POINTS TO BE AWARE IN REVIEWING CONTRACTS

 FOR SALE OF REAL ESTATE

1. All the parties identified and, if representing the purchaser, does it mention "or assigns".

2. Check property description to determine if property is being sold in gross, by acreage or square footage and, if so, is adjustment necessary upon survey.

3. Is the deposit identified as included in purchase price and, if representing purchaser, is it placed in an interest bearing account with interest accruing to purchaser if it is of sufficient size?

4. Is escrow agent released of liability for handling the escrow deposit payment of purchase price?

5. If a note is being accepted and secured by a trust against the property:

a. is there a right to substitute trustees;

b. are partial releases included if we represent the purchaser;

c. are the terms explicit;

d. are the releases without consideration for public improvements, etc.

6. If partial releases are included and we represent seller, does the release sequence prevent landlocking of the property?

7. Is there an obligation to sign all documents required by public officials for development of the property without consideration or joining the trustees.

8. Does the contract require delivery of all existing plats, surveys, soil studies and topographical studies without payment by the purchaser?

9. Does the feasibility period expire automatically without notice being mailed of this exercise?

10. Does the feasibility clause vest sole and exclusive discretion to the purchaser regarding development of the property.

11. Does it allow the purchaser to enter on the property and contain indemnification provisions to the seller for any damages as a result of the entry?

12. Condition of title: If representing purchaser assure that title defect will not adversely affect the development of the property and this is in contract.

13. If representing seller in major transaction, encumbrances on title should be spelled out in title insurance policy and no objection will be valid for any of such disclosed exceptions.

14. In the event of title defect, does it cleanly release the escrow funds to the purchaser at his discretion.

15. Closing costs or other adjustments for all interest, taxes, etc. If purchasing raw land in rural areas, is the treatment of roll back taxes dealt with and made the obligation of the seller.

16. Do settlement charges indicate a settlement fee to be paid to the settlement office by the seller.

17. Does purchaser reserve the right to specific performance, forfeiture, or damages as a result of breach.

18. If representing seller, is it clear that seller can insist on forfeiture, specific performance or damages?

19. Representations of seller:

a. seller must be the owner and if owned by a corporation that the corporation is in good standing and the person signing is authorized to sign;

b. that no pending suits or actions exist which impede, threaten or that are pending against the property;

c. no bankruptcy or solvency proceedings are pending;

d. that the execution of the agreement will not result in default or acceleration for sellers.

20. Representation that the property has not been used as a fill area and has not been used to store hazardous waste.

21. In commercial settlements:

a. affirmative soil test should be required of the seller to ensure that has not been used to store hazardous materials.

22. Purchaser's representations:

a. has full authority to purchase the property

23. Risk of loss.

24. Agent's commission should be spelled out and who pays it.

25. Indemnification provisions may be appropriate to protect purchaser from commission claims.

26. Notices should contain copy to counsel.

27. Condemnation: purchaser has the right to get out of the contract in the event of condemnation.

28. Provision should be considered for counsel fees in suits to enforce the agreement.

29. Seller's representation that it is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code and if seller is a foreigner that he will comply with the provisions of that code section.

30. Boiler plate:

a. interpretation in accordance with Virginia law;

b. non-merger provisions and survival of the execution and delivery of the deed.

31. Heirs: agreement will bind heirs and assigns.

32. Integration clause.

33. Time is of the essence clause.

34. Severability clause.

35. Review proper format for signature.