"The Top Ten Mistakes in Real Estate Transactions"

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1. **Failing to specify whether an easement is exclusive or non-exclusive and who will be responsible for maintenance and upkeep of the easement**

   Problem:
   At the time you drafted the easement, everyone knew exactly what the relationship was between the dominant and servient estates. However, years later and/or after successor parties are involved, there is a dispute involving the particulars of the easement.

   Solutions:
   Be proactive in your drafting of easements. Generally speaking, the more specific you are today, the less likely it is that there will be a dispute in later years. Be sure to identify whether the easement is exclusive or non-exclusive. Additionally, draft the easement with the scope clearly defined. The classic example of failing to identify the scope, are easements for access to a water's edge (i.e. ingress and egress only, recreation activities, parking, etc.). Spend the time now while everyone is on the same page.

2. **Failing to order title work prior to accepting a deed in lieu of forfeiture or foreclosure**

   Problem:
   You represent a mortgagee or vendor who has asked you to begin foreclosure or forfeiture proceedings. In an effort to save your client time and money you orchestrate a deed in lieu transaction. Several months after your client leaves your office happy you receive a call from him or her inquiring about "the $7,900 tax lien on my property."

   Solution:
   Always order title work prior to instituting foreclosure, forfeiture and even deed in lieu transactions. Most attorneys know to order title work prior to instituting foreclosure or forfeiture proceedings. However, some overlook this process when taking a deed in lieu. Remember that by accepting a deed in lieu, your client is taking title subject to existing encumbrances (tax liens, environmental liens, and any other encumbrances).

3. **Failing to have all interested parties sign a purchase agreement**

   Problem:
   You find out after a purchase agreement has been fully executed that your client/seller, a man, is married or divorced and you have a wife or former wife that owns the property or has a dower interest involved.

   Solution:
   Be proactive. What does your title commitment say? You can't simply rely on your client to tell you how he/she owns the home/property.

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4. **Adding "and other good and valuable consideration" in the description of the consideration in a conveyancing instrument**

Problem:
The deed you have prepared says "Grantor conveys Blackacre to Grantee for $1 and other good and valuable consideration." Your deed has now been returned unrecorded by the register of deeds.

Solution:
Avoid the use of this stock phrase altogether.

5. **Incorrectly assuming how a party or your client wants to take title to property**

Problem:
You make the assumption that your married clients want to receive title to their property at tenants by the entireties.

Solution:
This is an easy one. Verify up front how the deed should be prepared. While a subsequent transfer correcting the mistake could likely be made, why create a second step.

6. **Failing to follow the recording requirements of MCL 565.201**

Problem:
Take your pick: everything from multiple recordable events in one document, to no 2.5" margin, to containing text smaller than 10 point font.

Solution:
Remember, we're dealing with the 800 pound gorilla. Do you really want a fight with the register of deeds office? Familiarize yourself with MCL 565.201 to ensure that your documents are in recordable format.

7. **Failure to have a split approved under the Michigan Land Division Act**

Problem:
Your client is selling off a portion of a larger parcel. The conveyance qualifies as a split under the Land Division Act. Unfortunately, you fail to obtain approval for the split prior to closing the transaction. Now the assessor's office won't assign a new tax parcel i.d. number and your client is being billed for taxes on the whole parcel.

Solution:
If you're not sure whether your split is a "split," verify that fact with the municipality long before closing. In many regards, the split approval process is not a matter of "if" a split will be approved, but rather how long the process will take.

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8. **Failure to prepare/require authorizing resolutions and/or verify the status of a buyer/seller that is an entity**

Problem:
When representing a client involved in a transaction, you failed to verify the existence of an entity and/or require a resolution authorizing the entity to enter into the transaction. You are now faced with a situation where the entity either doesn't exist, has been dissolved, or no one has been authorized to sign or bind the entity.

Solutions:
Order a certificate of good standing from the D.L.E.G. Require a resolution setting forth all of the members/shareholders of the entity, specifically authorizing the transaction, and also appointing an individual to sign all of the documents. Additionally, you may want to ask for an opinion letter from opposing counsel attesting to the fact that the entity is validly existing and that its participation in the transaction will not violate any bylaws, laws, etc.

9. **Failing to take into account that taxes are prorated differently in different areas of the state**

Problem:
Your purchase agreement states that "taxes shall be prorated." You later learn that the other party to the transaction understood that they will be prorated according to what is usual and customary for their region, which as it turns out, is both different than what you anticipated and detrimental to your client's bottom line.

Solutions:
Your purchase agreement should state with specificity exactly how taxes will be prorated.

10. **Failing to verify ownership of real property when drafting a deed for a client, when you have not previously been a party to the transaction**

Problem:
You are contacted by a potential new client regarding the drafting of a "simple deed." You haven't been involved with the transaction up until that point. Your new client tells you who the grantor and grantee are. However, you fail to verify whether the grantor is the owner of record. Some time after the transaction you receive a call from the grantee who tells you that a title company has told them that their deed is not valid. As it turns out, your client, the grantor, wasn't actually the owner of record, or wasn't the only owner of record.

Solutions:
It's best to simply decline representation of a potential client if they insist on you only drafting the deed. Any deed that you prepare should include at a bare minimum a review of a title commitment, or where one doesn't exist, a review of the chain of title.

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Other issues to be mindful of:

-Failure to file for or rescind a homestead exemption

-Failing to record pertinent documents (e.g. memorandum of land contract, deed, etc.)

-Agents failing to fill in ALL of the blanks on a standardized Buy & Sell Agreement

-Failure to perform or provide for adequate due diligence prior to purchasing

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