

Condition-Free Offers

Purpose: This bulletin explains a licensee's responsibility to ensure their clients are fully informed before they make a condition-free offer.

This bulletin applies to residential real estate, mortgage broker, residential property management, and commercial real estate licensees.

In competitive markets, clients may feel they need to make condition-free offers to appeal to a seller in a multiple-offer situation. It is their licensee's duty to ensure their buyer client understands the potential consequences of a condition-free offer before they make a decision.

Conditional Offers

Conditional offers are offers to purchase a property that are conditional on certain criteria being met. These criteria must be written in the offer to purchase, with an exact explanation as to how the condition will be met, and when the condition must be met by.

Typical conditions include conditions for a buyer to:

- secure financing
- complete a home inspection to their satisfaction
- review condominium documents to their satisfaction
- finalize the sale of their current property.

These are typical conditions, but a condition can be anything the buyer and seller agree to, as long as it is written in the signed offer to purchase.

An offer to purchase is void should the buyer not waive their conditions by the agreed upon deadline.

A condition-free offer is an offer to purchase property that has no conditions.

Risks of Condition-Free Offers

Conditional offers allow buyers and their licensees to perform due diligence on a property, such as a home inspection, title review, or condominium document review. Conditional offers also allow buyers to secure financing for the property, typically through a mortgage. To not

allow for this due diligence or financial certainty to be in place prior to committing to a purchase is a risk for buyer clients.

Offers to purchase are usually accompanied with initial deposits from the buyers. These deposits usually run in the thousands or tens of thousands of dollars. Depending on the wording in the condition-free purchase contract, if a buyer fails to complete the purchase, the buyer may be forced to forfeit their deposit.

Making an offer without approved financing in place and without inspecting a property, its title, or its condominium documents (if applicable), greatly increases the chances the deal will collapse, and the buyer client may lose their deposit, and may even open themselves up to civil litigation by the seller.

Even if a condition-free offer is accepted and the deal closes with your buyer client taking possession, they may later discover facts about the property that may have dissuaded them from completing the purchase had they discovered them before entering into a condition-free purchase contract.

Duty to Inform Clients

As a licensee, it is your duty to advise your client about the risks and possible implications of condition-free offers. It is in their best interest that they make their decisions having all the information.

After learning of the risks, should your client wish to proceed with a condition-free offer, it is still the licensee's duty to act in their client's best interest. Licensees should advise their clients to allow the licensee to perform what due diligence they can on a property prior to making the offer, including a title search, asking the sellers or their representative about material latent defects or other known facts about the property, and talking to neighbours about the property.

However, licensees must obey their clients' lawful instructions. Should they wish to proceed with a condition-free offer immediately, the licensee must assist them in doing so.

Document Your Discussions

Licensees should keep a record of their discussions with clients concerning condition-free offers in the client's brokerage file. Should a condition-free offer result in clients losing money, a record that the licensee informed the clients of the risks ahead of time will help protect the licensee and the brokerage should the client take legal action.

Licensees must ensure all documents related to a trade in real estate are provided to their broker in a timely manner and inform their broker if their clients are proceeding with a condition-free offer.

Related information

Legislation

- *Real Estate Act Rules* - section 41(b)(d)
- *Real Estate Act Rules* – section 53(c)(d)

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