



Manage Expectations on Front End

Dear Forms Guy: I have a bone to pick with you about the “Expenses” section of the Offer to Purchase and Contract, the part where the seller agrees to pay some of the buyer’s expenses (paragraph 10 of the 7/2007 version). I had a little situation recently where my seller client wouldn’t agree to have the carpets professionally cleaned because it wasn’t a necessary repair under the contract. The buyer seemed to understand, and I thought we were in good shape to close. I was wrong. The parties had agreed that the seller would pay up to \$3,000 of the buyer’s expenses at closing. Guess what the buyer asked to be included in the \$3,000?

Sincerely, Bud in Burgaw

Dear Bud: It wasn’t the cost of having the carpet cleaned, was it? **Sincerely, Forms Guy**

Bud: You guessed it, Forms Guy. My seller was steamed, no pun intended. I ended up paying for it out of my own pocket just to get the deal closed. I’ve been in the business for 25 years and I always thought that any amount the seller agreed to pay was only to cover the buyer’s loan-closing costs. Am I wrong?

Forms Guy: The blank in paragraph 10 is intended to cover more than just the buyer’s loan closing costs. By way of explanation, I will give you a bit of forms history. In older versions of the Offer to Purchase and Contract, the wording about the seller paying buyer expenses appeared at the end of the loan condition section, and it stated that “... if Seller is to pay any of the Buyer’s Closing costs (including loan discount points), those costs are as follows: _____.” There were frequent disputes reported by our members about whether a particular item of expense was or was not a “closing cost” that was includable in the amount the seller agreed to pay. (As an aside, I recall that whenever I would receive a call from a member who was whispering, I would immediately assume two things: (1) they were calling from the closing attorney’s office, and (2) there was a ruckus going on around the closing table about “closing costs.”) A number of years ago, the Joint Forms Task Force did two things to clarify the wording to help minimize the disputes. First, the wording was moved out of the loan condition section of the contract and into what is now known as the “Expenses” paragraph, to clarify that the includable expenses were not limited to loan-closing costs. Second, based on the premise that when a seller agrees to a particular dollar amount, the seller expects that the full amount will be “used up” by the buyer, the wording was broadened to read: “Buyer’s

expenses associated with the purchase of the Property” so as to more clearly include many of the disputed expense items.

Bud: Are you telling me that having carpets cleaned is an includable expense?

Forms Guy: As a result of the changes, there has been a significant decline in the number of reported disputes about what expenses are includable, but the changes haven’t eliminated *all* of the disputes. Reasonable minds may differ about whether the expense of having the carpets cleaned is “associated with” the buyer’s purchase of the property.

Bud: So how should I advise my seller clients when they are trying to decide what amount to agree to in the blank in paragraph 10?

Forms Guy: I think a listing agent should point out the broad wording of the provision and advise their seller to assume that the full amount of whatever is agreed to will be paid at closing to cover the buyer’s expenses. On the other hand, a buyer’s agent should make it clear to their client that the buyer is not necessarily entitled to the full amount of what’s in the blank just because it’s there. Situations do sometimes arise where the buyer’s expenses just don’t add up to the total amount, in which case the buyer is *not* entitled to receive the difference as a credit. Also, buyers occasionally must leave some part of the agreed amount “on the table” because their lender prohibits some portion of the amount in the blank being credited to the buyer. Listing agents and buyer agents alike must always strive to manage their clients’ expectations on the “front end” of the transaction in order to help minimize later misunderstandings.

Bud: Guess who ended up paying for the carpet cleaning?

Forms Guy: Was it you, Bud? ■



Have a question or questions for the Forms Guy?
Email Will Martin at wmartin@ncrealtors.org.