



Legal Information Lines: Frequently Asked Questions - Waiving Contingencies in a Multiple Offer Environment

*Christal Park Keegan, NVR Legal Information Line Attorney
April 5, 2021*

Q1. In order to present a more competitive offer, my buyer wants to make their EMD non-refundable. Is this legal?

A1. When the market perceives scarcity of housing, it can create rabid behaviors such as making irrational concessions. What the Legal Information Line has been hearing from its members is that buyers want agents to write in the offers that the earnest monies are non-refundable. We are not talking about a couple of thousand dollars, either. In some cases, buyers are jeopardizing upwards of \$100,000. ***This is not a recommended practice.*** It's important to remember the standard REALTOR® contracts come with prescribed protections to the earnest money deposit (EMD) and it is not in your client's best interest to give up those contractual rights. The takeaway here is: anytime your client wants to reduce or eliminate the legal protections that come standard in your local association's contracts, you should be telling your clients to speak to their attorney. A best practice would be to get it in writing, add it to your client's file, so that if needed, you can demonstrate you advised your client appropriately.

Q2. In order to present a more competitive offer, my buyer wants to waive the appraisal contingency provided for in the standard REALTOR® contract. What do I do?

A2. Doesn't this feel like 2006, again? This is happening a lot, especially as market forces drive inflated prices. Many offers are coming in *way* above asking price and homes aren't appraising accordingly. ***Waiving appraisal contingencies is not recommended.*** The mortgage lending industry has been scrutinized after the '06 bubble, and it's important your client understands paying above the appraised price is extremely risky for those financing a home purchase.

Statements made by the Nevada REALTORS® Legal Information Line attorneys on the telephone, in emails, or in legal eNews articles are for informational purposes only. Nevada REALTORS® staff attorneys provide general legal information, not legal representation or advice regarding your real estate related questions. No attorney-client relationship is created by your use of the Legal Information Line. You should not act upon information you receive without seeking independent legal counsel. Information given over the Legal Information Line or in these articles is for your benefit only. Do not practice law or give legal advice to your clients! Inform your clients they must seek their own legal advice.