



## **No Praise for Failure to Appraise: Offer Tactics Regarding Purchase Price**

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The number one question into the Legal Information today revolved around the use of the following language in offer/counteroffers: *"In the event that property does not appraise, the buyer agrees to pay \$10,000 over appraised value in cash at the COE."*

### ***Void - Lacks Definite and Certain Terms!***

When I hear about agents writing this into the contracts, it clearly demonstrates a lack of understanding of what is required to have a valid contract. To have a legally binding contract ***the offer must contain definite and certain terms***. What does that mean? It means the terms must be clear so that a reasonable person can readily understand the terms. Further - in order for a court to enforce the contract, the court has to be able to determine the terms of the contract. What can a reasonable person and/or a judge determine from the language provided above? Not sure! \$10,000 over what? We don't know what the appraised price is, so how can a reasonable person understand what the material price term is, let alone a judge!

### ***No Mutual Assent!***

So we've identified there's an issue with the above additional terms in that it lacks sufficient definiteness because again, we don't know what the purchase price is. It follows that there can't be mutual assent, or what we call in the law a "meeting of the minds", for a material term that is not defined.

### ***Defer to the Contract!***

Don't reinvent the wheel! Most of the standard contracts provided through your local associations include an appraisal clause that accounts for what will happen if the property fails to appraise. Defer to that! It's almost as though agents are trying to jump right into the options provided under the appraisal clause of standard contracts if the property does not appraise - "renegotiate". Don't put the cart before the horse! Or is this being used to trick the seller into a lower price? I can only guess at the intent but remember - underlying every contract is good faith and fair dealing.... By inserting the above contract, the validity of the contract is in jeopardy.



***How to Handle a Offer/Counteroffer with Terms Lacking Definiteness - Best Practices***

First and foremost, present the offer/counteroffer to the seller (NRS 645.252). The discussion with the seller on how to respond should include highlighting that the appraisal term modifying the purchase price is contingent on an appraisal that hasn't occurred yet. Some good options for the client include: 1) the client can counter and reject the void term, 2) seek legal counsel before signing such a document, and/or 3) have the attorney properly prepare counter language/response to the void/voidable term.

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