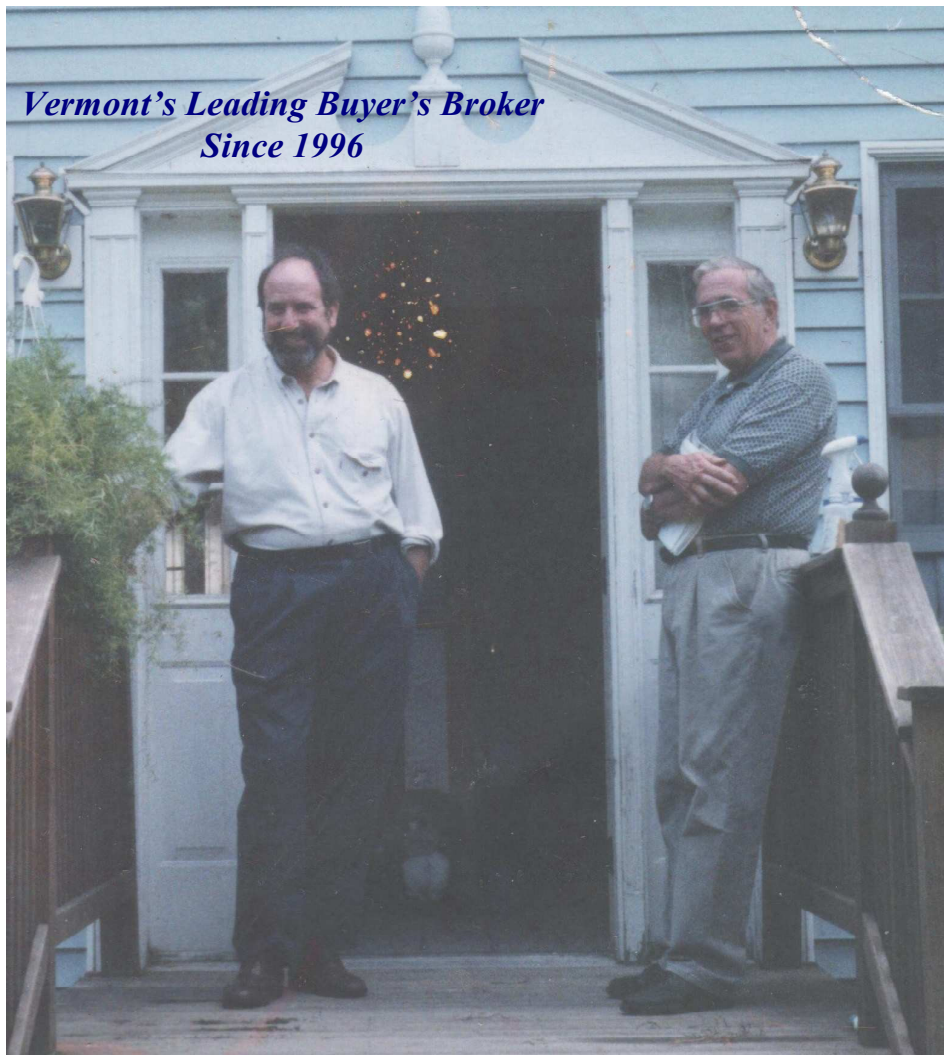


# Ten “Secrets” of Successful Homebuying



*Accurate Information  
Sound Decisions*



*Vermont's Leading Buyer's Broker  
Since 1996*

The buyer who chooses to be represented by an experienced broker with a history of positive, ongoing, collegial relationships has a tremendous advantage over the buyer who is merely a party to a one-time deal. Here, buyer's broker Steven K-Brooks talks with a seller's broker in Hinsdale, NH, on the porch of a home bought by folks represented by Steve.

## **Brattleboro Buyer Brokerage Real Estate**

(registered tradename of New England Buyer Brokerage Real Estate, Inc.)

**88 Canal Street (by appointment)  
Brattleboro, VT 05301  
(802) 254-7750  
[www.buyer-brokerage.com](http://www.buyer-brokerage.com)**

**By Steven K-Brooks - Realtor®, ABR®, CBR®**  
copyright 2007  
revised printing - 2009

### **Broker's Qualifications:**

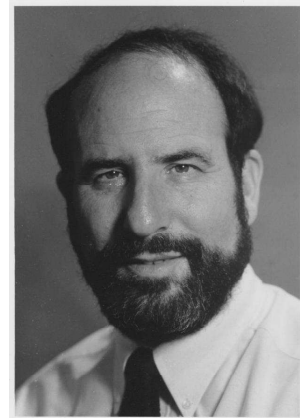
Steven K-Brooks is a licensed real estate broker in Vermont and in New Hampshire. On March 1, 1996 K-Brooks started the first real estate agency in Vermont to represent buyers exclusively. Prior to that he was an agent at Martocci & Henry Real Estate, where he earned an award as that agency's top buyer's representative. K-Brooks is a *Certified Buyer Representative® (CBR)* and an *Accredited Buyer's Representative (ABR®)*. He has served on various Realtor® committees and offices, including two consecutive terms as president of the Southeastern Vermont Board of Realtors® (SEVBR, now SVBR) . In 2006, K-Brooks was voted by his colleagues in SEVBR as *Realtor® of the Year*. He has been a member of the Vermont Association of Realtors® (VAR) Real Estate Commission Liaison Committee. As a member of a VAR panel, K-Brooks spoke about agency issues at the 2001 Real Estate Law Day (a symposium sponsored by the Vermont Bar Association). He is a former president and former 11 year member of the Brattleboro Area Affordable Housing Corporation (BAAHC). He is active in local civic life, and has served on the Town of Brattleboro's Bus Advisory Committee, and the Housing Commission. K-Brooks' expert opinion of market value for real property has been used in probate and litigation as evidence; by mortgage companies to determine the value of foreclosed properties; and by buyers needing reliable advice to compete in a challenging market.



*The Accredited Buyer Representative (ABR®) designation is the benchmark of excellence in buyer representation. This coveted designation is awarded to real estate practitioners by the Real Estate BUYER'S AGENT Council (REBAC) of the National Association of REALTORS® who meet the specified educational and practical experience criteria. Fewer than 5% of real estate licensees have this designation.*



*The First Nationally Recognized Buyer Representative designation, Sponsored by REALTOR® Boards & Associations Nationwide. Fewer than 1% of real estate licensees have this designation.*



**Steven K-Brooks,  
Owner, Principal Broker**

Brattleboro Buyer Brokerage  
Real Estate  
PO Box 1652  
Brattleboro, VT 05302

**(802) (254-7750)**

**First Exclusive Buyer's Agent in Vermont  
since 1996!**



***Complete MLS Computer, Property Searches.***

***Call Us For Print-Outs or Email Links On Properties Listed With Any Agency!***

***Website: <[www.buyer-brokerage.com](http://www.buyer-brokerage.com)>  
Email: <[vtbroker@buyer-brokerage.com](mailto:vtbroker@buyer-brokerage.com)>***

## *Introduction*

The material in this report may seem technical, and . . . well, somewhat tedious. It is the kind of thing Realtors® can talk about for hours, but bores their mates. Nonetheless, if you consider the personal disasters that can befall an unsuspecting individual in a real estate transaction, it may suddenly become a lot more exciting.

Potential disasters can range from not getting a home that you really want because of a negotiating error, to purchasing a home with serious, hidden defects. Relying solely on good will can jeopardize your deposit and cause sleepless nights.

Brattleboro Buyer Brokerage believes that buyers in today's real estate market want more than a smoothly polished sales-talk. The broker who says: *you're probably saying, "I just want to buy a house,"* does not understand today's, sophisticated buyers. The intention of this booklet is to provide sound information (particularly about the practical impact of agency relationships) for buyers who recognize the difference between self-serving manipulation, and an honest, "let-the-chips-fall-where-they-may" discussion of the relevant facts .

## *Mission Statement*

Since 1996 when Brattleboro Buyer Brokerage Real Estate became the first agency in Vermont to offer undivided loyalty to buyers, we have been the leader in exclusive buyer brokerage. Our primary responsibility is to represent our buyer-clients and serve their best interests.

Convinced that knowledge is power, we endeavor to provide our clients with all the information they need to make their own, best decisions. Whether providing information, making suggestions, or giving advice, we will always put our clients' best interest ahead of our own. As advocates for the consumer, we support all continuing efforts to professionalize real estate practice.

Disclaimer: This Report is meant to be educational and promotional: not as advice, legal or otherwise. Brattleboro Buyer Brokerage Real Estate has an obligation to be honest and fair to all parties, but is only required to serve the interests of our clients with whom we have a written agreement.

## PART I – AGENCY RELATIONSHIP

page 2

### **A Cautionary Tale**

When John and Cathleen bought their home in Townshend, the seller's agent lead them to believe that a deed restriction prohibiting development in the field across the road would protect their beautiful view.

Eleven days after their closing, the property with the field also closed; and as part of that deal, the development restriction was removed!

Not only were they shocked: They felt betrayed. The same person who had sold them their home -- knowing full well that they based their buying decision and the price they were willing to pay on the "guaranteed" view -- was also representing the seller of the adjoining land with the field. The same agent sold both properties.

The *existence of the deed restriction* was a major selling point to promote the sale of one property, *while removing the restriction* apparently was a major inducement in the sale of the other!

John and Cathleen were working with a subagent who co-broked with the seller's agent. Although they are not certain that the sub-agent intentionally mislead them, his fiduciary responsibility was to the seller. He was not the buyers' agent. His legal obligation was to the best interests of the seller, not to look out for the buyers.

"We were under the misconception that the real estate agents were there to help us," explains John, "when in reality they were trying to get the best price for the seller."

John and Cathleen are not alone. A 1982 study by the Federal Trade Commission revealed that nearly two-thirds of buyers believed that the real estate agent was working for them, when in fact the agent was working for the seller. What was even more shocking: The study revealed that *over half of the real estate agents did not know which side they were representing!* "Let's just put a deal together," was the prevailing ethic.

I pretty much thought that agent confusion about whom they represent was the bad ol' days, but recently, in a course on Buyer Agency, I was shocked to hear a licensee say that her agency "represents" buyers without a written agreement. That is illegal in Vermont and elsewhere.

### **What Is Agency Disclosure?**

The FTC study prompted state laws across the country requiring real estate agents to disclose whom they are working for. At first, only a verbal disclosure was required, but since the mid '90s Vermont and New Hampshire have required a written agency relationship disclosure at the first significant contact.

Nonetheless, buyers are often confused about whether an agent is working for them, for the seller, or for the seller's agent. Quite a few buyers, when asked whether an agent who showed them a property was representing them, have told me, "I signed something, but I don't know what it was."

Even though purchasing a home is a highly serious matter, many buyers are confused and think that the agent is representing them, even when the agent is on the other side. There are several reasons for this confusion:

1. Some buyers do not read what they sign, and when they sign the Disclosure, they believe they have retained the agent.
2. Some agents treat the disclosures as "paperwork" to be signed "for the file" without an adequate discussion of what the disclosure actually says.
3. Even if the written disclosure is completely understood and the licensee goes through it carefully with the buyer, actions speak loudly, and if the agent is behaving as though he or she is "taking care of" the buyer, it is only natural for the buyer to figure that, despite the formalities, *the agent is really on my side!*

If an agent who is representing the seller tells you that as a buyer you do not need representation, then it is only natural to ask: "Then why does the seller need their own agent?"

If an agent talks about "everything I have done for you," then that agent is *implying* that he or she is representing the buyer, thus *inadvertently* creating an expectation and belief. Real estate practice has improved greatly over the years, and our profession is far ahead of most other professions in disclosing whose interests we represent, but, it is still imperative for both buyers and sellers to make sure that they understand agency relationships, and to make conscious, informed decisions about whom they will work with.

### **Potential, Unforeseen Problems:**

Suzanne and Lars saw an ad for a property which interested them, called the number on the ad and made an appointment to see the property that weekend. When they arrived at the agent's office, they were asked to sign an *Agency Relationship Disclosure*, stating that they understood that the agent represents the seller, not them, but that they have a right to be

represented. Fine, but as a practical matter it was bit late. They had already made the trip and checked into the motel. The agent handing them the disclosure had set up the appointment to view the home, and when he gave them the disclosure he explained that, because his agency is representing the seller, no one in that agency can represent them for the particular property they had come to see.

So what else could Suzanne and Lars do? Should they make frantic calls trying to find a qualified buyer's agent at the last minute? Very unlikely. Postponing the viewing until the following weekend was out of the question. So, of course, they went to see the property with the seller's agent.

Previous to being handed the Agency Relationship Disclosure, they had not given much thought to whether or not they might want to have their own agent: They were thinking about the house, and just wanted to see it.

A few times, I have gotten a call from someone in this situation.

Although a buyer has the legal right to retain their own agent at any time, as a practical matter, a "Johnny-come-lately buyer broker" can encounter a sticky situation with a listing agent who may resent another agent "horning in" on "their" transaction. If I have made the call to set up an appointment for the initial showing, then I am the "knight in shining armor" bringing the buyer. But if I show up for a second showing with a buyer whom the listing agent has already been working with, then I may be more like the skunk at a garden party. When confronted with this type of situation, I call the listing agent or their broker, and explain the dilemma. Through a respectful, cooperative, and professional approach, in every case so far we have been able to work out a mutually acceptable solution. However had the buyer decided to be represented right from the start, we could have kept our focus wholly on homebuying, rather than on an avoidable diplomatic challenge.

### **Successful Homebuying "Secret" Number 1**

**FIND THE RIGHT BROKER FIRST, THEN  
LOOK FOR THE RIGHT HOME.**

*Rather than call on advertised properties, have your agent  
make the calls and set up appointments to view homes.*



## Who Pays the Buyer's Agent?

Buyers have always had the right to have their own agent representing them in the transaction, working in their best interests. Savvy commercial buyers typically did hire an agent. Starting in the late nineteen-eighties, residential buyers began to benefit from this trend. Thanks to a number of factors including market conditions, increased consumerism, disclosure laws, and a shift in policy by the National Association of Realtors® (NAR) agency representation increasingly became an option for homebuyers. In 1996 NAR mandated that interagency cooperation offers in MLS must include an offer of compensation to buyer's agents. That alone was the biggest factor in making residential buyer brokerage practical. Most listing brokers understand that it is in the best interest of their seller-clients to split the commission with the broker who brings a qualified buyer. When we encounter the occasional self-serving broker, we may have to use a special addendum (recommended by NAR) to keep the game fair.

### Who Really Pays?

The question of who pays the real estate agent's fee is a perennial controversy, much like the chicken/egg debate. Typically, as a technical matter, the seller pays; but where, after all, does the seller get the money from?

Answer: The seller gets the money to pay the real estate agent's fee from the money the buyer puts on the table! The important question is, not who provides the fee, but in whose interest is the broker working. Loyalty and compensation arrangements are legally separate

### Successful Homebuying "Secret" Number 2

#### **BUYERS NEED NOT PAY THEIR AGENT AN EXTRA FEE.**

*MLS listings offer compensation to broker's agents and to buyer's agents. In those those rare cases in which a buyer's agent is not offered reasonable compensation, an addendum can be attached to the Purchase Contract making it a seller's expense.*



### Buyer Protects Fee:

Although the seller usually pays the buyer broker's fee, either through an interagency commission-split offered by the listing agency or else as a direct seller's contribution written into the purchase & sale contract, nonetheless it is the buyer's responsibility to protect his or her agent's fee by doing nothing to jeopardize the buyer agent's ability to

collect. Specifically, once you have entered into an exclusive buyer agency agreement, you should never call another real estate agent without the knowledge of your own broker, and never view a property with another agent (other than an open house) without your broker. If you do view an open house, let your agent know, preferably in advance, and tell the agent at the open house that you are represented, and refer all questions to your agent.

### **Multiple Listings:**

The Multiple Listing Service (MLS) is a cooperative, Realtor® system allowing each member agency to access the property listed by other member agencies. For each property, information is entered into a database which each member agency can access. By choosing

appropriate search criteria, we can find every listing in the system which fits our parameters. Every property in MLS is an “exclusive” listing, yet every agency which belongs to the statewide MLS can access them. Brattleboro Buyer Brokerage Real Estate is a member of the Vermont MLS (VREIN) and the New Hampshire MLS (NNEREN). MLS is more thorough and detailed than any online search available to the public.

### **Why should the seller pay the buyer broker's fee?**

Putting aside for the moment the reality that the seller actually got the money from the buyer, professional representation for both parties makes for a solid transaction, which is what both parties need. When both parties can rely on sound advice rather than a sales talk, they can proceed with greater confidence. Less guesswork means less suspicion, greater trust, and a more certain closing. Sometimes I am amazed at how often I hear about deals falling apart, and the reason is often something which could have been prevented.

The Real Estate Buyer's Agent Council (REBAC) which is an affiliate of the National Association of Realtors® (NAR), has identified the following reasons why a seller and their agent should welcome a represented buyer:

1. The seller has no liability for the misdeeds or misstatements of buyer's representatives -- important when you consider that most lawsuits in real estate are brought by buyers.
2. There is reduced chance that seller's representatives or subagents will slip up, and disclose confidential information to the buyer.
3. The seller's property is made more attractive to more buyers at no additional expense to the seller.
4. Buyer's agents represent motivated buyers, their motivation demonstrated by their agreement for representation.
5. For the listing agent, it just makes good business sense. Being open to working with buyer's reps extends the property's marketing reach, which can mean a faster sale. The result is a satisfied client, enhancing your reputation and even yielding more business.

### **Origin of MLS**

*On certain appointed days, the Members of the Board of Realtors® gathered at the Board offices and exchanged information about their listings. They, in effect, carried on an auction as they frequently came prepared to purchase certain property desired by their principals, but listed by another broker. This practice was common in the 1880s and 1890s. Shortly after the end of the nineteenth century, the term 'multiple listing' was in use.*

NAR Handbook on MLS Policy, 2003

## The Law of Agency

### What is Agency?

The *Law of Agency* is rooted in over 500 years of English Common Law, which adopted it from Roman Law. According to *Black's Law Dictionary (6th Edition)* in part:

*Agency is a fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to Act.*

The one for whom action is taken is the *principal*, the one who acts is the *agent*.

### Mark Twain on Agency From: A Tramp Abroad

*"I lay abed and read and rested from my journey's fatigues the remainder of that Sunday, but I sent my agent to represent me at the afternoon service, for I never allow anything to interfere with my habit of attending church twice every Sunday."*

### General Agent:

A *general agent* is authorized to conduct a series of transactions involving a continuity of service, and may be empowered to enter into contracts which are binding on the principal. An example of a general agent would be the manager of a business owned by an absentee owner.

### Special Agent:

A *special agent's* power and authority is limited to accomplishing a specific, and limited assignment. A real estate agent is a special agent and does not have the power or authority to enter into contracts on behalf of the principal.

### Fiduciary Responsibility:

An agent, whether general or special, has what is called a fiduciary responsibility to the principal. The word fiduciary is etymologically related to the word "faithful." The agent is legally required to be faithful to the principal's best interests, even at the expense of the agent's own, personal interests. The fiduciary responsibilities of an agent to his or her principal include: Loyalty; Obedience; Disclosure; Confidentiality; Reasonable Care and Diligence; Accountability. These responsibilities are the very core of whether or not an agent has performed properly, and therefore will be discussed in more detail, below.

## **Duties of an Agent**

The following are the fiduciary responsibilities owed by an agent to his or her client:

### **Undivided Loyalty:**

An agent must act at all times solely in the best interests of his or her principal to the exclusion of all other interests, including the agent's own self-interest.

### **Obedience:**

An agent is obligated to obey promptly and efficiently all lawful instructions of his her her principal, within the scope of the agency relationship.

### **Disclosure:**

An agent is obligated to disclose to her or his principal all relevant information (except confidential information which was obtained through another fiduciary relationship) that the agent knows and that pertains to the scope of the agency. The seller's agent owes the buyer disclosure of material facts about the real estate, but must protect the seller's sensitive information, such as needs and motivations. Your own agent must tell you anything s/he learns which could help your cause. including confidential information about the other party.

### **Confidentiality:**

An agent is obligated to safeguard his or her principal's confidences and secrets. The duty of confidentiality continues forever. Any confidential information learned during the time of the agency relationship continues to be confidential, even after the agency relationship ends. An agent working for the seller is obligated to disclose any information he or she learned which might be sensitive to the negotiating position of the buyer, but a buyer's agent must protect that information.

### **Reasonable Care and Due Diligence:**

An agent is obligated to use reasonable care and diligence in pursuing the principal's affairs.

### **Accountability:**

An agent is obligated to account for all money or property belonging to the principal which is entrusted to the agent. A licensee is accountable for all funds entrusted to him or her, regardless of whom those funds belong to.

Ministerial Services (this is not about religion) -- A real estate licensee representing the seller can perform non-agency services to a buyer, which in essence means clerical services, but cannot include advice or protection of confidential information if that information would help the seller. When an agent who is not representing you shows you a property, it is part of the sales process. A salesperson who understands their responsibilities will not try to talk you out of making a purchase. But a competent buyer's broker working for you will if s/he has reason to believe that a purchase is not in your interest.

## Real Estate Agents

Until recently, the general practice in residential real estate was for an agent to represent the seller, and for another agent who also represented the seller to work with the buyer. Somehow the seller needed two agents yet the buyer was expected to fend for him or herself. Two agents on the side of the seller is now less common, but still the norm.

### Seller's Agent:

If a real estate agent's principal is the seller, then the agent's assignment is to sell the seller's property. Even if the seller knows that the property is overpriced, that agent's legal responsibility is to defend the asking price. The seller's agent must protect sensitive information about the seller's situation and motivations, but if s/he learns anything about the buyer which could help the seller, the agent must disclose this to the seller.

### Buyer's Agent:

If the principal is a buyer, then the real estate agent's assignment is to help the buyer to procure property. The agent must at all times act in the buyer's best interests, advise the buyer, protect the buyer's confidential information, and disclose to the buyer any relevant information -- including confidential information -- which the agent learns about the seller (except confidential information which was learned in a previous agency relationship with that seller).

### Subagent:

"A party to whom an agent delegates his or her authority." (*Black's Law Dictionary, 6th Edition*). In traditional real estate practice, the agent working with a buyer would either directly be an agent of the seller, or would be a cooperating subagent from another firm. Thus an agent from ABC Realty, as a seller's subagent, could show a buyer property listed with XYZ Real Estate. Of course this lead to confusion, so that buyers often refer to "my agent," when in fact the agent was working for the other party.

### *Got glued lips?*

*Before starting Brattleboro Buyer Brokerage, I worked at a large agency which specialized in representing sellers. One Saturday afternoon, after viewing property all day with an out-of-state investor, we got in my car to return to Brattleboro. As I started down Route 30, she said something which amazed me:*

*"I like that property. I am going to offer 170, but if they hold out, I'll come up to 180."*

*I had made a proper agency disclosure earlier, and yet here she was giving away state secrets. That alone did not seem amazing -- after all, slips of the lip among unrepresented buyers are not unusual. What amazed me was that she was an experienced investor. Up until that point her demeanor had been professional and properly tight-lipped. But now, worn out after a long and grueling summer day, she just let it out. I realized then that, sooner or later, it is only human for a person to "let down their hair," and just have to tell someone what is on their mind.*

**Broker's Agent:**

Sub-agency has been eliminated in Vermont by the Real Estate Commission. In Vermont, a "Broker's Agent" now performs the functions which would otherwise be performed by a subagent. The technical difference is that a broker's agent is an agent of the seller's broker, but not an agent, or subagent, of the seller. The reason this category was created was to eliminate the seller's liability for actions by a subagent. Thus if a broker's agent were to make a fraudulent representations regarding a property, the buyer's legal cause of action would be against the broker's agent and against the listing agent, but not against the seller. In day-to-day practice, a broker's agent walks like a subagent, talks like a subagent, and acts like a subagent.

**Shared Responsibility:**

An agent and the agent's principal join together for the accomplishment of their common purpose (such as selling a home, or buying a home). Because they have joined, each is legally responsible for the actions of the other within the scope of their agency agreement. Thus if a seller makes fraudulent, material representations about their home, the real estate agent representing the seller could be sued along with the seller, regardless of whether or not she or he was aware that the seller's statements were fraudulent. Likewise, the seller can be liable for misrepresentations by her or his agent. The same is true regarding buyers and buyers' agents. Obviously it is important for buyers and for sellers to exercise good judgment in selecting an agent; and it makes good sense for a real estate agent to be careful in selecting clients!

**Customer vs. Client:**

If you see houses with a salesperson (seller's agent) you will be a customer, not a client. The agent is obligated to disclose material facts about the house, but owes loyalty to his or her client: the seller.

**Working With a Seller's Agent:**

A seller's agent may provide the buyer with listing sheets, area information, etc. However if the seller's agent advises the buyer or negotiates on the buyer's behalf, then that agent has stepped over the line, and is practicing illegally. Sometimes buyers feel betrayed when they realize that the agent who was showing them homes used sensitive, personal information gained from conversation to help the other side. Actually, there is nothing wrong with the agent doing that: In fact if they had protected your confidential information, it would be a betrayal of the responsibility they have to their client: the seller.

**Successful Homebuying "Secret" Number 3**

**"MY" REALTOR®** -- Unless you have a current, written and signed Agency Agreement: The Realtor® is not your agent, that Realtor® is the seller's agent (or an agent for the seller's broker).



**Implied Agency:**

An agency relationship can be created by words and actions that indicate an agency relationship, even when there is no formal agreement and even though the agency nature of the relationship is not acknowledged. Implied agency is also sometimes called “accidental agency” or “undisclosed agency.” In most states, including Vermont and New Hampshire, an agency relationship must be disclosed to all parties affected by that agency relationship, and, therefore, any kind of unacknowledged agency is illegal.

**IN WRITING!**

In Vermont and New Hampshire, a legal buyer agency relationship can only be created with a written and signed contract. An Agency Relationship Disclosure is not a contract and cannot be used to create an agency relationship. Any trustworthy real estate professional will work with written agreements only.

**Conflicts of Interest:**

Traditionally, real estate agencies specialize in representing sellers. Naturally, the bigger the firm, the more sellers they represent. In the past few years, in an attempt to take advantage of current trends, traditional firms have begun to offer buyer representation. So long as you, the buyer, are only interested in the listings of other firms, fine. But what happens when you become interested in a property listed by the agency which is representing you? Your brokerage agreement (Right to Represent Agreement) is not with an individual agent, but with the firm. The same is true of the seller’s brokerage agreement (Listing Agreement). How then can the same firm represent the best interests of both a buyer

**The “Marriage Proposal”**

When I was first licensed in 1993 we were only required to recite a verbal disclosure: *“I am representing the seller, but I am obligated to be fair to all parties.”* Having reeled that off once, the agent had taken care of the formalities, and now could get down to the real business: Putting a deal together.

Jamie, my trainer, was an aggressive person. He gave me the following advice:

*“At some point early in your relationship with a buyer,”* Jamie told me, *“make the ‘marriage proposal.’ Point out that you have been investing time and doing a lot for them, and ask: ‘If I continue to help you find a home, will you promise that you will be loyal to me and not work with another agent?’”*

Since, as the seller’s agent, we had a legal obligation to give the seller undivided loyalty, this “marriage proposal” to the buyer was the equivalent of infidelity. It was intentional, implied agency. (At the time, I did not fully understand the legal implications, but viscerally, it did not feel right, and I could never get myself to do it.) When the hook is baited with a false obligation and the buyer goes for it, it diminishes the buyer’s freedom to choose. Of course an informed buyer need not acquiesce.

and a seller on opposite sides of the same transaction? Obviously, they cannot. Therefore, in a potential transaction in which the agency represents both buyer and seller; unless that agency refers out either the buyer or the seller to be represented by another firm: either buyer or seller, or both, will receive less than full agency representation.

### **Dual Agency Is Illegal:**

As a practical matter, no one can serve two masters; as a legal matter, dual agency, whether disclosed or undisclosed, is illegal in Vermont.

### **“Limited Agency”**

Disclosed dual agency is still legal in New Hampshire, and at one time was permitted in Vermont as a solution to the dilemma which occurs when a conventional real estate firm finds itself representing both buyer and seller in the same transaction. However, nobody feels very comfortable with dual agency, disclosed or otherwise, so the Vermont Real Estate Commission did away with it and replaced it with so-called “limited agency.” Some feel that “limited agency” is just a name change for disclosed, dual agency. Limited agency is supposed to be practiced only as a reluctant, last resort, and with the written consent of both parties. In theory, the “limited agent” represents both the buyer and the seller in the same transaction, advancing the interests of both, neither at the expense of the other. Umm... good luck.

### **The Double-Dip:**

Dual or “limited” agency does not protect consumers. Instead it provides a means for large agencies to keep both sides of a commission (which was meant to be split) in-house despite the inherent conflict of interest.

### **Single Agent:**

As a matter of policy, a real estate firm may decide that they will voluntarily forgo the right to act as a dual or “limited” agent, even though they may be permitted to do so by law. A firm practicing single agency must have a written policy specifying how they will determine whether to continue to represent the buyer, or to represent the seller if a conflict should arise. Their policy may be that, in a conflict of interest situation, they will always continue to represent the buyer (this almost never is the case) or always to represent the seller; or some other solution, such as first in, last out, which means that whichever party has been represented by the firm the longest would be the one who would continue to be represented.



*Photo Courtesy of Christine Yue*

Finding an agency which exclusively represents sellers only, never buyers, is quite rare; but it would be a cleaner solution to the conflict of interest situation if real estate brokerage firms were required to make a policy choice: either to represent sellers only, or to represent buyers only.

### **Our Office Policy - Buyers Only:**

By our license, Brattleboro Buyer Brokerage Real Estate is authorized to represent either buyers or sellers, or both. **As policy, our firm represents Buyers Only, Never Sellers**, thus giving home buyers the opportunity to obtain priority, and avoid the typical dual loyalty dilemma.

### **Conflicts of Interest of Buyer's Agents:**

When an ordinary real estate agency attempts to represent buyers, they may be faced with a conflict of interest if a buyer whom they are representing becomes interested in a property owned by a seller/client who is also represented by that same agency.

An exclusive buyers agent -- an agency which represents buyers only, never sellers -- avoids this common conflict of interest. However, there is a much less common conflict of interest which an exclusive buyer's agent may run into: Suppose two buyers, both of whom are represented by the same buyer's agent, become interested in the same property?

In such a case, the buyer's agent has confidential information about both buyers, and therefore, is not in a position to honestly represent them both when they are competing for the same property. It is therefore necessary for the agency to handle such potential conflicts by having and following a written policy.

### **Our Policy Regarding Clients Competing for the Same Property:**

Brattleboro Buyer Brokerage's policy is to resolve such a conflict by continuing to represent the buyer who is first submits a written offer on that property, and to refer the other buyer out to another agency -- just for that one, particular transaction. It is so rare, that in 13 years (at the time of this writing) it has never happened at Brattleboro Buyer Brokerage. Prior to that, when this writer was a licensee with a large, local firm, he only had it happen one time. In that instance, the buyer who was referred out (with no referral fee) prevailed. Of course any agency which offers buyer representation must decide what they will do when two of their buyer-clients find themselves competing for the same property.

### **Successful Homebuying "Secret" Number 4**

#### **ANTICIPATE CONFLICTS OF INTEREST:**

*Before signing up as a client, an informed buyer or seller should know what the agency's policies are regarding conflicts of interest. Always ask in advance what will happen if a buyer whom the agency represents becomes interested in a home owned by someone who is also a client of that same firm, or if the firm represents a competing buyer.*



*Congratulations! If you have read to this point, then you probably know more about agency than many real estate agents. Having read this far, undoubtedly you are a thinker.*

*I have heard that most buyers probably do not want all this information about the rules of the real estate game: Supposedly they just want to know the color of the carpet. That may be true for some, but most of the buyers whom I have met prefer straight talk and want all the facts so that they can make their own, best decisions.*

## PART II - Preparing for Success

### Assemble Your Team:

Typically a real estate transaction involves a number of professionals, and success is more likely if they harmonize their efforts.

For example: Suppose a major, unexpected inspection issues emerges, and the continuation of the transaction comes into doubt. Would you want your banker to know about it so that the appraisal can be put on hold rather than for you to risk an unnecessary expense? Shouldn't your lawyer review any notifications or addenda regarding inspection issues to be sure that they are legally effective?

On the buyer's side of a real estate transaction, there is usually a broker, a mortgage lender, an appraiser, a home inspector, an insurance agent, and a lawyer. Often hiring a lawyer or getting insurance is done almost as an afterthought with the insurance binder and title work being treated as a last-minute detail prior to closing. However changing insurance standards make last-minute insurance snags which can derail a transaction more likely. It is also prudent to have a lawyer review the purchase agreement and any subsequent notifications.

You may want to give yourself sufficient time to compare inspectors so that your choice does not become restricted by who is available on short notice. And if there is a septic system, you should consider how best to investigate it.

In the event that unexpected inspection issues emerge, your agent can handle renegotiations (*your* agent, *not* a seller's agent) but if the parties agree to modify the contract, your lawyer should review the changes. Inspection issues may affect insurance and financing as well. Having your agent coordinate communication among the professionals on your team facilitates a smoother transaction.

### Selecting the Right Broker:

Many people seem to focus solely on looking for the right home, and end up with whichever agent answers the phone when they call on an ad.

Taking "pot luck" on an a real estate agent may work out fine, particularly if you are sure that you have a good handle on current property values and negotiating strategies; but in a situation in which every edge counts -- such as an attractive property for which there are competing buyers -- who knows what "pot luck" will bring. Personal recommendations are an excellent way to find a professional. You should also talk with the broker, and ask every question that you have. It is not only important to find a competent broker, but the chemistry must also be right.

### Successful Homebuying "Secret" Number 5

#### ASSEMBLE A TEAM OF PROFESSIONALS

*whose actions should be coordinated. Rather than assembling your team through haphazard chance, use a buyer's broker to handle communications, help you select competent professionals, and to make sure everyone is on the same page.*



**Working With the Seller's Broker:**

The job of a seller's broker is to sell the property, and if you are their best prospect, they will try to put the deal together. Of course if another buyer comes along who is interested in the same property, the seller's agent has no loyalty to you (and would be violating the law if they put your interests ahead of the seller's). I have heard buyers complain that their interest in a particular property was used to flush out a stronger offer from a competing buyer. Nonetheless, there is nothing wrong with a seller's agent using legal means to lean in favor of one buyer at another buyer's expense if it helps their client, the seller.

**"You Don't Need a Buyer's Broker"**

A number of buyers have come to me after hearing this and not believing it. Ever wonder why a seller needs their own agent, but a buyer does not? My clients have included real estate professionals, including brokers, investors, attorneys, and a real estate appraiser: sophisticated buyers -- business people who relied on a buyer's broker.

**A Buyer's Agent Can Make the Difference**

Norma was an artist who wanted to relocate to Vermont for a more relaxed lifestyle. After what seemed like an epic quest, she finally found a home she liked, on a quiet, country road, yet only 15 minutes to Brattleboro. The home inspection revealed inadequate insulation and venting in the attic, and possible drainage and moisture problems affecting the basement. The inspector indicated that these issues were correctable, but the actual cost would depend on further investigation, and a contractor's estimate.

Norma's broker recommended a contractor with an impeccable reputation, but, because of his schedule, there would be a delay of more than a week. The seller was willing to escrow money for remediations but was not about to write a blank check. The seller was not willing to continue to keep the house on the market for 10 days while the transaction would be in limbo. Memorial Day -- a major real estate selling weekend -- was coming, and if the inspection issues were not resolved quickly, the seller's agent said she would have to show the property for a back-up contract. If the seller's agent were able to get a back-up into place, there would be much less of an incentive for the seller to work things out with Norma.

Had Norma not been represented by an experienced buyer's broker, she would have been behind the eight ball.

Norma's broker and the listing agent had a history of cooperation, and partly because of the value of ongoing business relationships, both of them wanted to keep the current transaction on track. They worked out an interim agreement in which the seller would commit to pay for the remediations, so long as the estimate did not exceed a maximum dollar value. Included in this written agreement, was a stipulation that the seller would not show the property to other buyers during the estimation period. This agreement addressed the concerns of both parties, and kept the transaction on track.

**Financing Pre-Approval:**

Many home buyers do not talk with a lender until they find a home which they hope to purchase. Now, with contract deadlines mercilessly ticking, the buyer is obligated to make major decisions under stress.

Shopping for a lender and comparing your financing options in advance, gives you three, major advantages:

1. You can compare options and make your best choices without pressure.
2. Unexpected glitches, such as erroneous derogatory credit items, which might have derailed a transaction, can be addressed.
3. A pre-approval (not a “pre-qualification” which is just a screening based on unverified information) strengthens a Buyer’s offer (especially when there are competing offers) and allows the buyer’s agent to promote it as a solid offer which will fly.

**Successful Homebuying “Secret” Number 6**

**TALK TO LENDERS EARLY** so you can compare your choices without the pressure of a contract deadline. A lender’s pre-approval strengthens your bargaining position because a “bird-in-the-hand” offer is attractive to a seller, and convincing to the seller’s agent.

**Choosing a Loan Program:**

These days, there are lots of options other than the conventional 20% down, 30 year mortgage. There are 10, 15, and 20 year mortgages, which allow for a rapid build up of equity by paying down the principal quickly, thus diminishing the total amount of interest. For people with good credit but little money saved, there are 5% down, 3% down, and special affordable housing programs. There are Adjustable Rate Mortgages, and temporary buy-downs which artificially lower qualifying ratios. These instruments can work well for someone who has a sound reason that they can rely on for an increase of income, but they can also get the borrower in over his or her head.

Although responsible lending by Vermont lenders has resulted in extremely low foreclosure rates, nonetheless new regulations are changing the game for everyone. The biggest change is “delivery fees:” risk-based pricing adjustments which change the cost of a loan depending on the borrower’s credit score. This new system makes it almost impossible to shop for the best rate, so that shopping for a reliable lender now makes more sense than ever.

As always, it is important to find competent professionals who will give you sound advice rather than to simply shunt you into whatever loan program will make the deal work.

### **Is your lender a form taker or a problem solver?**

Dave and Margarete had found a home which would work well for their family. But when they went to the bank, they were told that, because Dave's credit was less than pristine, they would have to settle for one-year adjustable loan with an unattractive rate schedule.

They had hoped to get a Vermont Housing Finance Agency (VHFA) loan with below-market interest. Margarete's credit was excellent, and if they could have applied for the financing in her name only, there would have been no problem. In fact, her income would have been sufficient, except that the payments on a car loan which was in her name raised her consumer debt obligations to 12% of her income. Since VHFA allowed 30% of income to go toward housing, and 8% for consumer debt, Margarete's consumer debt ate into the allowable housing ratio, so that only 26% of her income could be applied toward housing. That was not enough.

But just as they were starting to get discouraged, the loan officer said: "Wait, I have an idea!" She picked up her phone, and a few minutes later another loan officer joined them. After a discussion, the other loan officer prepared documents, and soon the automobile debt, which had been in Margarete's name, was refinanced as a personal loan for Dave. This freed up Margarete's debt ratio, so that the full, allowable, 30% of her income could be applied to the home purchase. It was no longer necessary for Dave's credit rating to be considered in financing the home purchase, and they were able to qualify for a VHFA mortgage in Margarete's name alone.

What had seemed to be an insurmountable problem a half hour earlier, was now remedied. In retrospect, the solution seemed obvious. As is often the case, the genius of the solution was in its simplicity.

### **Local Lenders:**

If a problem arises with a loan originated locally, a visit to the bank president may get the problem resolved. But how can you get anywhere with a automatic voice-mail system designed to frustrate communication? A great interest rate from an Internet lender is likely to be a mirage, with upfront junk-fees offsetting any apparent advantage. Do you really want a loan package which arrives ten minutes before closing, so that your lawyer does not have an adequate chance to review it before you have to start signing the papers? And what about the loan package which does not come on time, or a delayed transfer of funds... and when you call, no one is available! Local lenders, with whom we have a face-to-face relationship tend to be the most reliable.

### **Affordable Loan Programs:**

For income qualified homebuyers, there are special programs which use grants and/or below market interest rates in order to extend the opportunity for home ownership. For details, call: **Windham Housing Trust** (Homeland Program) 802-254-4604. **U.S.D.A. Rural Development**, 802-257-7878. For Vermont Housing Finance Agency (**VHFA**) call, 802-864-5743. In NH call, **New Hampshire Housing Homeownership Programs**, (603) 472-8623 or (800) 649-0470.

## PART III - ATTAINING THE RIGHT HOME

### Property Search:

It never ceases to amaze me how many buyers confine their property search to scanning ads. A systematic approach, which is supported by the technology available to every Realtor®, will give the buyer greater detail about each listing, and will avoid missing particular properties.

### Local Multiple Listing Service (MLS):

Windham County VT, Windsor County VT, and Cheshire County NH are border areas, and to be sure that we have complete access to MLS listed properties, Brattleboro Buyer Brokerage belongs to two systems: The Vermont Real Estate Information Network (VREIN) and the Northern New England Real Estate Network (NNEREN).

### Criteria:

The MLS computer program will spew out every property fitting the criteria we program into the search. A computer will not use any discernment: It does only what we program. So if we request 5 acres as the lower end of the range for lot size, and there is an otherwise very attractive property on 4.9 acres: That property will not show up in our results.

Quite often a buyer will say to me: “My upper limit is \$325,000, but if the property is really nice, I would go up to \$350,000. Of course the computer cannot be programed to decide which properties are “really nice,” so it is up to us to decide on the most inclusive criteria which could conceivably be acceptable: The bigger the haystack, the more likely to find the needle.

It is generally better to use as few fields as possible when setting criteria. Suppose the listing agent neglected to fill in the “garage” field, but instead wrote, “two car garage” in the remarks. If we have requested only homes with garages, that property will not appear in our search results. South-eastern Vermont and Southwestern New Hampshire are low population areas with a limited number of properties on the market at any given time, so we are unlikely to be overwhelmed by an abundance of results if we simply limit the criteria to price range, towns (or whole counties), lot size, and a suitable range of living space square footage.

### Initial Search and Automatic Notification:

Both VREIN and NNEREN allow us to program automatic email notification, so that you can be informed of all new and changed active listings fitting your search criteria. Once you have decided on search criteria, we would run an initial search so that you would be exposed to all the properties currently listed in MLS fitting your criteria. We would also set up automatic email notifications for updates. It is not necessary to be a client in order for us to run a computer search for you: We will do it as a courtesy, and to demonstrate our diligence.

### *Successful Homebuying “Secret” Number 7*

***AUTOMATIC EMAIL NOTIFICATION** set up with criteria specified by you, is the best way you can be sure that your property search is being done objectively. A licensee who has disclosed to you that s/he represents the seller, is not doing anything illegal if they steer you toward their client's properties.*



**For Sale By Owner (FISBO):**

Since a fisbo, by definition, is unrepresented by a licensee, only a buyer's agent, representing you, can assist you in pursuing a fisbo. With only one exception each time I have contacted a fisbo, the seller welcomed my participation. In fact many seem relieved to have a real estate professional involved. With only one agency involved, there is no need to split the commission, so my fee is about half of what a the seller would expect had they listed their property. Nonetheless, in hopes of getting a better deal if no agent is involved, you may prefer to approach the seller of a fisbo that you have discovered on your own. My agency agreements leaves that question as a buyer's choice so that you can freely decide if it is best to continue to enjoy the benefits of representation. When given the choice, almost all of my clients want to continue to have my advice and assistance.

**A word about terminology:**

Ordinary agents talk about showings, because that is what a salesperson does: shows the merchandise. Even when an ordinary agent has "turned their hat around" to represent a buyer, most of them tend to have a sales orientation, and even the language they use shows it. Maybe it seems like splitting hairs, but I do not "show" homes: I accompany my client to view homes. I do not sell property, I assist buyers of property. That is not mere semantics, because, when appropriate, I would just as soon try to persuade a buyer *not* to buy a particular home as to buy it. The legal duty of a seller's agent is to try to sell the property: The obligation of a buyer's agent is to help the buyer make sound decisions.

**Viewing Property:**

OK, now you know that I do not "show" property, I view property along with my clients. Unless you plan to purchase property sight unseen, viewing is an essential part of the process. If you are a local person, you may want to drive by properties to eliminate those which are definitely nonstarters based on setting and outside appearance. If you are coming in from a distance for an intense few days, we should discuss other ways of paring down the list, but when there is any doubt, we should err on the side of inclusion.

Scheduling a viewing tour is challenging because we have to get the properties in a sensible time frame and geographical order which meshes with the listing agents' schedules. We try to leave some gaps for lunch, snacks, unexpected delays, and just to stay sane. Your reaction to properties we view is of paramount importance. In addition to whether you like the home or not, we are on the lookout for signs of problems. Although we are not building inspectors, we do want to know about anything odd which really jumps out at us.

**A Search Strategy:**

The best strategy is to see the entire list as quickly as possible because if you should find one which you like, you would not want to be in limbo about a possible buying decision simply because there is "one more pair of shoes in the store which you still need to try on." A home which you find attractive is likely to attract competing buyers as well, so the sooner we can be decisive, the better. If there is a long list of properties to see, we can arrange for quick looks of each, and leave time for longer viewings of those which make it to your short list.

**When you find the right home:**

For some, finding the right home means knowing just what you want, and then locating a property which matches that description. Others may start out thinking they want to live on a dirt road, and end up falling in love with a home walking distance from Main Street. For many, it turns out to be an, “I’ll know it when I see it,” experience.

Now that you have found the home you want, attaining ownership at fair market value through a transaction structured to protect you can be the greater challenge. Even when there are no competing buyers, a seller is likely to have other alternatives, just as you do. A successful negotiation is needed in order to build confidence, and bring the parties together for a cooperative transaction.

**Making an Offer:**

Real estate agents are required to communicate all offers regardless of whether an offer is verbal, or written. However (except in unusual circumstances) in order to be taken seriously, an offer should be written and accompanied by a deposit check. In some states, the practice is to present a letter of intent, which is a formal offer to write a contract. In Vermont and New Hampshire, for residential real estate we rarely use a letter of intent, but instead the Buyer submits the offer in the form of a contract which the Buyer has signed, and invites the Seller to sign it. The Seller can accept the offer, make a counteroffer, or plain out reject it, which is a way to communicate that the offer is not even in the right ballpark.

**Structuring the Offer:**

People generally think about price as though it is the only real item upon which an agreement will hinge. In reality, while price is a paramount issue, a deal usually comes together or falls apart around non-money issues. Even when money is the ostensible issue, it may mask other, emotionally-charged issues. Sensitivity, and “reading the tea leaves” can be critical.

Sometimes, flexibility about the closing date can be a gesture which goes a long way. Conversely, taking a hard line about non-monetary issues which are important to the seller can insult human sensibilities and sabotage the deal. Emotions are aroused not solely over the substance of the issues, but over feelings about whether the other party is being considerate or inconsiderate. Working cooperatively, the Buyer’s Broker and the Seller’s Broker can structure the transaction in a way which reduces risk for both parties and builds confidence.

**Contingencies:**

A contract contingency makes the purchase conditional on something which may or may not happen. Common contingencies include the Buyer securing financing, and a satisfactory property inspection. It makes sense to demonstrate that the Buyer has been pre approved for a mortgage, in order to assure the Seller that it is unlikely that, 4 weeks into the transaction, the deal will fall through because of credit problems. Cluttering the contract with superfluous contingencies can spook the Seller into rejecting an offer; so contingencies should be used judiciously, and the need for unusual contingencies should be explained.

**Value & Price:**

Black's Law Dictionary (Sixth Edition) defines "Fair Market Value" (in part) as:

*The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.*

In forming an opinion of value for a property which is not on the market, a real estate broker, a town assessor, or an appraiser are trying to gauge the price at which the subject property would change hands if it were offered for sale in a free market. In other words, they are attempting to predict what the market would say if it were given the chance to speak.

The definition of fair market value, precludes the "random nut" with more money than good sense, who will fall in love with the property, and pay too high a price. In order truly to be a fair market value, the price at which a buyer pays must be a price at which that buyer could also sell it for.

In reality, there is not a single price-point at which a property will sell in a free market situation. Rather there is a range within which the subject property would be likely to sell. A seller in a distressed situation is more likely to end up selling towards the lower end of the range than one who can walk away from an unacceptable deal. A newly-listed property which is attractively priced is likely to draw competing bids, so that it sells more quickly and at a higher price than a property which starts out too high.

In the real world, real property values are a moving target. The prices of recent sales of comparable properties, the seller's situation, availability of competing properties, current market conditions & future outlook, and an assessment of your own best alternatives to buying that property must be factored in. There is no one-size-fits-all answer. In some situations, the price on an offer is intended for a "slam-dunk" acceptance. Other time, the amount is an opening gambit. Having the advice of an experienced, real estate professional who is representing you and putting your interests first can be of major help in deciding how much to offer on a particular property.

**Confidence Building:**

Even when all goes smoothly, a real estate transaction is one of the most stressful events in a person's life, simply because of the magnitude of the stakes. Parties are likely to put the worst, possible interpretation on one another's actions, so that great care should be taken in our conduct and communication. Small gestures can either erode, or build trust.

**Attorney's Review:**

Your Purchase & Sale Contract, and any addenda should be reviewed by your attorney either before you sign, or else there should be a clause allowing for an attorney's review within a specified period after signing. Even if what you sign is perfectly fine, an attorney who has reviewed and approved a document has a greater obligation to defend it should there be a challenge. We rarely get into a dog fight, but there is no harm in knowing that, if needed, we have muscle.

## **Negotiations:**

Negotiations are going on continually throughout a real estate transaction.

This is true when working to put together an agreement, and it continues throughout the period between contract and closing. Even “casual” conversations are often more significant than they appear. When a listing agent says: “Can you see yourself living in this house,” they are angling for position with a sales technique, transparently masquerading as an innocuous inquiry. An experienced Buyer’s agent, diplomatically can deflect the effect, taking you off the spot.

Having agents as intermediaries make it necessary to find a way to be sure that information we mean for the seller to consider is actually getting through, undistorted. (There are diplomatic ways to accomplish this.) But the ability to stay at arms-length by using an intermediary can also be an invaluable advantage for a buyer.

It has been said that, stripped down to essentials, the only real power in a negotiating situation is the ability to walk away. If either party *must* have the transaction, then it becomes quite difficult for that party to avoid being dominated by the other.

### **Successful Homebuying “Secret” Number 8**

**BATNA\* -- A guiding principle in negotiations is to evaluate and strengthen your best alternative to a negotiated agreement.**

*That could mean purchasing a different property, it could be continuing to look, or it could be deciding not to buy a home after all. Your BATNA will be stronger in a weak market, and weaker during a period of rapid appreciation. Analyzing and strengthening your BATNA, is a key to determining how much you are willing to pay, and what compromises you are willing to make. Discerning the other side’s BATNA helps you to understand what they are likely to do. Unlike many other negotiating techniques, which rely on playing it close to the vest, you can usually tell the other side what your BATNA is without any disadvantage whatever, because disclosing your BATNA is a display of your strength.*

*\* Developed by Roger Fisher and Bill Ury of the Harvard Program on Negotiation (PON).*



## **Inspections:**

Inspections are one of the two major causes for a contract to fall apart. The other major reason is unexpected denial of financing, which is usually preventable if everyone first does their homework.

Inspection issues can be tricky because renegotiations over inspection issues are supposed to be used only when a significant structural or mechanical problem, not self-evident, emerges. But suppose there is something which is self-evident, but about which you are unable to tell whether it is a nickle-and-dime issue, or major problem? It is unethical to make an offer while harboring a premediated plan to use inspections as a ploy for renegotiations, and yet when you make the offer, you may not be in a position to determine the expected cost of remediation of a problem which you have observed. Depending on the particulars, your broker can advise you on effective methods to deal with this apparent dilemma.

### **Purpose of Inspections:**

We recommend inspections, not only to protect you from hidden defects, but also so that you can learn about your new home, be aware of what to keep an eye on and of what routine maintenance to plan.

### **Renegotiating for Remediations:**

Every inspection can be expected to discover some imperfections, particularly if it is an older home. Occasionally a buyer will say to

me: “Let’s offer such-and-such, and then we’ll use the inspection to get the price down another five or ten thousand”. Such a premeditated scheme violates good-faith, and is a fraudulent misuse of the inspection contingency.

If there is an unexpected major problem, say a rotten sill, or if there are minor problems which would just be a complete nuisance, such as leaking plumbing joints which would just be an annoying way to begin in your new home, then we are likely to ask for remediation. Sometimes emotions get roused over discussing remediation demands, and the brokers will do well to keep the conversation focused on how best to resolve issues so that we can close.

Whether we should ask the seller to correct problems, or ask for a price adjustment or cash credit at closing, is a judgment call depending on the situation. A monetary concession has the advantage of giving you, the buyer, control over the quality of the work, but it also means that you will have the burden of dealing with the problem once you own the house.

### **Selecting An Inspector:**

Buyers generally rely on the real estate agent whom they are working with to suggest an inspector. Unless the agent is representing you and you trust his or her guidance, be sure to get 3 or more names and interview the inspectors. I prefer an inspector who welcomes the buyer to be present at an inspection, and encourages questions.

#### **Remediation Demands -- a Judgment Call**

My own family’s home is an 1860 cape, and when we were buying it, I asked the inspector about rot which I was aware of on the front, structural sill.

“It is a hefty timber, which they used in those days, and there is about a quarter inch of rot on the surface,” he said. “It has taken 140 years for it to get to that point. For now, it is OK, but check it again in a hundred years.”

There were other defects, including some which would cost money. But we were buying the house at such a good price that asking for concessions for remediations (which were going to cost under a thousand dollars) in that situation, would have been nickel-and-diming. The seller had already volunteered to sand and refinish the maple floors, and he was painting the exterior. At the contract price, we would have bought the house without the sanding and repainting, so there was no point in jeopardizing the cooperative spirit of the transaction by going after the seller for the last farthing.

### **Hidden Contingencies:**

Within a contingency for financing are a number of implicit contingencies and deadlines. Typically a lender requires an appraisal to be sure that the property represents sufficient collateral. So in effect the transaction is contingent upon the property appraising at or above the contract price, even though this is not spelled out in the written contract. Being able to obtain insurance is another contingency, implicit in the financing contingency

### **Hazard Insurance:**

Homeowner's hazard insurance is also required by lenders. In the past few years, insurance companies have tightened up their standards so that waiting until the last minute to obtain an insurance binder can throw a transaction off track and stop a closing. It is best to obtain insurance early, and to beware of items (such as knob & tube, wiring, swimming pools, trampolines) which can raise red flags for insurance underwriters. Even if you find a company which will accept knob & tube, is there any guarantee that in six months they will not change their standards to follow the current trend?

### **"Trojan Horse"**

I was representing a young couple who had been searching for land upon which to build their home. Finally we found 6 attractive acres with a deep pond, a brook and good solar possibilities. It was for-sale-by-owner, and from my discussions with the seller I understood that we had a meeting of minds.

Just as we were about to sign an agreement, he surprised us with an announcement that another couple, who wanted to place a modular on the land had just made an offer which he found attractive because, unlike my clients' offer, there was no contingency that the land must perc for a legal septic system. He thought the other offer was therefore more of a sure thing.

To advocate for my clients, I pointed out that the need for financing in the competing offer created "closet" contingencies. In an email, I made the following argument:

*"While it is the lender who will be making the decisions, it is difficult for me to imagine that the loan would be made without verification that the property can be built on. If that is true, in effect the other offer may have a hidden contingency. While I am not of the opinion that the other buyers have intentionally sneaked a Trojan Horse into their offer, the lender's underwriting guidelines might include a number of 'sleepers,' which would, in effect, function as implicit contingencies. Before trusting an offer for land contingent on financing, a competent broker normally would require verification.*

*"Deena and Thor are qualified buyers who have conveyed serious intentions by structuring a sound offer. They want to purchase your land. While neither offer is 100% a bird-in-the-hand, it is my opinion that, realistically, Deena and Thor are by far your better choice."*

Once the seller understood the implicit contingencies in the competing offer, he realized that Deena and Thor were offering him a more reliable contract.

### Successful Homebuying "Secret" Number 9

**"INVISIBLE" DEADLINES** -- Some events which are spelled out in the purchase contract depend on other events, which are not so obvious. For example, the financing commitment deadline is spelled out, but it is necessary to obtain an insurance binder in order to get the financing commitment. Only a buyer's agent representing you has a duty to remind you of your obligations. A seller's agent generally wants to keep things on track, but is not obligated to remind you or to help you with your responsibilities.



#### **Contingencies Satisfied:**

A strange thing can happen once all the hurdles have been overcome and all you have to do is plan the move and wait for closing: The lack of further challenges can be nerve-racking. At least when there is something we know needs to be done, there is a feeling of direction and accomplishment. During that time we have gotten to know each other: We have been on a mission together. It may seem strange that we are no longer going to be riding around together looking for a home, no longer talking every day or so on the phone.

#### **Prorations:**

At the closing, there will be a balance sheet showing debits and credits to the Buyer, and debits and credits to the Seller. Your lender and/or your lawyer will have explained your closing costs, so you will not be surprised to see property transfer tax, doc preparation fee, filing fees, and prorations. Property taxes are prorated to the day of the closing. Depending on whether taxes have been paid in advance, or will be paid in arrears, the Buyer may owe the Seller something, or the Seller may owe the buyer. Right before closing the agents will figure out how much to debit the Buyer and credit the Seller for heating fuel currently in the tank.

#### **Walk-Through:**

Right before the closing, we schedule a walk-through to be sure that the house is broom clean and free of occupants and in the condition which you expect it to be in. Usually the walk-through is uneventful. But suppose that trash pile which the seller was supposed to remove is still there? Or a window which was previously fine is now broken? Because no one wants to stop a closing over relatively minor deficiencies; if it is something which cash will cure, we agree on a credit. If it is an obligation of the seller -- such as removing debris -- the Seller promises to do it after closing: either on a handshake, or else they can leave money in escrow, which will be returned when they have fulfilled their obligation.

**Successful Homebuying "Secret" Number 10**  
**REPRESENTATION IS A POWERFUL ADVANTAGE!**

*Astute buyers understand that in a one-time-deal they will benefit by tapping into the ongoing business relationships of their broker. The desire of other professionals to continue to do business in the future with that broker, and the collegial relationships, will be an advantage.*



*This is the day we have waited for and worked for. Receiving the keys at closing is no accident. It is a result of dedication and good decisions!*

**THE KEY TO SUCCESS: PLANNING AND INFORMED DECISIONS**

**Brattleboro Buyer Brokerage Real Estate**  
*Vermont's Leading Buyer's Broker Since 1996*  
(802) 254-7750  
vtbroker@buyer-brokerage.com