

California Real Estate Brokers, Inc. Real Estate Law – Trends for 2018

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Overview

1. *Litigation*

- *Partitions and Specific Performance*

2. *Best Practices*

- *CAR Forms, Disclosures*

3. *Market Issues*

- *Taxes, Cannabis*

Partition of Co-Owned Property



Partition of Co-Owned Property

CO-OWNERSHIP TAKES MANY FORMS –

- ▶ Joint Purchase
- ▶ Inheritance

Partition of Co-Owned Property

All is usually great at the beginning – but what we see are *PROBLEMS down the road...*

- ▶ *Disputes over Occupancy/Tenants*
- ▶ *Disputes over Maintenance costs*
- ▶ *Disputes over Equity*

Partition of Co-Owned Property

SCENARIO –

Client comes to you with listing, yet is co-owner. Other co-owner refuses to sell...

What Now???

Partition of Co-Owned Property

- ▶ Resolve matter without court action (buyout), OR
- ▶ File a Partition lawsuit

Questions On Buy-Out

- ▶ What is the property worth?
- ▶ Reimbursement of Expenses
- ▶ Bottom Line – no buy-out or sale agreement, forced sale through a two-part process called Partition and Accounting.

Partition of Co-Owned Property

Begin a PARTITION action

CCP §872.010 *et seq.*

No-one can be compelled to remain a co-owner of real estate if they don't want to.

Co-Owner cannot be held Hostage

Partition

- The Partition lawsuit – The person seeking to force the sale starts the legal process by filing a lawsuit against the other requesting the Court to Order of Sale
- Physical division of the property (land), or
- Sale of the property and a division of the proceeds
- Court chooses fairest method

Attorney Fees

- ▶ Because the person who refused to sell has forced the other to go to Court to force the sale, the **Plaintiff can typically recover Attorneys' fees** where they are incurred “for the common benefit” of parties entitled to share in the lands divided.

The Property Sale

- ▶ Court can give the Plaintiff the right to sell and compel Defendant's cooperation.
- ▶ Price set by opinion of licensed Appraiser.
- ▶ Property listed for sale with a licensed real estate professional – **OPPORTUNITY**
- ▶ From this point forward it is just like any other sale.

The Accounting Phase

- ▶ After sale all remaining proceeds are divided between former owners.
- ▶ Unless an agreement is made between the parties, the Judge will determine who is entitled to what from the proceeds.

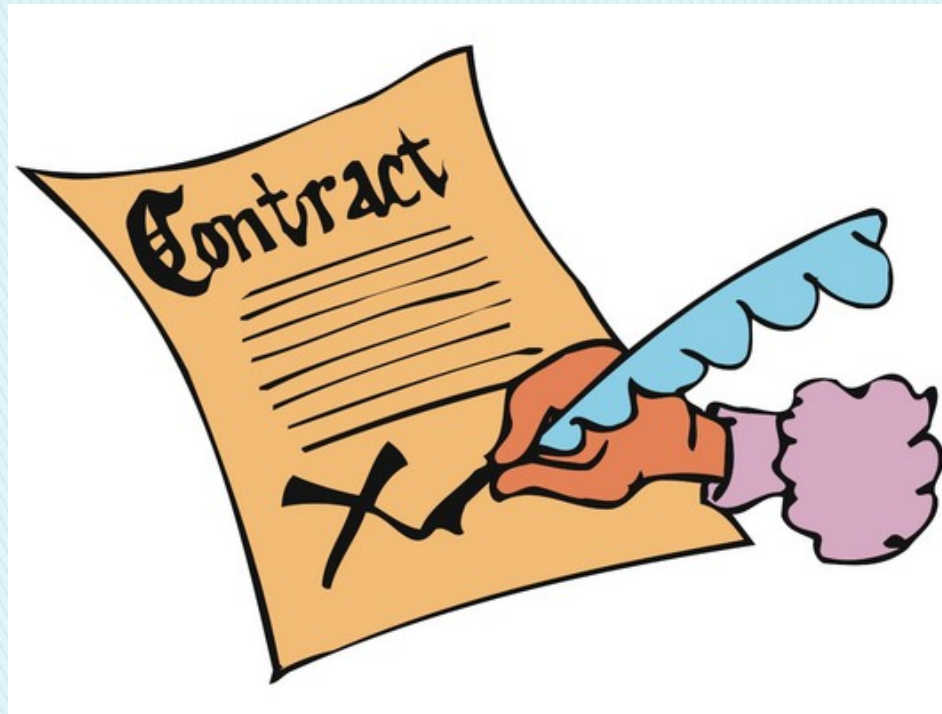
THE BOTTOM LINE

Partition case take a LONG TIME – could be a year or more!

VERY EXPENSIVE for all involved

SO – if you have a partition listing, be prepared to WAIT to close the sale.

Specific Performance When Seller Breaches the RPA



Specific Performance When Seller Breaches the RPA

► *What is Specific Performance?*

- *It is a remedy allowed for by law to force a non-performing party to perform under a contract.*

Civil Code 3387

- ▶ “It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation. In the case of a single-family dwelling which the party seeking performance intends to occupy, this presumption is conclusive. In all other cases, this presumption is a presumption affecting the burden of proof.”

Scenario

- ▶ Market is accelerating and seller lists property.
- ▶ Seller quickly gets an offer and agrees to sell to buyer.
- ▶ During the inspection period, Seller gets a second much higher offer and seller decides to cancel first contract to go with the second offer.

Remedies

- ▶ Specific Performance
- ▶ Attorney's Fees and Costs per Contract
- ▶ *But how enforced?*
- ▶ Lawsuit filed by Buyer
- ▶ Lis Pendens recorded to prevent any future sale

Best Practices Using the CAR Forms



Best Practices Using the CAR Forms

- ▶ Knowing the CAR forms and how they work are critical!
- ▶ Key Areas to Understand:
 - Contingencies
 - Closing

Contingencies

- ▶ Section 14(B)(4) of the RPA (from the 12/15 version)
 - Contingency remains effective until removed in writing...

BUT ???

How To Force Buyer to Remove Contingencies?

Contingencies

USE: NOTICE TO BUYER TO PERFORM (NBP)

THIS ALLOWS SELLER TO APPLY PRESURE ON BUYER...

Under RPA para. 14(D) 1 & 2, Seller May Not Cancel a Contract Based on Buyers Non-Performance without FIRST delivering NBP!

Contingencies

IF BUYER DOES NOT COMPLY WITH NBP, THEN –
AND ONLY THEN –

SELLER THEN ISSUES A CANCELLATION OF
CONTRACT FORM (CC) TO BUYER!

The real fight now is over the escrow deposit...

CLOSING ESCROW

IF BUYER DOES REMOVE CONTINGENCIES, BUT
EITHER PARTY FAILS TO MOVE FORWARD –
THEN WHAT?

ISSUE A DEMAND TO CLOSE ESCROW (DCE)

SCENARIOS –

CLOSING ESCROW

IF SELLER FAILS TO CLOSE, THEN BUYER
RESORTS TO SPECIFIC PERFORMANCE LAWSUIT

IF BUYER FAILS TO CLOSE, THEN SELLER
CANCELS AND SEEKS RECOVERY OF ESCROW
DEPOSIT

BUT – ONE MORE THING...

CLOSING ESCROW

WHAT IF BOTH PARTIES FAIL TO *TIMELY* CLOSE?

Pittman v Canham case comes into play...

“The failure of both parties to perform concurrent conditions during the time for performance results in the DISCHARGE of both parties’ duty to perform...”

Disclosures



Disclosures

- ▶ When in doubt *Disclose, Disclose, Disclose.*

TDS/SPQ – Seller to complete

AVID – 4 Word Rule:

- Crack in driveway – Good
- Crack in driveway from tree root in neighbor's yard undermining the driveway and needs repair –
BAD (YOU DON'T KNOW THIS)

Disclosures

- ▶ Must Buyers Agent/Broker Complete an AVID?
- ▶ YES – RPA para. 10A(2):
- ▶ “...nothing relieves a Buyers Broker from the obligation to (i) conduct a diligent visual inspection and disclose on Section IV of the TDS or AVID material facts affecting the value or desirability of the Property...”

Disclosures

- ▶ Must Buyers Agent/Broker Complete an AVID?
- ▶ TDS Section IV: “Agents Inspection Disclosure”
 - ▶ – see attached AVID, or
 - ▶ – Agent notes no items for disclosure, or
 - ▶ – Agent notes the following items:

Market Issues



Market Issues

- Tax Reform
- Cannabis

TAX REFORM

- ▶ December 2017 – Tax Cuts and Jobs Act.

Major Changes

- ▶ *Reduction in Individual Tax Rates*
- ▶ *Reduction in Corporate Tax Rates*
- ▶ *Changes related to Deductions*

Individual Tax Rates

- ▶ Other than 35% tax bracket – all other tax brackets decreased with the largest overall reductions in the middle tier brackets.
- ▶ **HOWEVER** → Tax cuts for individuals are not permanent – they will expire in 2025 and revert back to the old tax rates.

CORPORATE TAX RATES

- ▶ Corporate Tax Rates cut to 21%
 - Corporate tax rate reductions are permanent.
 - Not all corporations are created equal and not all corporations were cut to 21%.
 - Personal service corporations (health, law, financial services – generally pass through entities) do not benefit from corporate rate cut to 21%

CORPORATE TAXES

▶ Pass – Through Entities

- Partnerships / S-Corporations / LLCs
- Does not benefit from reduction in corporate rate but does benefit with a 20% deduction on pass-through income on the first \$315,000 of pass-through income
- Not a straight line deduction – is subject to QBI

The Deductions

- (1) Many personal itemized deductions including home office expense, licensing fees, professional society dues, work clothes and moving expenses are suspended as a result of the new law. (Means not available to take the deductions)
- (2) Mortgage Interest Deduction drops from \$1M to \$750,000.
- (3) **SALT Deduction (State and Local Tax)** is reduced to a \$10,000 cap. This will potentially have a significant impact on states like California that have high income tax rates
- (4) Medical Expenses remain deductible but increases to 10% of AGI in 2019
- (5) Allows for immediate expensing of short lived capital improvements

Real Estate Professionals Impact

- ▶ Potential Change in way business is operated:
 - Will Agents continue to operate as sole proprietors?
 - Will Agents begin to incorporate?
 - How will the QBI impact these decisions?
 - ***CONSULT YOUR TAX PROFESSIONAL***

CANNABIS

(Everyone's Favorite Topic)



CANNABIS

(Everyone's Favorite Topic)

- Cannabis is legal in California – but what does that mean?
- State v Feds
- Supremacy Clause v. 10th Amendment (commandeering clause)
- California began building its regulatory scheme
- Local Agencies began building regulatory schemes

Cole Memorandum Revoked

- ▶ Prior federal policy *against* prosecuting cannabis related cases under federal law when the activity occurred in a state where legal and certain protections were in place.
- ▶ Unilaterally revoked by Attorney Jeff Sessions in January 2018 – **The Wildcard** – What will the feds actually do?

Fed Legislation Introduced

- ▶ Sen. Chuck Schumer introduced legislation on 4/20/18 (**get it?**) to decriminalize cannabis – not legalize outright, but allow states to decide
- ▶ Sen. Corey Booker introduced the Marijuana Justice Act – legalize cannabis nationwide

LEASING -- What to do?

- ▶ Examine Your Rental Agreement.

Legal Basis for Contract?

Violation of Laws clause

Must You Lease to Tenant who grows Cannabis?

- ▶ Get the Facts from your Landlord and Tenant
- ▶ Check the Applicable Laws.

What Restrictions Exist?

Local Laws

City of Sacramento:

- ▶ Indoor Grow ONLY
- ▶ 6 plants total (not per person)
- ▶ MUST have ventilation system to prevent odor from exiting structure – approved by Building Dept.
- ▶ Administrative penalties of \$500 per plant over limit – STRICT LIABILITY OF OWNER!
 - \$396k penalty for one case!
 - Will this “chill” rental property purchase market?

Real Examples of RE and Cannabis

▶ Disclosure Issues

- Smell, light, stigma?
- Prior use of grow house?
- Next Door Neighbor?
- Proximity to “Green Zone”?

THANK YOU!



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