

# Business Insider

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## ***HOME BUYERS AND SELLERS: READ YOUR AGREEMENT OF SALE***

Most Pennsylvania home buyers and sellers sign a written agreement of sale as part of their negotiations. A buyer signs the agreement as part of making an “offer,” while a seller signs the agreement to signify acceptance of the buyer’s offer. In most residential real estate purchases, the agreement used is the Pennsylvania Association of Realtors Standard Agreement for the Sale of Real Estate. Home buyers and sellers can view a sample of the form at [www.parealtor.org](http://www.parealtor.org).

While it may seem long and confusing, all buyers and sellers should read and thoroughly understand their entire Standard Agreement of Sale (SAS). In addition to establishing the obvious terms, such as the price of the home and the timing of the buyer’s responsibility to make a down payment, the SAS identifies just what is being bought and sold and to whom. All parties should pay careful attention to the property description and address. All owners must be listed as sellers, and anyone taking title must be listed as a buyer.

### *What Are Fixtures?*

“Fixtures” are items that are considered part of the real estate. Upon closing, a buyer is entitled to all of the fixtures in the home. Chandeliers, ceiling fans, pool and spa equipment, and window shades all are listed in Paragraph 4 as items that are included in the sale as fixtures. Recent changes to the SAS added the following items to the list of fixtures: sump pumps, storage sheds, mailboxes, existing window screens,

storm windows, screen/storm doors, and awnings.

Buyers and sellers may add items to the list of fixtures and may also delete them. Reviewing Paragraph 4 of your SAS is an important part of making sure that you understand the deal you are entering into. A seller who wants to keep his or her storage shed or a buyer who expects to get the dining room curtains each needs to make changes to Paragraph 4.

### *Contingencies*

The “contingencies” in the SAS are very important. These are the various paragraphs that permit a buyer or a seller to back out of the deal if certain things do not happen. If, for example, the buyer opts for the homeowners’ insurance contingency paragraph, he or she will be entitled to back out if homeowners’ insurance is not available on reasonable terms.

Increasingly, buyers are finding that insurance carriers may require repairs or improvements to an existing home before agreeing to issue a policy of homeowners’ insurance. The insurance contingency permits the buyer to act quickly in applying for homeowners’ insurance and gives the buyer a chance to refuse to buy the home if homeowners’ insurance is too expensive or if the insurance company requires considerable repairs or alterations to the home. Buyers who opt for this contingency must strictly meet the deadlines for notices and for termination of the agreement. Otherwise, the contingency fails.

### *Inspections*

Buyers should always use the inspection contingency clauses of the SAS. Inspection clauses for property condition, wood infestation, radon, water, and sewer are all included in the SAS. The inspection section starts by identifying various options that the parties will follow if the inspections reveal defects. Each of the inspection sections has a blank space for the deadline date for inspection completion. The dates do not have to be identical. Before agreeing to any deadlines, wise buyers will find out how much time their various inspectors need. Buyers using more than one inspector should take the time to set different completion dates for inspections if necessary to meet the needs of their various inspectors. Buyers must also appreciate that most sellers do not want long inspection periods no matter how busy a buyer's chosen inspectors may be.

### *Location for Closing*

The SAS also provides that the final closing will occur where the property is located or in an "adjacent" county. "Adjacent" is not the same as "adjoining." Believe it or not, Pennsylvania courts have been called on more than once to determine what "adjacent" means. An adjacent county is one that is "close to or lying near" the county where the property is located. An adjoining county is one which is "next to or contiguous to" the county where the property is located. Therefore, the reference in the revised SAS to an "adjacent" county means nothing more than a nearby county—it does little to clarify where your closing should take place.

Because lenders and title companies can influence where a settlement takes place, a seller who does not want to have to travel out of town to attend the closing may want to insert language in the SAS at Paragraph 3 identifying precisely the county and/or town where the closing will be held.

### *Zoning Issues*

Paragraph 18 requires that, where the township, borough, city, or any local governing body has issued a notice of any municipal code or zoning violation, the seller has an absolute responsibility to share the notice with the buyer. Failure to share the notice triggers an automatic responsibility on the part of the seller to make all required repairs.

Where a zoning violation is concealed by a seller, even innocently or due to an oversight, a "repair" certainly is not an option since it is probable that the municipality will not forgive a zoning violation. But other municipal violations may be solved by repairs. This responsibility for "repairing" extends beyond and after the closing and is a serious and long term liability for sellers. However, since a seller can meet his or her obligations simply by sharing all municipal notices with the buyer, this provision is a problem only for sellers who attempt to conceal or who are remarkably careless about municipal violations.

Buying or selling a home is exciting and full of time pressures. Taking the time to slow down and read the Agreement of Sale is fundamentally important for buyers and sellers alike.

## ***WHAT HAPPENS TO YOUR E-MAIL AFTER YOU DIE?***

When a young Marine died in Iraq and his parents wanted to retrieve his e mail as a memorial to him, they came up against the privacy policy of the Internet service provider (ISP), which declined to provide the information. Ultimately, a probate court ordered that the parents be allowed to retrieve the e mails.

When a prominent poet died without leaving the password for his e mail account, where he kept virtually every significant piece of personal information, his daughter had no means of gaining access to that information so that she could notify others of her father's death. Citing privacy concerns, the ISP for the account refused to divulge the information to the daughter.

These real life stories are the leading edge of what may become a wave of litigation concerning ownership of e mail information upon the death of the account holder. The competing interests are the privacy of the account holder, coupled with the ISP's interest in preserving that privacy, and the survivors' rights to the property of the deceased.

Most of us think of e mail as the modern equivalent of a box of letters belonging to us, when, technically, e mail is an intangible form of property owned by the ISP. Nonetheless, if it is possible to spot an early trend on the issue, that tendency is to treat e mail information as the account holder's property upon his or her death. In most states, the issue is still unresolved and without clear case precedents. At least one state has passed a law directing ISPs to turn over the e mail of a decedent to the personal representative for the decedent's estate.

#### *Steps to Take Now*

It will be some time before legislatures and courts catch up with the reality that millions of people use their e mail accounts as repositories for all sorts of information having sentimental, historical, or economic value. In the meantime, there is some practical advice for facilitating access to e mail information "left behind":

- Read your ISP's privacy policy to determine what your survivors may have to contend with to get access to your e mails. The policies run the gamut from providing e mails to next of kin upon showing a power of attorney over the account and a death certificate, to treating e mail accounts as non transferable and with no right of survivorship.
- As strange as it may sound, consider dealing directly with the issue in your estate planning by including e mails specifically in your will, especially if they have monetary value. In connection with this, you should archive the information to your hard drive and be sure that your survivors have any necessary passwords. Conversely, if you want to take your e mails with you, in effect, stipulate in your will that no one is to have access to your account.
- Get good legal advice, including information as to whether there are any new laws in your state on the subject. They could trump, or at least affect, whatever arrangements you have made or may be considering for disposing of your e mails after your death.

### ***WATCH YOUR LANGUAGE, DEBT COLLECTORS***

In a letter to a debtor intended to prompt payment of \$250 in debts, a collection agency's choice of words entangled it in protracted litigation under the federal Fair Debt Collection Practices Act (FDCPA). The theme of the dunning letter was honesty, or the lack thereof, on the debtor's part. In all capital letters, the letter informed the debtor: "YOU ARE EITHER HONEST OR DISHONEST YOU CANNOT BE BOTH." It proceeded to question the debtor's good

intentions in allowing the account to become past due and in supposedly ignoring all prior requests for payment.

The debtor struck back with a lawsuit under the FDCPA that was at first dismissed by a federal trial court, but then reinstated when the debtor appealed. The letter violated the FDCPA in more than one respect. A debt collector may not falsely represent or imply, in order to "disgrace" the consumer, that the

consumer committed any crime or other misconduct. It was true that a check written by the consumer did not clear, but there was no evidence as to why this happened, or that the debt collector had, in fact, previously made communications to the consumer that were ignored.

Since there could have been an innocent, or at least honest, explanation for the unpaid bills, the letter's comments impugning the consumer's honesty and claiming that other collection attempts were ignored could be shown to be both false and intended to shame the debtor into payment. This violated not only the letter of the FDCPA, but also its underlying rationale that even defaulting debtors deserve to be treated in a reasonable and civil manner.

The same letter also ran afoul of the prohibition in the FDCPA against using "unfair or unconscionable" means to collect or to attempt to collect a debt. By way of example, the Act lists eight forms of conduct that constitute unfair or unconscionable

means. The letter in question did not fit neatly into any of the examples, but the debtor's claim could still proceed because the list was not meant to be exhaustive.

It was conceivable that impugning a debtor's honesty and good intentions could be regarded as an unfair or unconscionable collection method. Since, by law, a court views a claim under the FDCPA through the eyes of an unsophisticated debtor, the plaintiff was planning to support her claims by conducting a consumer survey to determine if such debtors would find the letter she received to be false, misleading, unfair, or unconscionable.

The practical lesson to be derived from this case is that debt collectors should steer away from any inclination they may have to try to enhance the impact of collection communications by casting aspersions on the debtor's character and intentions. Collection letters should stick to the provable facts and should be direct and simple. Opting for spicy language over plain vanilla only invites legal indigestion.

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