Title Chat

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What if there is a previous purchase contract? Can we close?

When owners put their property up for sale, there is always the hope that it will sell and close quickly with no problems. Well, sometimes a contract is entered into with a potential purchaser and--for a variety of reasons--the sale does not close.

Many times a finger-pointing contest ensues.

Failure to close was the purchasers' fault because

Failure to close was the sellers' fault because

A question arises in these cases regarding who is entitled to the purchaser's deposits?

Also, what happens when someone else comes along and makes an offer to purchase the property? Can the property owner enter into a contract to sell to this new purchaser while the rights and liabilities of the parties to the first sales contract remain unresolved? Should the property owner tell the potential new purchaser of the first contract?

If the property owner discloses the existence of the first contract, the potential new purchaser may not want to purchase.

If the property owner does not make this disclosure, a new contract may be entered into but one of two things may then occur:

- 1. During the time period before closing, the new purchaser may be made aware of the first contract by the title commitment if the first purchaser recorded documents indicating the first purchase contract or the title company knew of the first contract. One would not expect a closing to occur with this disclosure absent some agreement between the seller and first purchaser resulting in the first purchaser giving up any right to the property. Without a resolution of the dispute, it would be difficult to close because title to the property is in question.
- 2. If the new purchaser closes without any knowledge of the first contract and thereafter the first purchaser seeks to enforce rights under the first contract, litigation will in all likelihood occur as would a claim under the new purchaser's title insurance policy.

Our next Chat will discuss what happens with the first purchaser's deposit.

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