

2013 Brings Big Change in How Inspection Issues Are Handled in Contracts

Every January, real estate professionals need to familiarize themselves with changes in the state-approved real estate contracts and forms. For 2013, the biggest change will be in how inspection objection and resolution are handled.

Until now, we have all been taught that the inspection notice is not part of the contract. Thus, when resolution of inspection issues involves a price adjustment or a concession by the seller, that resolution has to be implemented through an amendment to the contract. And that amendment never indicates why the price adjustment or concession is being made — for example, because some major defect was not repaired by the seller.

Starting in January, the inspection resolution document (which will no longer be part of the inspection objection notice) will be con-

sidered part of the contract.

When real estate professionals first heard about the Real Estate Commission's desire to make the inspection notice part of the contract, the industry rose as one in protest.

We were primarily concerned that the inspection notice would now have to be shown to appraisers and underwriters and might kill some transactions. Many lenders joined our protest, saying, "we don't want to know!"

However, according to attorney Kent Jay Levine, analyzing the form for a local real estate school, "The lender does not need to receive the items that the Buyer wanted to be fixed if the Seller did not agree to do the work. However, if there is a resolution between the parties, whether by repairs performed by Seller, an adjustment to the Purchase Price or a credit from

Seller to Buyer, the Buyer will need to disclose this to the lender."

Indeed, only the Inspection Resolution form has the following note just above buyer's signature: "***This document amends the Contract. Buyer must provide a copy of this Inspection Resolution to Buyer's Lender.***" The Inspection Objection form is now considered merely a "notice" to seller and is signed only by the buyer. Even if the seller agrees to make every repair listed in this "notice to correct," this must be embodied in the Inspection Resolution form, which then becomes part of the contract.

Even if the buyer submits the full inspection report with his objection notice, that document (which could scare an underwriter) does not get attached to the resolution agreement and therefore is not part of the contract and is not submitted to lender.

Given these clarifications, I think that both real estate agents and loan officers can relax.

Fannie Mae Rules Benefit Credit Unions

Credit Unions are too often overlooked by buyers as a place to obtain a home mortgage, but they are becoming increasingly attractive — in part because of the underwriting nightmare created by Fannie Mae and Freddie Mac.

I have written in the past about how most loans are sold to Fannie and Freddie, and if the lender's underwriter fails to meet those entities' underwriting guidelines, the lender could be forced to buy back the mortgage. Buying back just one big mortgage can put a small lender out of business, because they must sell their loans to free up capital to make new loans.

As a result, the underwriters at mortgage companies commonly make absurd demands on their clients, such as to document every deposit to their checking account, no matter how small. A client told me that he was asked to document a \$50 deposit to his account.

Here's where credit unions provide a refreshing change — that's because, typically, they hold their loans instead of selling them to Fannie Mae or Freddie Mac. Thus, they are freed from that underwriting tyranny and can use that rare commodity — common sense. They are non-profit, too. They deserve buyers' consideration.

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