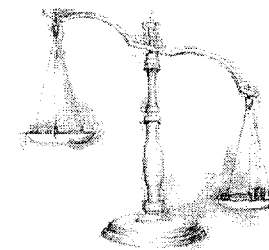


I have often heard that it would be a tremendous advantage to everyone if personnel from title companies, real estate offices, tax offices, loan companies, banks, and surveyors could exchange jobs for awhile to fully appreciate the totality of relationships among the related offices. However, we should not forget it is the Buyer and Seller who may be lost in the confusion as well. Therefore, I hope this article helps you to understand better the many activities that must be coordinated for a transaction to “close.”

Sam A. Moak is an attorney with the Huntsville law firm of MOAK & MOAK, P.C. and is President of SAM HOUSTON LANDMARK TITLE COMPANY. He is a Member of the State Bar College and is licensed to practice in all fields of law by the Supreme Court of Texas.

WHY CAN'T I CLOSE RIGHT NOW?

**“THE LEGAL CORNER”
By Sam A. Moak**



**SAM HOUSTON LANDMARK
TITLE COMPANY**
1305 ELEVENTH STREET
HUNTSVILLE, TEXAS 77340
TELEPHONE (936) 295-5497
FACSIMILE (936) 295-4069
WWW.SAMHOUSTONLANDMARK.COM

The information in this column is not intended as legal advice but to provide a general understanding of the law. Any readers with a legal problem, including those whose questions are addressed here, should consult an attorney for advice on their particular circumstances.

Some of the more common questions at the title company are: "When will we be ready to close," and "Why can't I close right now?" Or the famous "We want to close ASAP."

Once an earnest money contract has been signed and turned into the title company, many people wonder why they cannot close immediately? Negotiating the earnest money contract is just the beginning of the "closing" process. Therefore, this week I will address what happens between when the earnest money contract is signed and the day you sign the paperwork (a/k/a "closing").

Once the earnest money contract has been signed by all the parties, the real estate agent takes it to the title company. Once the title company has the contract, they begin a title search on the real estate. This search is performed by the examiner's department. The title examiner reviews the chain of title to the property for restrictive covenants, easements, taxes, encumbrances that affect the property and missing links in the chain of title. The examiner then prepares a report on the status of the title to the property. The report is called a commitment for title insurance.

However, the title review is just one part of the process. Someone needs to start checking on the status of the loan, the survey, the insurance,

the maintenance fees, the inspections and possible repairs, etc. These are all areas within the realm of the realtor's responsibilities. However, because the realtor and title company have more than one sale going, some of these items may be overlooked. The title company's closing department works with the realtor after the commitment is completed. While the closing department cannot order these items, they can cooperate with the realtor to make sure these things are addressed.

For example, an area that is almost exclusively the province of the realtor is that of inspections and repairs. The promulgated form of Addendum to the earnest money contract specifies that the buyer's responsibility is to have the designated inspections made, except the termite inspection - which is the seller's responsibility. Based on the inspections, repairs may or may not need to be done. The title company is not obligated to make arrangements, either directly or indirectly, for any inspections and/or repairs. The closing department should, as often as possible, remind the realtor or the parties if the specified inspections and/or repair bills are not coming in.

Once the closing department receives the examiner's report and a completed commitment for title insurance, they should read these documents and make sure the realtor, buyer and seller have done the same. Reading the commitment is important to make sure the names of the grantors, grantees and legal description match what is on the earnest money contract. If not, the closing department must find out why. If corrections are necessary, they

must be in writing and initialed by the Buyer and Seller.

Curative work on the title may need to be taken care of at this time by the closing department. For instance, if there is an outstanding lien that will be paid off out of the closing, they should contact the lienholder and request a written payoff.

The closing department also must contact the new lender and request their loan closing instructions. After carefully reading the loan closing instructions, a settlement statement is prepared which lists the lender's costs for closing the loan. The closing department must also follow up with the lender to ensure the loan has been approved by the lender's underwriting department. Additionally, the closing department must also follow up with the surveyor, inspectors, attorneys, etc., to gather all the costs associated with the transaction. Once all of these costs have been collected, they are also listed on the settlement statement.

If you are lucky, there still may be a few days left under the earnest money contract to close. Very often, however, too many things happen at once -- the earnest money contract comes in, the loan closing instructions, attorney fees, closing documents, etc. arrive and the realtor/attorneys/parties are calling asking the title company to hurry up and close. It is easier said than done when everything hits at once, especially when there is more than one file wanting to close.