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When the Client Balks

from the desk of David M. Touchstone

I don't know if the times are changing or I'm just getting older (and presumably wiser *(?)*). Whatever the source, I get more and more calls from agents who have experienced a balk. A balk? You know – when the buyer or the seller tell you "I've just decided to go in another direction" or "Me and the Missus have decided we want to stay here." What to do; that's the theme of this article.

The first thing is to do all the things right that keep you from ever getting in this maddening situation. When I was a wet behind the ears new lawyer, I was fortunate enough to have as a regular client a fellow named Jim Scogin (now passed on). Jim was the manager of a finance company. From watching Jim and other finance company managers, I learned that people in that business better learn human nature pretty quickly. Jim knew his business and he knew people. One of the things he taught me was that when he closed real estate loans the *right way* he reduced his delinquency and collection problems. At the time of the closing he always politely and thoroughly explained to the borrower what the borrower's obligations were and that he fully expected the borrower to do what the borrower had promised to do. That was it, all there was to it. Not that it was foolproof, but what Jim had learned is that if you make a person stop and think at the moment he is entering into a contract, and clothe the moment with sufficient solemnity, he is apt to take his responsibilities more seriously. My suggestion to you on this point: Just as the buyer or seller is about to sign a written offer or acceptance, remind him that the document he is signing is a legal contract and can and will produce serious legal consequences that are enforceable in a court of law.

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Continuing in this vein of how you, in your role as agent, avoid the balk, take a little time now to think about how what you do or don't do might create or exacerbate the problem. Avoiding the balk is in the contract; it's all about the contract. If clients sometimes regard contracts as mere suggestions, well, I'm afraid that all too often, that is also the case with agents. I look at ten real estate buy/sell agreements every day. Most are filled out competently and professionally; many aren't. Here's the reality. First, you go to real estate school and they teach you all this stuff. You learn it as well as you can,

well, at least well enough to pass the test. After that, it's all sales, sales, sales. If you are serious about your career, you attend about a million hours of seminars to teach you how to sell, sell, and sell. After you get your license, there just isn't much emphasis on the nuts and bolts of how to fill out a buy/sell agreement. Further education in this area comes from ad hoc question and answer sessions with your broker or maybe a more experienced agent, even occasionally a real estate lawyer. Fortunately, the local Board of Realtors has developed a high quality document which helps agents avoid trouble. Nevertheless, the very nature of real estate transactions dictates that one size does not fit all. That's where you come in. Here are the problem categories: completeness, ambiguities, and contingencies. I don't see many problems that arise out of a lack of completeness; most agents sufficiently fill out the MLS form such that all the main bases are covered. Every now and again I see a form on which there was insufficient treatment of which party was responsible for all or some portion of the closing costs or prepaid items. Incompleteness rarely is the basis on which a client balks, but sometimes it is. More balks arise with ambiguity. By ambiguity, I mean a provision in a contract that is susceptible to more than one interpretation. Sometimes, clients balk because they genuinely and honestly interpret a meaningful provision in a manner differently from the guy on the other side of the contract. More often, the balking client has already decided to take a walk and simply uses an ambiguity as an excuse to get out of the contract (sometimes with the help of his attorney). Remember the old adage about contracts, that they represent a "meeting of the minds". No meeting of the minds, no contract. Every provision you draft must be susceptible of *only one* interpretation. I don't have a magic bullet for you here; it really boils down to common sense and professionalism. Fill out your contracts completely and be very careful in your choice of words as you write in provisions. It's about having the right mindset. Write everything as if you knew that it would all end up in a lawsuit tomorrow. I know this sounds pessimistic, but it's the best way to avoid the lawsuit. As you are writing the contract, think to yourself "What if?" at each step of the way. Believe me, this is what lawyers are trained to do and you should do it too. As you write each provision, do your best to consider each worst case scenario; when you do this, you can draft your language to avoid the danger or you can build a defense against the danger. One final observation on this point: some of you might be thinking at this point "Well, I just put down whatever my client tells me he wants". The "I'm just taking orders" defense didn't work for the Germans at Nuremberg and it won't work for you either. Remember, you are a real estate professional; you are the person who is supposed to be providing guidance and professionalism. Do not allow yourself to be used by ignorant or unscrupulous clients. Always assert your professionalism when you are drafting the contract. If the client asks you to do something you believe could cause problems later, politely refuse. If the client asks you to draft a provision that gives the client a way to unjustifiably extricate himself from the contract, politely refuse. After all, none of us are in business to help people who are bad faith operators. It also isn't sufficient for you to say, "Well, that was the other agent who wrote that dumb thing". You must drive defensively; if the other agent drafts an ambiguous provision or one that gives his client an unjustified "wiggle out" clause, you must counter it.

You must clean up the language of the contract so that it is susceptible of only one interpretation and you must shut down any wiggle out provisions.

The third category I mentioned was contingencies. This is the big one. Contingencies exist in buy/sell agreements because people have legitimate needs for them. For instance, if a buyer has made a good faith effort to secure financing and isn't able to get it, he shouldn't be obligated to complete the purchase. But there are a couple of problems in the area of contingencies. First, many contingencies require customized language; whenever this is the case, the agent is not able to receive the benefit of the careful and wise draftsmanship built into the MLS form. Secondly, many parties use contingencies as wiggle clauses to wiggle out of the contract. Therefore, the language utilized in contingencies should generate extra caution. Although the potential number of types of contingencies is as limitless as the breadth of human imagination, those most frequently employed are: financing, title, sale of another property, appraisal, zoning, and inspection (property condition, termite, environmental, business records, rent rolls, etc.). This subject is too broad to treat in depth, but I do want to cover a couple of situations that I think are important for residential agents. First, if it ain't broke, don't fix it. Remember this, a tremendous amount of effort, wisdom and legal counsel have gone into drafting the standard MLS form. Every time you handwrite a provision in the contract that addresses the same subject that has already been addressed in the printed text, you are overriding the printed text. That's the law of contract interpretation. Do you really want to do that? Do you really want to supplant the wisdom, effort, and legal counsel that went into drafting the printed text with your judgment? Certainly, there are situations in which you need to do this, but not that many. If you think about it, the printed text already covers financing, termite, title, appraisal, inspection, and sale of another property contingencies. In most of these instances, the printed form simply requires you to check the right box or fill in the right blank; in some of them such as appraisal, termite, title and inspection, you don't even have to check a box or fill in a blank. So, before you go changing something, think carefully. I've read many contracts in which it was apparent to me that the client asked the agent to put something in the contract that was already there. I can only assume that the agent does this because he doesn't know the contract well enough or he's too lazy to explain to the client that the desired provision is not only in the contract, but that it's really well written. In these "write over" contracts, oftentimes the agent, by writing what his client requests, is actually diminishing the client's rights as they were already written in the contract. Every agent should know the MLS contract inside and out. If you know your stuff, you'll be able to go right to the provision and show it to the client. You can tell him "Look, it's already in there; we don't need to get the guy on the other side of this contract worried about why we wrote over this provision of the contract". If, on the other hand, you have been presented with an offer with an open ended contingency, you know, the kind that could be a wiggle out clause, you must shut it down.

Let's picture a situation. You are representing a seller who has just received a transfer to say, Philadelphia. Your client will not be receiving a buyout from his employer and will be in no position to make the move until he completes the sale of the house he has listed with you. Oh joyous day! You

receive a full price offer and he quickly signs off. A closing is scheduled and your client contracts with a moving company; the plan is that all his stuff will be packed up and ready to head for Philadelphia the moment he completes signing the sale documents and gets his proceeds check from the title agent. The day before the scheduled closing, the buyer's agent tells you that the buyer is refusing to close because the house doesn't meet with his "inspection" standards. You suspect this is a subterfuge for some other reason (perhaps you have heard rumblings of domestic discord between the buyer husband and wife). After this unsettling call, you pull out the contract and there it is right there in front of you: "This sale is subject to inspection by buyer's inspector and shall be subject to buyer's satisfaction, in buyer's sole discretion". With a heavy heart and a heavier hand, you reach for the telephone to make the call to your seller. If you think I'm making this up, I've already seen it happen a number of times. What went wrong here? First of all, to borrow Alan Greenspan's term: "irrational exuberance". You and your client got so excited about the full price offer that you didn't carefully parse the offer. Let's face it; real estate agents are sales people. The dominant dynamic for a real estate agent is selling, not the details. Plus, selling a house is an exciting moment, for the seller, for the buyer, and for the agents. This environment just isn't conducive to careful consideration of details. This is all the more reason for you to tell yourself and to train yourself to increase your level of vigilance and care on behalf of your client. What could have been done to avoid the nightmare scenario? The following language should have been written as a counteroffer against the above stated inspection contingency: "Buyer shall have 15 days to complete all inspections and to advise Seller in writing of any objections. If Buyer does not advise Seller in writing of any objections within 15 days, all such objections shall be deemed waived. If Buyer does timely advise Seller in writing of any objections, Seller shall have 15 days to complete repairs or otherwise remove the basis for such objections in such manner as to satisfy a prudent man standard". This language allows the buyer to have the inspection opportunity he desires, but shuts down his ability to unilaterally walk away from the contract. Without shutting down wiggle clauses, you create a situation in which the only party who is bound to something is your client. And that's not very good representation; it might even amount to negligence. When the lawsuits start flying, you might find yourself on the wrong end.

Let's talk for a moment about another kind of contingency – the waiting period. The waiting period is a relatively recent introduction into Louisiana law. Most of us old hands (including me) haven't really trained ourselves to think about it. But we better. What am I talking about? First of all, the disclosure law. As all of you have been trained, every buyer in every residential real estate transaction is entitled to a detailed written disclosure on a form prepared by the Louisiana Real Estate Commission. Everybody pretty much does this as required. But here's the "gotcha": if the prospective buyer is not given the completed disclosure *before he makes the offer*, then he has up to 72 hours after presentation of the disclosure to simply change his mind. The 72 hours don't include holidays and weekends. Here's a scenario for you: Offer on Tuesday the 1st, seller accepts Thursday the 3rd and sends accepted offer (now a contract) back on the 3rd along with a disclosure form, both of which are received by the buyer on the 3rd at 5:00

p.m. Friday is day one, Saturday and Sunday don't count, Monday is day two and Tuesday is day three. The buyer has until 5:00 p.m. on Tuesday the 8th to rescind the contract, no questions asked and with the right to return of all his deposit. And if the disclosure was given later in the process, the buyer would have even more time to cancel the deal. Please note that the scenario I described above happens *only when the disclosure is provided after the offer*. The moral to this story: if you are the buyer's agent (the selling agent), get the disclosure and provide it to your buyer before you allow the buyer to sign a written offer; if you are the seller's agent (listing agent), get the disclosure to the buyer at the earliest opportunity to start the time ticking. There is another area of statutory law that has intruded into the parties' freedom to contract. I'm speaking of the disclosure laws applicable to condominium, townhouse, and timeshare sales. These real estate transactions require numerous and voluminous disclosures and failure to timely provide these disclosures creates grounds for the buyer to withdraw from the contract. I've already treated this subject in some detail in a previous article. If you wish to read the archived article, it is available on our website at firstcommercetitle.com under "newsletter articles" and is entitled "What Every Real Estate Agent Should Know About Condominiums and Townhouses".

Let's turn our attention to another aspect of contingencies. One of the overriding premises in contract law is the notion of "good faith". The law expects all parties to perform their contractual obligations in good faith. Considering matters from this perspective, there are two ways to look at how a contingency is drafted. The hard core perspective is: what would happen in court? This perspective asks what would happen if the party relying on the contingency as a ground for nonperformance were challenged on that point in a court case. The other more soft core perspective asks the question "Can the nonperforming party even make a plausible argument based on the contingency for his nonperformance?" I submit to you that when you draft a contract you should do it in such manner that the party otherwise tempted to balk on grounds of the contingency, realizing the implausibility of the argument, will accept the futility of balking and forgo the whole court experience. But let's turn our attention back to the "hard core" scenario again. Imagine, if you will, a contract in which the balking client has a plausible argument, but not necessarily a winning argument. Just where does a court draw the line in these cases? Remember, I started this discussion with the premise that all parties are expected to perform their contracts in good faith. "Good faith" will be the border that separates winners from losers. One area of contingencies that has been especially fruitful of litigation is the financing contingency. We lawyers have been the beneficiaries of enough written opinions by higher Louisiana courts as to have a pretty good idea about how a case in this area will turn out. Putting all the cases together the rule goes something like this: if a contract contains a financing contingency, the buyer is expected to make a real and substantial effort to obtain a loan commitment. This means the buyer must do all the things the lender asks of him and he must do these things on a timely basis. If the buyer is turned down by one lender, he must apply to other lenders if he still has remaining to him additional loan possibilities and if such additional loan possibilities are within the scope of the type of loan he is obligated by the contract to pursue. If, on the other hand, additional efforts by the buyer would

be vain and useless, he is not required to continue his efforts to obtain a loan commitment. If, for example, the parties to the contract have agreed that the buyer will obtain a VA guaranteed loan, and in the loan application process, the buyer discovers that because of his particular circumstances he will be unable to obtain any VA loan from any lender, he will not be required to continue in his efforts to obtain a loan; in this instance, the buyer would be entitled to withdraw from the contract and to obtain his deposit. In those court cases in which the court determined that the balking party had not made a good faith effort to perform, the court simply read the contingency out of the contract. Put another way, the contingency was eliminated as if it had never been in the contract and the court held against the balking party, granting a judgment in favor of the aggrieved party with a remedy in accordance with whatever the contract provided. Let's suppose another contingency situation. Many contracts have written into them a contingency that the buyer will not be required to perform if he is unable to sell his house first. If, in such instance, the court were presented evidence that the buyer hadn't seriously marketed his house, say, for instance had taken it off the market, or had turned down a full price offer, the court might conclude such a buyer was not in good faith. Were a court to reach such a conclusion, it would write this contingency out of the contract and grant judgment in favor of the aggrieved seller.

Although I am digressing here for a moment, I think it is important to address another type of problem I've seen arise several times in my practice. I have been privy to several cases in which a seller whose agent was really trying to keep up with things got himself into trouble. Here's what happened: The contract contained a financing contingency and the buyer applied and was turned down. Based on the kind of loan the buyer had applied for and the reason the buyer was turned down, the listing agent made the quite reasonable assumption that the buyer would be unable to obtain financing. But the way most financing contingencies are drafted, the buyer can continue to pursue other loan possibilities until the contract has reached its maturity date. In these nightmare cases, the listing agent and the seller jumped the gun, found another buyer, and entered into a contract with the second buyer, thinking the first contract was dead even though the contract maturity date had not been reached. Wouldn't you know it? Buyer number one found his financing. Wow! What a mess. The moral of the parable in this paragraph is to make sure contract one is dead before you enter into contract two or write a contingency into contract two that contract two will not be effective until contract one is officially dead. A reminder on this point: under the local MLS contract form, it's not dead until seven days have transpired after the contract maturity date (unless the contract has been extended under the "title" provisions which allow the buyer to notify the seller in writing of title defects, giving the seller 30 days from notification to cure the defects.)

Well, so much for appetizers and salads. Let's get to the main course. All that I've written so far has been on the subject of how to avoid the situation of the balking client. It's time to discuss what happens when it's all too late, when despite your best efforts, or maybe even your somewhat lame efforts, it's all blowing up in your face. What do you do? Like the Hippocratic oath that doctors take, first, do no harm. In other words, your attentions should now be focused on strengthening your client's position.

First and foremost, know when to hand the ball off. Remember: you are a realtor, not a lawyer. When a party to a buy/sell agreement balks, matters have just crossed a clear demarcation; it's time to put your client in touch with a lawyer and pronto. I find that oftentimes these situations sneak up on realtors because the situation degrades by degrees. When it still seems possible that the balking party will perform, agents quite understandably keep trying to get the deal to the table. But you must recognize that in every busted deal there is a point when it's time to hand off. Don't wait one second longer than you should. I even recommend that you cover yourself with paper. In other words, write a letter to your client telling him everything you know and urge him to get in touch with a lawyer without delay; be sure to advise him that time is of the essence and that his failure to immediately seek legal counsel could substantially impair his legal rights. Retain proof of the date and time that this letter is delivered.

The next step that should be considered is the possible recordation of the buy/sell agreement. If the balking party is the seller this could be of great value. If the balking party is the buyer, do not record the buy/sell agreement. By recording, I mean taking the buy/sell agreement to the parish clerk of court for the parish in which the property is located and placing the contract on public record. In order to do this, you will have to have a contract bearing the original signatures of the parties; otherwise the clerk won't permit recordation. The effect of recordation is to warn off other buyers and tell them that you were there first. I guarantee you that no title lawyer is going to close on a deal for which a buy/sell agreement has been recorded giving some other party preemptive rights. Caveat: recording an unenforceable contract may result in a money judgment against you and your client. If your party isn't ready, willing and able to perform under the contract, you shouldn't record.

Even though you have suggested to your client that he should seek legal counsel, sometimes there just isn't time or your client isn't sure at that moment that he wants to pursue his legal remedies. There, nevertheless, are VERY important steps you should take to protect your client's interests. Louisiana law takes the position that before a party asks the court to enforce a contract, the plaintiff party must demonstrate his own performance. Now, in certain kinds of contracts, this is simple: the aggrieved party just does the thing he contracted to do. For instance: a roofer contracts with a homeowner to roof the homeowner's house. In order to perform, the roofer simply roofs the house. When the homeowner doesn't pay, the roofer doesn't have to do anything else before he files his suit. Buy/sell contracts don't work that way; they're a two way street, calling for *simultaneous* performance by the parties. Bottom line: I can't sell it to you if you won't buy and I can't buy it from you if you won't sell. So how do you demonstrate that you are ready willing and able to perform. The answer is that bane of every second year law student's existence: "putting in default". We poor law students spent months trying to understand when you must put the other party in default. Fortunately, for you, it's simple. Just do it anytime the other party balks. By now you are probably rhetorically commenting that you don't know how to put someone in default. Not to worry: I'm going to tell you. Do this: write a letter directed to the balking party and advise the other party that your clients, John Doe and Mary Doe, hereby demand that Sam Smith and Judy Smith ap-

pear at the office of First Commerce Title, 2708 Village Lane, Bossier City, Louisiana on a certain date and at a certain time and complete the sale described in the buy/sell agreement. I recommend that you have your clients sign this letter so no one can ever argue a lack of authority. This letter should be written and *delivered* to the balking parties prior to the date that the contract declares to be the maturity date, completion date or whatever it's called. You know, every contract has one. Then, you and your clients should appear on the appointed date and time at the appointed place. Some questions you may be asking yourself: how soon is too soon, how late is too late, and how do I pick the appropriate agent to which I direct the balking party. Too soon: obviously, you should allow enough time to the balking party that he could have completed all the things he needed to do under the contract had he so chosen; the courts have held that you are not obligated to wait to the very last minute. In one case I read, the demanding party demanded the appearance of the balking party approximately one week prior to the contract maturity date and the court in this case deemed the timing of the demand to be reasonable. In instances in which performance is being demanded well before the maturity date, I suggest including some language in the written demand along the lines of "If the date and time demanded for your performance in this letter are not convenient for you, please advise a date and time which will be convenient and which is prior to [the maturity date]. Too late: Never pick a date later than the contract maturity date; this places your client in the position that a court hearing the case at a later time may find that your client did not adequately and timely demonstrate a readiness to perform. The place: this one's pretty easy; in every case with which I've had personal familiarity, the contract had already been placed with a title company; in such instances, the place should be the title company to which the contract has already been entrusted. If that company refuses to assist, or you are concerned about their expertise in these situations or, for some reason, no file was ever opened, then just pick any competent title agent that is reasonably accessible to the balking parties. Courts are not going to get too hung up on "where" performance was demanded. Be sure you and your clients appear at the appointed time and date and have the title agent prepare you a "Proces Verbal." "Proces Verbal" is a fancy name for a report signed by the title agent that on such and such date and time, Mr. and Mrs. Buyer appeared at the title agent's office and announced ready, willing and able to close. Mr. and Mrs. Seller failed to appear and after waiting an hour, Mr. and Mrs. Buyer gave up and left. The title agent should sign this document in the presence of a Notary and two witnesses, and then surrender the original to the appearing persons.

Sometimes it isn't necessary to put the balking party in default. If the balking party has unequivocally announced that he will not perform or if he has taken some other action which clearly indicates his unwillingness to perform, it is unnecessary to put him default. But you should never try to make that call because you might be wrong. Therefore, you should always go through the process of putting the balking party in default. And, as I said, you should do this prior to expiration of the contract maturity date. But, if you have somehow allowed expiration of the contract maturity date, go ahead and put the balking party in default anyway. In some instances, the courts will allow a putting in default after expiration of what might at first glance appear to be a contract termi-

nation date. Our local MLS forms state that the contract does not end at the maturity date, and, in fact, is not terminated until the maturity date has passed and one of the parties has informed the other in writing that he considers the contract terminated.
Bottom line: always put the other party in default prior to the contract maturity date, but if you fail to do so, don't give up and go ahead and put the balking party in default as quickly as possible.

After the putting in default, it's lawyer time. No doubt, your client will ask you whether he ought to seek legal assistance, what can he do under the contract, and what can he expect to recover should he file a suit. Again, I say to you, pass the ball; don't get yourself in trouble advising your client about things beyond your expertise. But just in case you might want to know some things about how this part works, I'm going to tell you. Item 1: the standard MLS contract provides that attorney fees can be awarded to the prevailing party; this is a big help to court claimants. Item 2: the standard MLS contract, and just about every other contract I've seen, provide for either specific performance or damages. Before I talk about specific performance and damages, I want to discuss earnest money and deposits. The word "earnest" is a legal term of art. Literally, it is the amount that a party is entitled to if the other party withdraws from the contract. Sometimes, in other contexts, this is what lawyers are referring to when they describe the damages as "liquidated damages". In South Louisiana, it is very common to see contracts that are earnest money contracts. However, the sums put up on the front end of contracts in South Louisiana are usually larger than they are in our area; often they are 10% of the sales price and frequently they are in the form of a promissory note. In earnest money contracts, the buyer can walk by surrendering the earnest money; nothing more will be required of the balking buyer. In earnest money contracts, balking sellers' liability is limited to the amount of earnest put up by the buyer unless the contract stipulates something else or unless the buyer is also entitled to pursue specific performance as a remedy. In our area, I don't believe I have ever seen an earnest money contract. In fact, the standard MLS form specifically states that the up front money shall not be considered as earnest but is a deposit. What is the legal meaning of a deposit in a buy/sell agreement? The same as any other contract. It simply represents a portion of the money the buyer is obligated to pay under the contract. I want to make this point clearly, because I often get the sense that parties and agents alike sort of vaguely believe that handing over the deposit settles a dispute. It doesn't, unless the parties agree that handing over the deposit is intended to settle the dispute.

The aggrieved party is faced with the question of whether to seek specific performance or damages. Specific performance means having a judge order a party do the thing he agreed to do in the contract. If you think about it, this remedy is pretty much a one way street. This is a great remedy for a buyer, but pretty much useless to the seller. If a court orders a seller to sell the property to the buyer on the terms and conditions set forth in the buy/sell agreement and the seller refuses or just doesn't do it, the buyer can get the judge to sign a judgment that substitutes for the deed. Such a judgment is normally contingent on the buyer depositing into the registry of the clerk of court the purchase price or such sum as the judge has determined after making appropriate adjustments. In order for a seller to seek specific perfor-

mance, he would have to actually transfer the property to the buyer. How will he get his money? As the bard says: "Ah, there's the rub". Specific performance is seldom a viable remedy for an aggrieved seller. Out of the many cases I read in which specific performance was granted, in only one of them was it a seller who sought it and received it. And, in that case, the balking buyer was a medical doctor who simply changed her mind about buying a $500,000.00 house. Reading between the lines, the story was that the doctor had plenty of money which the seller could easily get to. What about damages? Damages can be kind of tricky. The Court of Appeal which oversees cases for North Louisiana (in other words, the one which calls the shots on us) has been all over the place on this issue. Of course, for reasons stated above, aggrieved sellers will normally seek damages instead of specific performance. So, accordingly, most of the cases on damages are sellers suing buyers. The rub here is the formula by which the court determines the damages. In some instances, our appellate court (and others in the state) have fixed damages as the difference between the contract price and what the seller received in a later sale. Example: seller has a contract to sell for $100,000.00, and buyer refuses to perform. Seller sells the house six months later for $85,000.00. Then seller sues the buyer who balked on the first contract; many courts would grant the aggrieved seller a damage award of $15,000.00. Absent any other evidence, I think that would be the rule in our area. However, in a similar fact situation, but one in which an appraisal was done at the time of the $100,000.00 contract, the seller got nothing because the appraisal showed the house to be worth $100,000.00. According to the court's reasoning, when the buyer backed out, the seller lost nothing because he still had a house worth as much as the price as he was to be paid, even though when he sold it the next year he took a big loss. It is inexplicable to me how a court would give the benefit of the doubt to the bad faith party and elevate something as abstract as an appraisal over a here and now real buyer, but you need to know that case is out there. Weird stuff happens in court sometimes. One last point on this: I have had agents sometimes express to me the fear that their seller clients must retain ownership of the house in order to sue balking buyers. This is absolutely not the law, and there are many appellate cases to attest to the fact that it isn't the law. For, as I set forth above, in many instances, courts have used the selling price in a *later sale* for the purpose of determining the amount of damages the balking buyer will have to pay.

Well, that's it, appetizer, salad, and meat. Now, I feel compelled to express my secret fear that I'm about to be inundated with every "won't close" contract in town. Oh, it's ok; send 'em over, but, if you don't mind, please send a few that will close.