

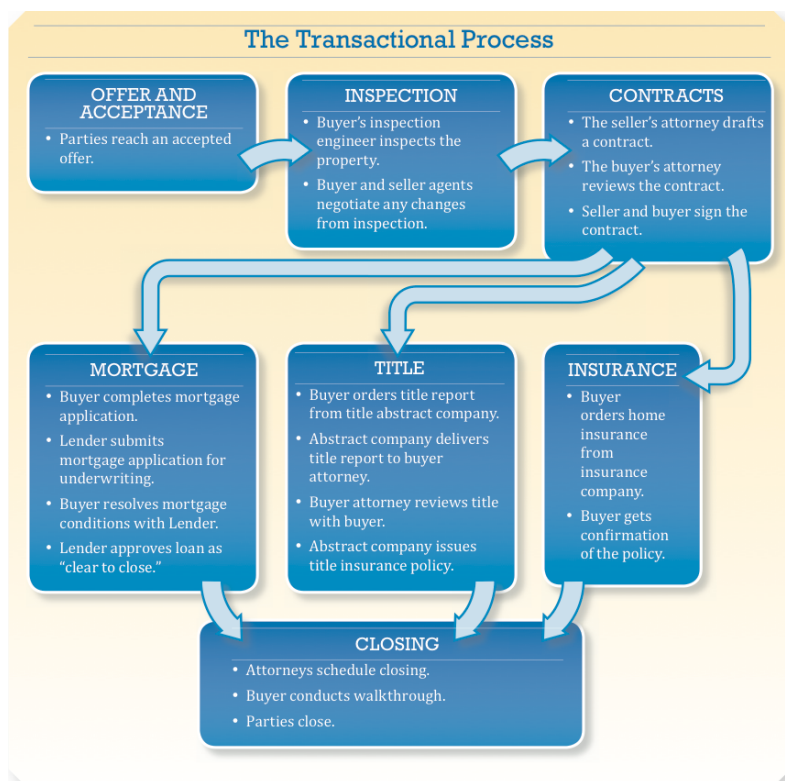
Transaction Management (3 CE Credits)

Wednesday, December 5th, 1PM-4PM

Joe Rand

You represent Bobby Buyer, who has just found out that Sally Seller accepted his offer on 123 Ridgeway Road for \$500,000. Unfortunately, the agent who represents Sally Seller is a bit of a numbskull, so most likely you're the one who is going to have to work to make sure that this transaction gets through to the closing.

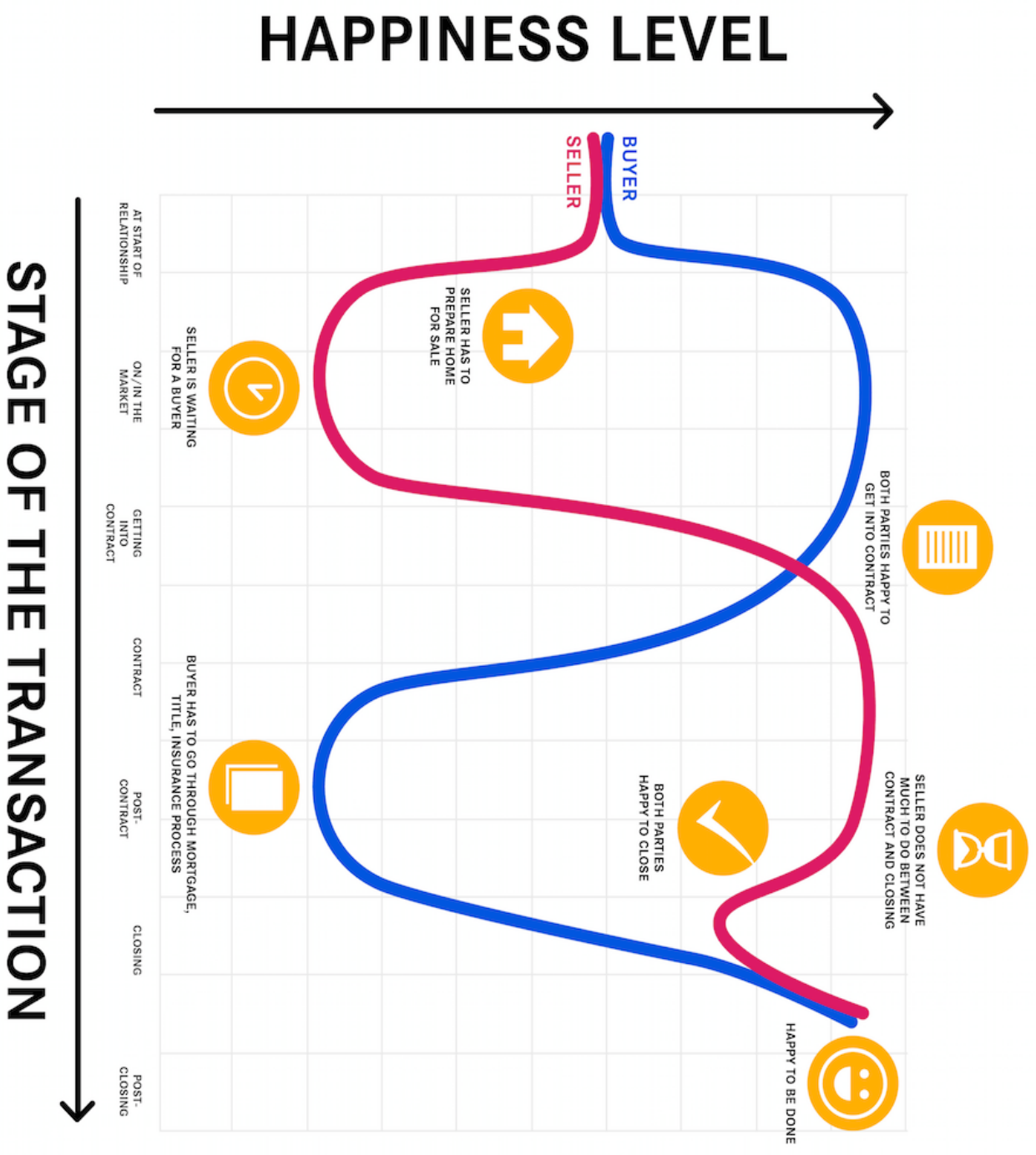
So congratulations! You have an accepted offer. Now comes the hard part....*



* Note: In New Jersey, Contracts sometimes come before the Inspection.

REAL ESTATE HAPPINESS CHART

HOME BUYER AND SELLER HAPPINESS CHANGES DURING THE COURSE OF THE TRANSACTION



Transaction Management Guidelines

Challenge of transactional management is that you're no longer in charge, the way you were during the time your buyer was looking at homes or your seller was on the market. Now, you have to coordinate a series of moving parts, all of which can break down on you.

- 1. Buyers and sellers can afford to be emotional, you can't.

- 2. Give your clients an update every single week, even if you don't have anything to report.

- 3. Be a problem-solver, not a blame-thrower.

- 4. If there's a problem, apologize and fix it.

- 5. Be proactive, not reactive.

6. Get your manager involved.

7. Stay on top of your transactional partners.

8. If you have something important to say, document it in an email.

9. Use “Project Plans” to keep track of every step, and a folder system to manage your documents.

10. Urge your clients to read the Orientation Guides (you too!), and prepare them early for the transactional challenges ahead.

Inspection

The inspection will usually take place right before contracts (in NY) or after contracts but during attorney review (NJ).

Bobby Buyer Hypothetical

Bobby Buyer was really excited to buy the house – at least, until you just completed the inspection. They found a few issues:

- **Water Pressure.** There might be a problem with the water pressure in one of the upstairs bathrooms (not the master bathroom). The water came out in little more than a trickle.
- **Mice.** The inspector found some mousetraps in the garage, and some evidence of mice infestation.
- **Disposal.** The garbage disposal in the kitchen does not appear to work.
- **Pool.** The engineer notes that he was unable to check anything involving the pool, because it was covered (the pool has not yet been open for the season)
- **Water Damage.** The engineer found evidence of water damage in the ceiling of the screened-in porch, and believes that there might be a crack in the ceiling that could require significant repairs to the roof of the porch (but not the roof to the rest of the house, which is separate).

Bobby is now freaking out about all these problems, saying that he’s not interested in buying a “fixer upper.” You have not yet approached the seller’s agent about these issues.

How should you resolve those issues?

What could you have done differently preparing for the inspection?

What else can go wrong on inspections?

Transaction Management Tips:

- 1. Be present at the inspection.
- 2. If remedial work is required, have the buyer do it and get a concession or money in escrow. Why?

- 3. Make sure lawyers are involved in the drafting of any agreement.

Be Proactive!

- 1. Make sure to explain how inspections work, and prepare your buyer for issues.
- 2. Point out issues during a final showing that might come up.

Contract

The contract is supposed to memorialize the terms of the deal you made, but new issues can crop up during the attorney back-and-forth.

Bobby Buyer Hypothetical

Okay, you got through inspections, and now are ready to go into contract. In New York, the seller's attorney is going to prepare contracts and send them to the buyer's attorney for review. In New Jersey, your offer was prepared as a contract of sale, but in this case the seller's attorney made notification that he was abrogating that contract and would be replacing and supplementing it with his own form.

So you're now waiting for the seller's contract to arrive. Here are some of the issues that you're concerned about:

- **Attorney.** Bobby is trying to save money, so he asked his brother-in-law, a trusts and estates attorney from another part of the state, to review the contract and represent him on the sale, because he'll do it for free.
- **Closing Date.** Bobby is currently renting, and his lease is up in three months, so he'd like to make sure that the seller is ready to close by then. From what you know, the seller has not yet found a home to buy, or at least you haven't gotten any indication that the seller is eager to close quickly. But Bobby is adamant that he wants to close by 90 days.
- **Fixture.** When you showed the house to Bobby the second time, Sally Seller happened to be there. And when you got to the dining room, Bobby happened to compliment a beautiful antique lighting fixture over the dining room table. Sally heard him from the kitchen, and came in to explain that it was her favorite piece, a family heirloom worth about \$10,000. It never came up in negotiation, but you're pretty sure Bobby expects it to be part of the sale.

What should you be doing at this stage to keep the transaction moving and protect your client in the formation of the contract? And what could you have done differently to this point to avoid these potential issues?

What should do you do?

What could you have done differently to avoid the issues?

What else can go wrong in contract formation?

Transaction Management Tips

- 1. Urge your clients to hire a local real estate attorney.
- 2. Provide the attorneys with a clear statement of the terms.
- 3. Stay on top of the attorneys to get the contract done.

Be Proactive!

- 1. Make sure your accepted offer covers all material terms: (1) Fixtures, (2) Closing Date, (3) Contingencies, (4) Holdovers.
- 2. Have seller's attorney prepare contract in advance.
- 3. Make sure your buyer understands flexibility of closing dates.

Mortgage

The mortgage process is the most likely source of transactional problems in your deal. Accordingly, you should be as proactive as possible in both warding off potential issues and handling problems as they come up.

Bobby Buyer Hypothetical

Well, you worked out the contractual issues, and you're now in contract! Congratulations!

Now, it's time for Bobby to get his mortgage. Right at the beginning of your relationship with Bobby, you hooked him up with a mortgage professional, Mary Mortgage, who pre-qualified him and counseled him on his proper price range. You're not sure how much Bobby has talked to Mary since then, but you're a little concerned that he's not taking the mortgage process particularly seriously. He seems very confident that he can get a mortgage without a problem given his income.

But the mortgage doesn't go particularly smoothly, for a couple of reasons:

What can go wrong?

1. Approval Issues
2. Commitment Issues
3. Appraisal Issues

Overall Transaction Management Mortgage Tips

1. You need to be VERY PROACTIVE with your buyers early in your process.
2. Stay in constant touch with the loan officer and processor.
3. Stay on top of your buyers to get them through the process.
4. Be careful what you say to the seller's agent.

1. Approval Issues

Any number of problems could cause your client to be denied for a mortgage. Basically, what they come down to is that the bank is not confident that the buyer can afford to make the monthly loan payment given her income and credit history.

Bobby Buyer Hypothetical: Qualifications

Bobby and his wife make a combined income of about \$100,000, and do not have any major outstanding debts. He says he doesn't like to take on debt after having some credit card problems when he was just out of college about 15 years ago. It seems to you that he should qualify for a mortgage for a \$500,000 home, but you just got word from Mary that his bank did not approve him for a mortgage.

Mortgage Qualification Issues

1. Qualification ratios

The borrower's income might be insufficient to cover the expenses of owning a home, or her debts might be so high that they make up too much of the borrower's income:: 28% of income for housing expenses (payment, taxes, insurance), 36% of income to cover all debts (everything).

2. Credit Score

If the borrower has a weak credit score, the lender is going to require a higher interest rate, which might make the payments unaffordable.

3. They don't fit the program

The borrower might have been applying for a specific mortgage program for which she does not qualify based on her income, credit score, background, etc.

How can you resolve these issues?

1. Try a different bank.

2. Try a different program.

3. Get them in credit repair.

4. Get more of a down payment.

How do you address Bobby's Problem?

Be Proactive!

Prepare your buyers early in the process! The mortgage process starts the minute you meet with your buyer for the first time. Remind them:

- 1. Start storing your bank statements and pay stubs.
- 2. Keep your credit clean – don't go lease a new car!
- 3. Maintain steady account balances.
- 4. Stay at your job!
- 5. File your taxes!

2. Commitment Issues

Even if your buyers gets a “conditional commitment,” the lender will likely require the buyer to resolve some conditions in order to get the “clear to close.” Here are some of those most common issues, and how you can help.

Bobby Buyer Hypothetical: Commitment Issues

Bobby has told you that he only has about \$50,000 for a down payment, and is planning on getting a gift from his parents, if he needs it, for another \$50,000, to give him a total of a \$100,000 down payment. You’re wondering if he’s going to need it, and whether that will complicate things.

How do you resolve this?

Be Proactive!

To get your buyer through the commitment process, remind her:

- Respond quickly to requests from the processor
- Don’t make changes in the financial profile.
- Keep updating the file: bank statements and pay stubs.

Ten Common Commitment Issues

Below are the most common commitment issues that come out of the loan process. Virtually all of them are resolvable if the borrower is engaged in tracking down documents and staying in touch with the processor. But you need to be engaged with your buyer to help her resolve them.

1. Changes in bank statements

2. Changes in credit, or credit report issues.

3. Employment changes.

4. Proof of Self-Employment

5. Verification of Employment

6. Tax returns.

7. Gift sourcing.

8. Home or title repairs.

9. Other investment property

10. Condo and coop approvals.

3. Appraisal Issues

The home might not appraise, which will greatly disturb your buyer and could kill the deal.

Bobby Buyer Hypothetical: The Appraisal

Well, Bobby did apply for his mortgage, and everything seemed fine, but the appraisal just came back at \$470,000, \$30,000 below the sale price. Bobby is freaking out again, complaining that he overpaid for this home. He has a mortgage contingency, so he can get out of the contract.

How do you resolve this?

1. Challenge the appraisal.
 2. Get another appraisal.
 3. Start a new mortgage process.
 4. Re-negotiate the price.
 5. Get the buyer to put more money down.
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Be Proactive!

1. Provide good comps for the appraisal.

You are allowed to provide information, just not to lobby.

2. Be proactive! Prepare the buyer for appraisal issues.

Remind the buyer that bad appraisals do not mean you got a bad deal:

- There are bad appraisers.
- Distressed properties skew the market.
- Comps might not reflect market changes.

Title

Most title issues are not in fact “title issues.” You will rarely find a problem in the chain of title, because most properties in our area have already been through the review process in recent history. But that doesn’t mean you won’t find problems in the title review process.

Bobby Buyer Hypothetical

While you’ve been putting out mortgage fires, the buyer’s attorney has ordered title insurance and the normal municipal searches. During the title review process, the abstract company has found a number of potential problems, all relating to some work that Sally Seller did a few years ago to add a deck onto the property and put a half-bath in the basement:

- **Lien.** The lien search turned up a mechanic’s lien for Carl the Contractor, who did the work for Sally, for \$25,000.
- **Survey.** The title company did a survey inspection, and has noted that the survey does not include the deck.
- **C/O.** The title company also pulled the Certificate of Occupancy, which does not list the half-bath in the basement.

On top of all that, the title report also indicates some other, unrelated problems, including:

- **Prior Mortgage.** The title report indicates that when Sally bought the property ten years ago, the prior owner did not pay off the mortgage of \$300,000 on the property. That mortgage is still on the title.
- **Taxes.** When the listing agent listed the property taxes on the MLS, he indicated that they were \$12,000. However, the title report now indicates the taxes are closer to \$15,000.

Again, Bobby is beside himself. He’s looking to you to fix all of this. You’ve called the listing agent, but she has recently taken a job as a barista and is no longer actively working in real estate. You’re on your own.

Common Title Issues and How to Resolve Them

Issue	Description	How to Resolve	Be Proactive!
Open Liens	Unexpected liens on the property (other than first mortgage). <ul style="list-style-type: none"> • Mechanic's • Second mortgages • Tax liens • Personal judgments 	Assuming they do not put the property underwater, it's up to the seller to resolve them and pay them off prior to closing. Buyer can't close with open liens.	Do a preliminary lien search on the property when you list it or make an offer on it.
Short Sales	Seller's home in underwater and she is unwilling to go out of pocket to close.	You need to go through the whole short sale approval process.	Most short sales will be disclosed in listing, but a preliminary lien search can reveal undisclosed short sales.
Documentation Errors	These are usually innocent errors that involve prior title companies that neglected to properly file documents.	These are usually quickly resolvable by the title company and seller attorney.	Just prepare your clients that these things come up and can delay their deal.
Inaccurate Taxes	Most properties are off at least a bit in the taxes. Problem is when they're off a lot, usually because listing agent did not include one of the property tax categories.	Usually, nothing to resolve. Either the buyer just takes it or the buyer insists on the seller making a concession.	Check the taxes when you list the property or prepare an offer!
Survey Inspections	The title company does a sight-check of the property to make sure it conforms to survey. Also, finding a survey or ordering a new one will take time.	Depends on the severity of the problem. This is really in the hands of the seller and seller's attorney.	Make sure to ask your sellers about any work they've done on the property.
Municipal Violations	Open building permits, lack of a certificate of occupancy, or an inaccurate certificate of occupancy.	Can be complicated. Seller might need to apply for C/O, which takes time. Or might need to fix up the home, which takes time.	Pull the property card when you take a listing or get an accepted offer.

The Walkthrough and Closing

The Walkthrough takes place the morning of the closing, or the night before, once the seller is out of the home. The purpose of the walkthrough is to make sure that the property is in move-in condition and nothing has changed since the inspection.

Bobby Buyer Hypothetical

You worked out the title problems, and Bobby actually got his mortgage commitment. So now you're ready for the closing. The attorneys work out that the closing will be on Wednesday, with the walkthrough that morning.

On the walkthrough, a couple of things pop out:

- Sally Seller is a bit of a pig, and she left the place a mess – some full garbage bags in the middle of the kitchen, bits and pieces of moving debris (boxes, tape, empty tape rollers), and it's clear that no one actually tried to clean the place up for the walkthrough.
- In the master bedroom, Sally apparently took the ceiling fan light fixture, which you guess was a cheap one probably worth about \$150, out of the ceiling. There are just open wires hanging down.
- The pool is still not open.

Bobby is not happy about the walkthrough, but you don't have time to talk because you're rushing off to the closing. You get to the closing, and a few things happen:

- Bobby didn't bring his checkbook. He didn't realize he needed it, thought he could put everything on his credit card.
- Bobby doesn't have any home insurance. He totally forgot about it, and neither you nor the attorney nor the mortgage lender reminded him.

So now you're scrambling. But you're going to get this deal closed, no matter what it takes. What does it take? And what could you have done differently to avoid these issues?

How do you resolve these issues?

What else can go wrong?

Transaction Management Tips

- 1. Make sure to check basic mechanicals.
- 2. If something comes up, bring it to the attorneys to argue for a concession.
- 3. If something cannot be checked (e.g., the pool in winter), attorneys usually require money to be held in escrow until the mechanical can be operated.

Be Proactive!

- 1. Make sure the buyer is aware that the property is not going to look like a model home.
- 2. Bring 9-volt batteries for the smoke detectors.
- 3. Remind the buyer to bring a checkbook and photo ID.
- 4. Show up at the closing, but you don't need to be there on time.

Insurance

Home insurance itself rarely causes a major transactional problem, but it does sometimes create some last-minute frenzy when the buyer has failed to secure insurance coverage on the eve of the closing.

What can go wrong?

What you need to know about home insurance?

1. What kinds of risks/hazards/perils should be covered?

The standard policy covers all the “named perils”

- Example: fire, explosions, wind, weight of ice and snow

But the standard policy does not cover certain types of “exclusions”:

- Example: flood damage, earthquakes, power outage, homeowner negligence.

And what if the hazard is not specifically covered or excluded? It depends:

- HO-3 (standard): only covers named perils
- HO-5 (all risk): covers everything not excluded, and is more expensive.

2. Replacement coverage for dwelling.

If you suffer a loss, your policy might cover you for “replacement cost” or “guaranteed replacement cost”:

Replacement cost (HO-3):

Guaranteed Replacement Cost (HO-5)

3. Replacement coverage for personal property.

For your personal property (i.e., the contents of your home), your policy will generally cover your itemized losses, but only up to a cap based on the amount of insurance that you have on the home, usually between 40% and 70% of your overall coverage:

- *Example: if your policy covers 50% of the value of your coverage for personal property, and you have \$500,000 of coverage on your home, you will be capped at \$250,000 for your itemized personal losses.*

Just like with a dwelling, you can get different types of coverage:

“Actual Cash Value”

“Replacement Cost Coverage”

*Note that coverage can be extended for particularly valuable items with specific endorsements.

4. Liability coverage.

Homeowners get to choose the limit of their liability protection for accidents at the home or even some off-premise accidents.

5. Deductible.

The homeowner can set the deductible that she'll have to pay before insurance coverage sets in. What are the advantages and disadvantages of a higher deductible versus a lower deductible?

Flood Insurance

Flood insurance is a different animal, because flood insurance can be a deal-killer if you have not prepared your client for the extra cost. Make sure to talk to an insurance representative to check on whether you need flood insurance on a property when you make an offer, and prepare the client for the possibility of the added cost.

Be Proactive!

1. Have your buyer sit down to get a quote well before the closing.
2. Have your buyer itemize (and photograph) expensive personal possessions while she's in the process of getting ready to move.
3. Check the flood insurance requirements!

