

Contract Writing 101 – Review of CVRMLS Purchase Agreement & Issues Of Note

First, when writing any contract, we must recognize who we represent. We should be structuring contracts differently depending upon if we represent the buyer or seller. While many of the terms are client neutral, some are not and a good agent will recognize the differences and structure the contract accordingly. For example, financing conditions/terms should be more stringent if we represent the buyer side. Contingencies may need additional terms, specifically to better protect the interests of our clients. Below we will go through the contract from page 1 to 10, specifically noting places where things may vary.

Recitals – This is just where the parties are identified and their agency relationship is identified. The most notable issue here is when the owner is not an individual or when an owner is deceased. We cannot have contracts in the name of dead people, and if someone is an executor or POA, they are not listed as the owner. We are required by law to verify that the person signing has the authority to sign PRIOR to drafting any contracts.

Real Property – Get the address right, include the tax id and legal description, don't be lazy. If an additional parcel is included, you better add it or it's not included just because the MLS says so.

Personal Property – As time changes there is becoming less clarity and there really isn't much that is "standard" other than what is listed. Some things to avoid here and things that can become an issue...tv mounting brackets, ring doorbells, camera systems, solar panels, etc.

Addenda – if you are attaching ANYTHING to the contract, then it needs to be attached here. As-is addendum, seller rent backs, possession agreements etc. are things I often see not listed. If you submit an offer with an early possession agreement and it is not attached as an addendum, what happens when the seller signs the contract but not the possession agreement...your buyers are going to be very upset with you.
* If an attachment is removed as a part of negotiating, then it needs to also be removed from page 1.

Price & Financing – If you are representing the buyer, you want to be as specific as possible. Remember, this paragraph states the terms that your buyer will be obligated to. I do not ever recommend selecting "at the prevailing rate at the time of settlement". As we all know, in an environment of rapidly changing rates, don't assume that your buyer is ok with the market rate, and what that payment will yield. If you represent the seller, a little grey area is ok and most likely is in your seller's best interest. Keep in mind the terms regarding changing loan type other than what is in the contract.

Seller Concessions – This is new, but I believe that most people are doing this right. Please keep in mind that your buyer brokerage agreement MUST match what is written here or... If the amount of your buyer brokerage is lower, you will not get the additional. If the amount of your buyer brokerage is higher then the buyer will have to pay the difference.

*When closing out a listing, do not include commission as a seller concession.

Appraisal – IF THE LOAN REQUIRES AN APPRAISAL, THEN IT BETTER BE LISTED IN THE CONTRACT. If the purchaser is able to cover a gap, explain that in additional terms, but do not waive the appraisal if lender required. Make sure that your buyer understands the 15-day rule!

Financing – This is a paragraph that we MUST go over with our buyers. They need to understand that any variance here can result in default of the contract. Also, buried in this paragraph is the sentence that says... "If purchaser fails to comply with any of the provisions of this paragraph or fails to obtain a written loan commitment by 5:00 pm on the settlement date, then seller may terminate this agreement". This is pretty

cut and dry and another example that we need to remember who we represent. If we represent a purchaser and we are going to need more time to get this, we need an addendum. Without an addendum changing the closing date, our buyer could literally have the contract terminated days before they are ready. If we are representing a seller, I do not advise creating an addendum changing the settlement date. If the date is not changed, then the seller can (but does not have to) terminate. I would try to have the seller retain that right, if possible.

Deposit – This is one of the top DPOR violations. We should be explaining to buyers at our initial meeting that they will need a deposit. If we have explained that to them, they should not need delayed receipt, etc. If a deposit is not received by the timeline specified in the contract, YOU are required to notify all parties to the transaction immediately. If you choose not to or fail to notify the parties, it is both a DPOR and a NAR Code of Ethics violation. Also, the time period on receiving the check and the timeline VCR has to deposit the check is not cumulative. If you have a delayed receipt of 5 days and we have 5 days to deposit it, that does not mean 10 days. If you get the check on the 2nd day, the 3 days that were remaining are GONE!

Settlement – Option 1 verse option 2. Option 1 has been determined by courts to mean 30 days. If you don't want that, select option 2. If you want to limit to 10 days, go with option 2. Keep in mind paragraph 24B!!! That's back to 30 days on title issues. That is, 30 days from notification.

Property Owners – Everything is now referred to as a Common Interest Community. Understand the rules about when the clock starts on the 3 days. Any part or piece of a disclosure that is provided even when incomplete, starts the clock.

Property Inspection – We are finally starting to see inspections again. Please make sure that you are 100% familiar with this paragraph. Know what is required in the "repair request". Know what the requirements are, know what defects are, know what antiquated systems means and do not ask a seller to perform inspections. * Schedule your inspection with enough time to have additional inspections prior to the end of the inspection period if needed.

Additional Terms – See clauses in transaction desk.

Paragraphs in 24 –

C. If you are selling a property with land, know what this means and how each county treats this. The contract specifically puts the burden on the seller unless the property remains eligible.

E. This is the reason that the As-Is addendum is critical. Writing as-is in the contract does not delete this and your seller may have to make repairs to comply.

F. This paragraph is also changing. This paragraph is also deleted by the as-is addendum.

G. This paragraph is also deleted by the as-is addendum.

Acceptance Deadline – Please make sure that you have a ratified contract. I see very often that this does not get caught and I often have to reject contracts and not deposit EMD's until corrected. Keep in mind acceptance AND DELIVERY is required.

Summary – In summary, the market we are living in is changing. Buyers are starting to believe it is a buyers' market, while sellers are still expecting multiple offers. As Realtors, people come to us for our professional opinion, so you need to have an opinion and set reasonable expectations. Be prepared with what terms you and your buyer are comfortable with and the data that you used to make your recommendation. Know your

client and provide your expert opinion, keeping in mind the needs of each of your clients are different and they need to be making a fully educated decision. If you don't know the market you are selling in, you MUST educate yourself. Some markets are hot and terms must be competitive BUT some are not and some homes have been on the market for months. **USE MARKET STATS** as a tool to verify that the market conditions are what you believe they are.