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## **NEWSLETTER**

**NOTE: If you think your colleagues would benefit from the information contained in this Newsletter, please forward it to them and ask them to reply to me by email for inclusion in this free Newsletter.**

**Also, if you have a topic you would like me to analyze and discuss, please email me and I would be glad to consider it in a future Newsletter**

### **JULY 2016 ISSUE---- WHEN IS A MORTGAGE CONTINGENCY SATISFIED?**

The typical residential real estate contract contains a contingency clause for mortgage financing.

For example, the New Haven Board contract [paragraph 6] says that the ***Buyer's obligation [to purchase] is contingent upon Buyer obtaining financing as specified in this paragraph.*** The clause describes 4 elements of a mortgage commitment that must be accomplished in order for the contingency to be deemed satisfied: **amount, maximum rate, term of loan and type of loan.**

These 4 elements are also common to contracts in Fairfield County, Hartford County, New London County and Middlesex County.

However, as we in the real estate community know all too well, satisfying these 4 conditions does not mean that the Buyer can be assured that they are now prepared to go to closing with a Lender's money readily available. Lenders often issue written commitments that satisfy the 4 elements but contain pre-conditions to the funding of a loan by a Lender at closing. Common examples are:

- Appraising the property for a certain amount;
- requiring that the current home of the Buyer be sold and closed; and
- payoff of other obligations such as credit cards and student loans

The result is that I believe a mortgage contingency clause in a contract that contains only the 4 elements can be satisfied even though the obligation of the Lender to pay over the loan proceeds may not be guaranteed at the time specified for closing unless certain conditions occur.

As a consequence of the Lender granting a mortgage commitment with unsatisfied conditions, I often find realtors and lawyers seeking an extension of time to obtain a mortgage commitment even though all 4 conditions are completed. The realtor or lawyer

incorrectly believes (in my opinion) that the mortgage contingency is not satisfied until all conditions are fulfilled because the Buyer has not received an unconditional commitment.

However, the standard contract does not require the Buyer to obtain an unconditional mortgage commitment to satisfy the mortgage contingency clause. The contract merely provides that the Buyer receive a written commitment containing the 4 elements.

If, as the contract was being negotiated, the Buyer's realtor or lawyer attempted to add a 5<sup>th</sup> or 6<sup>th</sup> condition to the contingency clause or attempted to modify the clause to make the contract subject to an unconditional mortgage commitment, it would be very difficult to obtain the Seller's approval. Therefore, until we can all agree on a suitable substitute, we are going to have to live with the clause as written.

It is my opinion that the mortgage contingency clause, as we commonly know it, is satisfied once a written commitment is issued to the Buyer containing the terms set forth in the clause and that the Buyer is not entitled to an extension of time until the time a commitment becomes unconditional.

I recognize that this is my opinion and that other lawyers or realtors may disagree with me. If there are other schools of thought on this issue, I would welcome a dialogue. Perhaps if we started one, somehow a consensus of opinion could develop that would lead to a permanent alteration of the standard mortgage contingency clause to clarify and modernize it.