



The Closing Process in a real estate transaction

In the State of Florida, foreign investments in real estate have become one of the most significant factors for the development of the local economy.

The process of purchase and sale of a real estate, even though not very complex, may sometimes lead to misunderstandings between the parties involved in the transaction (*i.e.*, seller, buyer, the attorneys, the real estate agents and the lender, (in case of financing) which may cause delays during the closing process, (the “Closing”).

In the United States only one subject (properly called the “Closing Agent”) is responsible for the Closing. The Closing Agent is an impartial third party that follows the real estate transaction from the beginning through the end and is agreed upon by the parties, or apportioned according to the terms of the purchase and sale agreement.

The purpose of this article is to provide the reader with a general understanding of the basic steps of a Closing and the different situations which may arise in each of them.

The basic steps for a Closing are the following:

Execution of the Purchase and Sale Agreement (the “Agreement”);

Request for a title search (“*Title Commitment*”);

Analysis of the legal status of the property;

Compilation and compliance with all the requirements described in the Title Commitment;

Drafting of the closing statements;

Preparation of the “U.S Department of Housing and Urban Development Statement” (also known as “*HUD*”);

Close the Transaction, delivery of the property and transfer of the money. As a general rule, real estate agents are responsible for the first stage of the transaction. They generally help to find a suitable property, negotiate the sales price and draft the preliminary offer that will merge into the final Agreement. (Step 1). Since real estate agents usually follow standard and generic forms, before entering into the Agreement it is always advisable to seek counsel from an attorney.

It is important to keep in mind that the Agreement underlines all the terms and conditions of the real estate transaction, such as buyer and seller (the "Parties"); the description of the property; the sales price; the apportionment of the payments between seller and buyer, the real estate commissions (which are customarily borne by the seller), the amount of the "good faith deposit" or "guarantee deposit" (the "Deposit"), the closing date and the method of payment (by cash or by financing).

The Deposit is paid by the buyer to the Escrow Agent, which is a person or entity that holds the funds in trust for the Parties while the closing is finalized. The Escrow Agent can be the real estate agent or the attorney for buyer or seller (notice that the Deposit is never paid directly to the seller). Once the Deposit is paid and cleared, the Escrow Agent delivers to the parties written confirmation of the amount held in escrow.

Once the Agreement is executed by the Parties, the Closing Agent has to request the "Title Commitment" ("Commitment") from a Title Company (the future title insurer) (Step 2). The Commitment is the document by which a title insurer discloses all the liens, defects, burdens and obligations that affect title to the subject property.

The Closing Agent analyzes the legal status of the property (Step 3) and must satisfy all the requirements described in the Commitment before the Closing, such as outstanding payments due, mortgages, open liens or debts in order to obtain the title policy. At this point, the Closing date may be more precisely determined. (Step 4).

Furthermore, the Title Commitment has to be forwarded to the seller's attorney for his review. If necessary, the Parties may modify the Closing date and agree with a future date to comply with the requirements. At the same time, Seller's attorney shall provide to the Closing Agent with the required documentation to convey the property. (Step 5).

Usually, these are the fundamental documents to be provided by the seller:

The Warranty deed;

The Title affidavit;

The Closing Seller's affidavit;

The Bill of sale.

However, additional documentation may be required. For instance, the Foreign Investment Real Property Tax Act of 1980 requires that any foreign seller, not resident in the U.S. shall present a FIRPTA Certificate before closing generally prepared by the Seller's accountant, or have 15% of the amount realized withheld by the escrow agent (with some exceptions) and sent to the Internal Revenue Service ("IRS"). (This topic will be covered in a separate article)

Subsequently, the Closing Agent shall draft the "*U.S Department of Housing and Urban Development Statement*" (known as "*Settlement Statement*" or just "*HUD*") (Step 6). This document lists all charges and credits to the buyer and to the seller to be paid at the Closing, such as, the agreed sales price, the title insurance costs, the Closing Agent's and other professionals' fees. The HUD may be modified until the Closing date and it must be approved by the Parties.

Some of the closing costs that are customarily allocated to the seller for residential closings are: the documentary stamp tax, which in Florida is levied at the rate of \$.70 per \$100 (or portion thereof) for the transfer interest in real property, the real estate agents commission (that usually amounts to the 6% of the purchase price), and attorney's fees.

On the other hand, buyer is generally allocated all costs for the service provided by the Title Company (including both, the *Owner's Insurance Policy*, and the *Lender's Insurance policy*, which is mandatory if the purchase is subject to a mortgage) and buyer's attorneys fees. However, an Owner's title insurance policy is almost mandatory since it will protect the buyer against defects not detectable before the purchase, such as erroneous declarations on the seller's marital status and thus, a possible claim by the legal spouse.

The cost of the Owners title Insurance Policy is based on the purchase price as follows: up to \$100,000 is equal to \$5.75 per thousand; over \$100,000 it is equivalent to \$5.00 per thousand.

Once the HUD is approved by the Parties, the Closing Agent has complied with all the requirements from the Commitment and the documentation required for the conveyance of the property has been approved, the transaction can be closed.

On the closing date, the Closing Agent shall have in its escrow account the total amount of funds required to close the transaction and all the documentation executed by the Parties. The Closing Agent will then proceed with the disbursements as per the HUD and the registration of the deed in the public records. (Step 7).

Remember that all the above steps may be subject to last-minutes changes and

this may be a concern to the Parties. Thus, it is always advisable to seek the advice of a professional in order to obtain a proper support from beginning to end of a real estate transaction.