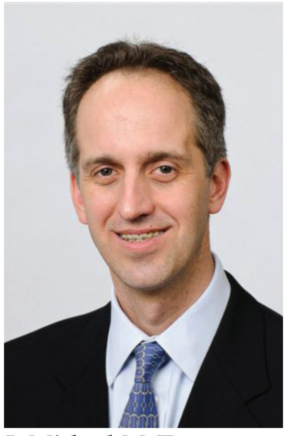
MY Place

Advertising Supplement to the Kenosha News

Buying Property AS-IS



J. Michael McTernan is a Kenosha real estate Attorney

By J. Michael McTernans

The increase in mortgage foreclosures that followed the recent economic downturn resulted in a corresponding increase in the sale of lender-owned real estate. Such homes are almost always sold "as-is", without the typical disclosures in a typical real estate condition report. Wisconsin law requires that owners of real estate provide a prospective purchasers with a real estate condition report. The mandated report is required to set forth all known conditions that would have a significant adverse effect on the value of the real estate being sold. However, the statute has a handful of exceptions, that allow real estate to be sold without such disclosures. Buyers are also free to waive the right to receive said real estate condition report. Predictably, homes that are sold without such a report are typically listed at prices that are lower than would be the case with such a disclosure report.

Lenders who obtain ownership by way of a mortgage foreclosure, or by receipt of the property in lieu of a foreclosure traditionally list the real estate for sale without making any such disclosures. As a result, prospective buyers may find a "bargain", but "buyer beware"!

The purpose of the law is to prevent fraud; to give the buyer the opportunity to make a better assessment of the value of the real estate in light of all the known defects. The law defines a "defect" as a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed, or replaced would adversely affect the use of the property.

With our without a real estate condition report from a seller, a buyer is well advised to retain an expert(s) to inspect all facets of the property, not only to determine the extent of any listed defects, but to discover any other defects that may not be known or disclosed by a seller. The real estate condition report is not a guaranty as to the condition of the property; it is simply a representation, that to the best of the seller's knowledge, the condition of the property is as listed on the disclosure.

Sometimes, prospective buyers enter into an offer to purchase for a property with a seller who is otherwise required to provide a real estate condition report but simply fails to do so. Unless the seller squarely fits into one of the exceptions, the law mandates that a real estate condition report be provided to a buyer no later than ten days after acceptance of a contract of sale or option contract.

If a condition report is not provided within ten days, a buyer may, within two business days after the end of the ten day period, rescind the contract by delivering a written notice of rescission to the owner or the owner's agent. However, if a buyer fails to rescind the contract, and proceeds to close, the buyer is deemed to have waived his or her right to receive the report.

Given the risks involved in real estate transactions, even experienced buyers and sellers should retain a real estate attorney to help navigate the law, and draft the appropriate contract to help reduce the risks involved.

Did you know?

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Primary mortgage insurance, or PMI, protects lenders in the event that borrowers default on their primary mortage by ceasing to make payments, resulting in homes ending up in foreclosure. But all borrowers do not have to pay PMI. Typically, home buyers must make a 20 percent down payment on a home when they buy it. However, some borrowers are unable to put down 20 percent. In such instances, the lender will require they pay PMI. This is because the lender views a borrower who cannot make an initial 20 percent down payment as a riskier investment, and lenders charge PMI in an effort to protect themselves should the borrower prove worthy of their skepticism. PMI will be factored into the monthly mortgage payment, but borrowers should know they do not have to continue paying PMI once they have paid enough toward the principal amount of the loan. For most, this means once they have paid 20 percent of the principal, then they can ask that the monthly PMI payment be removed. Many borrowers are unaware of this or even forget to ask, but it's within their rights as borrowers and can save a substantial amount of money over the course of the mortgage loan.

All things are relative- if you are trading (up or down) now is the best time to sell....

Jeff Stevens spent years as a licensed Realtor, investor in Commercial, Residential and Industrial Property and is a freelance writer

First of all, the numbers for September, regarding Kenosha's real estate market, have come out, via the WRA (Wisconsin Realtors' Association) and they are looking bullish. The median price in the area is up 13.1% and the sales volume is up 17.5%. I have been saying that "this is the time" for months and I believe many people are still sitting on the fence, based upon emotion and not logic.

Take a step back, take a deep breath and let's wax poetic a bit with the larger picture and a more general reasoning that should certainly leave you feeling more positive.

If you have retained the posture that "it is best to wait until more value returns to the market and my home goes up in value" let's just analyze this emotion and impose some reasoning that you might otherwise not consider in order to get a broader view.

If you are trading- whether it be up or down, it is likely that you are simply exchanging equity for equity- we will not delve into all of the elements related to the real value of money and how that will change whether we are idle or not- we will simply study the concept of trading up or down and how all things are relative...

First, ask yourself this- "Do I trust myself?" The assumption, herein, is that you are trustworthy with your own future and would not use known equity in your present home to trade into a property that suffers from locational obsolescence or some other obstacle to natural appreciation.

Let's say, for instance,you are in a large home, worth 250,000.00 and you want to trade down to something smaller, because you are approaching retirement- The smaller home you want to be in is in the 150,000.00 range... Let's further state that your cash out from selling the 250,000.00 home is 150,000.00- are you beginning to see the positive outcome of not waiting. Take a step further now... You have traded down and your equity position is still 150,000.00. The Kenosha area, based upon the aforementioned WRA report shows an increase in median sales price of of 13.1%- if that truly translates into a natural appreciation in the market, the 250,000.00 asset would hence increase in value by 32,750.00, while your 150,000.00 asset would increase in 19,650.00. On the debit side, if your mortgage is fixed on the 250,000.00 at 4%, then it is fair to say that hanging onto the larger asset could cost you more than the difference in natural appreciation- especially if one factors in the cost of utilities and maintenance.

The devil is always in the detail. Have your Realtor, or an accountant, help you study all aspects of waiting to sell or not selling- don't be hasty with your home as an asset. Be certain. Empower yourself with knowledge and don't try to "hang onto things"- make your home work for you and your future.