

KEEPING TRACK

Getting to closing: Avoiding the pitfalls in real estate contracts

By Merlisa Lawrence Corbett
Special to The Examiner

After the joy of finding that first home and the relief when the seller accepts the offer, first-time homebuyers quickly must focus on avoiding the pitfalls that can kill their newly minted contract before closing.

Buyers must feel comfortable with everything in the contract before signing, says Ashley O'Brien, a Realtor with RE/MAX Preferred Properties in Vienna, Va. She suggests paying close attention to the section that contains the "default clause," which spells out what happens to a buyer's earnest money if he fails to meet certain deadlines and the contract is broken. These deadlines often include a specific number of days to get financing. But a default also can occur if a buyer fails to apply for property insurance within the given time limit or does not have enough money to close on settlement day. And it's not just earnest money at risk. A buyer who fails to come to the settlement table can be sued by the seller for damages and may have to pay real estate commissions.

Buyers usually have three days to review homeowners' association documents. These include results of a homeowner's association property inspection and a list of problems or rule violations that need to be corrected. Sellers and buyers can negotiate on who corrects the problems, but the process needs to start within the three-day time frame.

The home inspection can also cause buyers to lose sleep — and it has the potential to swamp the deal. Buyers usually get seven

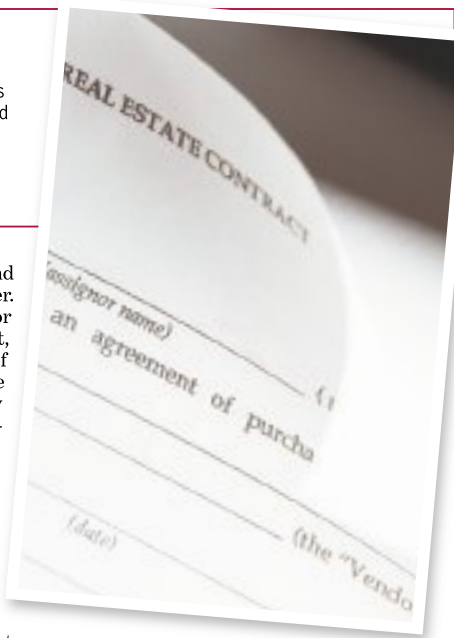
Contracts 101

- The contract will usually set the deadlines by which the buyer must get financing and property insurance.
- Buyers usually have three days to review homeowners' association documents.

to 10 days to have an inspection done and present a list of problems to the seller. Walk-through items include the major systems of the house, which, by contract, must be in working order at the time of sale. The seller is obligated to fix those problems. Other repairs not covered by the contract may be included in the buyer's request, but the seller is not obligated to make them. Such repairs can become points of contentious negotiation, and contracts can easily fall through over a disagreement amounting to just a few hundred dollars. The key to remember is the time allowed for all the back-and-forth on the inspection is governed by the contract.

First-time buyers brave enough to venture an offer on a foreclosed property find the standard real estate contract is just the beginning. After the bank receives the contract, the buyers also must sign one or more bank addenda that can end up nullifying much of what they agreed to.

"These are dangerous to sign without reading through the entire contract," said



Christian M. Lapham, a real estate lawyer and partner with Stonebridge Title LLC in Fairfax. "They are confusing, one-sided and supersede items in the general contract. A buyer is being asked to purchase the property as is."

Red flags in an addendum include headers such as "Limitation of Seller's Liability" and "Buyer's Waiver of Important Rights." After

signing the addendum, the buyer is locked into the purchase, risking loss of earnest money upon default. However, until the bank signs off on the agreement, the property can be sold to a higher bidder.

"It's not an agreement until both parties have signed," Lapham said. Some addenda even increase the amount of earnest money required before closing.

Both buyers and sellers can experience remorse after signing a purchase agreement. Buyers can get out of a contract without question if there are issues with either the home inspection or the homeowners' association documents. They also may have an out if a lender's appraisal comes in for less than the purchase price or if the lender refuses to fund the loan even with an adequate appraisal. Unexpected events, such as job loss, death in the family or financial hardship, are not legal grounds for backing out of a purchase agreement, unless contingencies for these are written into the contract.

The seller has few options to walk away after signing the contract but he or she can balk at a buyer's request for additional repairs or renovations.

The key is to review the contract line by line with a professional. "If you can get an attorney to go over the contract, you can't harm yourself," Lapham said. "But most experienced and credible Realtors will have read enough contracts to explain the details."

Lapham cautioned buyers to approach the contract as a business deal and avoid making decisions based on emotions. "There are many great bargains out there," he said. "Just keep a level head and stay focused."

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