract Requirements

1. [5.13] In Writing

Section 2 of the Frauds Act, 740 ILCS 80/0.01, et seq., requires that all contracts for the sale of land must be in writing and signed by the party to be charged. If there are any prior writings relevant to the transaction, you must review them and determine how they factor into the final agreement. Unless the prior agreements are specifically preserved, they will be merged into the final document. Likewise, prior oral representations and negotiations are merged into the final agreement, and it alone governs the transaction. Unless the contract specifically provides, all contract provisions merge into the deed and closing documents.

2. [5.14] Parties

The contract must include the full name, including middle initial, of both the buyer (or buyers) and the seller (or sellers), their current addresses, telephone numbers, and social security numbers. If a party is in a temporary living situation, that party must simply provide an address for the purpose of serving notice under the contract. If a corporate entity is a party, the officer of the corporation must identify the corporation and designate the capacity under which he or she is executing the contract; otherwise the officer becomes exposed to personal liability for some representation or warranty regarding the transaction.

Illinois law provides for real estate to be held in a land trust. The trustee of an Illinois land trust has both legal and equitable title to the property. If the property is held in a land trust, the lawyer should obtain a copy of the land trust agreement and review it to ensure that the proper party is executing the contract. While it is preferable to have the land trustee execute the contract, expensive land trust fees may be incurred. As an alternative, the signature of a land trust beneficiary with the sole power to direct conveyance of the property can also create an enforceable contract with his or her signature.

3. [5.15] Property Description

The legal description of the property should be included in the contract, if available. The address, lot size, and tax identification number should also be included. This will suffice if there...
is no current legal description available. The survey should also confirm this information. In any event, the parties should be clear on what is included in the property since things like garage size, a parking space, or even landscaping can be deal makers or breakers.

4. [5.16] Price

The price to be paid for the real estate must be included in the written contract. If the price has been stricken during negotiations and a new price is filled in, it must be clear what the final price of the property is as indicated by the change initialed by all parties. The contract must also state how and when the purchase price will be paid.

In order to secure the deal, a buyer should be required to deposit a portion of the purchase price in escrow when the contract is executed. This is called “earnest money.” Usually the contract provides for a payment of a relatively nominal amount, e.g., $1,000 at the time of execution, to be increased to a certain amount within five or so days of the acceptance of the contract following any contingency periods such as attorney review or inspection.

The earnest money amount is usually 5 or 10 percent of the purchase price, or enough money to secure the deal. The amount must be sufficient to ensure that the buyers do not default on the contract and sacrifice their earnest money. The contract may provide that, if the buyer defaults, the seller may keep the earnest money as damages. It should be noted that this money is rarely available to the seller for damages because the real estate broker will likely be entitled to it under the marketing agreement. The earnest money may also serve as an incentive to the buyer to relinquish his or her right to the property in exchange for a refund.

The earnest money is usually held by the buyer’s broker in an interest-bearing account. The contract provides that the earnest money goes to the seller and the interest goes to the buyer at closing.

The contract must include how the balance of the purchase price is to be paid. The most common methods of payment are cashier’s check, bank draft, or electronic fund transfer. Bank checks should be made payable to the buyer attending the closing, then endorsed over to the closing agent at the closing. Thus, if the deal does not close, there is no difficulty in the buyer retaining the money. The attorney should strongly advise against the use of cash due to security concerns as well as complications with governmental authorities.

5. [5.17] Closing

The date of the closing should be specifically set forth in the contract. The attorney should double check that the date is not a weekend or holiday. Some clients find it desirable to select the last day of the month for closings due to the amount of interest that they have to pay up front on their mortgage payment. However, it is a “six of one, half dozen of the other” proposition. In other words, they have to pay the interest one way or another. In any event, scheduling is much easier earlier in the month and also avoids problems with lenders and closing facilities being overburdened and sloppy.
6. [5.18] Possession

The contract must state the date the buyer may gain possession of the property. Buyers are entitled to possession at closing. However, circumstances may dictate that the parties select another date for possession. The contract should provide for the possibility that possession cannot be delivered at closing. It is customary to require the seller to pay the purchaser a specified amount for each day the seller remains on the premises after closing. This amount should take into account the anticipated costs to the buyer of holding the property while not in possession, including rent (pro-rated mortgage, tax, and insurance payment plus estimated utilities), aggravation, and possible attorneys’ fees. The contract may also provide for a possession escrow, an amount of money set aside at closing to ensure delivery of possession to the buyer on the date mutually agreed to by the parties. Insurance on the property should be crystal clear. Buyers are usually required by their lenders to provide a certificate of insurance on the property at closing.

7. [5.19] “Time is of the Essence” Clause

The real estate contract should include a “time is of the essence” clause. This provision indicates that the dates specified in the contract are firm and should not be extended without an express agreement between the parties. Strict adherence to the dates and time limits set forth in the contract constitutes compliance with this provision. However, if the parties are lenient, or conduct themselves in a way that could be construed as a waiver of this provision, the courts will not strictly enforce the “time is of the essence” clause. See, e.g., Prime Group, Inc. v. Northern Trust Co., 215 Ill.App.3d 1065, 576 N.E.2d 841, 159 Ill.Dec. 918 (1st Dist. 1991).

Conduct constituting waiver may severely prejudice a party further down the road if the other party then decides to delay performance and/or the parties end up in litigation. This is why you should implement thorough office checklists and docketing systems, as well as make it a habit to follow up material oral agreements with written communications that state, for instance, “This agreement does not constitute a waiver of the time is of the essence provision of the contract.”

8. [5.20] Signatures

According to the Frauds Act, all parties must sign their names to the real estate contract. Under certain extraordinary circumstances, some contracts may provide for a facsimile or electronic signature. Nevertheless, you should obtain a true handwritten signature within a short time to avoid any question regarding the authenticity of the signatures and, consequently, the execution of the agreement.


1. [5.21] Personal Property

Most form real estate contracts contain a provision for the transfer of personal property along with the real estate. They provide a checklist for the items to be conveyed. Each item should be specifically named in the agreement, otherwise the parties might end up in a dispute as to what was included in the price of the transaction.
If you are representing the seller, you should make sure that the list does not include items that the seller specifically wishes to exclude from the transaction. The seller should know that any item that is attached to the real estate is considered part of the real estate unless specifically excluded. For instance, the antique chandelier in the dining room that is a family heirloom will be conveyed with the property if you do not specifically exclude it on the contract under personal property.

If you are representing the buyer, you should carefully review this provision to make sure that all of the items to be conveyed are included in the agreement. For items of a substantial nature, you should consider ordering a lien search by a title company for liens filed with the Secretary of State and recorder under the Uniform Commercial Code, 810 ILCS 5/9-401. If liens exist, they must be removed before the closing.

The contract should also provide that all personal property should be in “good working order” at closing and that such a warranty will survive the closing. “Good working order” does not constitute perfect condition. Rather, courts will consider all of the evidence to determine whether various systems in the home were in good working order at the time of closing. Fleisher v. Lettv, 199 Ill.App.3d 504, 557 N.E.2d 383, 145 Ill.Dec. 613 (1st Dist. 1990).

2. [5.22] Title and Exceptions

The contract must specify the type of deed that will be delivered at closing. This provision should include a requirement that the seller release all homestead rights in the deed. The warranty deed is the most common deed. However, there are other types of deeds depending on who owns the property. If the land is held in trust, then a trustee’s deed is appropriate. If the land is held by an estate, then a representative’s deed is proper. Corporations will provide a special corporate deed. Under some circumstances, the seller may request that a limited warranty deed be delivered. When this occurs, the buyer must rely on the assurance of the title policy instead of the warranty of title of the seller.

It is customary to deliver a recordable deed that is intended to provide for tax revenue stamps. This feature also ensures compliance with the Plat Act, 765 ILCS 205/0.01, et seq. The deed should also be in compliance with the Counties Code, 55 ILCS 5/3-5001, et seq., so that it will be recorded at regular rates.

Tax revenue stamps may be required by the municipality in which the property is located. These are usually calculated based on the purchase price. If the contract does not otherwise provide, the municipality will designate which party is responsible for paying the tax revenue stamps generated on the transaction. Many municipalities require payment of other municipal fees and/or certification in addition to the tax revenue amount before delivering the stamps. These fees may include payment of the final water bill, zoning certification, inspection, and outstanding parking tickets.

The contract should also include any acceptable restrictions or exceptions to title. Most forms include the following exceptions: (a) covenants, conditions, and restrictions of record; (b) private,
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public, and utility easements and roads and highways, if any; (c) general taxes for certain years; (d) party wall rights and agreements, if any; and (e) zoning and building restrictions. These exceptions must also be set forth verbatim in the deed. If you are representing the buyer, you should know the significance of these provisions before entering into the contract. Indeed, in areas where restrictive covenants are more common, some subdivisions do not permit fences, dog kennels, TV antennae, satellite dishes, or other various and sundry activities.

3. [5.23] Mortgage Contingency

Most buyers do not have cash to purchase the property. They require some type of financing. The real estate contract should contain a mortgage contingency provision. To be complete, this provision should set forth the total amount of the loan, the maximum interest rate that would be acceptable to the buyer, the term of the loan, points, origination fees, loan discounts, and other charges not to exceed a percentage of the total amount. If you are representing the buyer, you should make sure that these amounts are reasonably within the means of your client. If you are representing the seller, you should ensure that the amounts are not somehow distorted to provide an easy out for the buyer.

Some mortgages may be supported by the federal government, such as FHA and VA mortgages. In that case, there may be specific language that these entities require in the contract and you should investigate that before signing off on the contract. These loans usually require that the seller pay mortgage discount points or fees up to a certain amount.

There are two types of mortgage contingency clauses: “sudden death” and “life without limbs.” The sudden death provision provides that the sale dies automatically if the buyer cannot obtain a mortgage on the stipulated terms. The life without limbs clause provides that the deal continues unless notice is given within the time provided by the contract. In this instance, if the buyer fails to give notice, he or she will be required to close the deal regardless of the financing. This provision is a red flag to the buyer’s attorney to docket the dates by which the client must obtain financing or send notice of the delay or inability to do so.

In any event, you should advise the buyer to apply for financing immediately upon acceptance of the contract. Most contracts now provide that a failure to apply for a mortgage within seven days of acceptance is a material breach of the contract. The mortgage contingency dates should be docketed with tickler dates to ensure compliance. It is preferable to obtain a copy of the mortgage commitment letter from the client and review the conditions to ensure they are acceptable and the deal is good to go. You may also provide the seller’s attorney with the commitment so they are kept abreast of the financing considerations.

4. [5.24] Real Estate Taxes and Prorations

Illinois does not require real estate taxes to be paid until the following year. In Cook County, real estate taxes are routinely due in March and September of the subsequent year (although the September date gets delayed at times). So, if a closing occurs in February of 2004, the seller will be paying the real estate taxes for all of 2003 and up to the date of closing in 2004 to the buyer at closing. However, the exact amount of the taxes for that time period will be unknown, so the contract should provide for a payment of a prorated amount at the closing.
The contract typically provides that this proration be taken as a credit to the buyer at closing. Then the buyer will be responsible for paying the taxes when they come due. The hard part is that, if you do not provide for a fair percentage for the proration, the buyer may not have been fully compensated for the taxes.

Historically, in Cook County, the customary amount of the proration to provide for in the contract is 110 percent of the most recent ascertainable taxes and 105 percent in the collar counties. However, if there has recently been a reassessment of the property, which usually occurs at regular intervals, and you should know this information, then the contract may provide for, perhaps, a higher percentage proration. The contract should usually provide that all prorations are final.

If there is significant uncertainty regarding the tax bill, for instance if it is a vacant piece of land or the property has been newly constructed or significantly improved in the past five years, it will be necessary to include a re-proration agreement in the contract.

5. [5.25] Title Evidence and Insurance

The contract should require the seller to convey merchantable title at closing. “Merchantable title” is not perfect title, but it is title that is not subject to doubt so that a reasonable person would be willing to pay a fair value for the land in order to take title.

Evidence of merchantable title is provided in a title commitment for title insurance in the amount of the purchase price on the real estate. The seller usually pays for the title insurance policy. However, the buyer should insist on using a reputable title company since it is he or she who will be making a claim, not the seller. After the closing, the buyer will receive a title insurance policy based on this commitment.

In general, the title commitment shows that title is held in the name of the seller subject to certain exceptions. Common exceptions are mortgages on the property, public utility easements, or some restrictive covenant that runs with the land. In some cases, there are archaic restrictions that are still on the title — for instance, a restrictive covenant to prevent members of certain races from purchasing property in the area. However, such a provision is void as against public policy, so you need not address it since it does not materially impact title.

As the attorney for the buyer, you must ensure that any exceptions that materially affect title or somehow reduce the value of the property, e.g., an easement allowing a neighbor to use the property for ingress or egress or an encroachment on the property, are addressed before closing. Ultimately, it is the seller’s responsibility to remove these liens at the time of closing.

There are times when the exceptions that appear in the title commitment would be considered unpermitted exceptions to title. The contract should provide 30 days from the delivery of the title commitment to address these exceptions and have them removed by the title company. Then the seller should provide documentation to the title company to allow them to remove or waive such exceptions. Another option is that the seller obtains a commitment from the title company to
insure against loss or damage arising from that exception. Nevertheless, to protect the buyer, the contract should provide that, if the seller fails to obtain such a commitment or have such exceptions removed, the buyer has the option to terminate the contract or elect to accept the title with the exceptions.

6. **[5.26] Risk of Loss**

Under the Illinois Uniform Vendor and Purchaser Risk Act, 765 ILCS 65/1, *et seq.*, all written real estate sales agreements are deemed to include an agreement concerning the risk of loss in the unlikely event that the property is destroyed before closing or possession. The contract is unenforceable against the buyer if the property, or a material portion of the property, is destroyed before closing or possession at no fault of the buyer. The contract is cancelled and the buyer is entitled to return of the earnest money. Notwithstanding this rule, if either legal title or possession has been transferred at the time of destruction without the fault of the seller, the buyer is still obligated to complete the transaction.

7. **[5.27] Default**

All contracts should address default. The default provision should specify which acts constitute default, the written notice requirements in the event of a default, and the consequences of a failure to cure a default.

The default provision should also address the remedies available to the parties in the event of a default. For instance, on behalf of the seller it should address whether the sole remedy is forfeiture of the earnest money. The seller’s attorney should be cognizant of this fact when considering the amount of earnest money being requested on the contract.

8. **[5.28] Walk-Through Inspection and Condition of Premises Before Closing**

The buyer’s attorney should insist on a walk-through inspection of the property immediately before closing (no sooner than two or three days before closing). The contract should provide that the condition of the property, both real and personal, should be in generally the same condition at closing as it was when the contract was executed, with the exception of reasonable wear and tear.

This allows the buyer to ensure that the property is in good working order. You should encourage the buyer to test, if possible, the HVAC systems, plumbing, appliances, and any other mechanicals on the premises. The buyer should also take special notice of any items that were requested to be repaired as the result of the home inspection and confirm that such repairs were made as warranted.

9. **[5.29] Survey**

Most contracts require the seller to provide a survey of the property that is current as of the last six months. The provision, if included, should require that the survey be performed by a licensed land surveyor and that it show lot lines, easements of record, setback lines, and locations.
of all property improvement, including fences. Today, most buyers’ attorneys require a staked survey so the buyer has physical evidence of the property lines. This may be particularly important if the property has a fence.

The lender likewise requires a survey because many mortgages are sold on the secondary market and the lender must have a survey in order to qualify the mortgage for sale.

The survey allows the buyer’s attorney to confirm the property description and the property lines. It also shows any easements or potential encroachments that may have to be addressed in the title insurance policy.

10. [5.30] Notices

The agreement should have a notice provision requiring that all notices be in writing and be sent to the parties at the address set forth in the contract. It should state that notices are deemed served when personally delivered or mailed by registered or certified mail, return receipt requested. The contract should provide that the mailing of notice is sufficient service. Notice by facsimile should also be allowed.

C. Special Contract Provisions

1. [5.31] Riders

There are a number of eventualities that may require certain additional provisions to the contract. Many of the multi-board form real estate contracts include additional provisions or riders in their forms that are rendered effective by the parties affixing their initials in the appropriate box. See www.reallaw.org/resources.asp (sample IRELA Multi-Board Residential Real Estate Contract). If a separate rider must be attached governing a specific circumstance or contingency of the sale, it should state that it intended that this rider be made a part of the contract and incorporated therein. The contract should be identified by date and property address. The rider should also indicate that, if there is a conflict between the rider and the contract, the rider controls.

2. [5.32] Property Inspection

From the buyer’s standpoint, the contract should include an inspection contingency. Usually, the period of time for attorney approval coincides with the time for the inspection, i.e., five to seven days. Once the inspection has taken place, the buyer’s attorney should consult the buyer to discuss any material defects to the home. If the defects are indeed material, the attorney can include a request to cure these defects in the letter regarding attorney approval of the contract.

Technically, any request for repairs or compensation for repairs constitutes a counteroffer; therefore, the attorney must confirm the level of interest the buyer has in the property and whether there are other offers waiting in the wings. This will allow the attorney to assess just how
far he or she may want to push the seller or if the buyer is willing to let these things go. Some attorneys include in the letter the language that the request does not constitute a counteroffer to avoid allowing the seller to get out of the contract based on the repair requests. The seller’s attorney must also be cognizant of the fact that buyers may use the inspection results to obtain a price reduction.

   a. [5.33] Radon

   As part of the inspection, buyers should request a radon test. Radon is a colorless, odorless, tasteless, radioactive gas that emanates from the ground and is sometimes found in residential homes. Prolonged exposure to radon has been found by the Environmental Protection Agency to be the second leading cause of lung cancer today. Since it is a very easy and inexpensive test, the buyer should be encouraged to have the inspector conduct such a test as part of the property inspection. Since radon can be very harmful and abatement can be costly, it is important to test the property at this stage of the transaction.

   The buyer bears the burden of paying for the initial inspection, including the radon test. However, if radon abatement is necessary, it is the seller’s obligation to pay because, under the terms of the contract, the seller is responsible for delivering the home in a safe and healthy condition. Of course, these terms may be negotiated depending on the ultimate cost and the level of commitment the parties have to the transaction.

   For more detail regarding radon issues relating to real estate, please consult RESIDENTIAL REAL ESTATE §§7.17 – 7.27 (IICLE, 2003).

   b. [5.34] Mold

   Mold has become a significant health issue in evaluating a home for purchase. Prolonged exposure to mold can cause harmful allergic responses and autoimmune deficiencies, to name just two dangers. While the residential real property disclosure form addresses water issues, but not mold, the home inspector should point out areas where there is evidence of water, and the source of that water, or if mold is observed on the premises. This information as well as the square footage involved should be included in the inspection report. If there are more than two square feet involved, the property should be inspected by an expert in the area, and a remediation plan should be developed and implemented if necessary. Once remediation is complete, the property should again be inspected and cleared.

   Usually, the buyer bears the burden of paying for the initial inspection and evaluation of the mold problem. Then, if remediation is necessary, it is the seller’s obligation to pay because, as in the case of radon, under the terms of the contract the seller is responsible for delivering the home in a safe and healthy condition. Again, these terms may be negotiated depending on the level of commitment of the parties.

   For more detail regarding mold issues relating to real estate, please consult RESIDENTIAL REAL ESTATE §§7.28 – 7.46 (IICLE, 2003).
3. **[5.35] Attorney Approval**

The most common occurrence is that real estate contracts are completed by brokers or agents, which is permissible in Illinois. Brokers or agents use the preprinted forms and fill out the terms of the transaction, then they go about securing the parties’ signatures.

Some buyers and sellers request attorney approval before signing the contract. However, as a practical matter, if there is competition for property, the parties will sign the contract but provide for an attorney approval period. This clause usually requires that any notice of disapproval of the terms of the contract by the attorney be given within five business days after the date of acceptance. The attorney must follow the notice provision of the contract.

Attorneys must be mindful that the attorney’s approval contingency does not give them carte blanche to renegotiate the contract. On the contrary, its purpose is to allow the attorney to approve the form of the agreement and to ensure that the terms are as favorable to the client as possible.

4. **[5.36] Contingency upon Sale of Other Property**

Some buyers cannot afford to purchase their new home without first selling their existing residence. While many sellers do not want to accept a contingency on the sale of other property, sometimes they must do so in order to sell their home. If such a contingency is included in the contract, the contract is rendered null and void and the earnest money is refunded if the buyer is unable to sell the existing residence by the time set forth in the contract. With these provisions, timing becomes very important. The attorney should make sure that the buyer has enough time to market, sell, and close on the property but not so much time that the seller is months behind the eight ball if the deal is not consummated.

5. **[5.37] Termite Inspection**

As a real estate attorney, you should know the area in which your clients are buying a home. Some areas are more prone to termite infestations than others. If in such an area, or if there are any suspicions about such an infestation, the buyer should include a termite inspection contingency in the contract. The FHA and the VA also require termite inspections on their loans. While termite inspections are not particularly expensive, make sure a reputable company that provides a detailed inspection report is used in order to protect the buyer.

6. **[5.38] Well and Septic Inspections**

Some real estate may have water provided by a well and a sewage disposal provided by a septic system. Lenders often require that the well and septic systems be inspected by a professional to ensure that they are in good working condition at the closing. Even if a lender is not involved, the buyer should require an inspection of the well and septic systems.
IV. CONTRACT PERIOD

A. [5.39] Documentation To Be Prepared or Obtained by Seller

Once the contract has been accepted, it is the seller’s attorney’s responsibility to make sure the documentation required by the contract is ordered and delivered and the appropriate documents are prepared in the office.

1. [5.40] Title Commitment Letter

It is routinely the responsibility of the seller’s lawyer to provide the title commitment from an independent title insurance company or an attorney-related source, as discussed in §5.8 above. The title commitment letter must be delivered to the lender so that the funds can be available and in the proper place at the time of closing.

The attorney must review the letter to make sure that he or she has or can obtain all of the documentation or information that may be required as a result of the information listed on the commitment.

The attorney relies on the title commitment letter for the legal description, tax information, proposed insured, and fees to include in the closing statement.

2. [5.41] Survey

If a survey is required by the contract, it should be ordered within five days of acceptance to give the surveyor enough time to complete it before closing.

3. [5.42] Deed

Real estate is conveyed upon execution, delivery, and acceptance of a written instrument, usually a deed. This document must be prepared in the proper form, signed by the sellers, and acknowledged by a notary. Also, it must include the correct legal description, tax identification number, and property address; it must identify the buyer and the manner in which title is to be held, the buyer’s address, and the date; and it must provide for delivery after recording. The most common deed is a warranty deed. A warranty deed expresses the seller’s obligation and liability to protect the buyer from title defects. See 765 ILCS 5/9. On the other hand, a quitclaim, often used to convey property between family members, conveys what title the seller has but with no liability for defects. See 765 ILCS 5/10.

The buyer’s attorney will inform the seller’s attorney of the manner in which title is to be held if there is more than one buyer. Most joint owners who are husband and wife hold in tenancy by the entirety because it grants the right of survivorship as well as some benefits from creditor’s action under IRS rules. See 765 ILCS 1005/1c. Otherwise, there is joint tenancy (with rights to survivorship) or tenants in common. It is important that the seller’s attorney get this information so the deed can be properly prepared.

The deed usually gives a waiver of the grantor’s right of homestead as well. A sample copy of a warranty deed is in §5.61 below.
4. [5.43] Real Estate Transfer Declarations

The Illinois Real Estate Transfer Tax Law, 35 ILCS 200/31-10, *et seq.*, requires that each deed be accompanied by a declaration of consideration in order for it to be recorded. Illinois also provides for a tax based on that amount. Usually, the county likewise taxes the amount. Municipalities have a right to require revenue declarations and an additional tax requirement. It is important to be familiar with the transfer tax requirements in the municipality where the property is located. As discussed in §5.22 above, the municipality may require the payment of other fees or fines before obtaining the tax declaration stamps, so any transfer stamps or certifications should be obtained as soon as practicable in advance of closing.

As the seller’s attorney, you will be required to complete Illinois real estate transfer declaration statements. Additionally, depending on the county requirements, you will have to complete such transfer declaration for the county.

5. [5.44] Mortgage Payoff Letters and Releases

The seller’s attorney or the seller should timely obtain a mortgage payoff letter effective the date of the closing. The seller’s attorney should also double check the title commitment letter to make sure all of the mortgagors, such as providers of home equity lines of credit, have been contacted to provide payoff information.

If the seller has an FHA or a VA loan, the payoff letter can be requested 30 days prior to closing to avoid a penalty.

The seller’s attorney must present the payoff letter at the closing. The amount on the payoff letter will also be represented on the closing statement.

Also, homeowners’ associations, sanitary districts, and other entities may claim a lien on the property. Letters from these entities relative to payment of charges must be presented and accounted for at the closing.

6. [5.45] Bill of Sale

The deed conveys the building and the land; the rest of it is conveyed by the bill of sale. The seller’s attorney must prepare the bill of sale to convey title to the personal property as described in the contract. Most bills of sale quote verbatim or refer to the personal property portion of the contract. A sample bill of sale is in §5.62 below.

7. [5.46] Affidavit of Title

The affidavit of title covers the period between the issuance of the title commitment letter and the recording of the deed to ensure nothing occurred between that time that materially affects title. The seller’s attorney must prepare this document. A sample affidavit of title is in §5.63 below.
8. **[5.47] ALTA Statement**

Many title companies or lenders require the parties to execute an ALTA statement warranting that nothing has been done to the property recently that materially affects title.

9. **[5.48] Closing Settlement Statement**

The seller’s attorney prepares a closing statement in advance of closing that reflects the amounts paid by both sides that are material to the transaction. This is usually the document that is transmitted to the lender and the title company by the day before the closing date (at the latest) to provide them with the closing figures. This then allows the closer or lender to contact the buyer’s attorney with the amount that the buyer must bring in order to close the transaction (along with a cushion amount for unexpected costs).

The closing statement can be a source of confusion based on its commonly-used form. It must include the names of the parties, the address of the property, and the date of closing. The amounts to be included are the purchase price, earnest money, all closing costs as provided by the title company, tax revenue stamps, and tax proration. In order to avoid confusion, the lawyer should include the method of calculation for the tax proration so it is crystal clear how that number was arrived at. The seller may also include amounts for attorneys’ fees, survey fees, or any other costs relevant to the transaction. An example closing statement is in §5.64 below.

These figures are also used to generate the HUD-1 Settlement Statement (RESPA) form. The federal government requires this form in any residential real estate transaction involving a loan that may be regulated by the federal government. Most loans require a HUD-1. This form recapitulates all amounts paid from the seller’s and the buyer’s (or borrower’s) funds at closing. It is also important for the parties to retain the HUD-1 for tax purposes when filing federal income tax returns. The HUD-1 form is available in fillable and printable format at www.hudclips.org/sub_nonhud/html/pdfforms/1.pdf.

10. **[5.49] Escrow and Agency Closings**

Almost all real estate transactions involving a lender are closed by an escrow agent. This is most often a title insurance company whether independent or attorney-related.

The term “escrow” describes an arrangement under which a deed and other documents from the seller and the purchase price are put in the control of a third party to be held until one or more specified conditions have been performed. Most real estate contracts provide that, at the election of either the seller or the buyer, the sale will be closed through an escrow in accordance with the general provisions of a typical deed and money escrow agreement.

An agency closing is distinct from an escrow closing. The terms of the escrow are usually agreed on by the parties and the costs are shared. An agency closing usually occurs when a lender designates the title company as its agent for purposes of closing. The lender instructs the title company, and the charges are paid by the buyer/borrower.
11. [5.50] Real Estate Tax Proration

The seller’s attorney calculates the real estate proration as dictated by the contract using the most recent tax bill as confirmed by the title commitment or public records. The sample closing statement provides the formula for calculating this figure.

12. [5.51] Miscellaneous Documents

The seller’s attorney must review the file in advance of closing to obtain any additional documents warranted by the transaction. Such documents include termite inspections, radon test results, well and septic reports, release of liens, broker’s commission receipt, etc. The seller’s attorney should have the seller’s social security number available to complete a federal 1099 form and possibly a certificate of non-foreign status under §1445 of the IRS Code at closing.

All relevant documents should be provided to the buyer’s attorney in advance of closing.

B. [5.52] Documents To Be Obtained by Buyer

The buyer’s attorney must inform the buyer what to bring to the closing. The buyer must bring the cashier’s check payable to the buyer for the amount instructed by the lender, a driver’s license, and proof of insurance showing that the premiums have been paid for at least a year.

While the buyer’s attorney has little work during the contract period except for receiving and reviewing the required documentation, his or her work is performed at the closing. Before closing however, the buyer’s attorney should make sure that he or she has received the seller’s documents in advance. Then, the documents should be reviewed and scrutinized so that any errors can be corrected before closing. This includes reviewing the property description on all documents, the deed, the affidavit of title, and the bill of sale to make sure they comply with the contract. Additionally, it is advisable to review and check the calculations of the amounts on the closing statement.

The lawyer should make sure that all general real estate taxes and any special assessments have been paid and that the buyer has notified the utilities of a change in title effective on the date of closing or possession.

V. [5.53] THE CLOSING

Most closings will go smoothly if both lawyers have done their work in advance. This minimizes the amount of surprises.

A. [5.54] Representing the Seller

The seller’s attorney has done the heavy lifting prior to the closing. He or she should be able to explain any documents and justify the closing statement if questioned. The seller’s attorney
should also confirm the figures and make certain that he or she receives a check in the appropriate
form and in the amount called for in the closing statement. It is a matter of routine now that
sellers rarely attend closings, so the attorney may also be there as the attorney-in-fact with the
power to execute any documents that could not be executed before closing.

B. [5.55] Representing the Buyer

The buyer’s attorney must explain all of the documents presented at closing to the buyer. This
includes explaining the terms of the loan and reviewing all loan documents before the buyer signs
them. It may be advisable to arrive at the closing 15 minutes early just to have the opportunity to
review the loan package before the client arrives.

If there are any discrepancies in the documents, the matter should be taken up with the proper
person, i.e., the title agent, the loan officer, or the seller’s attorney. Finally, the buyer’s attorney
should make sure that the walk-through inspection went well and arrangements for possession are
complete, such as transfer of keys, garage door openers, remotes, warranties, and any instructions
for mechanicals. Other arrangements, such as pool passes or utilities, may also affect possession.

VI. [5.56] TAX CONSIDERATIONS

The ever-changing IRS Code currently allows an exemption from capital gains treatment on
qualified residential property at $250,000 per person. 26 U.S.C.A. §121 (recently amended with
these provisions intact; always double-check for amendments). Under this section, a husband and
wife enjoy a $500,000 exemption every two years on capital gains. In many cases, this is enough
to eliminate a tax gain on the sale of a residence. If the property does not qualify for some reason,
or it is income-producing property rather than the owner’s residence, the usual tax considerations
will apply.

VII. [5.57] POST-CLOSING

Once the closing is completed, you will have little contact with the client. However, you
should follow up the closing with a letter congratulating the client on his or her new home and
offering your services for any other legal needs, such as drafting a will. You should also provide
the client with a documentation file from the closing for his or her records. It is the buyer’s
attorney’s responsibility to make sure the title policy is issued in the proper form and that the
deed and title policy go to the buyer. It is the seller’s attorney’s job to deliver the canceled note
and mortgage for each loan paid off to the seller.

VIII. [5.58] CONDOMINIUMS, TOWNHOMES, AND COOPERATIVES

If the residential real estate is not a single-family home, but an apartment or townhome
setting, this adds to your work. First, you must determine the type of property, condominium,
townhome, or cooperative. The attorney must have a separate checklist to make sure that you
have all of the required documentation. Such documentation includes association bylaws,
declaration, articles of incorporation, and rules and regulations that govern the property.
Since ownership of these properties involves a cooperative element, the buyer’s attorney must be diligent in determining what is and is not permitted on the property. This makes the review of the above documents at the earliest possible time in the contract process vital.

Section 22.1 of the Condominium Property Act, 765 ILCS 605/1, *et seq.*, is key to the disclosure process for an association buyer. A form 22.1 disclosure statement for a condominium is in §5.65 below.

One issue that often arises is parking space. The parking space on these types of property may be conveyed in different forms. Both the attorney and the buyer need to see and understand what the buyer is getting since it impacts the value of the property and the convenience of the owner.

For more detail regarding the purchase of a condominium, townhome, or cooperative, please consult RESIDENTIAL REAL ESTATE, Ch. 12 (IICLE, 2003).

IX. [5.59] TROUBLESHOOTING LITIGATION ARISING FROM REAL ESTATE TRANSACTIONS

Unfortunately, litigation arises from real estate transactions with too much frequency. If there is a default on the contract, this could result in an action for specific performance or for damages. As a practical matter, many parties to a real estate transaction will walk away if they are somehow compensated. Nevertheless, you may have that tenacious buyer who simply wants that house and is willing to go to the mat to force the seller to convey the property or that seller who cannot afford to go back to the drawing board and put the house on the market so he or she wants to force the buyer to buy.

The Residential Real Property Disclosure Act has also provided a basis for litigation. A buyer may sue under the Act or base a claim on common law fraud, or both, for a failure to disclose a known material defect on the property. Under the Residential Real Property Disclosure Act, a party has only one year from the earlier of the date of possession, the date of occupancy, or the date of recording of an instrument of conveyance of the residential real property to file a cause of action under the Act. 765 ILCS 77/60. However, a common law fraud action with a two-year statute of limitations may also be based on the disclosure report. See *Rolando v. Pence*, 331 Ill.App.3d 40, 769 N.E.2d 1108, 264 Ill.Dec. 271 (2d Dist. 2002) (purchaser’s common law fraudulent misrepresentation claim may be based solely on residential real property disclosure report based on 765 ILCS 77/35 providing that Act is not intended to limit or modify any obligation to disclose created by any other statute or that may exist in common law in order to avoid fraud, misrepresentation, or deceit in transaction). Accordingly, the buyer has up to two years to file a claim for failure to disclose or for misrepresentation.

As a practical matter, these types of lawsuits in Illinois are often based on basement and foundation leakage and flooding problems. Therefore, it is imperative that when you become involved in the transaction on behalf of the seller that you go over the disclosure information to ensure that the form has been filled out completely so no such problems arise.
Finally, regardless of whether you are the buyer’s attorney or the seller’s attorney, as long as you adhere to your established office procedures and make sure that you are obtaining and reviewing documentation in a timely manner, properly tracking contract compliance, and following up any oral agreements (even the minor ones) with written correspondence containing the proper language and disclaimers, you will be giving your client the best possible representation. This is the best way to market your business and secure the future of your practice.
X. APPENDIX — FORMS

A. [5.60] Disclosure Statement — Controlled Business Arrangement

FORM DS-1
(GEI-Form.05/01/97)

DISCLOSURE STATEMENT
CONTROLLED BUSINESS ARRANGEMENT
(By a Producer of Title Insurance Business or Associate thereof)

This Disclosure is made to: (Check one or both) Seller/Owner Buyer

Seller(s)/Owner(s)

[Print Name(s)]

Buyer(s)

[Print Name(s)]

Regarding the Property located at:

Street

City

State Zip Code

For Title Insurance Company, Title Insurance Agent, and/or Escrow Agent:

(Print Company Name)

In connection with the property described above, the undersigned has recommended, or is about to recommend, the above named title insurance company, title agent, and/or escrow agent to the above named party(ies) to provide title insurance and/or escrow services.

The undersigned producer has a financial interest in the above named company/business, or is an associate of the party or entity which has said financial interest and therefore, makes, or has made, the following estimate of the fees and charges that are known and which will be made in connection with the recommended title and/or escrow services.

Only those charges which may be paid by the party(ies) to whom this disclosure is made, are here disclosed herein. If there are additional parties who choose to utilize services from the above named company/business, there may be additional charges for those services.

* Owner's Title Policy: $__________

* Mortgage Title Policy: ___________________

Escrow or Closing Fee: ____________________

Other Fees: ________________________________

Total Estimated Charges: $__________________

* These estimated figures include all charges/services such as title search, title examination, title insurance premiums, and final issuance of Policy(ies). These estimates may be revised if any unusual circumstances occur, unusual risks are "insured over", and/or lenders require special endorsements which extend their coverage.

You are not required to use (name of provider) as a condition for, settlement of your loan on, or purchase, sale, or refinance of, the subject property. There are frequently other settlement service providers available with similar services. You are free to shop around to determine that you are receiving the best services and the best rate for these services.

The undersigned does hereby certify that the above disclosure was made to the above named party(ies) on

Signature of Producer: __________________________ Date: __________________________

ACKNOWLEDGMENT

I/we have read this disclosure form and understand that __________________________

(refering party is referring me/us to purchase the above described settlement services from (provider receiving referral) and may receive a financial or other benefit as a result of this referral.

Seller/Owner: __________________________ Date: __________________________

Buyer: __________________________ Date: __________________________

(Note: Pursuant to Section 18.1(b) of the Title Insurance Act, the Title Insurance Company, Independent Escrowee, or Title Insurance Agent shall maintain this disclosure form for a period of 3 years.)
WARRANTY DEED

THE GRANTORS, ____________________ AND ____________________, [HUSBAND AND WIFE,] of the City of __________, County of __________, State of Illinois, for and in consideration of [[$10.00] and other valuable consideration in hand paid, CONVEY AND WARRANT TO ____________________ AND ____________________, [HUSBAND AND WIFE,] of the City of __________, County of __________, State of Illinois, [not as joint tenants or as tenants in common, but as tenants by the entirety,] the following described real estate situated in the County of __________, in the State of Illinois, to wit:

[THE SOUTH 16 AND 1/2 FEET OF THE NORTH 140 FEET OF THE EAST 1/2 OF BLOCK 41 IN EVANSTON IN SECTION 12, TOWNSHIP 31 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: ____________________
Commonly known as: ____________________]

Subject only to general real estate taxes not due and payable at the time of closing; covenants, conditions, and restrictions of record; building lines and easements, if any, so long as they do not interfere with the current use and enjoyment of the Real Estate.

Hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Dated this ___ day of __________, 20__. 

__________________________________________

State of Illinois  )
) ss.
County of __________ )

I, the undersigned, a Notary Public in and for said County, in the State of Illinois, do hereby certify that ____________________ and ____________________, [husband and wife,] are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this ______ day of __________, 20__.

__________________________________________

Notary Public
C. [5.62] Bill of Sale

BILL OF SALE

STATE OF ILLINOIS )
) ss.
COUNTY OF __________ )

Sellers, _________________, in consideration of $10.00 and other valuable consideration in hand paid, receipt of which is hereby acknowledged, do hereby sell, assign, transfer, and set over to Buyers, _________________, of __________, Illinois, the following personal property, to wit:

[All fixtures, all heating, electrical, plumbing, and well systems together with the refrigerator, oven/range/stove, microwave, dishwasher, garbage disposal, washer, dryer, all window treatments and hardware, built-in or attached shelving, smoke detectors(s), ceiling fan(s), all planted vegetation, existing storms and screens, electronic garage door opener(s), central air conditioning, central humidifier, sump pump(s), and light fixtures as they exist.]

Sellers hereby represent and warrant to Buyers that Sellers are the absolute owners of said property and said property is free and clear of all liens, charges, and encumbrances, and that Sellers have full right, power, and authority to sell said personal property and to make this Bill of Sale. All warranties of quality, fitness, and merchantability are hereby excluded.

If this Bill of Sale is signed by more than one person, all persons so signing shall be jointly and severally bound hereby.

In witness whereof, Sellers have signed and sealed this Bill of Sale at the City of __________, State of Illinois, this ___ day of __________, 20__. 

________________________________ __________________________

Subscribed and Sworn to before me this ___ day of __________, 20__. 

________________________________
Notary Public
D. [5.63] Affidavit of Title

AFFIDAVIT OF TITLE

STATE OF ILLINOIS )
) ss.
COUNTY OF __________ )

The undersigned affiants, being first duly sworn, on oath say, and also covenant with and warrant to the grantees hereinafter named:

That the affiants have an interest in the premises described below or in the proceeds thereof or is the grantor in a deed dated __________, 20__, to ____________________, [husband and wife,] grantees, conveying the following described premises:

[THE SOUTH 16 AND 1/2 FEET OF THE NORTH 140 FEET OF THE EAST 1/2 OF BLOCK 41 IN EVANSTON IN SECTION 12, TOWNSHIP 31 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN __________ COUNTY, ILLINOIS.

Permanent Index Number: ____________________  
Commonly Known As: ____________________]

That no labor or material has been furnished for the premises within the last four months that has not been fully paid for,

That since the title date of __________, 20__, in the report on title issued by [Chicago Title and Trust Company], affiant has not done or suffered to be done anything that could in any way affect the title to the premises, and no proceedings have been filed by or against affiant, nor has any judgment or decree been rendered against affiant, nor is there any judgment note or other instrument that can result in a judgment or decree against affiant within five days from the date hereof.

That the parties, if any, in possession of the premises are the grantors.

That all water, except for the current bill, and taxes have been paid, and that all insurance policies assigned have been paid for.

That this instrument is made to induce, and in consideration of, the said grantees consummation of the purchase of the premises.

Affiant further states naught.

_________________________________ ______________________________

Subscribed and Sworn to before me this ___ day of __________, 20__.

_________________________________
Notary Public
E. [5.64] Closing Statement Example

CLOSING STATEMENT

SELLERS:

BUYERS:

PROPERTY:

DATE OF CLOSING:

<table>
<thead>
<tr>
<th>Credit Buyer</th>
<th>Credit Seller</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price</td>
<td>$746,000.00</td>
</tr>
<tr>
<td>Earnest Money — Escrowee, Coldwell Banker</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Mortgage Payoff (effective to [date])</td>
<td>$301,584.43</td>
</tr>
<tr>
<td>ABC Bank</td>
<td></td>
</tr>
<tr>
<td>2003 Real Estate Taxes – 1st Installment</td>
<td>$4,487.61 (PAID)</td>
</tr>
<tr>
<td>$4,487.61 @ 110% of 2003 taxes × 2 - 1st installment</td>
<td>$5,385.13</td>
</tr>
<tr>
<td>2004 Real Estate Taxes</td>
<td></td>
</tr>
<tr>
<td>$9,872.74 @ 110% of 2003 taxes = $10,860.01</td>
<td></td>
</tr>
<tr>
<td>$10,860.01 × (170 ÷ 365)</td>
<td>$5,058.09</td>
</tr>
<tr>
<td>Credit to Buyer per direction</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>Seller’s Closing Costs</td>
<td></td>
</tr>
<tr>
<td>Title Insurance</td>
<td>$1,645.00</td>
</tr>
<tr>
<td>State Transfer Tax</td>
<td>$746.00</td>
</tr>
<tr>
<td>County Transfer Tax</td>
<td>$373.00</td>
</tr>
<tr>
<td>State Registration Fee</td>
<td>$3.00</td>
</tr>
<tr>
<td>Evanston Transfer Tax</td>
<td>$3,730.00 (PAID)</td>
</tr>
<tr>
<td>Total Closing Costs</td>
<td>$6,497.00</td>
</tr>
<tr>
<td>Survey</td>
<td>$450.00 (PAID)</td>
</tr>
<tr>
<td>Attorneys’ Fees</td>
<td>$450.00</td>
</tr>
</tbody>
</table>
Real Estate Brokers’ Fees
Coldwell Banker $33,795.00

SUB-TOTAL $378,969.65

CASH TO BALANCE $746,000.00 – 378,969.65 = $367,030.35

TOTAL $746,000.00 $746,000.00

ACCEPTED:

___________________________ ______________________________
[ Seller ] [ Buyer ]

F. [5.65] Form 22.1 Disclosure (Condominium)

DISCLOSURE STATEMENT

The following statements are provided by or on behalf the Board of Directors of the Condominium Association named below, in compliance with §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1):

Condo Association: ________________________________________________

Unit Address: ________________________________________________________

Seller: ______________________________________________________________

1. Condo Documents

A copy of the Declarations, Bylaws, Rules & Regulations

_____ Are enclosed.

_____ May be purchased for $__________.

___________________________ ______________________________
[ Seller ] [ Buyer ]
2. **Assessments**
   
a. The regular Monthly Assessment for this unit is $\underline{\text{__________}}$.

b. **Special Assessments:**

   _____ There are NO special assessments pending.

   _____ There may be a special assessment in the near future. Provide details.

   
   ____________________________________________________________

   ____________________________________________________________

   _____ There IS a Special Assessment pending at this time.

   The details are as follows:

   $\underline{\text{__________}}$ Monthly Payment Amount

   __________ Due Date for Last Payment

   $\underline{\text{__________}}$ Total Payoff Figure, as of __________, 20\
   (Amount) (Date)

   Nature of Work/Reason for Special Assessment:

   ____________________________________________________________

3. **Capital Expenditures**

   _____ The Condominium Association does NOT anticipate any capital expenditures within the current or succeeding two fiscal years.

   _____ The Condominium Association DOES anticipate capital expenditures within the current or succeeding two fiscal years. Provide details below.

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________
4. Reserve for Replacement Fund

A) The amount of the Reserve for Replacement Fund is

$__________

B) The following amounts have been earmarked for the following projects:

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

5. Financial Statements

_____ A copy of the statement of financial condition of the unit’s owners’ association for the last fiscal year IS enclosed.

6. Pending Lawsuits and Judgments

_____ There are NO lawsuits or judgments to which the Association is a party.

_____ There IS a lawsuit(s) or judgment(s) to which the Association is a party. Provide details.

_______________________________________________________________________

_______________________________________________________________________

_______________________________________________________________________

7. Insurance

Information regarding the insurance coverage on the Association may be obtained from our agent:

Agency Name: _____________________________________________________________

Agency Phone: ___________________________________________________________
8. **Improvements and Alterations**

_____ To the best of our knowledge, improvements and alterations made to the unit, or to the limited common elements assigned thereto, by the prior unit owner are in good faith believed to be in compliance with the condominium instruments, except as noted below (if no exceptions, then state “None”):

___________________________________________________________________________

9. **Percentage of Owner Occupancy**

_____ percent of the units are currently owner-occupied.

10. **Budget**

_____ A copy of the Association’s current budget is enclosed.

**THIS FORM COMPLETED BY:**

Today’s Date: __________, 20__

Company Name: _______________________________________________________________

Phone Number: ________________________________________________________________

Your Name: ___________________________________________________________________

Job Title: _____________________________________________________________________
I. [5S.1] Scope of Chapter

II. Developing Your Practice

D. Initial Contact with Your Clients
   2. [5S.11] Buyer

III. [5S.12] The Real Estate Purchase Contract

   3. [5S.23] Mortgage Contingency
   4. [5S.24] Real Estate Taxes and Prorations

C. Special Contract Provisions
   2. Property Inspection
      a. [5S.33] Radon
      b. [5S.34] Mold

IV. Contract Period

A. Documentation To Be Prepared or Obtained by Seller
   9. [5S.48] Closing Settlement Statement
   11. [5S.50] Real Estate Tax Proration

VIII. [5S.58] Condominiums, Townhomes, and Cooperatives

IX. [5S.59] Troubleshooting Litigation Arising from Real Estate Transactions

X. Appendix — Forms

G. [5S.66] Radon Disclosure Form — 420 ILCS 46/10(b) (New Section)
I. [5S.1] SCOPE OF CHAPTER

In the parenthetical in the last paragraph, “2003” is revised to read “2008.”

II. DEVELOPING YOUR PRACTICE

D. Initial Contact with Your Clients

2. [5S.11] Buyer

The fifth sentence in the first paragraph is revised:

The mortgage, amortized over up to 30 years, will likely require the buyer to pay a greater amount of interest than the actual loan itself.

Add before the last sentence in the first paragraph:

In the current market in which predatory lending has caused a spike in foreclosures, the buyer is well advised to consult a reputable lender and seek terms that are fiscally responsible under his or her personal financial circumstances.

Add after the first sentence in the last paragraph:

Some lenders require the buyers to be present at the closing.

Add at the end of the last paragraph:

As the buyer’s attorney, you are well advised to keep close contact with the lender as lending guidelines have become much more stringent in the tight housing market.

III. [5S.12] THE REAL ESTATE PURCHASE CONTRACT

The fourth sentence is revised:

A watermarked sample of the IRELA real estate contract (known as the Multi-Board Residential Real Estate Contract 4.0) is available at www.reallaw.org/resources.asp; the form is also reproduced in §2.56 of RESIDENTIAL REAL ESTATE (IICLE, 2008).

3. [5S.23] Mortgage Contingency

Add at the end of the last paragraph:

It is imperative in this real estate market to confirm, preferably in writing well in advance of closing, that the financing is secured and all conditions are met with the lender.

4. [5S.24] Real Estate Taxes and Prorations

Add at the end of the second paragraph on p. 5-15:

In Cook County, the tax assessor maintains a Web site, www.cookcountyassessor.com, with current tax information. It is imperative for the buyer’s attorney to consult this Web site to ascertain the most accurate proration amounts for the client before the attorney review period expires on the contract.

The last paragraph is revised:

If there is significant uncertainty regarding the tax bill, for instance if it is a vacant piece of land or the property has been newly constructed or significantly improved in the past five years, it will be necessary to include a re-proration agreement in the contract requiring re-proration of the tax payment upon receipt of the actual tax bill. These agreements are becoming more prevalent, but you must inform your client that there will be a fee from your office for the re-proration service. Additionally, you must establish a docketing system to capture the transactions under which re-proration may be required.

C. Special Contract Provisions

2. Property Inspection

a. [5S.33] Radon

Add after the first paragraph:

Effective January 1, 2008, Illinois sellers are required to provide a radon disclosure statement stating that the property may present the potential for exposure to radon before the buyer is obligated under any contract to purchase the residential real property. 420 ILCS 46/10. See the sample disclosure form reproduced in §5S.66 below. The statute does not obligate sellers to conduct radon testing or mitigation activities, but only to disclose what they know about the presence of radon on the property at the time of the contract. The statute excludes certain transactions from this requirement, such as sales between co-owners. See 420 ILCS 46/20.

The citation to “RESIDENTIAL REAL ESTATE §§7.17 – 7.27 (IICLE, 2003)” in the last paragraph is revised to read “RESIDENTIAL REAL ESTATE §§6.8 – 6.10 (IICLE, 2008).”
b. [5S.34] Mold

The citation to “RESIDENTIAL REAL ESTATE §§7.28 – 7.46 (IICLE, 2003)” in the last paragraph is revised to read “RESIDENTIAL REAL ESTATE §§6.12 – 6.15 (IICLE, 2008).”

IV. CONTRACT PERIOD

A. Documentation To Be Prepared or Obtained by Seller

9. [5S.48] Closing Settlement Statement

The Web site for the HUD-1 form at the end of the last paragraph is revised to read “www.hud.gov/offices/adm/hudclips/forms/hud1.cfm.”

11. [5S.50] Real Estate Tax Proration

Add at the end of the paragraph:

See also §5.24.

VIII. [5S.58] CONDOMINIUMS, TOWNHOMES, AND COOPERATIVES

The citation to “RESIDENTIAL REAL ESTATE, Ch. 12 (IICLE, 2003)” in the last paragraph is revised to read “RESIDENTIAL REAL ESTATE, Ch. 11 (IICLE, 2008).”

IX. [5S.59] TROUBLESHOOTING LITIGATION ARISING FROM REAL ESTATE TRANSACTIONS

The sentence before the Rolando citation in the second paragraph is revised:

However, a common law fraud action carries a five-year statute of limitations (735 ILCS 5/13-205) and may also be based on the disclosure report.

X. APPENDIX — FORMS

G. [5S.66] Radon Disclosure Form — 420 ILCS 46/10(b)

New section:

DISCLOSURE OF INFORMATION ON RADON HAZARDS
(For Residential Real Property Sales or Purchases)
Radon Warning Statement

Every buyer of any interest in residential real property is notified that the property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. The seller of any interest in residential real property is required to provide the buyer with any information on radon test results of the dwelling showing elevated levels of radon in the seller’s possession.

The Illinois Emergency Management Agency (IEMA) strongly recommends ALL homebuyers have an indoor radon test performed prior to purchase or taking occupancy, and mitigated if elevated levels are found. Elevated radon concentrations can easily be reduced by a qualified, licensed radon mitigator.

Seller’s Disclosure (initial each of the following which applies)

(a) _____ Elevated radon concentrations (above EPA or IEMA recommended Radon Action Level) are known to be present within the dwelling. (Explain)

(b) _____ Seller has provided the purchaser with all available records and reports pertaining to elevated radon concentrations within the dwelling.

(c) _____ Seller has no knowledge of elevated radon concentrations in the dwelling.

(d) _____ Seller has no records or reports pertaining to elevated radon concentrations within the dwelling.

Purchaser’s Acknowledgment (initial each of the following which applies)

(e) _____ Purchaser has received copies of all information listed above.

(f) _____ Purchaser has received the IEMA approved Radon Disclosure Pamphlet.

Agent’s Acknowledgment (initial) (if applicable)

(g) _____ Agent has informed the seller of the seller’s obligations under Illinois law.

Certification of Accuracy

The following parties have reviewed the information above and each party certifies, to the best of his or her knowledge, that the information he or she provided is true and accurate.

Seller ____________________ Date ________ Seller ____________________ Date ________
Purchaser ________________ Date ________ Purchaser ________________ Date ________
Agent ____________________ Date ________ Agent ____________________ Date ________