

For Sale By Owner: How agentless transactions can turn into royal nightmares

By Carol Lloyd, Special to SF Gate

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Last week I wrote about the benefits of selling your own home. After decades of the National Association of Realtors claiming that working with an agent brought buyers more money even after the commission, [a new academic study](#) found quite the opposite: that buyers who sell homes without an agent can profit mightily from their hard work and entrepreneurship. But before sellers jump into the For Sale By Owner fray in search of fatter profits, it's worth listening to those who have jumped before them and have injuries to show for it.

Most tales of real estate gone wrong entail an accusation -- deserved or not -- about the agent. But nothing screams stress like a real estate nightmare without an agent to blame.

"It's been insane, I've had three different lawyers, and I'm out at least \$10,000 dealing with this," says Alan Jacobson, a newspaper design consultant.

Jacobson's dark night of the FSBO began in February when he put an offer on a duplex where he lived in Norfolk, Va. The home was being sold as an FSBO with an explicit refusal to work with any real estate agent. But Jacobson says he wasn't concerned. The seller was not only an acquaintance, but a close friend of his girlfriend's mother.

"You think that someone connected to a romantic interest and their mother ..." he trails off. "Let's put it this way, if anything went wrong, I thought there would be social pressure to make the sale go smoother. Besides, I don't want to be an untrusting person."

According to Jacobson, initially the sale seemed to be on the right track. "There were no signs there was going to be problems," says Jacobson. "All the indications to the contrary. I accommodated him with a long close and he accommodated me with doing some renovations on the third floor."

But in the course of the complex deal -- which involved numerous contractors, failed inspections and too many chagrined e-mail exchanges to count -- the deal went south. The buyer questioned the quality and the timeliness of the seller's agreed-upon improvements, and dealings between the two parties grew increasingly antagonistic.

Among the most dramatic plot points were the death of one of the contractors and accusations that the seller was doling out ethnic slurs and violent threats to the buyer's contractor. The seller, Fred Rhyne, declined a request for an interview and calls to his lawyer, Sullivan Callahan, were not returned. Jacobson, who says he's still considering the option of filing a lawsuit, decided to use his Web skills to try to shame the seller into performing. He launched a Web site called [FSBOgonewrong.com](#), which offers an excruciating blow-by-blow narration of the deal with links to contracts, addenda and e-mail.

"Basically, now I've gone to the court of public opinion to try to make the guy comply with his contract," explains Jacobson, who says he's particularly interested in this house because, as a newly divorced father of two young children, he wanted to stay within a two-block radius of their mother's home.

In the process, his FSBO Web site has made him an unlikely hero of the real estate industry. "Real estate agents love me," he says. "A lot of them are linking to my site."

Needless to say, Jacobson has changed his views on the risks associated with FSBOs. He now regards sellers who

refuse to work with a buyer's agent as a "giant red flag" -- an indication that the person might either be trying to hide something or is too stubborn to negotiate in good faith.

"Never, never, never buy a house without a real estate agent, he says, sounding like a walking advertisement for the National Association of Realtors. "Even if the seller is your mother, always use a Realtor." He adds that he's kidding about distrusting your mother but only barely: "I've learned you can't trust anybody."

Whether Jacobson's fatal mistake was not working through a real estate agent or not is arguable. He certainly should have had his own lawyer write up the contract instead of sharing one with the seller. But as the archives of Surreal Estate can attest, the presence of a licensed professional Realtor does not immunize you against an unreasonable buyer or seller or a deal from hell. Still, when it comes to complex deals, experienced real estate agents (or real estate lawyers, for that matter) often steer clients away from proverbial money pits and convoluted legal nightmares.

Even if it's only for self-interested reasons, many Realtors prefer simple, clear contracts, not four-month deals with multiple contractors and ongoing inspections.

Indeed, local agents I spoke to suggest that FSBOs are particularly risky when it comes to unique, complicated situations.

"I get these deals when my clients are the charred remains of a human being, when it's already too late," says San Francisco agent Bonnie Spindler. She recalls a client of hers who had bought a backyard cottage in Noe Valley as part of a tenancy in common. When some of her TIC partners exercised their right to build a bedroom in the storage space behind the garage, the woman lost substantial access to her home.

"She used to go through the garage to get to her home and suddenly she's only got 18 inches access along the side of the house. She couldn't move in a refrigerator or a couch," says Spindler. Spindler attempted to help the woman sell the unit, but no one would buy it. Eventually the woman moved out, but had to leave her furniture there. "A good agent would have noticed that there was a problem with the TIC contract," says Spindler.

Spindler recalls another FSBO nightmare involving a tenancy in common. "My client found the TIC on Craigslist and it seemed like a really good deal," she says. "Once the client had bought the place, she discovered that the TIC agreement had been altered such that she was responsible for all the utilities and all the taxes. The TIC agreement also required every owner to have keys to each others' apartments and the woman kept finding one of her TIC partners in her apartment. If she had had an agent she would have known that the TIC wasn't normal."

Between the rent control laws, the ever-increasing number of disclosures and special properties like tenancy in commons, Spindler says FSBOs in San Francisco are far more risky. Spindler doesn't mince words: "You are out of your mind not to use an agent."

Sometimes it's the naivete of the seller rather than outright deceitfulness that makes FSBOs more precarious. Zephyr agent Randall Costick recalls a client who offered to pay him directly to act as his agent in an FSBO in which the seller was not interested in working with any agent. Although the sellers had already ordered a pest report, Costick recommended doing additional pest inspection under the front stairs. When the report came back showing \$30,000 worth of rot, the seller "went through the roof," Costick says. Costick maintains that, had the seller been working with his own experienced agent, the agent could have explained that sometimes pest reports

are incomplete and sometimes further inspection reveals big-ticket items. By the same token, had his client decided to "do the deal" without his counsel he would have saved a commission but missed the far more expensive stair rot.

Costick argues that money shouldn't be the only consideration when deciding between hiring an agent and selling a home yourself. Buyers also need to assess their emotional resilience. "There's a whole emotional angle," he says. "A lot of people are not comfortable being directly involved in negotiations about their home. Sometimes people say things that are not all that kind about your property, and some people need a buffer in negotiations."

Of course, a few stories about FSBOs going horribly, horribly wrong does not a reality make. I know this from experience. I've sold FSBOs on two separate occasions and both times the deals defied the dark mythology. Each side behaved rationally -- negotiating in good faith, treating the other side like people who deserved respect. The buyers probably benefited more from my not paying a commission, but I also got a reasonable deal. It's not like I did it without any guidance -- the buyers paid a lawyer/real estate agent who worked by the hour, offered them negotiating help and provided all the paperwork. Although they were not representing my interests, they did remind me about important paperwork I needed to file.

Nowadays, real estate sales have become too complex to wander through without expertise, but it's questionable whether the 5 or 6 percent commission structure associated with "full service" real estate agents is really the only way to protect oneself. Of course, Realtor fees look cheap compared to a home you can't move into or a nasty lawsuit. But can't there be a happy medium between high-commission professionals and bootstrap DIY?

Next week: Red Fin, FSBO.com, and Help U Sell: The changing terrain of minimum service agents and customer rebates.

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