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“LEGALESE” MADE EASY

CONSIDERATION: A legal term used in contracts that defines the value provided in the contract. It can be money, service, physical goods, or even the decision to not take legal action, can all be deemed consideration.

STATUTE OF FRAUDS: This is a State Law which defines what contracts MUST be in writing to be valid. For example the sale of real estate falls under the Statute of Frauds and any attempt to enforce a transfer of real estate requires a written contract or you can sue to enforce the contract.

UNILATERAL CONTRACT: This type of contract requires someone to take action and perform the terms of requestor thereby accepting the contract terms. An example would be a REWARD. The person offering the reward announces they will pay some money for finding a lost kitten. If you find the lost kitten then the person making the offer owes you the money. There may be conditions to the offer such as the kitten being found alive, that the kitten is returned etc.

BUYING PROPERTY WITH A FORCLOSURE IN ITS TITLE HISTORY IS STILL RISKY BUSINESS.



For many people in the mortgage and real estate industry 2010 was a landmark year. That was because of the ruling handed down in the case of *U.S. Bank v. Ibanez* that essentially invalidated many deeds that were acquired through the foreclosure process. Land court Judge Keith Long ruled that the assignment of mortgages had to be recorded prior to the foreclosure proceeding. In some cases, especially where large national lenders were involved, the assignment of the mortgage was not recorded until after the foreclosure occurred. The Massachusetts Supreme Judicial Court upheld Judge Long’s ruling thereby throwing a lot of deeds into question.

The question is what do you do if you have a bad title because of the bank’s bad foreclosure process?

A new case is pending before the Massachusetts Supreme Court that will impact how homeowners handle the bad titles. The critical legal question raised by the new case is whether the homeowner is even allowed to bring an action to clear title since he is not the legal title holder. It’s a true “catch-22.” The homeowner accepts what he believes is good title from the bank in a foreclosure purchase and then discovers

the deed is no good. Because he doesn’t have good title, he can’t get into court to try and clear the title. Hopefully the homeowner has an owners policy of title insurance to pay for legal costs. In the end it may be that the homeowner has to seek a legal claim against the bank for delivering bad title. All of this puts many large banks in a precarious situation having to potentially take back foreclosed property that was sold incorrectly or worse yet, leaving homeowners with property they can’t sell or refinance. All of this creates uncertainty in the home buying market. As such, buyers, sellers, realtors and lenders should all take a careful look and seek legal advise whenever there is a foreclosure in the title history.



CONTRACTS

Hardly a month goes by that someone doesn’t say to me, “We had a contract, but we never officially wrote it down. Now I’m out of luck.” It’s true that a contract that is in writing and signed by both parties is a great advantage to resolving a contract dispute, but the written document is only evidence of what the parties agreed to. (See sidebar on Statue of Frauds for exceptions) A contract under the legal definition must have (1) Offer; (2) Acceptance; and (3) Consideration. The contract occurs when the parties have agreed to the basic terms of their transaction and have a “meeting of the minds.” The problem isn’t in

(Continued on page 2)

(Continued from page 1)

...CONTRACTS

proving that the two parties had an agreement, it's determining the specific terms of the agreement, and therefore the damages that become problematic.

For example, a homeowner hires a landscaper to perform spring cleanup work on his yard for \$500. The landscaper finishes the work and then the homeowner doesn't pay, claiming all the work didn't get finished. Clearly there was a contract, since the landscaper performed the work on the homeowner's property. The problem is that since there is no written contract, there is disagreement about the term "cleanup" The landscaper thought it meant leaves and dead grass. The homeowner thought it meant cleaning the flower gardens, removing dead plants and taking away the old tire by the shed.

NO FREE LUNCH

Just because there is some debate about the scope of the work does not mean the homeowner gets to pay nothing, thereby holding the landscaper hostage for the full \$500. This will never sit well with a judge. Yes, you have a contract that's verbal, but it's unclear as to what each of you meant. The bottom line: GET IT IN WRITING, and make sure you understand all the terms of the agreement and what each person is obligated to do.



ALIMONY CHANGES

Alimony is four letter word to those who are ordered to pay it. For the spouse getting the payment it may be a financial necessity. For

lawyers advising clients on potential alimony awards it's a guessing game. The problem is largely because the law surrounding alimony has not kept up with the changing dynamics of today's society. This has left some people paying alimony forever, even into retirement and when an ex-spouse is cohabitating. The ALIMONY REFORM ACT of 2011 is set to address many of the problems with the current system.

Under the proposed new rules there will be multiple types of alimony awards that will differ in amount of money awarded and the duration of payment. For example, a "rehabilitative alimony" award would be appropriate where the dependent spouse simply needs a few years to get back on his or her feet through education or training and then re-enter the work force and become economically independent. Transitional Alimony would be used for marriages under five years where the dependent spouse also needs some income to transition to a new life but would be usually a lump sum or short duration payment.

Probably the most important aspect of the new legislation are guidelines on the timeframe that alimony would be paid. Under the proposal the duration of alimony would be based on the length of the marriage as follows:

* < 5 years	No more than 50% of the marriage length
* 5-10 years	No more than 60% of marriage length
* 10-15 years	No more than 70% of marriage length
* 15-20 years	No more than 80% of marriage length
* 20+years	indefinite

Until the new law goes into effect, lawyers and their clients will have to work through the myriad of factors that affect the calculation of an alimony award. If the two sides cannot reach agreement, then it usually means a trial and that means letting a judge determine who gets what. That may be too much uncertainty for most people.



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