

Contract Negotiations: Dissection of a Real Estate Contract

This is a paragraph by paragraph review of the standard form used by the Capital Region Multiple Listing Service, Inc. It is recommended that you undertake this review with your client during the attorney approval period.

Paragraph 1: Confirm spelling of your client's names and whether or not they intend to use a middle initial. Remember that misspellings here can be carried on to the note, mortgage and deed.

Paragraph 2: Yes, make sure the property address is correct. Really. And check the town and county. While you're at it, confirm the school district.

Unless you have a perfectly square lot or are absolutely sure of the acreage, the lot size of the property should be "as per deed".

Paragraph 3: Review this list. Remind your Seller not to remove items and remind your Purchaser to check that the items are there on walkthrough. Confirm that your Seller is including a smoke detector and carbon monoxide detector. Double check the add ons.

Paragraph 4: Confirm with your Seller that there's nothing attached that they want to remove or switch out. Confirm with your Purchaser that there's nothing on premises that should be removed.

Paragraph 5: Check the math!

Paragraph 6: A. ***Diary the dates for mortgage application, approval and notification of termination.*** Review the terms and make sure that the deadlines can be met. When representing a purchaser, confirm that they will be able to apply for a mortgage within the agreed upon time frame. Distinguish the process of obtaining a mortgage qualification letter from applying for a mortgage.

Review the type of mortgage to be applied for and the interest rate parameters.

B. Review this very carefully with your Seller to make sure that they understand the concept of the Seller's Contribution. For the Purchasers, advise about potential issues concerning appraisals and amounts allowed by lenders.

Paragraph 7: Talk to your Purchaser about the Good Faith Estimate.

Paragraph 8: Should there be any other terms?

Paragraph 9: Determination of the party who provides the updated abstract of title or title insurance is made by the title zone. Do you know who is responsible for providing title?

Albany.....purchaser provides
Columbia.....purchaser provides
Fulton.....seller provides
Greene.....purchaser provides
Montgomery.....seller provides
Rensselaer.....purchaser provides
Saratoga.....purchaser provides (exception to the mle)
Schenectady.....seller provides
Schoharie.....seller provides

Paragraph 10: Subject to tenancies? Usually not preferred. Purchaser, what use were you seeking?
Seller, what uses are allowed?

Paragraph 11: Review types of deeds with client. The expectation is that a Warranty Deed with Lien Covenant will be given. Why is Seller giving a Quitclaim or Bargain and Sale Deed?
Change to Executor's Deed if you represent an estate.

Paragraph 12: Calculate the transfer tax for your Seller.

Paragraph 13: Review the adjustments to be made. Discuss what your client can anticipate receiving or reimbursing. Confirm the type of fuel on premises if you haven't already by review of the PCDA. Discuss the process for oil adjustments.

Paragraph 14: Warn the Seller about the inspections and confirm that the Seller will be moved out in a timely fashion. Advise your Purchaser to schedule the walk through on the day of closing, testing everything and checking to see if the house is in the condition it is supposed to be in.

Paragraph 15: ***Diary the date for transfer of title.*** Is it feasible? Three and a half weeks is not feasible. Explain the concept of "on or about" vs. "time of the essence".

Paragraph 16: Advise Seller that the deposit will most likely be applied to the broker's commission and that it will be adjusted for at closing.

Paragraph 17: Self explanatory.

Paragraph 18: Explain to your Seller how this works.

Paragraph 19: ***Diary the date for attorney approval.*** Consider the failure to meet this date as evidence of malpractice. Meet with your client and review the contract paragraph by paragraph. Fax your letter and confirm that the fax transmission actually went through.

Diary a date for follow up on open contract issues raised through the attorney approval process.

At this time you should also be addressing the Letter of Engagement with your client. Discuss any agency relationships you may have with title companies.

Paragraph 20: This is the Merger Clause. Explain the concept of *caveat emptor*.

Paragraph 21: ***Diary the dates for inspections and notifications.*** There are different thresholds for each type of inspection, know the differences. If your client chooses to waive any of the inspections, consider a CYA letter to document that you advised your client to have all inspections.

- A. Structural Inspection: review the mechanics of this. One defect which will reasonably cost \$1500 to correct. Consider adding on other types: where does mold fall?
- B. Wood Destroying Organisms: Must be free from infestation or (and!) damage.
- C. Septic System: Must be in *working* order.
- D. Well Water Flow and Quality: must be potable, free from chemicals, metals or other organic matter as requested by Purchaser, and must have water flow.
- E. Radon: The test must reveal less than 4.0 picocuries per liter.

Paragraph 22: Are there any addenda? Have you reviewed them all?

Paragraph 23: To be technical, you might add that attorneys will also receive copies of notices.

Paragraph 24: Confirm that there are no other agreements between the parties.

Finally, make sure that your client has initialed every page at the bottom and all changes to the contract. Check to see that everyone who should have signed the contract has signed the contract.

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