
MEMORANDUM

TO: LINCOLN REALTORS
FROM: GREAT PLAINS REGIONAL MLS, LLC
RE: UNIFORM PURCHASE AGREEMENT

As you may be aware, the Great Plains Regional MLS (“GPRMLS”) has been working with a combination of Omaha and Lincoln Realtors to prepare a new Uniform Purchase Agreement that can be used in Omaha, Lincoln and other geographic regions. Recognizing that both Omaha and Lincoln have had their own forms in use for some time, these forms were compared and reviewed with the intention of taking the best practices from each. The result has been to prepare a new version of the Uniform Purchase Agreement that can be used by all Realtors regardless of the market.

The most obvious benefit to Realtors and their clients will be simplicity in reviewing and explaining offers. The use of a uniform agreement will avoid situations where the “Omaha Form” or the “Lincoln Form” is used, requiring the agents involved to carefully review an unfamiliar, out of market form. Although there will certainly be a transition period where both Omaha and Lincoln agents need to familiarize themselves with the new form, the benefits should soon become apparent to all involved.

This Memo identifies and discusses what we see as some of the most significant ways that the Purchase Agreement will change and improve the contracting and sale practices.

PERSONAL PROPERTY

Provisions related to personal property located on the premises are addressed in Section 3 of the Purchase Agreement. The Purchase Agreement now provides a number of check boxes to identify personal property to be conveyed as a part of the transaction. This is intended to avoid circumstances where questions arise during the move out process. While a Bill of Sale can still be used in circumstances where appropriate, the checkboxes allow the parties to address the most common circumstances and personal property.

IDENTIFIED THIRD PARTY SERVICE PROVIDERS

The Purchase Agreement form allows for brokers and agents to identify lenders, home inspectors, title companies and escrow agents. These sections can be prepopulated to include

providers as brokers may be deemed appropriate. Good practice would still be to allow blank lines for a party to select their own service provider.

FINANCING OPTIONS

Provisions regarding the more uncommon financing circumstances, such as loan assumption or carryback financing are addressed as checkboxes in Section 8 of the Purchase Agreement. However, the terms for those circumstances are now to be addressed by separate addendum. This provides the parties all of the same options but relegate the specific terms to a required addendum.

SALE OF EXISTING HOME CONTINGENCY

Section 9 of the Purchase Agreement provides significant detail for the circumstances under which a Purchaser may make an offer contingent upon the listing or sale of existing home. This is an extremely common contingency, such that it made sense to list the terms and requirements in the Agreement. The language of Section 9 either includes the information regarding the scheduled closing or the requirement that the Purchaser's existing property be listed. The sale of an existing home, like title and financing issues allows for the automatic extension of the closing date under the terms of Section 13 of the Agreement.

The Purchase Agreement includes language that would apply to the sale of rental and investment properties in Section 22. Specifically, Section 22 provides that deposits and leases are assigned at closing if the property is leased. The Seller is also required to provide copies of all leases within three days of acceptance of the Purchase Agreement. Section 22 provides that the parties will cooperate if one or both wish to pectinate in a 1031 tax deferred, like kind exchange.

INSPECTION

Property inspections, addressed in Section 18 of the Agreement provides a simplified structure. Rather than requiring a purchaser to identify the specific inspections to be performed, or requiring the inspections to be ordered within a certain number of days, the purchaser now has a 14-day period in which to arrange for an obtain the results of any property inspections desired. Before the end of the 14 days, the seller must be informed of the deficient conditions or the inspection contingency is deemed waived. If conditions are identified by the Purchasers, the Purchaser and Seller can negotiate an Addendum regarding these matters up through the 18th day following the acceptance of the Purchase Agreement. If the parties do not reach an agreement by that time, the Purchase Agreement terminates and the deposit is refunded to the Purchaser.

Although the language used with respect to inspections is similar to the language which has been used in the Lincoln market for some time, the time periods have been extended slightly to allow for purchasers to have more time to arrange for and review inspections. Because it is important to identify circumstances where a purchaser does not want to perform inspections, the purchaser will initial the form to identify whether or not the offer is made subject to inspection.

CLOSING DATE

Purchase Agreement sets a fixed closing date, subject to automatic extension under some circumstances. Previously, the Omaha Purchase Agreement form provided for an approximate closing date, meaning that an amendment would not be needed if closing was postponed for the convenience of the parties. Now, the closing date is fixed unless the Agreement is amended or closing is delayed because of issues related to title, financing or an existing home sale contingency.

Under the circumstances where closing is delayed because of a title, financing or existing home sale contingency, the specific provisions of Section 13 of the Purchase Agreement will apply. Under Section 13, closing date is automatically extended until such provision is remedied. However, if closing has been delayed by more than 14 days, either party has the right to unilaterally terminate the Purchase Agreement, at which time the deposit will be refunded to the purchaser.

The idea behind this revision is that a fixed closing date allows the parties to better plan the logistics of closing, such as document execution and scheduling movers. An automatic extension under limited circumstances allows the parties to proceed without a formal amendment when these circumstances arise. The ability of either party to eventually elect to terminate the agreement without future cause protects the parties from being contractually bound in a circumstance where an issue seems unlikely to be cured for the foreseeable future.

EARNEST MONEY

The provisions regarding delivery and receipt of the earnest deposit, including identification of the recipient and party making delivery, are specifically addressed in Section 7 on the first page of the Purchase Agreement. These are important terms that, previously, were addressed on final pages of the Agreement.

The language of the Purchase Agreement has also been broadened as compared to the previous form, to allow an escrow agent to release the earnest deposit on the occurrence of certain events. While many escrow agents will not release the funds under any circumstances unless both parties have agreed in writing to do so, language has been used, taken from the form in Lincoln, to allow an escrow agent greater authority to make such distribution. While the escrow agent would still be liable for a distribution and violation of the Agreement, this may allow funds to be released in the most clear cut circumstances without written agreement.

TAXES

Section 11 of the Purchase Agreement includes language related to proration of property taxes. The language keeps the distinction that, under local practice, Douglas and Sarpy County prorate based upon the taxes that become delinquent in the year of closing. Properties in any other County will be sold with the proration based upon the taxes assessed for the year of closing. This is not a change to local standards but an attempt to make the language more user friendly. Using this language in a unified form and all marketplaces will allow the location of the property and not the choice of agreement, to control prorations.

GOVERNMENT REQUIRED DISCLOSURES

Government required disclosures are now all addressed in Section 25 of the Agreement. This includes disclosures between the parties, such as the Property Condition Disclosure Statement, legal requirements such as installation of smoke detectors and the receipt of affiliated arrangement disclosures.

NOTICE AND TIMING

Section 27 of the Agreement provides clear guidance as to when and how any notice required by the Agreement is made. Notices must be delivered before 5 p.m. on the date due, and can be hand delivered or emailed to the agent or broker. Other delivery means are acceptable, such as text message, provided that the recipient acknowledges receipt. Establishing a clear timing and structure for notice should avoid questions that arise near contract deadline and create specific guidelines and practices for Realtors to ensure that notice is properly given.

ATTACHMENTS AND ADDENDA

Section 33 of the Purchase Agreement provides a full menu of Addenda, attachments and disclosures, both between the parties and with respect to the disclosures by agents to their clients.