



DAVE WINDSOR ANSWERS YOUR REAL ESTATE QUESTIONS

Contract Issues and 1031 Exchanges

Dear Dave: My Realtor wrote up a Contract Amendment for repairs on the home I am buying and told me it would be better not to give it to my Lender. Seemed a bit weird to me. What do you think?

Answer: If a Purchase and Sale Agreement is the basis of a Loan Application you have made and it is amended in any way, you must turn over any amendments (or addendums) to your Lender. What your Realtor suggested is not only 'weird', but also fraudulent.

If you apply for a loan, the Lender is entitled to a full disclosure of your contract to buy and, naturally, any changes you make to that contract.

When it comes to repairs, Lenders do not require the actual Inspection Report, provided you do not refer to it in any contract documents. However, if the resulting agreed repairs are written up as an Amendment to the contract, it would be unlawful to withhold that from your Lender.

The only loan programs requiring a copy of your actual Inspection Report are Alaska Housing's

IRRLIB Program (Interest Rate Reduction for Low Income Borrowers), Cook Inlet Housing Loans (CIHA), and Anchorage Neighborhood Housing loans (ANHS).

How your contract document is drafted originally, and how it is subsequently amended, is very important and an experienced Licensee has learned, over the years, that it can impact your loan application and its journey to final approval.

This is why the purchase of appliances such as the refrigerator, washer and dryer are included on a separate contract known as a Bill of Sale, for separate consideration, as they are not part of the "Real Estate" being acquired but, rather, "Personal Property".

Unfortunately, MLS has produced a version of the Bill of Sale document that includes both Personal Property and items that are part of the Real Estate and, if that form is used, it should also be included with the contract to the Lender unless the Lender asks for its removal from the loan application.

Contract law issues are better understood by legal professionals (Attorneys) and you need to be careful about what your Real Estate

Licensee advises that could have legal implications. If in doubt at any time, consult an Attorney.

Dear Dave: We are selling an investment property and heard that it may be useful to do a "1031 Exchange". What is that in layman's terms?

Answer: When you sell an investment property, whether it be an apartment 10-plex, a shopping mall or a single family home that was a rental, you are likely going to pay a Capital Gains Tax on the profit you make - either 15% or 20%.

The Internal Revenue Code recognizes that sometimes the taxpayer is just rolling over one investment property for another and it would be unfair for you to pay this tax if you are just swapping out one investment property for another. Hence, the introduction of Section 1031 of the IRS Code. You can completely avoid paying any Capital Gains tax on your sale if you roll that money into a new and similar investment.

From the time of closing on your sale, you have 45 days to identify a property (or properties) which you may be acquiring and 180 days to complete the acquisition. A key legal element is that, during the exchange, none of the funds may come into your personal account and, therefore, you must funnel the money through a third party facilitator.

The 1031 Exchange is a very useful tool for deferring capital gains tax if you are selling and then buying a like-kind investment wherever it may be. You should consult a CPA or call Alaska Exchange Corporation at 907-274-1031 for further information.



Dave

Windsor

A handwritten flourish or signature mark consisting of a single, continuous, sweeping line that starts from the bottom left and curves upwards and to the right, ending in a small hook.