Can a 'buyer's agent' truly represent the buyer's interests?

by Ilyce_Glink

Q: This is a comment about your article last Sunday about "buyer's agents." This area is one of my pet peeves as an attorney.As a matter of law, unless the buyer is paying the "agent" from the buyer's own pre-sale funds and the "agent" expects to be paid from the proceeds of the sale, then the "agent" is by definition an agent of the seller only.No one ever tells the buyer this until it is too late. In my opinion, it is unethical and fraudulent for people being paid by the seller to claim that they are representing the buyer's best interests. While such people may have the purest of motives, the bottom line is that someone being paid by a seller, whose interests are necessarily in direct conflict with those of the buyer, cannot represent the interests of the buyer. The conflict of interest is inherent and inescapable. Thank you for listening.A: I'll agree with you that it's a murky legal issue, but as you well know, states have tried to get around the representation thing by coming up with laws that require buyers and sellers to sign documents acknowledging who represents whom in the deal. Agency disclosure agreements require the buyer to sign off on a document in which the agent states, "I represent you, the buyer, because I fully disclose to you and the world that in this transaction I am a buyer's agent."Whether this clears up the confusion or causes more of it, I don't really know.Thanks for taking the time to write.Q: How can I remove someone from the title of my home? I purchased my home in 1999 while I was single. I put down all of the cash for the down payment and the mortgage is in my name only. I pay the mortgage and the taxes on the home. As part of my estate planning when I was single, I added my sister on the home as a co-owner with joint survivorship, just in case something happened to me.Fast forward to today: I got married in July 2006 and want to add my wife on to the title of the property and have my sister removed from the title. Here's my problem: My sister does not want to have her name removed right now.She is getting married in July and she and her fiance are planning to purchase a home in August. What are my options to removing her from the title to the property?A: Let's look at it from your sister's perspective. Why would she want to voluntarily remove her name from the title? She effectively owns half of your property without any of the risk of being on the mortgage. If she stays on the title, it'll make her seem like a much stronger candidate when she applies for a mortgage since she owns property without any of the liability.You had good intentions, but you should have consulted an estate attorney if you wanted to protect your property or your sister. You could have simply listed her as the heir in your will, or created a trust naming her as the beneficiary. When you married, you could have simply eliminated her from the will or changed beneficiaries of the trust.What you have now is a money and control issue. Your sister wants one or the other or both. What she is doing should show you that she doesn't care much for you or your welfare. As for getting her name off the title, you don't have a lot of options. She has to agree to it.You have a serious problem on your hands. If you sell the property, she'll be entitled to half of the proceeds. Of course, you may be well within your rights to charge against her share of the profits her unpaid share of the mortgage, taxes, insurance, and maintenance costs during the years in which she has been an owner of the property.I would have a conversation with a very smart attorney about your various options for the property.And next time you want to add someone else's name to the title of a major asset, call your estate attorney to help you think through the ramifications of this action.Â© 2007 Real Estate Matters - TMS