

## **Anti-Terrorist Clauses - in Real Estate?**

*by Sandy Geroux*

In our changing times, real estate professionals have had to contend with many changes - from the way they promote their services, to who they're allowed to call, to the amount of technology and the associated knowledge required to perform their jobs properly.

The one thing I never thought I'd see is the situation in which real estate professionals have to negotiate anti-terrorist clauses in their purchase agreements. That's right - you read it correctly: anti-terrorist clauses.

While breaking news in our post-September 11<sup>th</sup> business climate has indicated that other businesses are being forced to contend with these types of clauses, they are at least fairly predictable. One example is the special-events business, which usually represents hundreds of thousands - even millions - of dollars, to bring a single event to a particular area. Clients are understandably squeamish about committing themselves to this kind of money, only to have the event get cancelled by a terrorist attack of the magnitude of 9-11.

However, a new and unexpected wrinkle has just been added to real estate negotiations, in the form of an anti-terrorist clause that one team of REALTORS<sup>®</sup> has actually had to negotiate during the past week, in order to keep the real estate transaction involved in this scenario alive.

"I've just spent the last week on the telephone with the buyer's agent and my seller's lawyer, as well as my sellers, while the buyer's agent has spent his last week on the telephone with his buyers and their lawyer," said the REALTOR<sup>®</sup>, who prefers to remain anonymous since this transaction is still in process, and he doesn't want anyone's position to be compromised.

Another complication is the not-so-surprising fact that one lawyer has read the clause and feels it is unenforceable, while the other disagrees and feels it is completely enforceable. While there is a long history of different lawyers interpreting contracts and laws in completely opposite ways, it does little to help ease the minds of the buyers, sellers and agents in this particular transaction.

This issue arose as a result of the following situation: the sellers of the home are in the travel industry, and while the aftermath of the 9-11 terrorist attacks did not force them to go out of business, they were hit hard. If another attack like that one occurs, it could very well put him out of business, thus eliminating the reason for selling his home and moving to another state.

"We finally composed a version of the clause that both buyers and sellers may feel comfortable with, although it is not yet a done deal," said the REALTOR<sup>®</sup>, who has some advice for other REALTORS<sup>®</sup> who may be confronted with this issue. "Find whatever reasonable neutral ground you can, and try to make it as fair as possible to all parties involved. Also, even though the lawyers disagree, we're all glad we got their input into these dangerous new waters." The following also outlines the basics of the changes made to the original clause, making it a win-win situation for both parties.

The original clause contained no specifics about the nature of the terrorist attacks that could force cancellation of the contract, nor did it contain an expiration date for the clause itself. In its original form, this clause would have continued right up until the minute the closing documents were signed by all parties. In order to make the clause acceptable to the buyers, the sellers agreed to specify the type of terrorist action that would constitute a valid reason to cancel the contract (a terrorist activity that directly and adversely affects the travel industry). Also, the clause now has an expiration date by which the activity must occur, or the house will transfer as agreed. In addition, a provision was added that allowed the buyers to also exercise an option to cancel the contract in the event of terrorist activity. The original clause only gave this option to the sellers.

We must remember that we now live in a whole different world than that which existed prior to September 11, 2001 - a world in which provisions are being made for some very interesting scenarios. Staying on top of each new situation as it comes along is crucial as we all try to make our way through unfamiliar waters.

Let's just hope nothing else big happens before we can figure out what to do about this one.