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Waiving the Financing Contingency — How to do it Competently

To Waive or not to Waive? A Requirement to waive the financing contingency is still a function of certain deals — i.e. in bidding wars; as a deal sweetener; higher end deals and new offerings. That being the case, it's important to review the basic steps that should be taken before the contingency is waived.

Of course there is a lawyer's caveat that at the end of the day the risk is with the Buyer, but a team approach and educated analysis will help gauge expectations.

A Financing Contingency is a provision in a contract of sale that permits a Buyer to cancel the deal, without penalty, in the event a bank is unwilling to give the Buyer a Commitment Letter. A Commitment Letter comes in all shapes and sizes — some are FIRM meaning they do not contain any significant conditions. Others contain many conditions. Suffice it to say that a bank needs about 30 days to get close to Firm — more time than a Buyer has in which to sign the contract.

If a Buyer intends to finance but fails to secure a Commitment Letter, the Buyer will need to either pay all cash or risk the loss of the contract deposit (usually 10%).

The goal then ' if the Financing Contingency is to be waived — during the period between accepted offer and contract signing is to get a comfort level on the criteria that Banks review in issuing a Commitment Letter.

There are three basic matters that get reviewed when a Buyer applies for a loan. The First is the Buyer's personal criteria - financial assets, employment and credit. The Second is the value of the Property, which is established by an Appraisal. And the Third is the bank's approval of the Cooperative or Condominium Building, called Project Approval, where the bank reviews financials, insurance, owner occupancy and the like. Banks use a Questionnaire to assist them in making this determination.

A fast acting Team Approach (between the Real Estate Broker, Buyer's Attorney and Mortgage Broker/Banker) is a required format.

The Mortgage Banker or Broker can do a verbal review of the Buyer's personal picture. Of course it is always preferable to have the Buyer come into a deal pre-qualified for a loan. To confirm the value of the Property, the Real Estate Broker can run a search of comparable sales in the building and the neighborhood to see if an appraisal will support the purchase price. As for Project Approval, the Mortgage Broker/Banker may have experience with the building or may be able to call the bank and review a database to see whether the building is on the lender's approved list (or has not been declined). They can work with the Broker or Buyer's Attorney or even the managing agent directly to get the basics on the building to see if any red flags exist.

Putting these pieces together may not provide a guarantee but will certainly provide a basis upon which the Buyer can make a more informed decision.