Nathanson, Cipriano & Dolberry, P.C.
Attorneys at law
PHONE 203 288 1333
FAX 203 287 0048
Cell phone 203 314 3034
Main Office
60 Washington Ave.
Hamden, Connecticut 06518

FEBRUARY 2016 NEWSLETTER

NOTE: If you think your colleagues would benefit from this TIP, please forward it to them and ask them to reply to me by email for inclusion in this free Newsletter

The February Newsletter discusses the issue of contract closing dates and FHA mortgage payoffs.

As we all know, the closing date set out in a contract is actually a <u>target date</u> not written in stone unless we include after the closing date the phrase: *time is of the essence*. Therefore, neither party is customarily liable to the other or in default when a closing is delayed for a short period of time (usually not more than three weeks).

Since most Buyers will not agree that time is of the essence for a closing date, that clause is rarely inserted in a contract of sale. Nevertheless, for many reasons, the closing often occurs after the closing date written into the contract and without monetary compensation to the non-delaying party (unless the contract is a Fairfield County contract containing daily damages for a delay).

What happens if a contract closing date is March 29, 2016, the Seller happens to be paying off an FHA mortgage and the buyer wants to delay the closing until April 2, 2016? At first blush, there does not appear to be much of a problem until the closing when the Seller and the Seller's lawyer review the mortgage payoff letter and the Seller hits the roof.

What occurs at that time requires a little explanation about mortgage payoffs.

The amount necessary to pay off a mortgage ordinarily consists of the principal balance PLUS accrued but unpaid interest on the loan. Since mortgages are paid <u>in arrears</u>, if the Seller was closing on March 29 and the payoff is being wired out, the payoff would equal the principal balance PLUS interest from March 1 to March 29, 2016. If the closing were delayed to April 2, 2016, the interest to be paid would be collected from March 1, 2007 to April 2, 2016 (an extra 4 days because

of the delay).

Now what if the mortgage to be paid off were an FHA Mortgage? The FHA law has a quirk that essentially requires an ADDITIONAL MONTH OF INTEREST if the loan were paid off in the next month!! Therefore, in the situation described in the preceding paragraph, if the closing were delayed to April 2, 2016, the payoff would equal the principal balance PLUS interest from March 1, 2016 to <u>April 30, 2007, not just to April 2, 2016</u>!! The Seller would be very upset if they had to pay what they consider <u>an extra month of interest</u> because of a 4-day delay by the Buyer!

What can you, as a realtor, do to help avoid this situation? Try this: if you know that the Seller has an FHA mortgage (simply ask when you list the property), and the Buyer wants to close at the end of the month, put a clause in the contract as follows:

The Seller discloses that they are paying off an FHA mortgage. If the closing is delayed through no fault of the Seller beyond the end of the month set forth herein for closing, then the Buyer shall pay the interest on the Seller's mortgage from the date of closing to the end of the calendar month of closing.

You will be a hero if you save the Seller money. However, even if you come to contract without this clause, at least you attempted to negotiate it and I believe the Seller will be pleased with your attempt.

I hope you find this Tip informative and helpful to you in your business.