

MAILBAG – Closing Responsibilities and Contingency Language

Hello, Michigan Realtors® and welcome back to “From the Mailbag.” Today’s topic dovetails with last month’s Letter of the Law video which discussed some of the responsibilities that an agent has to their client in between the time when a purchase agreement has been signed and a closing occurs. Today, we’re going to take a closer look at one of the topics addressed in that segment – contingency clauses. With that, let’s dive into some questions from the mailbag.

Question 1: The appraisal on my seller’s home came in at less than the agreed-upon purchase price. The purchase agreement did not contain an appraisal contingency. Are the buyers still obligated to close on the sale?

Answer 1: Yes. That is assuming that it’s an all-cash sale or that the financing contingency has still been satisfied. But, if the results of the appraisal mean that the buyers no longer qualify for their mortgage, then they may be able to terminate the purchase agreement pursuant to the financing contingency (if there is one).

Question 2: I represent a buyer who entered into a purchase agreement with a 15-day inspection contingency. During the inspection, the buyer discovered numerous defects with the property. The buyer still wants to purchase the property but only if the seller remedies the defects. Can my buyer-client force the seller to do this?

Answer 2: PROBABLY NOT. But the answer here really depends on the exact language of the inspection contingency. Remember that inspection contingency language varies from purchase agreement to purchase agreement. But many inspection contingencies give the buyer the option to either move forward with the purchase agreement as written OR terminate the purchase agreement based on the results of the inspection. A buyer can REQUEST that a seller make repairs but, typically, they cannot REQUIRE the seller to do so (unless the purchase agreement specifically allows for it).

Question 3: The buyer waived the financing contingency in the purchase agreement. I just found out that the buyer is applying for a mortgage. Can they do that?

Answer 3: Yes, the buyer can do that. By waiving the financing contingency, the buyer has simply waived the right to terminate the contract if the mortgage is denied. But that doesn’t mean that the buyer is prohibited from applying for a mortgage. Although...if the buyer’s mortgage is denied, they’ll still need to find another way to come up with the money or else be in breach of contract.

Question 4: The buyer's lender will not be ready to close until 3 days after the deadline in the purchase agreement. My seller-clients have a better offer and want to terminate the first transaction based on the buyer's inability to close on time. Can they do this?

Answer 4: Maybe. This is a frustrating answer...but, the sellers should talk to an attorney before proceeding. Michigan courts have not consistently enforced time deadlines in purchase agreements. And the fact that the sellers will be further delaying closing (in order to get a better price) will not be a point in their favor. So, they should really speak to legal counsel before accepting another offer.

That's it for today! If you have any additional questions about contingency clauses and closing responsibilities, check out the Letter of the Law video linked the description, or reach out to the email listed below. As always, thank you for watching, and we'll see you next time!