QUESTION:
Does the Governor’s current moratorium on evictions also apply to a seller who does not vacate per a post-closing possession rental agreement?

ANSWER:
Yes. Seller’s tenancy is covered by the Governor’s Moratorium on Evictions, in place through August 1, 2020. The Governor has stated an intent to extend the moratorium through October 15 but the terms of the extension have not yet been identified. The current moratorium prohibits delivery of a notice to terminate tenancy except under very limited circumstances. “This prohibition applies unless the landlord, property owner, or property manager (a) attaches an affidavit attesting that the action is necessary to respond to a significant and immediate risk to the health, safety, or property of others created by the resident; or (b) provides at least 60 days’ written notice of intent to (i) personally occupy the premises as a primary residence, or (ii) sell the property.”

If buyer intends to personally occupy the property, buyer could potentially evict seller but even then, buyer must deliver 60 days notice to seller/tenant. Broker should advise seller to seek legal counsel. Under normal circumstances, a property manager could draft and deliver a notice of termination to a tenant. These current times are anything but “normal”. Washington’s residential LL/T laws are currently being controlled by the stroke of the Governor’s pen and those “laws” have changed three times since early March 2020. We know they are about to change again.
Landlord must attach an affidavit attesting to risk or deliver 60 days notice to terminate the tenancy for sale or personal occupancy. The exact language that must be included in the notice is not referenced in the Governor’s moratorium. Seller should work with legal counsel to ensure that the language included on the landlord’s termination notice to the tenant is sufficient to trigger the 60 day termination right or the right to terminate based on risk.

The Governor’s moratorium also does not specify the proper method for delivery of any notice. RE lawyers have been debating what is necessary to constitute proper delivery, necessary to trigger the 60 day termination right. There is debate as to whether it is necessary to personally serve the tenant versus posting the property and mailing the notice. Again, landlord’s lawyer should advise landlord as to the form of delivery that is necessary to gain the protections afforded to landlord by the Governor’s moratorium.

It is absolutely critical that any notice be properly drafted and delivered. If not, the court will not process any necessary eviction actions and the new buyer/landlord will not be aware of the defects in the notice until it is too late to make a meaningful cure. The Agency Law obligates brokers to advise clients to seek the advice of an expert in areas that exceed the scope of broker’s expertise. Interpreting and complying with the Governor’s rapidly changing moratoriums is not something that broker is licensed or insured to do for landlord/seller. Broker should advise landlord, in writing, to seek legal counsel.

Buyer brokers should also counsel enormous caution to any buyer who is inclined to give a seller post-closing occupancy rights. Before buyer agrees to give seller possession after closing, broker should advise buyer, in writing, to seek legal counsel.