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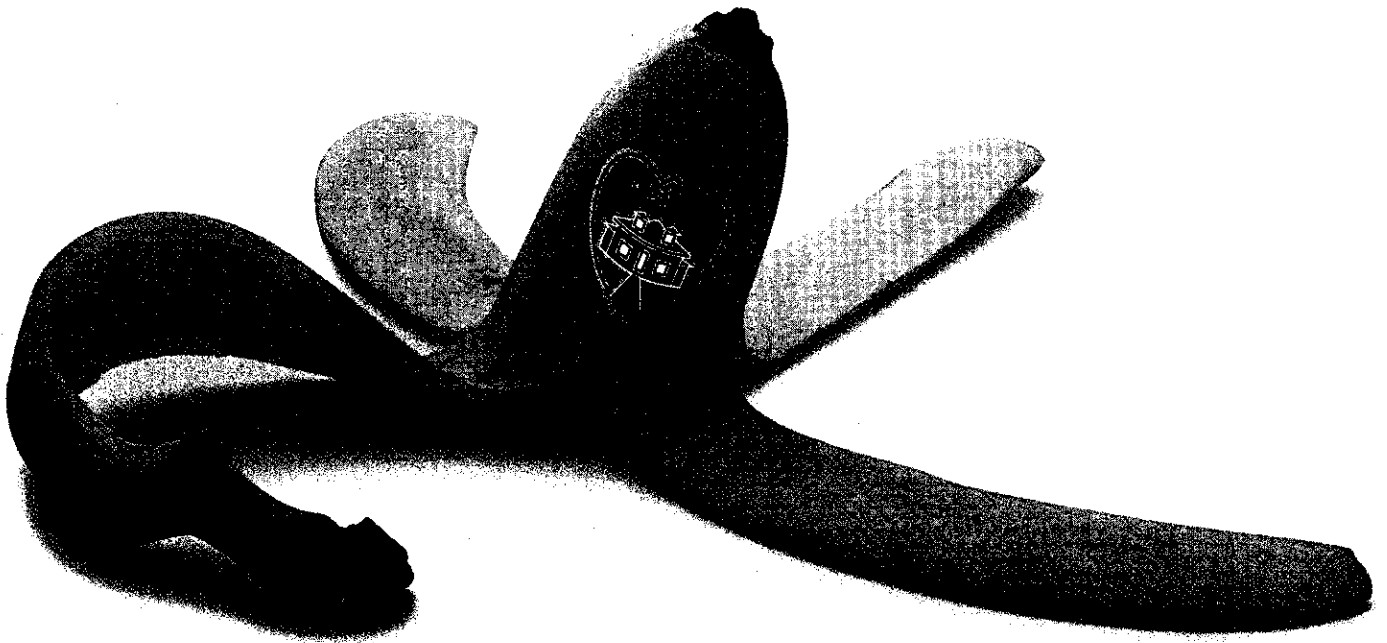


CALIFORNIA Real Estate

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RISK HAPPENS



* HOW TO HANDLE THE
17-DAY CONTINGENCY

* YOUR OFFICE CLOSED
... NOW WHAT?

* THE CASE OF THE
OPEN HOUSE AND THE
SMOLDERING CANDLE

The Case of the SMOLDERING CANDLE

[WHERE THERE'S FIRE...THERE'S MEDIATION | BY MARK LOETERMAN]

REALTORS® must be consummate negotiators, especially if they are going to survive the challenges of a tough real estate market. Disagreements between buyers and sellers arise even when REALTORS® have used the best risk management practices.

After all, parties come to the transaction with divergent interests and resources.

The case study that follows describes how a buyer and seller, with the help of a professional mediator, turned a fire and a contentious real estate dispute into a deal that left each side better off than going to court. How did they accomplish this?

It All Began with the Open House

The seller of a multimillion-dollar residence listed the property for sale with a broker who held the open house on a cold, gray winter afternoon. To create a warm and cozy feeling, the broker lit some elaborate candles the seller displayed around the living room and dining room, and started a fire in each of the two gas fireplaces. When the open house concluded, the broker turned off the fireplaces and snuffed out all the candles—or so she thought. One of the candles was not fully extinguished and was accidentally left burning on the living room coffee table.

Where There's Smoke . . .

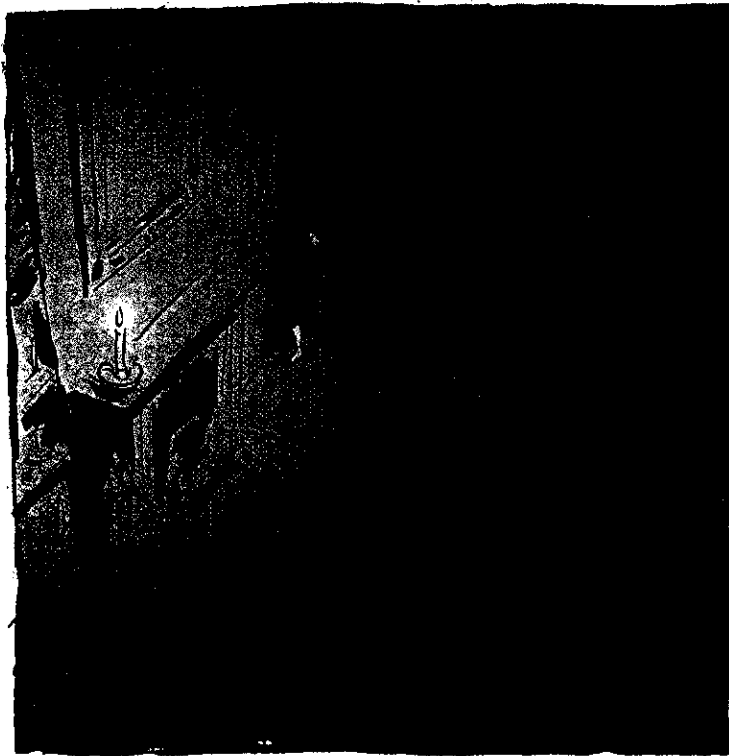
The sellers, who had been traveling at the time of the open house, returned home a couple of days later. Upon entering, they were greeted with a blast of intense heat and thick black smoke from a smoldering fire that had destroyed their furnishings and caused web-like cracks in the walls around windows and doors. The property was immediately taken off the market while repairs were made.

What? Nobody Told You About the Fire?

A few months later, the home was back on the market

and being shown again by the same broker. It sold to an unsuspecting buyer with no disclosure that a fire had occurred.

Shortly after the transaction closed escrow, the buyer noticed that cracks were starting to develop around the living room walls and doors. The buyer had no idea why this was happening, until a neighbor knocked on the door and asked to see the fire repairs made by the former owner! Understandably, the buyer was surprised and angry to learn



that the property had sustained fire damage, and sued both the seller and the listing broker for non-disclosure.

The Mediation

While the seller and their broker attempted to argue that no disclosure was necessary, they soon recognized that the case posed a serious risk of liability. A jury might reason that the fire should have been noted on the Transfer Disclosure Statement, even if the seller believed that its repairs were adequate. Both sides approached the mediation assuming that if settlement was feasible, it would involve some payment to the buyer based on the estimated cost of fixing any structural damage, and then patching and painting the walls.

First, an Argument That Goes Nowhere

Having framed the negotiation this way, the parties spent the first several hours at mediation having their respective experts justify their vastly different methodologies for the work and cost estimates. Predictably, neither side convinced the other of the correctness of its position. Resolution seemed elusive.

In private sessions, the mediator encouraged them to consider some other framework for settlement and, specifically, one that might take advantage of the parties' contrasting views.

Finally, a Breakthrough

The breakthrough in the negotiations came when the parties invented a new, more viable settlement option.

Believing that the property had appreciated substantially in value, and that the repairs were more likely cosmetic than structural and could be completed quickly, the seller offered to rescind the transaction and refund the buyer's purchase price. The plan was simple: Spend a relatively small amount fixing the damage and then resell the property. The listing broker agreed to handle the listing for a reduced commission.

Striking a Deal

From the buyer's perspective, this was an attractive proposal since it relieved them from the burdens of a construction project that they perceived to be complex, time-consuming, and very expensive. It also allowed the buyer to transfer the property without the kind of disclosure they feared might negatively affect the property's value and deter other purchasers.

After making some adjustments to the financial terms that compensated the buyer for a portion of the appreciation and reimbursed some transaction fees, a deal was struck.

Lessons

In this case study, the parties' negotiation could have easily been derailed. Impasse was avoided because the mediator helped the buyer and seller recognize trade-offs that would benefit each side.

The next time parties in a transaction experience some conflict and turn to you to solve the problem, keep this approach in mind:

Rather than driving parties further apart, understand that differing attitudes about resources, preferences, and valuations can be used to help form agreements.

Look for creative ways to use those differences instead of thinking of them as obstacles.

Asking the question "Why?" is the single, most powerful way to uncover information that can lead the parties to a satisfying resolution.

REALTORS® have to possess effective negotiation skills, not only to put deals together, but to help save transactions when issues arise. Though it may seem paradoxical, contrasting views need not stand in the way of success. ♦

Mark Loeterman is a professional mediator who specializes in real estate cases. His Web site, www.MLmediation.com, includes valuable information and resources for REALTORS® and their clients.