

# Offer Review

Complete an Offer Worksheet for each offer you receive. Next, run through the list of review notes on this page. Make any notes on your Offer Worksheet to keep track of issues to resolve.

## Price:

- **Offer is above list price.** This clause is commonly known as "Appraisal Gap Coverage". This situation increases the likelihood of the appraisal coming in lower than the contract price. Strongly recommend you ask your buyers to agree to make up any difference in value from a short appraisal by bringing additional cash to closing to avoid having to lower the price to match a low appraisal.
- **Appraisal Gap Coverage offered.** If your buyer is offering appraisal gap coverage, you must verify they can cover any appraisal shortage with cash funds available. If the buyer is financing, require proof of funds in addition to the buyer's down payment funds. If the buyer is cash, this normally isn't an issue since they likely provided you with proof of funds when they submitted the offer.
- **Buyer walk-through requested.** This is fairly new in the price-affecting arena. Many corporations are buying up homes and condos to rent out long-term. These companies make aggressive initial offers to win the "bidding war" in a hot market. They include a seemingly harmless "buyer walkthrough verification" upon acceptance. After their offer is accepted, they send one of their company reps in to "verify" condition and then use that clause to renegotiate the price since the property needed more work than they thought.
- **Escalation clause, not triggered.** This means that your buyer is willing to pay more than they are offering. However, they are only willing to pay more if someone else is willing to pay more. If you have no other offers that are higher than this one, this clause is not applicable. It does however let you know that there is room to negotiate up. Strongly advise you simply counter this offer higher and skip the escalation.
- **Escalation clause, triggered.** When you receive an offer with an escalation clause AND you have another offer high enough to trigger the escalation, you need to follow the language in the escalation clause. If you use the other offer to escalate this offer, you will need to provide this buyer with a copy of the triggering offer to prove you did in fact have a higher offer. Again, strongly recommend that you counter instead of getting hung up in the often confusing escalation clause language.
- **Offer is very low.** You may be tempted to ignore it, but our advice is to at least engage the buyer. You can do this with a sensible counter offer. To do that, send the buyer a price that is not the list price but is a price you would be willing to accept. If they reject your counteroffer, so be it and you are no worse off.
- **Earnest money deposit.** The amount of money the buyer will place in a trust with this offer. While this doesn't directly affect the price, we recommend a minimum of 1-2% of the offer be placed on deposit. Sometimes the earnest money is the only that keeps a buyer from walking away over small issues.

## Cost: (Common clauses that affect your bottom line)

- **Commission:** Although you may be offering a certain commission in the MLS, some agents will slip in a clause somewhere toward the bottom of the offer. This clause will state that the seller irrevocably agrees to pay the buyer's agent additional commission percentages or sometimes a flat dollar amount. Once you sign the offer, the clause is there and you won't notice until the day of closing. No bueno.
- **Seller concessions requested.** This is commonly known as "buyer closing costs" requested. Your buyers are asking you to pay part of their closing costs. This amount is in addition to your regular closing costs. This means the buyer is conserving cash by financing a portion of their closing costs. The only way to legally do that is to "have the seller" pay them. Focus on your bottom line. If you run into an appraisal issue or inspection issue, just know that this buyer is likely unable to use any cash to solve it.
- **Title insurance requested.** This clause tells the title company to order an expensive title insurance policy and charge it to the seller at closing. This policy does nothing for you--it's for the buyer. These policies can run into the thousands of dollars and the language in the contract is fairly harmless looking.
- **Utility hold clause.** This clause tells the title company to hold back a portion of your proceeds at closing to pay any outstanding water, electric, or other utility bills. This can range anywhere from \$100 to several thousand, depending on the property and the region. You will get any leftover money later, but it may take you several phone calls/emails and several months to collect. Recommend getting this struck in favor of providing proof of final utility payment at closing.
- **Home warranty requested.** The buyer wants you to pay for a one to two-year home warranty. It's not a bad idea, but the buyer's agent usually gets a kickback from the warranty company. The buyer gets the benefit of the warranty and you pay the bill at closing. Usually between \$500-1500, depending on the property and the area.
- **County transfer tax.** Also known as a "conveyance" tax. This is a small percentage of the sales price collected by your county recorder and paid for by you. The money will be deducted at closing. These taxes vary by county so do an internet search for "conveyance tax (county, state)" to find the rate in your area.
- **VA termite inspection.** If your buyer is using VA financing, there is a little-known clause stating that "the veteran shall not pay for any required inspections." VA only requires a termite inspection and since the veteran isn't paying for it, that leaves the seller. Usually runs about \$100-150 and can be paid for at the time of the inspection or at closing.
- **Property tax proration.** Property taxes are almost always billed a year behind (called "in arrears"). Therefore at closing, the title company will estimate the taxes for the time you owned the property but have not yet been billed. This money will be withheld from your proceeds and given to the buyer at closing.
- **Settlement/Title fee.** These are the expenses you pay to the title/escrow company to run the closing, prepare and record the deed, order and handle mortgage payoffs, conduct the title search, and so forth. Can run anywhere from a few hundred to a few thousand dollars. By the way, it pays to shop around.

## Off-ramps: (Clauses that allow the buyer to escape the deal)

- **Attorney/CPA review.** Clause that says either party may rescind the offer with written notice. This is a practical "get out of this offer" clause. There is no changing it if it's in there, but in a competitive market, you can ask the buyer to waive this "upon acceptance". Otherwise, if the buyer gets remorse later, they can simply cite this clause and they are gone with their earnest money deposit.
- **Seller disclosures not reviewed.** Many states require the sellers to fill out a disclosure form detailing the history of the property and any maintenance. Most contracts contain a clause stating whether or not the buyer has reviewed the disclosures. If they have not, the buyer will have an easy off-ramp until this term is satisfied. We recommend presenting the buyers with your disclosures and having them sign off this clause before accepting their offer.
- **HOA documents not reviewed.** If your property is governed by an HOA (homeowner's association), the buyer is entitled to review the HOA rules/financials as part of the purchase. Most contracts contain a clause stating whether or not the buyer has reviewed the HOA documents. If they have not, the buyer will have an easy off-ramp until this term is satisfied. We recommend presenting the buyers with your disclosures and having them sign off this clause before accepting their offer.
- **Home sale contingency.** Your offer is contingent upon the sale and closing of the buyer's home. This presents a number of challenges; chiefly that you must now contend with two sets of inspections, two appraisals, etc. Unless you see no other offers, we recommend you consider this offer only as a backup offer until the home sale contingency is removed. If you proceed with this offer, request a right of first refusal, allowing you to escape this contract if another offer shows up without a home sale contingency.
- **Inspections waived.** Your buyer has waived inspections. This clause significantly increases the strength of this offer. 70% of all deals that fall apart, happen during the inspection process. As a seller, it would be difficult to overlook this offer, assuming other factors.
- **Remedy waived.** Your buyer has waived the inspection remedy period. This means the buyer will only be giving a simple "Yes" or "No" on whether or not they will be moving forward after inspections. They will not ask for repairs, but they can still cancel the contract if they are unhappy with the inspection results. Keep in mind, the buyer can still ask for repairs. You don't have to agree to them and can simply say "no" so in essence, this clause is more about the buyer's mindset. It doesn't really enhance the offer much, in our humble opinion, since the buyer can still walk away.
- **Final walkthrough requested.** Your buyer is requesting a final walkthrough of the property a few days before closing to ensure the property condition has not materially changed. They cannot raise any new issues, but they can inspect any work that was done to satisfy the inspection remedies.
- **Long closing date.** Extended time between now and closing is not unheard of but could be a way for the buyers to hide the fact that they have a home to sell. To be on the safe side, we recommend asking their lender to confirm either way in writing that the buyer does not have to close on any other property prior to closing on your home. Do not take the buyer or buyer agent's word for this--get it right from the lender.