

## **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.

**Real Property** – Get the address right, include the tax id and legal description, don't be lazy.

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, 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.

**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.

**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 inspection 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 necessarily cumulative. If you have a delayed receipt of 5 days and we have 5 days to deposit it, that does not necessarily mean 10 days. If you get the check on the 2<sup>nd</sup> 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** – This is changing July 1<sup>st</sup>. Going forward there will not be a difference between POA and Condo, they will both be called Common Interest Communities. Understand the rules about when the clock starts on the 3 days. Any part or piece that is provided or even uploaded as an attachment starts the clock.

**Property Inspection** – This has been less of an issue in recent years, but will be coming back as the market shifts over time. 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.

**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 hectic. Its fast paced and learning on the fly is dangerous for both our customers and ourselves. Be prepared with what terms you and your buyer are comfortable with before sitting down to write an offer. We should not be recommending waiving inspections, waiving appraisals, paying significantly over market value, etc. While we should not be recommending that, we can certainly educate buyers and make sure that they know the full picture before choosing to do those things. Some buyers are savvy enough to understand what they are getting into and others have no clue and are not prepared to cover the potential costs associated with buying a home as-is with no inspection at a price over market. 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. We also need to know the market we are selling in. If you don't know, ask. Some markets are hot and terms must be competitive BUT some are not as hot and don't require terms to be as competitive...know the market so you can best serve your clients. **USE MARKET STATS** in your MLS dashboard as a tool to verify that the market conditions are what you believe they are.

## Additional Agent Tools



MarketStats



Fast