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Episode 8: Solar Panels

Call from the Agent: My client is considering a few homes – one of them has solar panels. How are they handled at closing?

The Response: The existence of solar panels will probably not be found in a title search because solar panel agreements are not recorded at the courthouse. Solar panels very definitely should be addressed in the transaction because the after-effects of not doing so may become unpleasant to both parties. Solar panel agreements may take many forms (and more will likely be introduced over time), but the most common are as follows:

Lease of Panels: As with any other lease, the merchandise (panels) belongs to the leasing company and the homeowner makes periodic payments. When the lease ends or the homeowner stops paying, the panels are returned to the leasing company. Obviously, if a new owner of the property did not know about the lease or did not understand its terms, he/she may be faced with the expense and inconvenience of removing the panels. Depending upon how the panels are affixed, their removal might leave the home somewhat damaged. No homeowner will be in the mood for that.

Lease of Solar Power: Here, the solar panels are usually installed at no charge and the homeowner signs an agreement to purchase solar power for an extended period of time. If you see the term “PPA” (power purchase agreement), this is what they’re talking about. As with an ordinary lease of panels, discontinued payment comes with consequences no one wants.

Purchase of Panels: This seems to be a less popular arrangement because panels are expensive. If, though, panels are purchased, they can be purchased outright or financed over time. If they are financed, a “financing statement” (in legal parlance, a UCC-1) can be filed at the courthouse or with the Secretary of State – this creates a security interest in the panels such that, if payments are discontinued, the panels can be seized. Notice this is the only circumstance in which there is a courthouse filing. Even if the panels are purchased outright (rather than financed over time), the solar power is a separate commodity and is the topic of a separate agreement.

If a home has solar panels, a listing agent should undertake to find out the exact nature of the underlying agreement(s). This means the agent should obtain complete copies of any solar panel and/or solar power agreement. This should be broadly disclosed to prospective buyers and the documents should be furnished to any serious buyer. While it might be possible for a buyer to assume solar panel/power payments, this would require the involvement and approval of the solar panel/power company. No matter what type of solar agreement exists, the seller may be faced with having to remove the panels prior to sale because many buyers simply won’t want to deal with solar panels/power.

In that you say your buyer is considering a home with solar panels, he/she would do well to inquire thoroughly before making an offer or, at the very least, making his/her satisfaction with the solar panels a steep contingency.