

Preparing agreements of sale

by *Phil Mitsch*

Each year, thousands of real estate transactions experience high emotionalism, frustration, anxiety, threats of lawsuits, actual lawsuits and substantial legal fees because of problems with agreements of sale (contract/purchase agreement).

There are a number of comprehensive clauses and addendums that I have developed and used over the years that, when used routinely, can truly make the difference between having a real estate transaction get to final settlement versus not getting there at all. Below is a brief analysis of some of these closing-saving clauses and addendums.

Extending mortgage commitment due date

How many sales are you aware of that have fallen through because buyers are unable to obtain their mortgage or assumption commitments by the due date called for in the agreement of sale? Having a clause that would automatically extend the mortgage or assumption due date for up to a specific period of time, if certain conditions existed, would eliminate this problem from occurring.

Buyers' right to have a home inspection

The home inspection is becoming more and more popular in today's real estate marketplace, and all selling agents (regardless of who they represent) should make buyers aware that they have the right to try and negotiate, as one of the conditions of the agreement of sale, the right to have a home inspection done. Having an automatic home inspection clause is certainly one way of making sure that buyers are made aware of this right.

The purpose of the home inspection

Thousands of transactions either terminate or have to be renegotiated due to problems that develop as a result of a home inspection being done. The number one reason why these problems develop is because the home inspection clause states that the inspection will be done to the buyer's satisfaction and/or that sellers will have the right not to make home inspection repairs asked for by the buyers.

Virtually all home inspection problems can be eliminated if the home inspection clause would specifically state that the home inspection is being done solely for the purpose of ensuring that all seller warranties pertaining to the property's structures, systems, items and appliances have been complied with and that no recommended cosmetics or suggested replaceables will constitute warranty violations.

Items that are being accepted "as is"

Even if buyers and sellers negotiate as one of the terms and conditions of the agreement of sale that certain cosmetic and/or functional deficiencies will be accepted "as is," this does not eliminate the possibility of the buyer's lender or local township calling for these deficiencies to be repaired, certified and warranted. In cases where deficiencies are being accepted "as is," it is an excellent idea to have a clause in an agreement of sale detailing the following types of information in order to eliminate any confusion that could easily lead to lawsuits:

- stipulate the actual deficiency,
- stipulate the extent of the deficiency,
- stipulate the amount to correct the deficiency (e.g., attach a contractor's estimate to the agreement of sale),
- stipulate that the buyers will be responsible for any deficiency repairs, certifications or warranties called for, and
- stipulate the buyer's financial limit of liability to repair, certify and warrant any deficiencies being accepted "as is" if the cost to do them exceeds their financial ability to do so.

Formula for low appraisal

Each year thousands of real estate transactions terminate or have to be renegotiated due to low appraisals. Having an addendum attached to the agreement of sale (that does not conflict with any terms and conditions of an amendatory clause) that will permit the sale price to remain the same or to be reduced in the event of a low appraisal is another closing-saving strategy.

The secret formula to this type of addendum is getting buyers and sellers to agree to the following terms and conditions:

- the buyers will agree to assist with an appeal of the appraisal if there is a basis,
- the buyers will accept alternate types(s) of financing if necessary and qualified to do so,
- the buyers will use additional monies if necessary and available, and
- the sellers will have the right to reduce the sales price if the above three conditions cannot be met, in which case the buyers will still be obligated to purchase the property.

Sellers Possession Addendum

There are times when a real estate transaction can be terminated or be in jeopardy when the final settlement date stipulated in the agreement of sale goes beyond the "lock-in" period deadline for both the buyer's interest rate and the amount of points being paid. The reason is because if the interest rate anticipated and the amount of points being paid increases between the lock-in deadline and the final settlement date stipulated, the buyers may no longer qualify to purchase the seller's home.

To eliminate this potential problem from occurring, final settlement should take place, if at all humanly possible, prior to the lock-in deadline, with the sellers having the right to remain in the property up until the original settlement date stipulated. To accomplish this, a Seller's Possession Addendum stipulating all terms and conditions under which the sellers will remain in the property after final settlement should be attached to the agreement of sale so that the buyer's lender is aware of and can approve of this possession arrangement at the onset of the real estate transaction.

Final comments

I have used each of these clauses and addendums with great success. There is no question about it, when real estate brokers, managers, agents and even attorneys utilize these and similar clauses

and addendums that are closing-saving oriented, they will be able to prepare very comprehensive agreements of sale. As I indicated earlier, having access to them and using them can truly mean the difference between a real estate transaction getting to final settlement and not getting there at all.

Phil Mitsch is one of the nation's all-time top producing REALTORS® , with over \$253 million in personal career production. He is one of the highest-rated real estate educators in the country. For further information on his articles or his educational materials, or how to secure him as a speaker, please contact Phil Mitsch Enterprises at (800) 484-7761, extension 1212.

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