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Top 10 things to beware of when buying resale

Buying a resale home may seem deceptively simple since it is common practice to use an industry-approved form offer and pop in a few "standard" conditions like mortgage financing and home inspection.

Based on my experience with thousands of transactions over the years, I have compiled a "top 10" list of things to watch out for when submitting an offer to purchase a resale home. Here they are, in no particular order.

1. Many offers are still prepared with wording that allows the final purchase price to be paid "by cash or certified cheque" on closing. If the buyer pays in cash, the seller will have a serious problem trying to deposit several hundred thousand dollars in 20s and 50s into a bank account. Do the words money laundering ring a bell?
2. Conditions are often drafted allowing a buyer several "business" days to obtain financing, complete a home inspection or review a condominium status certificate. Very few offers, however, define the term "business day." Since some banks and many businesses are open on weekends, the fuzziness of the words "business day" can easily lead to litigation, unless the term is clearly defined. I prefer to use calendar day instead of business day, or even to insert a specific date.
3. Most offers I have seen lately caution the buyer that current value assessment (CVA) is being implemented and that the parties will not sue each other or the agents for any change in assessment. (In fact, the Ontario government implemented CVA in 1998.) Any clause releasing an agent from liability for negligence or misrepresentation does not belong in an offer between buyer and seller. That clause should be deleted and replaced with a clause stating the precise amount of taxes for the current and previous years. A copy of the tax bill can be attached.
4. For some bizarre reason, the printed offer form used by the Ontario Real Estate Association and Toronto Real Estate Board allows until 6 p.m. on the day of closing to finalize the transaction. Since the Teranet land registration system shuts down at 5 p.m., it becomes a huge problem for the parties to figure out what to do in the hour between 5 and 6 if the deal can't be registered. I recommend adding a specific clause changing the deadline from 6 p.m. to 5 p.m.
5. If the house or condominium being purchased was built and occupied within the last seven years, a copy of the Tarion new home warranty should accompany the offer. A current home warranty is an important part of the sale and purchase of any nearly new home and should always be made available by the listing agent.
6. Thousands of Canadian homes have been used as marijuana grow operations or drug labs. An offer to purchase is not complete without a warranty that the house or condominium has never been used for these illegal purposes. Some purchasers are also starting to ask for guarantees that the home carries no other stigma such as being the location of a murder or suicide.
7. Recently I've had some clients complain that the home of their dreams has been left on closing in a mess, with mounds of garbage everywhere, inside and out. A well-drafted offer will have a clause requiring the home to be left in "broom-swept" condition by the seller.
8. When purchase negotiations stretch out over several days, the quality of the offer document deteriorates rapidly after being faxed and re-faxed repeatedly. Not long ago, I received an offer that was one big black smudge, and totally illegible. I advised the real estate agent that I could not accept the retainer and open a file until I had a copy of the agreement that I could decipher. My rule is that if I can't read the offer, a judge won't be able to either when he or she is asked to figure out what it really said.
9. One of the most important things for purchasers of freehold property to know is the size of the land underneath the house and where the house sits in relation to its lot lines. Far too many offers take the easy way out and simply say the lot size is "as per deed." In my view, if the lot size isn't available, the listing agent's job isn't finished.
On the same theme, the most important document in a house purchase is a survey. Unless there's written proof that a survey does not exist or has been lost, there is no excuse for failing to attach a legible survey to the agreement or, preferably, promising in the offer that the seller will provide a new one. Title insurance cannot replace the many benefits of having a survey; it only insures over the resulting problems.
10. A surprising number of Toronto-area properties have not been converted to Ontario's electronic land registration system because the folks charged with the conversion to the land titles system view the historical title as defective. Lately, I've seen more than my fair share of these bad titles, and the non-conversion to the land titles system often leads to a dispute between the lawyers for buyer and seller over the issue of how serious the defect is.

I recommend to my clients that they insert into their offers a clause that requires the title be electronically registered in the land titles system before the purchaser can be required to close.

Finally, I've added one free bonus to my top 10 list:

11. Agreements of purchase and sale should be conditional on the approval of the lawyer for each party. If the lawyer can't be consulted before the offer is signed, the parties can be fully protected only if they have the opportunity to obtain their lawyer's approval before the deal goes firm. If a lawyer approval clause is missing from the offer, the parties are not adequately protected.