

The Roles We Play In A Transaction

By Danielle J. Butler, Esq.

We have arrived at the apex event for the yachting industry, the 2009 Ft. Lauderdale International Boat Show (“FLIBS”). This year, we find ourselves in a distressed economy filled with apprehension and conservative spending. The client’s trepidation to buy in this economic climate has put a tight squeeze on the yachting industry. We find ourselves with much supply, but less demand, which usually equates to desperate acts. Desperation causes poor judgment and mistakes. Avoid mistakes, close efficiently and effectively by calling upon the resources available to you in this industry, such as your fellow brokers, FYBA, yachting attorneys, bankers, insurance brokers, customs brokers, documentations agents and registration representatives. Don’t answer a question that you aren’t 100% sure of the answer. Instead, call the appropriate representative to assist you, as they are only a phone call away!

With that, I am going to tell you a story about Justine and her flawless yacht transaction experience. Justine flies into Fort Lauderdale on her G5 from The Maldives to buy a yacht. She contacts FYBA for a yacht broker, assuming that she did not already fall over 20 yacht brokers from the airport to her hotel. Upon meeting with the yacht broker, he explains his duty to her. He tells her that he will assist her with wading through the vast inventory available. He will be there from the showing, to contracting, to surveying to closing. The yacht broker helps her select a boat that fits her particular taste and discusses chartering.

The yacht broker takes Justine and her entourage through the multitude of yachts at FLIBS. Justine finds the yacht of her dreams at FLIBS. Upon seeing the yacht’s price tag, Justine starts to well up with tears. To avoid seeing a woman cry, the yacht broker immediately grabs his Crackberry and calls a banker. The banker comes up with the most favorable business terms that will allow Justine to not only buy the yacht, but allow her cash to stay in her account. Elated, Justine now has her yacht chosen and understands how to buy it.

Over dinner at 954 Steak, Justine’s yacht broker hands her a form contract to review. Again, Justine’s eyes start to well up, so her wise yacht broker calls upon a yachting attorney. The yachting attorney, not being able to resist a good steak, joins them for dinner. The yachting attorney helps Justine break the legal code in the contract and explains to her the legal implications of her purchase, such as liability avoidance, tax implications, insurance risks, and charter regulations. Justine’s yachting attorney departs with a new client and a full belly. The yachting attorney and yacht broker work together to get the contract signed by both parties. Upon reflecting, Justine marvels at the wisdom of the yacht broker in advising her to seek legal counsel immediately, especially since the yacht broker made it clear to Justine that he would not practice law without a license by rendering advice on taxes and liability avoidance and by drafting legal documents, such as a contract or acceptance.

That night, Justine wakes up from a nightmare where her evil mother-in-law tripped and fell, sued Justine and ended

up with Justine's yacht. Not caring that it is 3:40am, Justine quickly calls her yacht broker for a solution to this nightmare. The yacht broker calms her by telling her that he will recommend her to an insurance broker. The next morning, the yacht broker delivers Justine to the insurance broker. Justine shares her nightmare with the insurance broker, noticing that the insurance agent also breaks out in a sweat upon hearing the term mother-in-law. The insurance agent lays out the protection afforded by a marine insurance policy and its exclusions and risks. The insurance broker presents Justine with a couple of policy options and helps Justine choose the best coverage based on her cruising schedule and her plans for the yacht.

Next, they meet up with a yacht surveyor. The surveyor explains how he will go through the yacht with a fine tooth comb. The surveyor produces a 20 page report spelling out what Justine must know before accepting or rejecting the yacht. Both yacht brokers involved in the transaction disclose all known defects that would have an effect on Justine's decision whether to accept or reject the yacht. The surveyor's report states that there is erroneous hull lamination. When Justine discovers the cost to repair this, she requests that the Seller fix the hull lamination before the closing. The yacht broker stops her mid-sentence and they get her yachting attorney on the phone. Justine and her yachting attorney discuss the best way to make a conditional acceptance. They agree that the best thing to do is to determine the cost of repairing the hull lamination, request that the Seller reduce the price by this amount and have Justine take care of the issues post closing. The yachting attorney avoided

future litigation by not having the Seller attempt to repair the hull lamination to Justine's impossible standard. Justine pulls the trigger and accepts the yacht. The yacht broker happily deposits her into the hands of her yachting attorney. They meet to discuss liability avoidance, registration and tax issues. Justine's yachting attorney informs her that the law firm will be hiring a documentation agent to assist them with the registration of the yacht. Justine then tries to take a short cut and asks the documentation agent if she can draft the mortgage documents and corporate documents for her to save on additional legal fees. Knowing that it is illegal to practice law without a license and that this act would not be covered by her E/O policy, the documentation agent flatly refuses Justine's request and informs her that the law bars non-lawyers from drafting or reviewing legal documents and that under Florida Law a non-lawyer is only allowed to fill in the business terms into a document.

It is closing day and Justine has on her best yachting chic outfit. Justine does a final walk through of the yacht. Present is her yacht broker, her yachting attorney and the Seller's similar representatives. Her yachting attorney walks her through each piece of paper. Justine has the closing funds wired to the Seller. She is now a yacht owner! Justine lives happily ever after sailing away on M/Y Bad Kitty into the sunset! The end.

The moral of the story is, be prepared! Take a minute to add your favorite industry contacts to your phone. You will be amazed by the efficiency that this quick action creates. To say the least, your client will be impressed with your ability to call upon an industry expert

Published October 2009
Florida Yacht Brokers Association

who can assist your client's immediate needs.

*The information offered in this column is a summary in nature and should not be considered a legal opinion.

**Danielle J. Butler is a Partner in the Maritime Practice Group at Fowler White Burnett P.A. Ms. Butler handles both transaction and litigation matters within the yachting community. She may be contacted at (786) 543-1141 or dbutler@fowler-white.com.