

The Dogs and Cats of Selling a Home

Gregory P. Hawkins

Generally, I discount pithy maxims silk-screened onto t-shirts. The solutions to life's philosophical riddles deserve more than colored latex applied to cotton — usually.

Recently, however, one t-shirt truism caught my attention and captured the essence of the home selling experience, "Dogs have Masters. Cats have staff."

Selling a home is an anxiety ridden process, even traumatic. Will I find a buyer? When? Will I be forced to lower the asking price? What problems will I encounter? Then there are those disclosure statements. Not to mention the Real Estate Purchase Contract (REPC) — long, complicated, every paragraph loaded with legal language that could help or hurt the seller.

To the rescue rides the real estate agent. Armed with a few weeks of training, hopefully some practical experience and a powerful marketing organization, he or she offers to shoulder your burden. Your remaining obligations — clean the carpet and prepare to say "yes" or "no" to purchase offers.

Many sellers feel little choice but to accept the dog's role in this relationship. Indeed, many relish the arrangement. How much easier to sit, stay, heel and rollover on command?

Yet, consider the consequences of allowing a single advisor to control the process, especially one trained in marketing and not legal consequences.

For example: the home is sold. One day a process server shows up. The sellers are being sued for fraud. Why? Unknown to the sellers there was a leaky pipe under the kitchen floor. Ten thousand dollars, two years and a three-day trial later, the sellers are vindicated. With good legal advise this would have been avoided. This is a true story.

A buyer sues the seller for failure to disclose termite damage in the basement. Months later — after several experts and lawyers battle it out — the damage, which was minor, is determined to be old water damage. The Seller's error: poor counsel completing the "Property Disclosure" form. This is a true story.

Six months after the home was sold a drain backed up. After extensive excavation a tree root is discovered, having grown through the main drain pipe. A law suit is filed against the seller. This is also a true story. Etc., etc., etc.

Real estate agents are not trained to protect you from the legal consequences of selling your home.

In fact, the contract you sign when listing your home specifically states, "Agents are trained in the marketing of real estate." Then in big, bold letters, it warns that if the seller desires legal counsel and does not contact a lawyer, "THE SELLER IS ACTING CONTRARY TO THE ADVICE OF THE COMPANY."

After signing a listing agreement that specifically states that your real estate agent cannot give legal advice, who, in their right mind, would sign a six page

Real Estate Purchase Contract without legal advice? Yet, too few homeowners make the catlike decision to increase their staff by adding competent legal counsel.

Why? Since real estate commissions could exceed \$9,000.00 for a \$150,000.00 home, the small fee to consult a real estate lawyer may seem like one expense too many. Many sellers simply hope their sale goes smoothly, without legal complications. Hope springs eternal but in today's litigious society, a little caution can save thousands of dollars and extreme emotional trauma.

Additionally, Utah law forbids real estate agents from changing the language of the standard Real Estate Purchase Contract. Your lawyer, however, can and should rewrite the contract to protect you. In fact, during my twenty years of practicing law I have only seen a handful of buyers reject such changes.

While "Dogs have Masters. Cats have staff" is a humorous t-shirt message, a homeowner with only a real estate agent as staff is not funny. Selling a home with or without a real estate agent is a marketing decision. But selling a home without competent legal advice can be devastating.

Gregory Hawkins is the senior partner at Hawkins & Sorensen, LC. He has been practicing law for 20 years and focuses his practice on the legal issues that affect families most — Your Family's Lawyer™.

He can be reached at 5250 South Commerce Drive, Suite 101, Murray, Utah 84107
Phone 801-747-3390