Protect Yourself When Selling Real Property

Suggestions for the Prospective Seller

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This brochure was prepared courtesy of the Georgia Association of REALTORS® to help sellers with the house selling process. The recommendations herein are general in nature and are not intended to be exhaustive. Some of the recommendations may not apply to specific properties. Sellers are encouraged to consult with experts and professionals of their own choosing to ensure that they are protected in selling a house.

Sellers should take reasonable steps to protect themselves in the house selling process. This brochure contains some general suggestions on how sellers can do this.

Broker's Compensation for Professional Services to Broker ("Compensation"). A broker's compensation in Georgia, and who pays it, is always negotiable. Such compensation can be paid by the seller, the buyer or both. Some buyers will ask the seller to pay the Compensation the buyer owes to the buyer's broker. They may do this for a couple of reasons. First, if the buyer is getting a VA loan, the buyer may not be permitted under the loan program to pay the buyer broker's Compensation. Others, particularly first-time home buyers, may not be able to afford to pay the buyer broker's Compensation if it is not included in the buyer's mortgage loan. When a buyer asks the seller to pay the Compensation owed by the buyer to the buyer's broker, the buyer is effectively making the Compensation part of the sales price for the property because most sellers will focus on their net proceeds after the broker's Compensation is paid. When the seller is not initially offering to pay the buyer's broker's Compensation, and the buyer wants the seller to pay this obligation, the buyer will usually include a special stipulation to that effect in their offer to purchase the property. If permitted by the buyer's lender, the buyer can also request the seller to make a monetary "Contribution at Closing" (as per the GAR Purchase and Sale Agreement) which can then be used by the buyer to pay for, among other things, any Compensation owed to the buyer's broker.

Be realistic in setting a sales price. All sellers want to get the highest possible sales price for their houses; however, if you set the sales price too high, your house may sit on the market unsold. One way to determine if the sales price reflects current market conditions is to study the listing and sales prices of other comparable houses in your neighborhood. Your REALTOR® can normally help you obtain this information. Setting a sales price for your house consistent with market conditions will help ensure that your house is sold within a realistic timeframe.

Property marketing and "Coming Soon". In any seller brokerage engagement agreement, the broker will disclose the various marketing options the broker offers. As part of any marketing effort, there are certain limits and obligations on the part of all parties, and at times there are things which may be out of the broker's control. Sellers are encouraged to carefully review the marketing options being made available and understand the rights and obligations each party has in any marketing effort.

Depending on MLS policies, a broker's individual business practice, and/or your readiness for bringing your home to market, your broker may list your property in "Coming Soon" status.

While in "Coming Soon" status, your broker may not be able to show your property to any potential buyers and may not allow other real estate brokers and agents to view the property.

Should an offer be received during the "Coming Soon" phase, your broker is required by Georgia law to present the offer to you. Sellers should be aware that their property has not been fully exposed to the marketplace and may want to consider a delay in accepting the offer until the property has been fully marketed via a MLS or until the broker makes the property available for all buyers to consider purchasing.

Understand your disclosure obligations. Sellers have a duty to disclose latent or hidden defects in their properties that are not readily apparent from a reasonable inspection of the property. In addition, if any dwelling on the property was constructed prior to 1978, the Seller must provide the Buyer with a written Lead-Based Paint Disclosure prior to the contract being signed. Your REALTOR® can provide you with a copy of this federally mandated disclosure. Disclosures should be in writing and whenever possible, incorporated into the purchase and sale contract to avoid any question regarding whether or not they were received. The Georgia Association of REALTORS® has prepared the form Seller's Property Disclosure Statement as an exhibit to the purchase and sale contract to help sellers make proper disclosure. In the event there are changes to the condition of your house, you are also required to update the Seller's Property Disclosure Statement through the date of closing. You cannot avoid disclosure obligations by selling a house in "as is" condition. Known hidden defects must be disclosed.

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Prepare the property for showing. To be viewed in its best light by prospective buyers, your house should be clean, clutter free, inviting and accessible. A REALTOR® can help make recommendations on how best to prepare your house. A major element of any marketing program to sell a house is motivating the real estate brokerage community to show your house to potential buyers. To maximize the likelihood of a sale, the house must be available for showing on short notice at the convenience of a prospective buyer. However, you should never allow your house to be shown to a buyer without the REALTOR® present. Prior to making the house available for showings, you should remove from the property fixtures that you plan to take with you. Since strangers will have access to the house, you should put prescription drugs, keys, checkbooks, jewelry, and other valuables in a safe place. For added safety, when you are in your house, keep the door locked. In this way, no one can inadvertently enter your house at an inopportune time. Your REALTOR® can provide a lockbox for your property which securely tracks who has accessed your property.

Have important information ready for buyers. Buyers are growing increasingly sophisticated in making house-buying decisions. They routinely ask sellers for information about the property to aid them in their decision-making process including surveys, a Seller's Property Disclosure Statement, termite reports and/ or termite bonds, information about utility costs and homeowner association fees and dues. To the extent you can have this information readily available for buyers, it will make the buyer's decision-making process easier and quicker and thus increase the likelihood of a sale. Being transparent in sharing information can also help create a positive impression that you have nothing to hide. Depending on the nature of your property, your REALTOR® can also help you identify other specialized information that buyers may request.

Remember that real estate sales contracts must be in writing to be enforceable. In Georgia, with limited exception, purchase and sale agreements must be in writing to be enforceable. Verbal offers and acceptances will not create an enforceable contract. You should also avoid trying to come to a verbal agreement with a buyer on the thought that it can be later reduced to writing. In many instances, the process of trying to reduce a verbal agreement to writing leads to disputes over the nature of the agreement between the parties. The best rule of thumb is that if a buyer is not willing to take the time to put an offer in writing, the buyer is either not interested in the house or does not think the offer will be accepted.

Read and keep a copy of contracts. A purchase and sale agreement is a legally binding contract. You should read it in its entirety before signing in order to ensure that it reflects the entire business agreement of the parties. Verbal promises not included in the contract are generally unenforceable. You should comply with all timeframes in a contract since missing a deadline can leave you in breach of contract. Get an early start on making agreed upon repairs to avoid missing time deadlines. You should also keep a complete copy of any contract you signed in the event a dispute arises regarding the authenticity of the contract.

A contract is not a guarantee. Just because a buyer has contracted to purchase a property does not necessarily mean that the contract will ultimately close. Many contracts contain a due diligence period during which the buyer can inspect and evaluate the property and terminate the contract without penalty. Other contracts are subject to contingencies that if not fulfilled will cause a contract to fail. If the buyer terminates the contract, either during the due diligence period or because of a failed contingency, the holder of the earnest money will normally return it to the buyer. On occasion, buyers also breach the contracts they sign. Unless you can afford to own two homes, you should avoid making a permanent commitment to buy a new house until after the closing of your existing house has occurred.

Be proactive with issues of concerns to buyers. Many houses contain some defect or condition that will cause a buyer to think twice about buying the house. Some houses are in flood plains or have basements or garages that leak. Many houses have termite damage or are in need of repair. Other houses have settlement damage or contain building products that may be dangerous or that have been the subject of litigation such as aluminum wiring, polybutylene in plumbing service lines, and certain kinds of siding. Being forthright in disclosing and/or fixing problems is the best way to get buyers comfortable that you are not hiding a serious problem with the house. Buyers tend to fear the unknown far more than the known. Knowing about a problem with a house may cause a buyer to factor in the cost of fixing it into their offer price. Fearing that the seller is hiding something will cause many buyers to terminate a contract during the due diligence period and look for another property.

Understand obligations to convey title to the property. Most contracts require the seller to convey good and marketable legal title to the property at closing free and clear of mortgages, liens, and title defects. Therefore, you should know how much money you will need to pay off mortgages and other liens on the property, fund any agreed upon seller contributions at closing and pay real estate compensation. If you anticipate having insufficient proceeds from the sale to meet your obligations, discuss that probability with your REALTOR® as soon as possible. In such an event, you may be eligible for a short sale or a federal mortgage loan modification program. If you know of a potential title problem with the property, you should also discuss it with your REALTOR®. The sooner professionals can address title problems, the easier it will be to close the sales transaction later.

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Comply with fair housing laws. In selling your house you cannot discriminate on the basis of race, color, religion, national origin, sex, disability, or familial status. In addition, REALTORS® cannot discriminate on the basis of sexual orientation or gender identity. Since REALTORS® have a commitment and obligation to provide equal housing opportunities to all and to comply with our state and federal fair housing laws, you should not ask the REALTOR® to do anything contrary to these laws. Violating our fair housing laws can result in significant financial penalties to the violator.

Have a plan for pets. Sellers should have a plan to keep visitors safe from pets and pets safe from visitors. Boarding pets or keeping them in locked crates during showings, prevent pets from escaping and visitors from becoming scared or injured. Sellers should leave a note in a conspicuous place explaining whether there are pets on the property, where they are located, the type and number of pets and any special warnings regarding the pets. Sellers should not assume that a gentle, loving pet will remain so in the presence of strangers. Sellers should also be aware that many buyers with allergies will not enter a house with a pet.

Capturing and sharing media. Buyers may take photos and capture video of a property to help them remember the specifics of that property. It is a convenient way for buyers to review the properties they are considering purchasing. In addition, they may share it with other decision-makers who are unable to attend the showing. There is also the possibility that an agent may be asked to take additional photos or capture a video walk-through of a property on behalf of a buyer. Sellers are advised that any visible personal property which may be in the property may be photographed or contained within a video and should take any precautions they deem necessary.

Beware of Cyber Fraud. Fraudulent emails attempting to get you to wire money to criminal computer hackers are increasingly common in real estate transactions. Under this scam, computer hackers fraudulently assume the online identity of the actual mortgage lender, closing attorney, and/or real estate broker with whom you are working in the real estate transaction. Posing as a legitimate company, they then direct you to wire money to them. In many cases, the fraudulent email is sent from what appears to be the authentic webpage of the legitimate company responsible for sending the wiring instructions.

You should use great caution in sending or receiving funds based solely on wiring instructions sent to you by email. Independently verifying the wiring instructions with someone from the company sending them is the best way to prevent fraud. In particular, you should treat as highly suspect any follow up emails you receive from a mortgage lender, closing attorney, and/or real estate broker directing you to wire funds to a revised account number. Never verify wiring instructions by calling a telephone number provided along with a second set of wiring instructions since you may end up receiving a fraudulent verification from the computer hackers trying to steal your money. Independently look up the telephone number of the company who is supposed to be sending you the wiring instructions to make sure you have the right one.

Choose a REALTOR®. Not all licensed real estate salespersons (or brokers) are REALTORS®. REALTORS® agree to abide by a Code of Ethics in their dealings with buyers and sellers. REALTORS® are members of the National Association of REALTORS® and participate in a local Board of REALTORS®. REALTORS® have valuable knowledge and industry training regarding how to negotiate various terms in a purchase and sale agreement in the best interest of the seller client. REALTORS® can also provide sellers with, and help them fill out, a pre-printed purchase and sale agreement form. REALTORS® routinely work with and, upon request, can provide sellers with the names of attorneys, home inspectors, termite companies and persons providing other services relating to real estate transactions. Therefore, when you need help in selling a property, you should always choose a REALTOR® first!

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