Fall 2014 - Georgia Residential Real Estate Newsletter

ALDRIDGE | CONNORS LLP

PARTNERSHIP INTEGRITY INNOVATION

Welcome to Fall

We hope you are relishing all that Fall has to offer....milder weather, leaves changing color, football, holiday preparations... As you enjoy this Fall, we hope you benefit from the information and practice tips included in the articles below.

Taxation Blues – Part 1

Georgia is second only to Texas when it comes to the number of counties in a single state. Our state has 159 counties and each tax commissioner independently determines when their county's tax bill will be issued and due. To complicate matters, in addition to county taxes a municipality and/or city can also collect and bill taxes separately and in a different month than the county's bill. Managing these variations can prove quite challenging for those of us in the real estate profession, especially when conducting real estate transactions throughout the entire state of Georgia.

Why is this important? County, city and/or municipal taxes must be prorated on the settlement statement between the buyer and seller, pursuant to provisions in the governing contract. If the closing takes place after the current year's tax bill has been issued, that tax amount is simply prorated between the buyer and seller based on the settlement date. If the tax bill has not been issued for the current year, the seller issues a credit on the settlement statement to the buyer for their calculated portion of last year's bill, unless the parties have agreed otherwise in the contract. The seller cannot pay their prorata share directly to the County or City; the municipality will not accept a tax prepayment on an unbilled amount. Based on the seller's credit to the buyer at closing, it will be the buyer's responsibility to pay the entire tax bill when issued for the current year, unless the parties agree otherwise in the contract.

What happens if the current year bill varies from the prior year bill? The answer depends on the language in the contract. If the contract form used is the Georgia Association of Realtors, Inc. (GAR), the parties have agreed to re-prorate amongst themselves after closing. Beware of contract addendums that override this agreement. Addendums which eliminate the provision for re-proration after closing are commonly used in bank owned (REO) sales. The bank's motivation for such clauses is to allow for them to close their books, so to speak, on each property at the conclusion of the sale

Some of the factors contributing to real property tax complications in Georgia would be eliminated if Georgia required the tax commissioners of all 159 counties to issue tax bills in the same month, as is the practice in other states, providing consistency and predictability. Until then, we will continue singing the taxation blues.

…..Stay tuned for Taxation Blues Part II, Tax Appeals.

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Realtor Tips to Protect your Client

Have we seen the last of the REO properties for the foreseeable future? REO ("Real Estate Owned") properties are assets that were acquired by lenders through foreclosure. After the real estate market shake-up in 2007 there was a sharp increase in the number of REO properties on the market. Even with the recent improvements in the real estate market, REO properties still comprise a noticeable portion of available homes for sale, and based on predictions will for some time. We hope the following tips are helpful to you in your representation of purchasers of REO properties.

Practice Tips:

1. Submit a loan prequalification letter or proof of funds with the offer in order to greatly increase the likelihood of seller's acceptance;
2. Make sure your client has submitted their highest and best offer if they really want the property. REO sellers often entertain multiple offers, and are not committed to any one offer until they sign a contract. Always remind your client that nothing is binding on the REO seller until they have signed the contract.
3. For your investor clients, bear in mind that some REO sales are open only to certain groups, such as intended owner occupants for a period of time, and if no qualifying offer is received during that time period then the seller will entertain offers from anyone.
4. Read and have your client read any REO Addendum presented by the seller. Any addendum will supersede the terms in the offer, including the timeframe for acceptance.
5. If there are items in the REO Addendum that are make or break items for your client, you will certainly want to counter with requested addendum modifications, but before doing so please warn your client that REO sellers are much less likely to accept an offer with addendum changes requested. REO sellers tend to be inflexible when it comes to changing the addendums as these are national documents preapproved by the entity's in house counsel, in most cases, and any changes often require in house counsel review and approval, which can be a lengthy process.
6. One item you will want to be sure you confirm in the REO addendum is whether or not the seller is agreeing to pay the cost of your client's owner's title insurance. REO sellers vary greatly in their approach to title insurance costs. Some pay on every deal. Others never pay on any deal. Some pay if you agree to close with the seller's attorney. Some pay for the costs of a basic policy, but not an enhanced policy. If the latter is the case, you will want to talk with your client about the differences between a basic and enhanced policy and always recommend to your client that they pay the difference between the basic and enhanced policies, if available. You will want to ask the closing law firm for the difference in cost between a basic and enhanced policy, but your client can expect to pay somewhere between $100 and $300, for most price points.

The best advice we can offer when representing the purchaser of an REO property is to read and ask, read and ask. Please feel free to reach out to us if you have any questions or if we can be of any assistance to you or your client, whether the transaction is closing with us or another law firm. We are here to help.

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Why Title Insurance?

In some states title insurance is required to be provided to a buyer of real property by the seller as a condition of the purchase. Georgia is not one of those states. In Georgia, owner's title insurance is customarily purchased at closing but generally is not a contractual obligation on the seller to provide to the buyer. Based on the fact that owner's title insurance is customary, many purchasers may not know or understand what benefits their policy provides them.

Title insurance protects the insured against financial loss in the event certain issues arise regarding the insured's interest in the property. In addition to protection from financial loss, title insurance also provides for the cost of defending against any covered claim.

There are two types of title insurance: lender's title insurance and owner's title insurance. Lender's title insurance only protects the interests of the lender and most lenders require title insurance as a condition of loan approval. Owner's title insurance protects the interest of the owner. There are 2 types of policies: basic and enhanced. A basic policy is analogous to auto insurance coverage for the state required minimums in that the insured has coverage but not for all the issues that might be raised in the future. Unlike auto insurance with future payments required in order to continue coverage, title insurance involves a one-time fee and may last indefinitely. The owner's protection lasts as long as the owner or any heirs have an interest in or any obligation with regard to the property.

What are the risks to a purchaser without owner's title insurance? Purchasers of real property expect to possess any and all legal rights to their property. Most purchasers are under the misconception that once they purchase a property, no other party has a legal right to that property without their consent. However, it is possible for a third party to constrain or even supersede the legal rights of the owners to the property without the owner's consent. How is this possible?

Prior to the completion of the sale of real property, a title search and examination is completed. The title search should determine the owner and any encumbrances, according to the real estate records. However, there can be hidden title defects that even the most thorough title search does not reveal, to include a forged document, an unaccounted for heir or a mis-indexed lien. For these reasons and more, a purchaser of real property can end up in a position where others may have a lawful and superior claim to their property.

History has proven that an owner of real property can have his/her property **legally** taken from them because they unknowingly purchased the property from a party whose rights were inferior to or encumbered by those of a third party. Protecting innocent purchasers from loss is the reason title insurance was developed in 1876 and the critical importance of this coverage is no less today.

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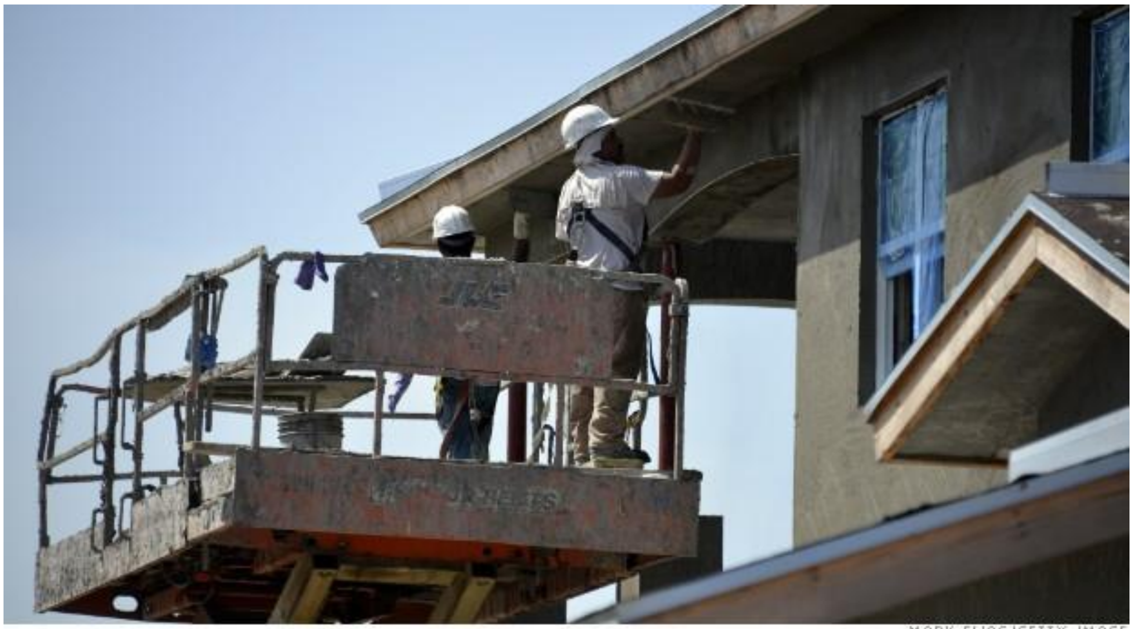
In the News.......

Is the economic recovery real?
3 stats to watch

Source: money.cnn.com



MARK ELIAS/GETTY IMAGE

What everyone wants to know is if the economy is truly better.
Is this recovery "for real"?

There is so much data on the economy now, it is hard to figure out what is most important. Last week alone exemplified the flood of numbers: the Census Bureau, Federal Reserve and Labor Department released a variety of economic data points. The big news makers -- employment, inflation and gross domestic product -- are always important statistics, but if you really want to know where things are headed, there are a few lesser known indicators that give a fuller picture of the economy's health. To make some sense of it all, CNNMoney surveyed numerous economists.

According to the experts, keep an eye on these three things.

1. People's spending:

Shoppers have a big impact on the economy. Consumption makes up over two-thirds of America's gross domestic product. The Great Recession made people a lot more cautious about buying things. And when people aren't buying, that also hurts company profits and jobs. "You can't sustain strong economic growth without the consumer leading the way," said Sal Guatieri, senior economist at BMO Capital Markets in Toronto. The question is whether buying is back. The best way to gauge that is the monthly Personal Consumption Expenditures (PCE) index. At the height of the recession in 2009, PCE decreased, and it still is not back to its pre-recession levels. What most economists -- and businesses -- want to see is steadily increasing spending. But so far in 2014, there have been three months where PCE has dropped, including July. That's worse than 2013 when the PCE increased (or at least remained level) every month.

Bottom line: Not back yet

2. Home buying and building:

The housing collapse was at the center of the recession. The slow recovery of the housing market serves as a microcosm of the economy's tepid comeback. "Home ownership has historically been the single largest trigger to consumer spending," said Diane Swonk, chief economist at Mesirow Financial in Chicago. People who buy homes tend to buy more of other products than non-buyers, which suggests that home buying can trigger a positive ripple effect on personal spending and jobs, Swonk says. Economists are watching a data point known as "housing starts." Single-family housing starts in July numbered 656,000, or about 10% higher than the same time last year, according to the Census Bureau. Still, the number of these housing starts is 50% below a typical level, says Robert Denk, senior economist at the National Association of Home Builders in Washington D.C.

A more normal level of housing starts would be about 1.3 million, the average between 2000 and 2003, Denk says. "The recovery truly can't be considered complete until housing gets back on track," Denk says. "[Housing] generates jobs and it still really is that sector of the economy that hasn't fully recovered, in fact it's only halfway back."

Bottom line: Not back yet

3. Manufacturing:

America might be known for Silicon Valley more than steel these days, but the country still makes a lot of products. Another indicator that holds implications for the greater economy is the PMI, an acronym for the wonky-sounding Purchasing Managers' Index (that term was actually abandoned in 2001). Created by the Institute for Supply Management, the PMI gauges manufacturing levels across the country, taking several factors into consideration, including employment and inventory levels. In a positive sign for the recovery, the PMI hit a 12-month high in August at 59%, according to ISM. The average PMI at the recession's peak in 2009 was 46.4%. Thus far in 2014, the PMI has averaged 54.9%, signaling a healthy gain in manufacturing during the recovery. There are some concerns that the really strong U.S. dollar could hurt manufacturing, since it makes American goods a lot more expensive to people in Europe and other parts of the world, but so far there doesn't seem to be an impact.

Bottom line: Good manufacturing rebound

By Patrick Gillespie @CNNMoney

Aldridge Connors, LLP
Real Estate School

Aldridge Connors, LLP is dedicated to providing real estate agents and lenders with in depth training on relevant topics. Real Estate agents will receive continuing education credit for School courses. Courses are taught in our offices and at locations convenient to the audience. Course instructors are AC attorneys as well as other real estate professionals to include surveyors, lenders and appraisers.

For more information about the School and upcoming courses, please contact us at 404.994.7600 or email us at ACRealEstateSchool@aclawllp.com.

Residential Real Estate Transactions Services Group

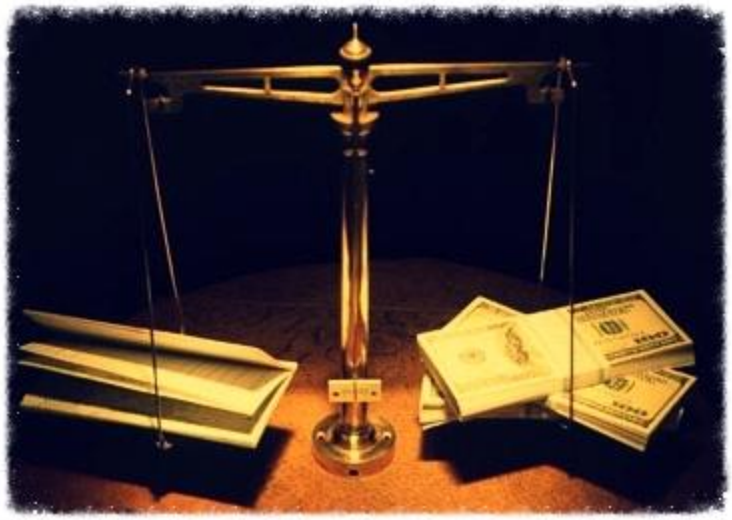
Aldridge Connors, LLP provides a full complement of residential closing services. In each transaction, we endeavor to provide comprehensive communication and timely closings to ensure the closing experience is positive for all parties involved. Our vast experience enables us to easily recognize and resolve the unique issues that arise in the closing context, including complex title issues. We have a dedicated group experienced in efficiently resolving title issues to allow timely closings.

Residential Transaction Types:

- Resales
- New Construction
- Refinances
- Reverse Products
- Home Equity Lines of Credit (HELOC)
- REO sales
- Short Sales

Our entire team is committed to exceptional customer service and we look forward to working with you on your next closing.

Please contact us at 404.994.7600 and GAClosings@aclawllp.com.



Aldridge Connors, LLP is a multi-state law firm with locations in both Atlanta, Georgia, and Delray Beach, Florida. Aldridge Connors is a full service provider of legal services to depository and non-depository financial institutions including, banks, mortgage servicing concerns, institutional investors, private firms, and other commercial clients.

In addition to Residential Real Estate Transactions, Aldridge Connors focuses on six (6) other principal "Practice Areas":

1. **Mortgage Default** Services
2. **Litigation** Services
3. **Commercial** Real Estate Transaction Services
4. National **Eviction** Practice Group
5. Regulatory **Compliance**
6. Home Owners Associations / Condo Owners Associations Estoppel Mitigation and Litigation (FL)

Please contact us at 877.319.8840 and info@aclawllp.com if we can assist you in any of these areas.

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