Notes from Rob Erickson's Presentation to the Missoula Real Estate Meetup

Notes taken by Keith Miller, and mistakes or omissions are his fault alone.

- Has been an attorney for over twenty years. He works at Rhodes and Erickson.
- There are times and during particular deals where a lawyer is important, and others where it is not, and he's going to cover when and why you'll need a lawyer.
- Most lawyers who you call up will first discuss whether you need a lawyer or not, that's a good sign.
- If you are a real estate investor, you are also a small business owner. Managing a property IS a small business, so he encourages you to also read business books. The parallels between small business thinking and real estate are uncountable.
- Moved to New Mexico after getting his Law degree in Tulane.
- Did a lot of real estate litigation in Albuquerque, all foreclosures are judicial, meaning they require a lawyer.
- Most foreclosures in Montana are non-judicial, meaning they don't require a lawyer to do a foreclosure.
- He helped banks with underwriting on loans, to determine whether a project was worth loaning on.
- 14 years ago, he moved back to Missoula, and worked at a medium sized firm, that mostly focused on real estate.
- Today, he focuses on about half of his time on litigation, and the other half on transactions, a lot of business and real estate consulting. Now he does a lot of consulting to focus on how to avoid litigation, and specific advice on real estate transactions.
- He's going to now cover some scenarios from the buyer's perspective, and then talk through what to keep in mind from a legal perspective.
- <u>Scenario</u>: A buyer has cash and a deal brought to them by a realtor, and is planning on buying it. Do they need a lawyer? Probably not, if you have a realtor, they are there to protect your interests. If the same situation is happening again, but the title report comes back saying "Lack of access" or the preliminary title commitment says "We are going to exempt legal access from the insurance policy that we will issue for this property". Should you hire a lawyer? Yes! Access to the property is crucial, access to a property is absolutely necessary. By talking to a lawyer, you can determine if the deal can be salvaged, or if you need to walk away. Sometimes you can buy an easement from a neighbor, and that can save the deal.
- <u>Scenario</u>: You are buying a property in cash, and you are not being represented by a lawyer, but the seller does have an agent. Should you hire a lawyer? Probably yes, or hire an agent. The full commission will probably just go to the selling agent if you don't have one, so it might be better to just have your own. Hiring a lawyer to prepare the documents, or to review them would be beneficial. If it's a cash deal, and no party has a realtor. If you want to buy an investment property

from a neighbor, and you want to buy a property from a neighbor. Should you hire a lawyer? Yes, because there are a lot of specifics to the deal. If it's truly a simple deal, without many complications, you can probably save a lot of money by only hiring a lawyer, instead of a realtor. You will need a buy-sell agreement, and a lawyer can write or review one. Contracts and buy-sell agreements do a great job of clarifying the specifics of the deals, to help avoid future conflicts over those things. You can think of them as "Communication Tools". Deeds are required as well, and the lawyer can handle this for you.

- Scenario: You want to buy an investment property, and you are borrowing the money for the down payment from your uncle. Do you need a lawyer? Yes! Your uncle probably needs a lawyer too, he will need a lien on the property. $500 of legal advice to review a contract can be well worth it when you have hundreds of thousands of dollars on the line. If there are no agents in a deal, and you are buying a property with seller financing. Do you need a lawyer? Yes. The seller probably needs a lawyer too. There are a lot of details involved with seller financing, and there are a lot of ways it can go wrong. If the buyer gets sick, dies, or loses their job, what happens? There are two ways to do seller financing. Under a Contract for Deed, if the buyer is in default, the contract is terminated, and the seller quickly regains possession. With a Note and Trust Indenture, otherwise known and a Note and Lien, the seller must go through foreclosure, and you will have plenty of warning. The buyer at any point can go back and pay the deficiency (the money owed), and put the contract back in good standing. In addition, in the unlikely scenario that the property is foreclosed on, and the property is worth more than the debt. For example, a million dollar property, with $100K in debt. If the property sells for $500K, there is $400K of profit. With a contract for deed, the profit goes to the seller (previous owner). With a Note and Trust Indenture, the buyer gets that profit.
- Scenario: You are the sole owner. Do you need a lawyer? No, no reason. But what if you are purchasing a property with more than two owners, and your goal is to eventually sell the property for a profit. Should you talk to a lawyer? Yes. Most real estate litigation is when one party doesn't perform, or when two people on the same side of the transaction don't get along, or don't agree, or something like that. It happens a lot, for all sorts of reasons. Divorce, moving out of state, some dies, there are all sorts of reasons. If everything goes perfectly, maybe a lawyer isn't needed, but that almost never happens. There are almost always divided responsibilities, with unequal contributions. General Partnerships, legally speaking, are structured so that all partners are equal, which doesn't always match reality. For example, if one partner put in $1 million, and one put in $100K, and there is $400K of profit, a standard General Partnership will award each partner $200K. A well written operating agreement will also specify what happens if a partner dies. As a side note, family cabins are the worst, they result in so many legal headaches and problems. Don't do it! When you are planning on pursuing a project with partners, make sure you have an operating agreement.

LLCs have only been around for 30 years, but are a great structure as long as it's not a large and complex purchase.

- Scenario: You are in a General Partnership, and you have a disagreement with your partner. The decision must be unanimous, and so if you can't agree on something, your business is stuck. Going to court is one of your only options. If you are in an entity, like an LLC, you can account for that by giving one person more votes on a decision. Or you can designate a manager to make final decisions. Make sure you have a plan for how you want it to work.
- Scenario: Who gets what at the end of a project? These decisions must be made at the beginning of the deal, not at the end. If the project is a huge success, then that can make it challenging to be "accommodating" with your partner, because there is so much cash at stake.
- If you are thinking that you may need a lawyer, you probably do. And sometimes, you can just ask a simple question to a lawyer, and get a simple, quick answer. Lawyers can often give you a rough idea of how long it will take them to help you. Consult lawyers early and often to avoid issues. Rob has done a lot of creative financing structuring in the past, including some work with "Subject To" AKA "Subto". Rob has enforced due on sale clauses over a dozen times, so it definitely does happen.
- Thanks so much Rob!