



Catskills Buyer Agency

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Important Information About the Purchase Offer and Contract Process

Signing a purchase offer and leaving a binder deposit for a house is an exciting moment. And getting the call that your “offer” has been verbally accepted by the Seller is even more exciting. But, at that point you do not necessarily have the house.

In New York State, real estate transactions are only valid upon the full execution of real estate contracts by both the Buyer and the Seller.

What does this mean for you, the Buyer?

The process of getting contracts in Sullivan County can be incredibly slow. The Purchase Contract (which is different than the purchase offer) is drawn up by the Seller’s attorney. This can take a couple of weeks. Then it is sent to your attorney, who reviews it and most likely drafts a rider with additional conditions to protect you, the buyer and returns it to the seller’s attorney. This process can go back and forth a *number of times*. In the best case scenario, expect 2 to 3 weeks before there are contracts ready for you to sign. In the worst scenario, it can take 6 to 8 weeks! It is a needlessly cumbersome process, but one which Realtors, unfortunately, have little control over.

When the contracts are ready, your attorney will send it to you to sign. You sign it and return it to your attorney, who sends it to the Seller’s attorney, who sends it to the Seller to sign. The Seller then returns it to their attorney, who sends a copy of the fully executed contract to your attorney. The process can drag on for weeks, and you do not actually have a deal until your attorney receives those fully executed contracts. Many listing brokers and Seller’s attorneys are recommending that their clients not sign the Purchase Offer, so in most cases, until you have fully executed contracts, you will have nothing signed by the Seller indicating they have accepted your offer.

During this period, until you have fully executed contracts, the Seller can accept another offer with no penalty. Listing brokers have different policies as to which point in the process they will no longer show the house to or accept offers from other potential buyers. Most brokers will continue showing a house during the first few “shaky” weeks of a deal, before you’ve completed your home inspection and negotiated inspection issues with the Seller. Once the contract process has started, but is not fully complete, these brokers will informally take the house “off the market”. Some listing brokers, however, will continue showing a house and accepting offers even after a buyer has signed contracts, completed the inspection and even applied for a mortgage — but before that critical moment when the Seller executes the contract.

If you are “bumped” by a higher offer, you will usually, but not necessarily, be given the opportunity to increase your offer or better your terms. If you are ultimately not the winning bidder, **any money you have spent for inspections, legal fees, mortgage application fees or appraisals is lost** (with the exception of mortgage application fees, which many lenders will allow you to apply to another mortgage.)

But there are some steps you *can* take to reduce your chances of being “bumped” or incurring unnecessary costs.

1. You may want to delay your home inspection until contracts have been fully executed. While we can include a contingency in the purchase offer that the inspection will be subsequent to executed contracts, some Seller’s attorneys will balk at drafting contracts before the inspection. Your attorney will need to work this out with the Seller’s attorney. Note that the seller may demand that the inspection be completed before contracts are issued.
2. Request your attorney to send all contract documents by overnight mail at your expense, including to and from the seller’s attorney. When you receive documents to review and sign, sign them immediately and return them by overnight mail. In this market, it is important to eliminate every possible delay in the process until you have fully executed contracts.
3. Stay in regular touch with your lawyer as to the status of the contract.
4. When your lawyer has reviewed the contracts and says they are ready to sign, ask that they be faxed to you to sign, and then return them by overnight mail as soon as you have signed them.
5. If you apply for a mortgage before you have fully executed contracts, instruct your mortgage lender to hold on ordering an appraisal until you have contracts.
6. Do not assume your lawyer is staying on top of the process. While some do, many do not. When you have contracts, carefully go through it and note your responsibilities and due dates. Particularly important is the date your mortgage commitment is due. Often, there are unavoidable delays in getting a mortgage commitment, due to backups in appraisal or underwriting. If you are not going to meet your commitment date, have your lawyer get an extension from the Seller. If you don’t meet your commitment date and do not have an extension, the Seller could withdraw from the contract.