

BUYER'S AGENCY: POINTS TO REMEMBER WHEN REPRESENTING THE BUYER

The age of buyer's agency is upon us. In many transactions across the state, the buyer is represented by one agent and the seller is represented by another agent. In some cases this is via a cross-sale between two companies and in some instances this is via designated agency within the same company. Nevertheless, buyer's agency entails very specific duties and responsibilities.

First of all, a buyer's agent should know the contract that he or she is using. Read over the contract from time to time. Contracts are constantly changing, and you need to know the precise language in the one you are using. If you do not and the language has changed, you may find yourself caught in a pickle. Moreover, make sure that your client understands the offer/contract and is comfortable with all of the terms contained therein. The buyer's agent should explain issues, such as "time is of the essence," to the buyer when preparing the offer. Let the buyer know his or her options, and then put those options in the offer to purchase.

Second, the buyer's agent should make sure that the buyer understands the numerous deadlines that appear in most contracts and should ensure that the buyer abides by each and every one of those deadlines. For example, if the buyer contracts to apply for financing within "x" number of days, the buyer's agent should make sure that the buyer knows this is the requirement and follows through on it. Likewise, if the buyer is to have an inspection within "x" number of days, the buyer's agent should make sure that the inspection is performed within that timeframe. If a list of repairs is to be delivered to the seller within a certain timeframe, then the buyer's agent should ensure that the list is in fact delivered in that timeframe.

Third, it is the buyer's agent's responsibility to make sure that the earnest money agreed to in the purchase contract is collected and deposited or delivered to the seller's agent for deposit. If the buyer, for whatever reason, does not come through with the earnest money as promised, the buyer's agent must notify the seller or the seller's agent. If the buyer is going to pay the deposit at some time in the future, make sure this is reflected in the purchase contract. Do not use the boilerplate language that states that the money has been deposited if, in fact, it is going to be deposited in a week's time. This could potentially put the buyer in immediate breach of the contract.

Fourth, if deadlines, such as the original closing date, are missed and there is a verbal agreement between the parties to extend those deadlines, get the extension in writing. Make sure all parties sign the extension. Do not ever rely upon a verbal commitment to extend the agreement. Memories fade, but written documents stay the same over time.

Fifth, if there are blanks in the boilerplate contracts that need to be filled in, make sure that every blank is either filled in or crossed out and initialed, dated and timed. Do not leave paragraphs blank without crossing them out, because there could be a question in the future as to whether that paragraph was intentionally left blank. In addition, if there are boxes to be checked, then check the appropriate boxes or cross out the section and initial, date and time it. Be careful to read the contract. If the instructions say to check only one box or to choose one, then check only one box or choose only one.

Sixth, obtain the signatures of all the parties on the purchase contract. Do not allow or rely upon the husband to sign for the wife or vice versa. If someone has not actually signed the agreement or given their power-of-attorney to someone else to sign on their behalf, then they are not bound and could protest the agreement. Further, make sure all signatures on the contract are dated and timed. These facts can become important if a dispute arises. Besides that, it's the law! (Please see 201 KAR 11:250.)

Next, make sure the buyers receive a copy of everything they have signed. Go over each document with the buyer and make sure they understand each document. Never fail to give a buyer agency disclosure forms. Also, it is your job to ensure that the buyer receives a Seller's

Disclosure Form. If the buyer has questions, pose them to the appropriate person. If the home was built prior to 1978, make sure the buyer receives a lead-based paint disclosure.

Finally, make sure that the contract is complete. If there are items in the listing contract that the buyer would like to stay with the property, specifically outline each item in the purchase contract. Do not assume that the seller will leave any item just because it is in the listing. In addition, if there is an obvious defect in the home, address that in the offer to purchase. Do not wait until the inspection period to ask for repairs for something that you knew of at the outset. The inspection is to uncover hidden or latent defects with the home, not obvious problems. If the buyer has a home to sell, make the contract contingent upon the sale of that home. Do not rely upon the financing provision to cover this situation. If the buyer is using VA or FHA financing, make that clear in the purchase contract. If the buyer is receiving part of their money from a gift or stocks or a retirement account, state that plainly in the contract. Do not say that the buyer is paying cash unless the buyer has that cash in his or her hand. Read over the contract to make sure everything is complete and that everything is included.

While many of these steps may seem obvious, they are all very important. A deal can be made or broken based upon how carefully the buyer's agent filled out the contract or how diligent the buyer's agent was in assisting the buyer with meeting deadlines and the like. Your client will be very happy with you if their contract goes smoothly and there are no major problems created by a sloppy contract or a missed deadline. By the same token, your client will be very unhappy if there are unchecked boxes, missed deadlines and the like.