

Smoothly Closing the Transaction

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Introduction

- We will discuss the documents associated with the formal transfer of property.
- We start with the contract and end with the post-closing obligations.
- Real Estate Contract is executory contract
- Used to be by “livery of seisin”
- Started recording land records around 1400
- Why we use escrow agents to close transactions
- Key to success is preparation

Agenda

- Role of the Contract
- The Closing Checklist
- Document Preparation
- Deed
- Spousal Rights
- Legal Descriptions & Permitted Exceptions
- Corporate Documents
- Outside approving parties
- Power of Attorney
- Bill of Sale

It all starts with the Contract

- Hopefully you are engaged to draft the contract
- Let's compare: Standard Board of Realtors form v. the “long-form” ABA type contract.

4. PURCHASE PRICE: The purchase price is _____ DOLLARS (\$_____) which Buyer agrees to pay as follows: _____ DOLLARS (\$_____) at the signing of this contract as Earnest Money which is to be deposited UPON EXECUTION OF THIS CONTRACT in the insured trust or escrow account of _____ Title Insurance Company ("Escrow Agent") as part of the consideration of the sale; the balance to be paid in the following manner: _____ DOLLARS (\$_____), in guaranteed funds or cashier's check at Closing (as defined in this Contract), adjusted at Closing for prorations, closing costs and other agreed expenses, and [state other payment or financing terms] _____

5. CLOSING DATE: Subject to all the provisions of this Contract, the closing of this Contract (the "Closing") shall take place at the offices of _____ Title Insurance Company on the _____th day of _____, 2005 or prior thereto by mutual consent, and possession shall be delivered as follows: at closing

6. EXISTING FINANCING: Unless otherwise provided in this Contract, Seller shall make any payments required on existing mortgages or deeds of trust until Closing. If this Contract provides that the Property is being sold subject to any existing mortgage or deed of trust, Buyer shall, at Closing, reimburse Seller for any principal reductions not already considered in computing payments of purchase price and for any deposits held by the holder of the mortgage or deed of trust that are transferred to Buyer.

7. PRORATIONS: The rents, income and expenses from the Property, and the interest on any existing mortgages or deeds of trust to which this sale is made subject, shall be prorated between Seller and Buyer as of Closing. Seller shall pay all general real estate taxes levied and assessed against the Property, and all installments of special assessments for the years prior to the calendar year of Closing. All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be prorated between Seller and Buyer on the basis of such calendar year, as of Closing. If the amount of any tax or special assessment cannot be ascertained at Closing, proration shall be computed on the amount for the preceding year's tax or special assessment. Buyer shall assume and pay all such taxes and installments of special assessments accruing after the Closing.

8. TITLE INSURANCE: Seller shall deliver and pay for an owner's ALTA title insurance policy insuring marketable fee simple title in Buyer in the amount of the purchase price as of the time and date of recordation of Seller's General Warranty Deed, subject only to the Permitted Exceptions defined below. Seller shall, as soon as possible and not later than fifteen (15) days after the Effective Date of this Contract, cause to be furnished to Buyer a current commitment to issue the policy (the "Title Commitment"), issued through _____ (the "Title Company"). Buyer shall have fifteen (15) days after receipt of the Title Commitment (the "Review Period") in which to notify Seller in writing of any objections Buyer has to any matters shown or referred to in the Title Commitment. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall have until Closing to cure the objections. If Seller does not cure the objections by closing, this contract shall automatically be terminated unless Buyer waives the objections on or before Closing.

2.2 Apportionments. Charges for real and personal property (if any) taxes and installments of special assessments, water, electricity, sewer and other utilities, and all Office Lease payments or other revenues and operating expenses (including Assigned Service Contracts) payable to or by Seller with respect to its ownership of the Property will be apportioned as of midnight on the day immediately preceding the Closing Date. To the extent possible, the parties will arrange for utility meters to be read as closely as possible to such proration time. If the taxes and/or any installments of special assessments for the current year are not known on the Closing Date, the initial apportionment at Closing shall be based on the previous year's taxes or installments of special assessments with an equitable adjustment to be made between the parties within thirty (30) days after the actual amount of such taxes and/or installments of any special assessments are known. Seller will supply the Escrow Agent/Title Company with necessary information to assist it with calculation of such apportionments on the Closing Statements. Any errors in calculating such apportionments shall be equitably adjusted between the parties as soon as reasonably possible after discovery. The provisions of this Section 2.2 shall survive the Closing.

ARTICLE 5

ESCROW; CLOSING

5.1 Escrow Deposit Account. Within two (2) business days after the execution of this Agreement by both Purchaser and Seller, (i) the parties agree to open an escrow with the Escrow Agent for the purpose of completing the purchase and sale of the Property by delivering original executed counterparts of this Agreement for Escrow Agent's execution and return to both Purchaser and Seller, and (ii) Purchaser shall wire transfer the Deposit to Escrow Agent. The Escrow Agent shall execute counterparts of this Agreement and confirm the date on which escrow is opened. The applicable parts of this Agreement, together with the general form escrow provisions of Escrow Agent, if any, set out on Exhibit G attached hereto not inconsistent herewith shall be the escrow instructions for the Deposit and Escrow Agent's other undertakings hereunder. Escrow Agent may also from time-to-time request reasonable supplemental instructions which the parties agree to provide so long as they are consistent with this Agreement.

5.2 Closing Date; Place. Subject to and in accordance with the provisions of this Agreement, and provided all conditions set out herein to the closing of this transaction (the "**Closing**") shall have been satisfied or waived by the protected or benefited party (including those set forth in Articles 3 and 4 and this Article 5), the Closing shall occur at 10:00 a.m. on the date (the "**Closing Date**") which is fifteen (15) business days after expiration of the Inspection Period, at the offices of Escrow Agent at 1220 Washington Street, Suite 102, Kansas City, Missouri 64105, or at such other place or time as may be mutually agreed to in writing by the parties. Neither party need be physically present at the Closing if such party participates therein by the delivery of all funds and documents required from such party to the Escrow Agent for handling in accordance with this Agreement and appropriate closing instructions.

5.3 Conditions to Purchaser's Obligation to Close. In addition to the other requirements, contingencies and conditions elsewhere set forth in this Agreement, Purchaser's obligation to close this transaction is subject to and conditioned upon:

5.3.1 Receipt of Estoppel Letters. Seller shall use commercially reasonable efforts to furnish to Purchaser, prior to or simultaneously with the Closing, an Estoppel Letter Certificate in substantially the form of Exhibit H attached hereto or in such other form as may be provided for in an individual Office Lease (each, an "**Estoppel Letter Certificate**") from each of the Office Lease tenants for the Premises. In the event Seller, despite commercially reasonable efforts, is unable to obtain an Estoppel Letter Certificate from a tenant, Seller may certify to such information and in such case Seller shall be deemed to have warranted and represented the correctness of all the information supplied by Seller with respect to such tenant and Office Lease to Seller's actual knowledge. Said Estoppel Letter Certificates and any certifications in lieu thereof supplied by Seller must be reasonably satisfactory to Purchaser in that they must not disclose materially significant tenant defaults and/or materially significant pending claims by tenants against Seller as landlord with respect to the physical condition or operation of the Building.

5.3.2 Certain Actions by Seller. Seller shall have completed the following work or taken the indicated actions with respect to the Premises:

- (1) Remove all tangible personalty owned by Seller which is not being purchased by Purchaser hereunder; and
- (2) Provide all keys/codes/combinations for locks and access devices at the Premises in Seller's possession or under its control.

5.4 Parties' Obligations and Options Regarding Conditions. Each party agrees to use its reasonable best efforts to cause the conditions for which it is responsible to be satisfied hereunder. If Purchaser has performed its obligations hereunder and Seller, despite its reasonable best efforts, is unable to satisfy all conditions to the Closing for which Seller is responsible, or is unable to deliver title as specified herein, Purchaser, at Purchaser's sole option, shall either (i) waive such failure or default and, if applicable, accept such title as Seller can convey, and in either case without any reduction or abatement of the Purchase Price or (ii) exercise any applicable Purchaser remedies pursuant to Article 14.

5.5 Similar Seller Names. If a search of title or other records discloses judgments, bankruptcies or other returns against other persons or entities having names the same as, or similar to, that of Seller, Seller will deliver to Purchaser and the Title Company an affidavit that such judgments, bankruptcies or other returns are not against Seller and such affidavit shall otherwise be in such customary form and content reasonably satisfactory to Seller, sufficient to permit the Title Company to remove such judgments, bankruptcies or other returns as exceptions to title.

5.6 Discharge by Seller of Monetary Encumbrances. On the Closing Date, with respect to any Monetary Encumbrance which Seller is obligated to pay or discharge, Seller may use any portion of the Purchase Price to satisfy the same, provided:

5.6.1 Seller shall deliver, or cause to be delivered, to the Title Company, prior to the Closing Date, instruments in recordable form and sufficient to satisfy, release or discharge such Monetary Encumbrances of record, together with monies (if any shall be required in excess of the net sale proceeds to which Seller is otherwise entitled) sufficient for the cost of recording or filing said instruments; or

5.6.2 Seller shall deposit with the Title Company sufficient monies (if any shall be required in excess of the net sale proceeds to which Seller is otherwise entitled) acceptable to the Title Company to insure the obtaining and the recording of such instruments of satisfaction, release, discharge or reconveyance in accordance with payoff letters from the Seller's lenders, if any.

The existence of any such Monetary Encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements and the Title Company shall take no exception therefor or shall insure the Premises against such matters or shall insure against enforcement of any such Monetary Encumbrance against the Premises.

5.7 Seller Closing Deliveries. On or before the Closing Date, Seller shall execute, acknowledge and/or deliver or cause the execution, acknowledgment and/or delivery, as the case may be, to Escrow Agent, the following:

5.7.1 The Deed.

5.7.2 A bill of sale and general assignment in form (the "**Bill of Sale/Assignment**") reasonably satisfactory to Purchaser and Seller, providing for the assignment and transfer to Purchaser without warranty of all transferable personalty to be conveyed to Purchaser hereunder, including any transferable permits, licenses, and other governmental approvals with respect to the ownership, use and occupancy of the Property; provided, however, Seller shall furnish Purchaser with copies of any transferable warranties or guaranties for any part of the Property in Seller's possession or under its control.

5.7.3 The originals (if in Seller's possession or under its control, otherwise photocopies) of any permits, certificates of occupancy, zoning certificates, and other governmental permits and licenses in connection with the ownership, use, operation or maintenance of the Property ("**Permits**").

5.7.4 The originals of the Assigned Service Contracts and the Office Leases.

5.7.5 The Assignment and Assumption Agreement for the Assigned Service Contracts and Office Leases.

5.7.6 A Certificate executed by each tenant-in-common comprising Seller setting forth its address and federal tax identification number and certifying that it is a "United States Person" and that it is not a "foreign person" in accordance with and/or for the purpose of Section 1445 (as may be amended) of the Internal Revenue Code of 1986, and any regulations thereunder (the "**FIRPTA Certificates**").

5.7.7 A Closing Statement in standard form prepared by the Title Company in accordance with this Agreement and approved by Seller.

5.7.8 The Tenant Estoppel Certificates.

5.7.9 Such other documents as are required by the provisions of this Agreement or otherwise reasonably required by the Title Company in order to issue the Title Policy in accordance with this Agreement, including an affidavit for removal of standard printed exceptions relating to rights of parties in possession and mechanic's liens (but not survey exceptions), and pay-off letters from Seller's lenders, if any.

5.8 Condition of Property at Closing. As of the Closing Date, Seller shall deliver possession of the Property to Purchaser in the condition required by this Agreement.

5.9 Purchaser Closing Deliveries. On or before the Closing Date, Purchaser shall execute, acknowledge and/or deliver to Escrow Agent:

5.9.1 The balance of the Purchase Price, subject to prorations and apportionments as set out in Section 2.2, payable in accordance with the provisions of Section 2.1.

5.9.2 The Assignment and Assumption Agreement for the Assigned Service Contracts and Office Leases.

5.9.3 A Closing Statement in standard form prepared by the Title Company in accordance with this Agreement and approved by Purchaser.

5.9.4 Such other documents as are required by the provisions of this Agreement or otherwise reasonably required by the Title Company in order to issue the Title Policy in accordance with this Agreement.

5.10 Escrow Agent Closing Duties. On the Closing Date, Escrow Agent shall effect the Closing by:

5.10.1 Recording all documents as may be necessary to clear title in accordance with the requirements of this Agreement;

5.10.2 Recording the Deed;

5.10.3 Paying all closing costs and making all prorations in accordance with the terms of this Agreement and the Closing Statement(s) of adjustments and prorations prepared by the Escrow Agent/Title Company and approved by Purchaser and Seller and delivered to Escrow Agent on or prior to the Closing Date;

5.10.4 Delivering to Purchaser the Title Policy (or binding commitment to issue the same), Escrow Agent's certified Closing Statement, the Bill of Sale/ Assignment, the Assignment and Assumption Agreement executed by Seller, the Permits and FIRPTA Certificates; and

5.10.5 Delivering to Seller the Purchase Price, plus or minus closing adjustments and prorations, the Assignment and Assumption Agreement executed by Purchaser, and Escrow Agent's certified Closing Statement.

5.12**Party Responsible for Costs.**

5.12.1 Seller shall pay (a) the fees necessary to (i) release and record the satisfaction of all Monetary Encumbrances and (ii) all amounts necessary to discharge any other liens and other matters, if any, encumbering or affecting the Property which Seller may have elected to remove; (b) the fees and expenses of Seller's Counsel; (c) the conveyance, transfer and recording taxes and recording fees imposed by state, county and local authorities on the recordation of the Deed; (d) all costs and expenses for title insurance premiums and expenses for the cost of the Title Report and the Title Policy to be paid by Seller as provided in Section 3.1; (e) one-half of the Escrow Agent's/Title Company's closing fees and costs and (f) one-half of any sales taxes on any personalty conveyed to Purchaser by Seller hereunder.

5.12.2 Purchaser shall pay (a) the cost of any Engineering Study or Environmental Study prepared for Purchaser pursuant to Section 4.1 or 3.2 and all other inspections, tests, studies, reports, investigations and inquiries undertaken by or on behalf of Purchaser; (b) the fees and expenses of Purchaser's Counsel; (c) any title insurance endorsements to be paid for by Purchaser under Section 3.1; (d) one-half of the Escrow Agent's closing fee and costs; (e) the fees necessary to record the Deed (and any Purchaser financing documents); and (f) one-half of any sales taxes on any personalty conveyed to Purchaser by Seller hereunder.

ARTICLE 6**SELLER'S COVENANTS PENDING CLOSING****6.1**

From and after the end of the Inspection Period to and including the Closing Date:

6.1.1

Except as otherwise provided herein, and except for the purchase of materials, inventory and supplies in the ordinary course of business operations, Seller shall not execute any leases, contracts, licenses or other contracts or agreements affecting the Property beyond the Closing Date without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

6.1.2

Operate the Property only in the ordinary course of business and substantially in the same manner as it is being operated as of the date of this Agreement.

6.1.3

Maintain the Property in substantially the same manner as it is being maintained as of the date of this Agreement, normal wear and tear and casualty damage excepted.

6.1.4

Maintain its current liability insurance on the Premises.

ARTICLE 6
SELLER'S COVENANTS PENDING CLOSING

6.1 From and after the end of the Inspection Period to and including the Closing Date:

6.1.1 Except as otherwise provided herein, and except for the purchase of materials, inventory and supplies in the ordinary course of business operations, Seller shall not execute any leases, contracts, licenses or other contracts or agreements affecting the Property beyond the Closing Date without Purchaser's prior written consent, which consent shall not be unreasonably withheld.

6.1.2 Operate the Property only in the ordinary course of business and substantially in the same manner as it is being operated as of the date of this Agreement.

6.1.3 Maintain the Property in substantially the same manner as it is being maintained as of the date of this Agreement, normal wear and tear and casualty damage excepted.

Closing Checklist

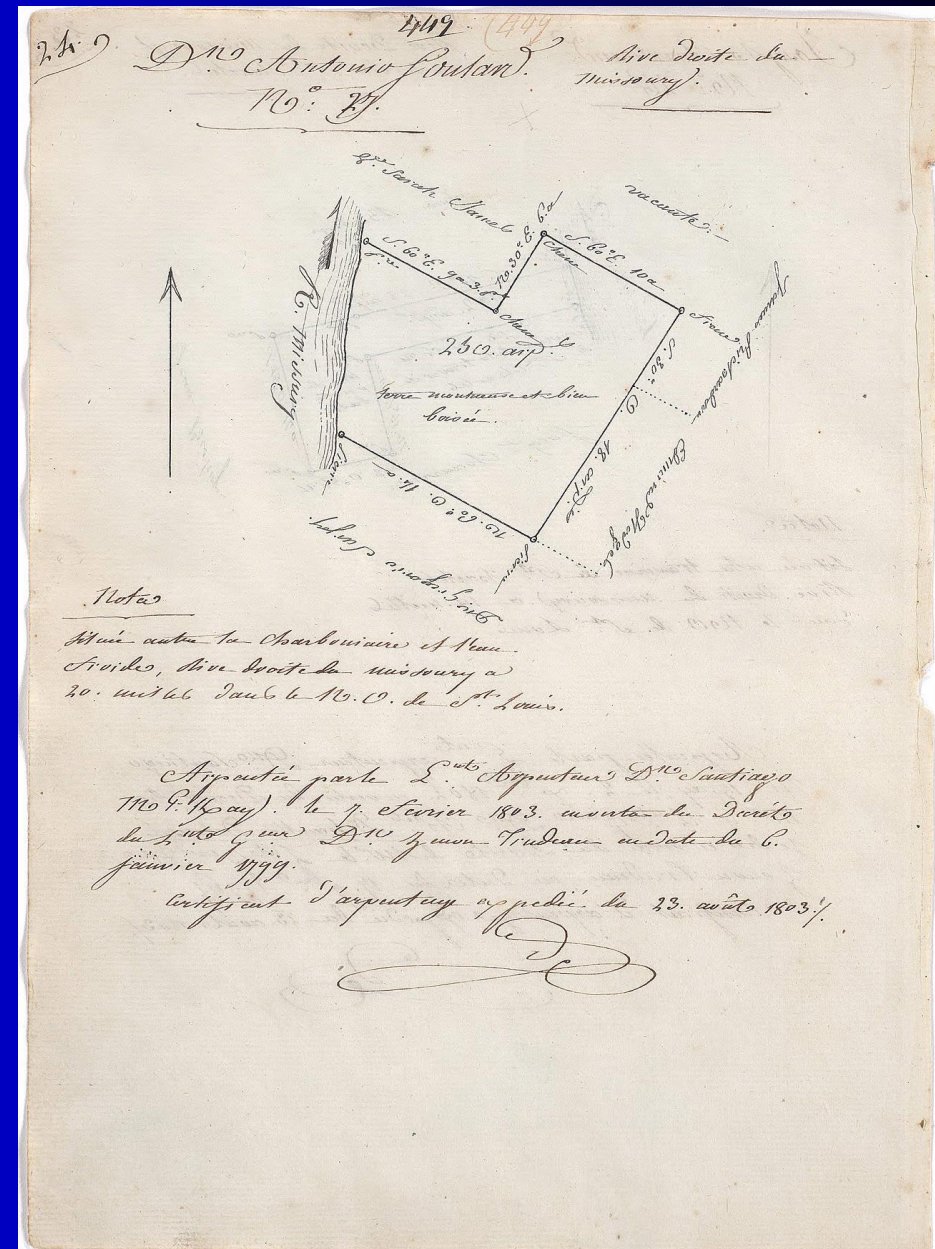
- Let's look at Appendix A (page 321 of materials)
- Read the contract and put each affirmative duty of your client on your checklist
- Put each affirmative duty of the other party on your checklist as something to verify
- Put all the documents to be delivered or received on the checklist
- External documents, such as certificates of good standing, tenant estoppels, SNDA's

Document Preparation

- Check your attestation clauses against statutes
 - ✓ K.S.A. Section 53-501
 - ✓ RSMo. Section 486.330
- Check for recordable format –
 - ✓ 1” margin; 3” at top—color subject to imaging
 - ✓ See Appendix B (page 327) for additional Missouri reqmts. What language?

What language?

Foreign languages ok
if accompanied by
sworn English
translation
442.140



Deeds

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Witness my hand and that this 9th day of March A.D. 1842 --

Delivered in presence of
 Lyman Merriam
 Lyman Merriam
 Madison Merriam

Wesley Arnold

Recorded March 17th A.D. 1842 Champaign Talbot D.S.C.

Notman W. Edwards
 To Beed
 Captain T. Legum & Lincoln

This Indenture Made and entered into this 10th day of March A.D. 1842 between Notman W. Edwards of the County of Sangamon and State of Illinois of the first part and Elizabeth P. Edwards his wife of the County of Sangamon and State of Illinois of the second part WHEREAS that the said parties of the first part for and in consideration of the sum of Four Hundred Dollars in hand paid by the said parties of the second part the receipt whereof is hereby acknowledged have granted bargained and sold and by these presents do grant bargain and sell unto the said parties of the second part their heirs and assigns a certain tract of Land situate lying and being in the County of Sangamon and State of Illinois known and designated as follows to wit the East half of the West half of Lot number six in Block number fourteen in the late Town Now City of Springfield Illinois

I have and to hold the foregoing Tract or parcel of Land together with all and singular the privileges and appurtenances thereto in anywise appertaining unto the said parties of the second part their heirs and assigns forever and the said parties of the first part for their heirs executors and administrators do Covenant to and with the said parties of the second part that they are lawfully seized have full right to convey and will forever warrant and defend the said Tract of Land from the Claim of them the said parties of the first part their heirs and assigns and against the Claim or Claims of any other Person whomsoever

In Testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year aforesaid

Signed Sealed and
 Delivered in presence of
 Thomas Moffett

Notman W. Edwards
 Elizabeth P. Edwards

State of Illinois - Before me the undersigned a Justice of the Peace in and for the County aforesaid

Lincoln Herndon Law Office



Deeds

- General Warranty
- Special Warranty
- Quitclaim
 - Kansas habendum clause “conveys and warrants” KSA 58-2203
 - Quitclaims—KSA 58-2204
 - Missouri Habendum clause: “grant, bargain, sell, convey and confirm”
 - Missouri Sp. Warranty – “sell and convey”
 - Missouri Quitclaim - sell and convey all his right title and interest
 - How to convert a general warranty deed to quitclaim

Spousal Rights

- Dower and courtesy are no longer recognized in Missouri and Kansas.
- Homestead statutes in both states require a spouse to join in conveyancing.
- Missouri
 - RSMo. §474.150; 513.475
 - Etheridge v. TierOne Bank (DOT invalid from just a husband) 226 SW3d 127 (Mo. 2007).
 - Interesting case of JAS Apartments v. Mohamed Naji, (354 S.W.3d 176 Mo. en banc 2011)
- Kansas
 - §23-201; KS. Const. Art. 15, §9

Spousal Rights Cont.

RSMo. 452.190 is fun. When any married person shall abandon his or her spouse, or from worthlessness, drunkenness or other cause fail to make sufficient provision for his or her support, the circuit court of the county where he or she has his or her home and residence may, on his or her petition, authorize him or her to sell and convey his or her real estate, or any part thereof, and also any personal estate which shall, at the time, have come to such person by reason of the marriage, and which may remain within the state undisposed of by him.

Permitted Exceptions

Existing Mortgages being assumed

Ground leases

Subdivision covenants and conditions

Reciprocal easements

Utility easements

Rights to parties in possession

Corporate Documents, and Powers of Attorney

- Each party needs to confirm that the other party lawfully exists and is authorized to do business
- Need a resolution authorizing the transaction and naming the person authorized to sign
- incumbency certificate lists the authorized signatories, states their titles within the organization, and contains specimen signatures
- Good standing certificates show that the business is in good standing in its state and the state where it is doing business
- Partnership documents need a signature of each partner

Corporate Documents, and Powers of Attorney, Cont.

- Outside parties may have to give their consent
 - Senior lenders
 - Ground lessors
 - Bankruptcy trustees
 - Tenants
 - Franchisor's
 - Parties to a development or subdivision agreement
- Power of Attorney
 - Needs to be done well in advance
 - Must conform to state law requirements so that it can be recorded with the conveyancing documents

Bill of Sale

- Same idea as the deed, but for personal property
- Usually contains a list of property
 - You may need a title as well
 - Cars and motor homes
 - State law may attach warranties
 - Make sure personal property taxes is paid
 - Be alert to sales taxes that may apply
- Lender will want a lien on all personal property
 - Lender will want a security agreement
 - Lender will want a UCC-1
 - Remember to perfect in the jurisdiction where borrower is organized-not property situs

Title Insurance

- Check schedule A-1 to make sure your client is listed properly, the estate is listed properly, and the land is properly described. Check the amount of insurance.
- Schedule B-2 exception items should have been worked out by now; otherwise you may not close
- ideally, the parties have attached a list of permitted exceptions or there is a letter between the parties agreeing to what is or is not permitted.
- Mechanics liens need to be paid off or bonded over
- Mortgages need a deed of release or a payoff letter to the title company
- Unless you are in a state where there is electronic recording, counsel for the buyer and the lender should ask removal of the “gap” exception.

Insured Closing Protection Letter

- Asked for and insured protection closing letter when you open up the escrow relationship.
- Title offices are often run by agents rather than the title insurance company itself; what you want is for the person actually conducting the closing to be backed up by large underwriting title insurance company.
- This is especially important for section 1031 transactions.

Payoff letters and satisfaction of existing encumbrances

- Add a clause to your contracts that say that a seller has the option of paying off the existing monetary encumbrances from the proceeds of sale. See section 5.6 at page 280 of the materials.
- Payoff letter usually has a balance and a per diem “odd-day interest” rate.
- Lender has statutory duty to execute release in Missouri. RSMo 443.130; in Kansas the closing agent can sign the release KSA 58-2309.

Opinions of Counsel

- At least look at the ABA/ACREL “Inclusive Real Estate Secured Transaction Opinion.”
- Get started more than two days before closing.
- Watch out for RSMo Section 431.030 re shortening the statute of limitations.

Method of Payment

- Contract to detail the type of payment.
- If owner financing is provided, prepare note and deed of trust/mortgage in advance.
- Contract should provide for either a certified check or wire transfer.
 - Prepare written wire transfer instructions and fax them to the bank's wire room in advance.
 - Or arrange for a certified check in the correct amount
- A Missouri statute requires real estate settlement agents to obtain good funds before they disperse. RSMo 381.412
- Review the note and deed of trust. Prior to signing to make sure there are no overlooked yield maintenance clauses.

Insurance Coverage

- Check with your insurance agent in advance.
- Both the lender and the client will want casualty insurance
- Make sure there are no significant exclusions (mold).

Tenant Documents

- Multi-tenant properties – buyer usually get tenant estoppel forms
 - Verifies the rent, rental deposits, and states there is no prepaid rent.
 - Excellent way to smoke out latent tenant disputes and “difficult” tenants.[Materials at p. 336]
- How to handle the tenant who declines to sign – substitute tenant estoppel. [See materials at p.339]
- Lenders usually like to get an SNDA (subordination, non-disturbance and attornment) [Appendix F p.342]

Employment agreements and service contracts

- Employment agreements.
- Service contracts.
- Franchise agreements.
- Licenses.
- Liquor licenses.
- Development agreements with local governments (may need approval of the parties involved)

Utility readings

- Check in advance to arrange a meter reading
- Make sure buyer follows up

Calculating closing apportionments and adjustments

- Property taxes.
- Ground rent.
- Property owners Association dues.
- Interest on any mortgage that will survive closing.
- Incoming rent from tenants—don't become a fiduciary as buyer.
- After one of the parties has made its calculations, it is helpful for the other parties to review the calculations to make sure that they agree.
- Buyer should receive a credit for tenant deposits.
- Buyer should cross check the amount of the credit against the tenant estoppel forms.
- Know the effect of tax assessments upon the closing proration.

Notices

- Usually, a commercial closing means someone has to send official notice someone else.
- In Missouri, a new owner who is a successor landlord is not entitled to recover rent, unless he or she has first sent “adequate and timely notice” to the tenant and attaches a copy of the deed. RSMO 535.081 (affidavit in first class counties is okay).
- Make sure that the notice is sent in accordance with the provisions for notice set forth in the lease.
- Make sure that this is on the closing checklist.

The Walk-through

- Buyer's attorney should consider putting a clause in the contract which allows for reinspection rights or a walk-through.
 - Done within 48 hours of closing.
 - Confirm that there are no material adverse changes since the conclusion of the inspection period.
 - If there are remaining punch list items, you can either take credit at closing or escrow funds for repair.

See Appendix H for a form of post-closing agreement p 349

The Settlement Statement

- Provides an accounting on one page
 - Should contain all of the credits and offsets rather than passing back and forth numerous checks for various minor closing adjustments.
 - Some parties may want certain costs left off the settlement sheet.
 - Legal fees.
 - Due diligence costs.
- Some parties may want to use the HUD-1.
- Things to watch out for.
 - Tax service fees.
 - Interest rate calculation 360 versus 365 day calculation.
 - Section 1031 closings should acknowledge the qualified intermediary
 - Actual rent versus scheduled rent.
 - Overdue rent and the fiduciary trap.
 - Inventory of product, fuel oil or propane.
 - Watch out for rebates, that deceive lender.

Closing



Running the closing

- Transfer of the deed displaces the old “livery of seisin” and consummates the executory contract.
- Provides an opportunity for all of the closing conditions to be met simultaneously

“table” or “New York-style” closing

- All the parties sit around a table simultaneously
- Title company and the attorneys markup the title commitment.
- The deal funds prior to recordation
- Parties usually get “gap” Coverage



Escrow closing

- Technology now militates in favor of an escrow closing in New York and elsewhere.
 - Usually a title company.
 - Parties are not present simultaneously.
 - Many of the ancillary documents are delivered by e-mail.
 - Usually, the lawyers write a letter of escrow instructions
 - title company can use the instruction letter as a performance checklist
- Today, with electronic filing, there is little need for gap coverage because there is no time delay.
- If everybody has exchanged and approved all the documents including the attorney escrow instruction letters, the closing should come off smoothly and without a hitch.

Title insurance

- One of the conditions of closing for the buyer should be an irrevocable title commitment.
- The original of policy. Seldom is delivered at the closing; it typically comes some weeks later.
- Make sure your post closing checklist has a reminder to get the original policy.
- Be sure to confirm that the original policy contains all of the necessary endorsements.
- Make sure any exceptions for an open mortgage has been deleted.

Execution and acknowledgment of documents

- Use a little document checklist:
 - Make sure all exhibits are attached.
 - Blanks filled in
 - Documents are all dated with correct attestation clauses
 - Label exhibits with a parenthetical
- Make sure the documents comply with local recordation requirements
- Make sure the attestation clauses comply with the law of the state where the property is being transferred (Ks and Mo take each other's notarial forms. KSA 58-2228 and RSMo 442.150).
 - See Stewart Title: www.vuunderwriter.com and First American ulj.firsam.com/ul/ulstart.do

Copies

- Make sure there is only one copy of the original note
- In some jurisdictions, other than Kansas or Missouri, you need to save the original of the deed of trust before the public trustee will release the deed of trust on the land records.

Delivery and distribution of funds

- The best way to transfer funds is by wire.
 - This obviates in need to wait for a check to clear.
 - Disadvantage most banks stop sending wires at 3 p.m.-- need to get wires going early in the morning especially for double wires.
- The amounts should follow those set forth on the settlement statement.
- Send a written memo to the wire room of the bank involved.

Post-closing matters

- Attorneys should follow to make sure the documents were properly recorded and in the proper order.
- Attorneys need to follow up and make sure they get back the originals from the recorder of deeds office.
- Lawyers will also want to make sure that all of the non-recorded documents are distributed to the proper parties.
- Take custody of the original note and put them in a safe location.
- The buyer and seller should each leave the closing with a copy of every single document that has been delivered and executed.

Organizing the file

- One of the attorneys should take responsibility for organizing a closing binder, at least for larger transactions.
- The lawyer may want to prepare a brief executive summary of the transaction, especially if it was a complicated one.
- The closing binder should note the book and page of each recorded document.
- Copies of the closing binder should be retained by the attorney, a client, and any other interested parties. For a specimen table of contents, see appendix J on page 364.

You are now ready for the next
deal!!

Summary

- Here is what we covered in today's lecture:
 - Be Prepared
 - Be Prepared
 - Be Prepared