

A New Offer to Purchase



Changes are brewing for the way North Carolinians buy and sell properties. In fact, as of November 1st, Realtors will be using a completely revised "Offer to Purchase and Contract" form. What does this mean for you? Plenty, if a move is in your future.

The new contract is lengthier, more complicated, and includes many more checkpoints and deadlines with financial consequences. For example, though there was always a place in the contract requiring buyers to apply for a loan within a negotiated timeframe, in the new contract, the seller can actually request confirmation that the buyer has submitted a loan application. The buyers then have five days for their lender to provide documentation, or the seller can terminate the contract and retain the earnest money. It will thus mean that buyers need to shop for the best loan before they write an offer. And it will be vital for buyers to choose a lender who artfully manages the loan process, is responsive to inquiries, and communicates readily.

Also new to the financing section is a loan approval date, by which time the buyers must have their loan approved or must provide notice to the seller that they are unable to secure a loan. If neither happens, the financing contingency expires, and the buyers are bound to close on the property or lose their earnest money.

Property surveys, which have declined as an imperative in recent years, will see a renewed importance. Why? The new contract requires sellers to document whether or not their property is in a flood hazard zone. If they check "no" and it's found that the house or other "permanent improvements" are in a flood plain, or that the lender will require the buyer to have flood insurance, the buyer can now cancel the contract with earnest money refunded. Thus if there's



any doubt about the status of a property's location, it would behoove the seller to have a survey completed, to eliminate the risk of a buyer later dissolving the transaction due to flood zone issues.

Many of the checkpoints and deadlines in the new contract revolve around inspections. Inspection negotiations can be a primary cause of discord and difficulty during the buying and selling process. New features in the contract attempt to reduce the challenges associated with inspection negotiations, by further clarifying and standardizing each step. For example, when buyers present an offer, they include a date by which they will submit a repair request to the seller. Sellers then have a negoti-

ated number of days to respond to the buyers' request. However, under the old contract there was no timeframe in which the buyers had to respond to the seller, and in addition, repairs which resulted from additional inspections – such as termite, radon, well or septic – could be submitted at a later date.

Under the new contract, "time is of the essence" regarding these dates, and in addition, the buyer now has to respond to the seller within 5 days. If the buyer doesn't do so, it will be assumed that the buyer accepts the seller's response. In addition, all inspections need to be completed by the date upon which buyers submit their repair request. There's no ability under the

new contract to contact the seller a week later and ask for repairs to the septic system, for termite treatments, etc. It's thus imperative that buyers and their agents schedule all inspections promptly, and seek any estimates for resulting repairs promptly as well.

An interesting change regarding inspection repairs involves termite treatment. Previously, if active termites were found at a property, the seller was required to treat the infestation. Now, termite treatment as well as resulting repairs are negotiable. It's no longer a given that if termites are found, the seller will pay for treatment

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Changes to the way closing dates are handled should also be mentioned. Under the old contract, if either party could not close by the contracted date, there was no standard of practice as to what happened next. Under the new contract, if closing doesn't occur within ten days of schedule, the "non-delaying" party is entitled to the equivalent of 8% interest per year from day 11 to day 30. After thirty days, the non-delaying party can terminate the contract and receive the earnest money.

The above are just highlights of the changes created by the new offer to purchase and contract. The changes are substantive and copious. As a result, now more than ever, it's important for buyers and sellers to consult with real estate agents and lenders who are responsive, knowledgeable and diligent in managing each step in the process. ■

