



ACRE OF BEAVER COUNTY

A Real Estate Education Community

LEGAL REVIEW OF TOPICS SURROUNDING AGREEMENTS OF SALE TO BE THE MAIN TOPIC FOR JUNE



A lot of national experts and many other local investors are talking about using assignable agreements of sale to control properties, and collecting assignment fees to transfer the agreements to buy to other investors. Others do the same thing with options to buy property, assigning the options to other investors. Our own ACRE board member attorney Brad Dornish has also talked to us about straw party agreements, conditional releases of agreements of sale as an alternative to assignments, and about doing complete "A to B to C"

closings, where the investor in the middle actually closes on the property, and then transfers it to the end buyer in a separate closing.

Altogether, that makes five different procedures to move property from its owner to a buyer, while the real estate investor in the middle makes money on the transaction. How do we understand the differences between these procedures, which are legal when, and which legal procedures work best in which circumstances? Come to the ACRE Beaver meeting on June 24 at 7pm, and get advice on these topics. Our main speaker will be Brad Dornish, Pittsburgh based and Beaver County resident real estate attorney, title agent, real estate instructor, real estate investor and Chairman of the Pennsylvania Residential Owners' Association.

Bring your tablets, electronic or paper, and be prepared to take lots of notes for a highly educational evening. You can get ready for this discussion by reading the article in this newsletter on investor vs. agent status. Come to The Venue early by 6:30 pm Tuesday, June 24 so you don't miss any of the meeting.

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WHY CHOOSE ACRE of Beaver County:

- **Network** with local investors
- **Attend presentations** by local leaders and experts on industry related topics
- **Meet local contractors and professionals** who are eager to work with investors
- **Get updates** on state and national issues from PROA and National REIA

UPCOMING EVENTS

The World Famous Rehabbers House Tour, Saturday, July 26, 2014, 8:30 AM-1:00 PM
Meet at McDonalds on Rt. 65, 300 Ohio River Boulevard, Baden, PA 15005

Thinking about doing a "fixer-upper?" Or want to do one with greater profit? Join the tour of several houses in Beaver County and learn to determine the value of a property in order to make an intelligent investment decision. Space is limited. ACRE Members \$69

* For more information, contact Debbie Dornish at 724-869-0129 or email info@acrebeaver.com

REAL ESTATE AGENT OR REAL ESTATE INVESTOR?

By Bradley S. Dornish, Esq.

The old adage “If it walks like a duck and it quacks like a duck, it’s a duck” might as well be the title of this article, since most of what I am about to tell you is aptly covered by that adage. Real estate investors are often told by experts and gurus that they can engage in activities, or build whole businesses around conduct which, at least in Pennsylvania, is within the description of the practice of real estate, and requires a real estate agent’s license and affiliation of the agent with a real estate broker.

National speakers do not know this law, and do not recognize that its violation in Pennsylvania is criminal, subject not only to substantial fines for each and every errant transaction, but even to prison time for violations of the law, regardless of whether the expert told you what to do or you did it on your own, without criminal intent, in blissful ignorance. I could make more money as a lawyer if I let you proceed in blissful ignorance, violating the law and incurring the risk of big fines and penalties for your actions, and then tried to defend you later, negotiating with the Attorney General’s office to reduce the large fines and avoid the jail time. But I make a good living as an investor, and have a busy law firm already, without more of these cases.

I do have cases for several investors right now, fighting against investigations and actions brought by the Real Estate Commission and the Attorney General’s Office alleging the unlicensed practice of real estate and illegal contracts with consumers, causing the Consumer Protection Bureau to seek money back from the



investors for those consumers. I want to give you the information to keep you from becoming another one of those investigations, so you can make money, and I can make money drafting contracts, doing closings, fighting to lower real estate taxes and forming entities instead of defending suits against you.

Now that I have your attention, the burning question is “what activities can bring these investigations and actions down on me, and what can I do to avoid these problems?” First, if you have been told to consult with buyers or sellers of real estate to bring them together, and to collect a consulting fee on the HUD-1 for the sale, or even off the HUD-1, don’t do that ever. I recently reviewed a form of consulting agreement given to its franchisees by a national real estate investing franchisor, which puts up billboards all over Pennsylvania, looking for cheap houses to buy. The form document used in hundreds of transactions for over a decade absolutely positively violates the Pennsylvania Real Estate Licensing and Registration Act, which I will hereafter refer to as RELRA. The

franchisee can’t sue in PA courts to collect fees under that agreement, and faces fines and jail time for each time they used the contract if investigated and prosecuted.

Consulting with real estate buyers and sellers to find buyers for properties, or properties for sellers, and negotiating the terms of the agreements between them is either the practice of real estate, requiring a real estate license, requiring all fees to be collected through a licensed real estate broker, 63 P.S. Section 455.201, or it is the practice of law, requiring a law degree and passing the bar exam.

Even licensed real estate agents can’t just charge a direct consulting fee payable to themselves personally for services bringing buyers and sellers together, without running the transaction and fees through their broker’s company, and sharing the fees with the broker. You would think this is obvious, but I now see one of these transactions every few months and have to tell the buyers and agents involved that the agents can lose their licenses and even face criminal charges for that conduct. 63 P.S. Sections 455.301 and 303.

What about tying up a group of different properties by signing agreements of sale or options to buy them? If an investor does that as part of a plan to buy a significant number of the properties under contract or option, actually buys many of the properties on which agreements or options were obtained, and then has left over (Cnt’d. on page 3)

REAL ESTATE AGENT OR REAL ESTATE INVESTOR? (CNT'D)

properties the investor can't use him or herself, that activity to dispose of the leftover properties is very defensible as part of an investing business.

However, if the actual business is to market all of the properties under agreement as available for sale to third parties, and the investor intends not to buy the properties, but to assign the contracts or options to others and collect a fee or commission on the sale of the properties to the end buyer, the business walks and quacks like a real estate brokerage, not a real estate investment business. The investor is really practicing real estate without a license, and is liable to being prosecuted for that activity.

Finally, keep in mind that the practice of real estate in Pennsylvania includes not only activity assisting others in buying and selling properties, but activity in helping landlords to manage and rent, and tenants to find and rent real estate as well. Many national real estate investing gurus have come to Western PA and marketed turnkey programs to their out of state buyers to buy properties here. They have indicated that they can find, negotiate for purchase, help to close, plan for and complete renovations, and then rent and manage the properties for the out of town investors. Not only are the finding and negotiating agreements on those properties the practice of real estate, as indicated above, but the management and rental activities also violate the PA RELRA. 63 P.S. Section 455.201 (3).

Now that you know what you

cannot do as a Pennsylvania real estate investor without violating RELRA, I'm sure many of you are wondering what you can do as a real estate investor in Pennsylvania without a real estate license. First, you can always buy property and resell it. However, remember that PA has a wet funds rule for closing, which means you can't do an "A to B to C" transaction with you in the middle as B, if you don't have the money or credit available to buy from A before you get the money from C.

Unless the seller of the property you are buying has restrictions on time or amounts for resale in their deed, as Fannie Mae does, or in their contract, as many REO companies do, you can even do both closings one right after another. Even the title company for which I am an agent allows me to close these transactions back to back, as long as both closings are separately covered by title insurance. No matter how many times you buy and resell properties, you are not acting as a real estate agent, since agents never do that. You don't have to tell the seller of the property you are buying that you plan to resell the property for a profit, but if you are trying to sell a property you have an option or a contract to buy, you have to tell the buyer that you control but don't yet own the property you are selling. To do otherwise is a blatant misrepresentation of what you have and what you can sell. The right forms can really help you to do this. It is not yet illegal in Pennsylvania to assign a contract or an option which is assignable, or to take a fee based on the value of the assignment in an incidental transaction. However, if you try to

make a business out of doing this over and over again, the original options or contracts misrepresent your intent to the sellers, and if the sellers are consumers, the Attorney General's Consumer Protection Bureau will be interested in that misrepresentation. The Real Estate Commission will also be interested in your business. The PA Department of Revenue is also interested in the assignment, since the assignment is considered a separate transaction in real estate, subject to a second set of transfer taxes.

If you are not making a lot of money on the transaction, so you don't want to pay for a second title insurance policy and closing, deed and recording, you can still differentiate your transaction from a real estate agent earning a commission from a seller for bringing a buyer, by charging a release fee instead of a fee for assignment. Suppose you are buying a property for \$20,000 and selling for \$25,000. Doing a whole closing in an "A to B to C" transaction would cause you to put money into the property and pay costs eating into your profit.

However, you can go to the willing seller and tell them you will let them sell to your buyer for \$25,000, and will release the seller from selling to you for a \$4,000 release fee. The seller can make an extra \$1,000 or so, you, provided they agree to sell (Cnt'd. on page 4)

REAL ESTATE AGENT OR REAL ESTATE INVESTOR? (CNT'D)

to your buyer and pay you the fee. I make the release of the seller from the agreement of sale to you conditional on their selling to your buyer, so the buyer and seller are less likely to go around you. I send it to the closing agent for the transaction, so they are aware of the condition on the release, which then creates a cloud on the title only if that closing agent closes without paying you from closing.

If you are still focused on charging other investors consulting fees, you must have a written consulting agreement which clearly describes the activities on which you are consulting, and none of those services can be services which require a real estate license, a license to practice law, or any other professional licensure, registration, or certification, such as an appraisal, certain contractors' bids, or home inspection. Finding the right terms for a consulting agreement to dance between the various requirements of all such licensing and registration acts is a real minefield, and can easily lead to problems for the investor who does this. Just the term consulting fee on a HUD will invite investigation of the details of the agreement.

On the management side of real estate, you simply cannot manage property you don't own in Pennsylvania without being a REAL officer/employee of the owner. (Only five officers are exempt from being real estate agents). For many years, I have used the limited partnership/limited liability company general partner structure for my own rental

properties, and advised it to my clients. You can use the same structure having your LLC own at least a 1% general partnership interest in each limited partnership which your LLC manages. Managing as an owner does not violate RELRA, because owners are always allowed to manage their own properties.

Sometimes, if you are making money doing things which you later learn are against certain laws, and nobody has started an investigation or prosecution, you hesitate to quickly change your business practices and business model. You ask, how will anyone find me and my business, and start an investigation or prosecution? The simple answer is that real estate agents who have taken classes, passed tests, paid for continuing education, insurance and shared their commissions with their brokers resent you for taking away customers with whom they have spent time showing homes or making listing presentations. With good cause, they will turn you in for violating the laws which they know and follow.

Dissatisfied consumers who learn from your buyers or their former neighbors that you received more for selling their house than they did, buyers who learn they paid you more than you paid the seller, or family members who see the consulting fee to you on a HUD are also good candidates to make claims against you with the Bureau of Consumer Protection. The Real Estate Commission is actively looking for violators of RELRA to protect Pennsylvania owners from

unlicensed, uninsured real estate consultants.

Finally, real estate investors who don't get paid and try to sue to enforce illegal contracts learn that they can't sue in court when they try, 63 P.S. Section 302. Worse, they bring investigations and prosecutions on themselves by trying to collect.

My advice to all real estate investors is to learn the laws applicable to your business, and follow them. It is far better to make less money on your real estate investing in a legal business, than to make more money on an illegal business and lose that money and more to fines, penalties, attorneys' fees, and even risk jail time! ■

Want to read more articles on all things real estate? Looking for an article from a past issue? You can find this issue's article and much more at www.dornish.net/blog.

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- We represent buyers, sellers, landlords, tenants, lenders, borrowers, contractors and subcontractors in real estate and construction matters during purchase and sale, financing, leasing, construction and development of residential and commercial real estate.
- We form entities for businesses including corporations, non-profits, limited liability companies, limited partnerships and business trusts.
- We go to court for business and real estate related suits including collections, seller disclosures, evictions and foreclosures, petitions, mechanics' liens and contractor disputes.
- We provide estate planning including wills, powers of attorney, health care declarations and trusts, and probate estates when a loved one passes.
- We represent property owners in real estate tax appeals on hourly flat fee or contingent fee plans.

ATTORNEYS:
 Bradley S. Dornish
 Charles C. Bell
 Jack P. Bock
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 Amber Resetar

DON'T GO TO COURT ALONE

Our lawyers have combined experience of over seventy years in litigation. We are not just civil litigators, though. We concentrate in real estate, business and construction litigation — handling the toughest evictions, collections, business and construction cases.

DON'T CLOSE ALONE

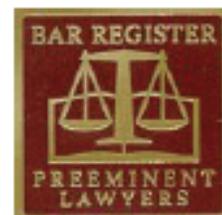
You are not required to have a lawyer handle your closing, but for real estate investors and others buying property in short sales, after foreclosure or from estates, it is a good idea. And with Dornish Settlement, you get the lawyers of Dornish Law Offices with no buyer settlement fee. So why wouldn't you use our experienced lawyers for your next closing?

SUPERIOR LEGAL AND CLOSING SERVICES

Our lawyers don't just practice business, real estate and construction law — they live it.

- Brad Dornish is a landlord and teaches real estate law to brokers and agents at the Realtors' Educational Institute, Investors at ACRE and lawyers through the PA Bar Institute.
- Chuck Bell has owned commercial real estate, has owned and operated a business and has served as a director and officer of non-profit and fraternal organizations.
- Jack Bock owns property in Pittsburgh's ShadySide neighborhood and has represented all sides in real estate transactions and litigation in State, Federal and Bankruptcy courts.
- Dave Tkacik is a Pennsylvania licensed real estate agent, landlord and property renovator.
- Amber Resetar has represented clients on both sides in litigation at the Magisterial District Justice, State and Federal levels.

Our firm holds the highest professional rating — the AV Peer Review rating by Martindale Hubbell and is listed in the Bar Register of Preeminent Lawyers.



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THE DEAL FOR VENDORS

One reason we run ABC is to connect local investors with local vendors who can help in real estate investing. Of course, I'm not just an investor, but a real estate lawyer, owner of a settlement company and publisher of real estate how-to books. That makes me a vendor too.

We offer two different levels for vendors (Premier and Value). Both levels get an advertisement in our newsletter sized according to level. All vendors get to come to the meetings, be introduced at the beginning of the meeting and network with the investors who are there. All vendors also get our monthly newsletter to keep up on speaker and event schedules and articles of interest to investors.

Premier vendors, for \$300 per year, get a half-page ad in each bi-monthly newsletter and an opportunity to speak at a meeting as a Vendor Speaker, the right to put materials on tables during meetings as available, and a chance to sponsor coffee and snacks at meetings and workshops.

Value vendors get a business card ad in the newsletter, for \$125 per year. ■

To learn more about becoming a vendor or member of ACRE of Beaver County, contact Brad or Deb Dornish at 724-869-0129 or info@acrebeaver.com.

THE DEAL FOR MEMBERS

The ACRE of Beaver County yearly membership fee is \$120.00. All members receive a monthly e-newsletter, attendance at all Beaver meetings and up to two meetings per year at ACRE of Pittsburgh, plus member discounts to all programs of ACRE of Beaver and ACRE of Pittsburgh.

Members of ACRE are also members of the Pennsylvania Residential Owners' Association (PROA) and members of the National Real Estate Investors' Association, with both of which ACRE is affiliated. Both the state and national groups have even more benefits for our members. ■



ACRE of BEAVER COUNTY

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MEETING SCHEDULE:

Meetings will be held from 6:30-9:30 pm, on the 4th Tuesday of every month.

2014 Dates: Jan 28, Feb 25, March 25, April 22, May 27, June 24, July 22, Aug 26, Sept 23, Oct 28

6:30 PM.....Vendor Setup and Networking

7:00 PM.....Meeting Commences;
Introduction of Vendors

7:20 PM.....Teaching Segment

7:40 PM.....Vendor Speaker

7:55 PM.....Properties for Sale

8:05 PM.....Main Speaker

9:05 PM.....Q&A

9:30 PM.....Meeting Adjourns

Remember to bring your properties for sale and ideas for future speakers!

Next Meeting:

**Tuesday, June 24, 2014
Harmony Ridge Golf Club
1280 Breitenstein Road
Ambridge, PA 15003**