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NEWSLETTER

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

Also, if you have a topic you would like me to analyze and discuss, please email me and I would be glad to consider it in a future Newsletter

November 2016 Edition: **How to handle the “Cash” offer**

A cash Buyer is attractive because of the prospects of a quick closing with no Lender issues or stumbling blocks such as credit, appraisals or other underwriting concerns. However, different types of issues may arise with “cash” Buyers between the times of contract and closing that could put the transaction in jeopardy in unanticipated ways.

The purpose of this Newsletter is to identify those issues and offer solutions.

I am stating the obvious when I say that *anyone* can make an offer to buy a property. A seller is marketing the property for sale to ready, willing and *able* Buyers. The emphasis is on *able*. The listing agent may have found a *willing* Buyer at agreed upon terms. But that Buyer must also be *able* to buy and subsequently be *ready* to close.

How do you identify an *able* Buyer? We all know and accept as “probably and potentially” *able* those Buyers who present to the Seller at the time of an offer a preapproval or prequalification letter from a recognized Lender or mortgage broker. In fact, it has become commonly accepted practice in the industry to present such letters when an offer is made even though a mortgage contingency clause

remains part of almost every offer. The reason is simple and obvious: A Seller does not want to waste precious time dealing with a Buyer, who, although *willing* to buy, is not *able* to buy. A preapproval letter helps to identify the *able* Buyer and weed out those offerors who are not *able* to buy. Markets can change quickly without warning. Wasting time with a Buyer who is not *able* to pay the agreed upon price can mean a Seller could lose thousands of dollars.

What actions should a realtor take when presented with a “cash” offer?

- 1. The Deposit: A cash offer says that the Buyer has or will have lots of money available at closing. Is the deposit commensurate with the offer? Try to negotiate and obtain the largest deposit you can. A full 10% deposit (or even greater!) prior to closing and a “time of the essence” closing date are terms ideally included on behalf of a Seller in every contract in a “cash” deal.**

I realize that *time of essence* clauses are difficult to obtain but an attempt should be made to include one. Time of the essence clauses are rarely used because Buyers can be defaulted in situations where they cannot control the closing date, such as a Lender-caused delay. Since there is no Lender in a cash deal, the concern of a time of the essence clause is lessened because a closing date can be controlled by the parties.
- 2. Where is the cash coming from (SOURCE AND EXISTENCE)? Do the Buyers have liquid assets, cash in the bank or in retirement accounts? Are the Buyers’ parents or other relatives giving them the money? Do they expect a cash settlement from a lawsuit? Do they have a current house under contract from which they expect to realize significant equity? Do they expect an inheritance? Or, are they so certain that they can get a mortgage that they are making an offer without a mortgage contingency? Each and all of these scenarios present their own questions! In all of these circumstances, the Buyers are presenting a “cash offer”!**
- 3. How does the Seller ensure that the “cash” will be available at closing (AVAILABILITY)?**

Before a cash offer is accepted, the listing agent should make every reasonable effort to determine the *source* of the cash, its *existence*

and when the money is *available*. It is important not to rely upon oral statements of *source, existence* and *availability*.

SOURCE AND EXISTENCE: The listing agent should obtain copies of the Buyers' bank or other institutional account(s) showing the balance of the sales price is currently in the account(s). If the accounts are in the name of persons other than the Buyers, you should endeavor to obtain letters from the account holders indicating that the money is to be used solely to purchase the property. If the Buyers are expecting an inheritance or a cash settlement from a lawsuit, the analysis becomes more difficult, and in these cases, it would be wise to get the Sellers' lawyer involved in the investigation. Another common scenario of a cash offer are the Buyers who have sold their home and are making an offer to buy without a mortgage contingency clause or without a clause conditioning the closing upon the sale of their current home. In that case, the listing agent should ensure that all contingencies on the sale of the Buyers' current home are satisfied before the "cash" offer is accepted.

AVAILABILITY: Lastly, even though you may have determined the **SOURCE** and **EXISTENCE** of the money, you must satisfy the final criteria, namely, that the money will be **AVAILABLE** at the closing. This could become the most difficult part of the overall cash closing analysis. This is the reason why a large deposit and a "time of the essence" closing date become important. You are putting the onus on the Buyers to make certain the money is available on the closing date or else the deposit is retained by the Seller as liquidated damages.

I hope my analysis of this issue has been informative and helpful to you. Remember that I am always available to answer your questions at any time.