



Guidance for Agents Considering the Use of an Appraisal Addendum

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QUESTION: A big topic of conversation lately among the agents at my firm is the use of a so-called appraisal addendum. The competition among buyers has become so intense that buyers are looking for a way for their offer to stand out. Some buyer agents in our area are recommending that their clients include an addendum as part of their offer stating that if the property fails to appraise for the contract's purchase price, the purchase price will be adjusted to a specified amount over the appraised value, or that buyer agrees to pay the difference between the appraised value and the purchase price. The agents in my firm have questions about the risks associated with using those kinds of addenda. What guidance can you give us?

ANSWER: First, agents should never draft an addendum like the ones you have described. The North Carolina Real Estate Commission would consider that type of drafting the unauthorized practice of law and a violation of the Real Estate License Law. Drafting a complex addendum for a client would also violate Article 13 of the REALTOR® Code of Ethics. To avoid problems, only an attorney-drafted addendum should be used. Ideally, the name of the attorney or law firm should be included on the form, but that is not required.

Listing agents receiving an offer with an appraisal or purchase price adjustment addendum are reminded that all offers received must be delivered to their seller clients. Listing agents may not weed out offers because they don't like their terms.

Agents on both sides of a transaction should understand that an agreement by the buyer to pay the difference between the appraised value and the purchase price, or to pay a specified amount over the appraised value, would not negate the buyer's right, under paragraph 4(g) of Standard Form 2-T, to terminate the parties' contract during the Due Diligence Period for any reason or no reason. Furthermore, the buyer's execution of an appraisal addendum would not enhance the seller's remedy if the buyer chose to walk away from the transaction after the expiration of the Due Diligence Period: retention of any Due Diligence Fee and any Earnest Money Deposit. Since an appraisal addendum does not assure the seller that the buyer will actually close on the transaction, the value of such an addendum to the seller is questionable.

Several appraisal addenda we have seen set forth an agreement, by both parties, to adjust the contract's purchase price if the appraised value, as determined by the buyer's lender, is less than the purchase price. This type of addendum is risky for the seller unless the addendum also gives the seller the right to terminate the contract if the appraised value is below a specified amount. If an addendum sets forth an agreement by the buyer to pay a stated amount over the appraised value, buyer agents should suggest including language specifying that in no event will the buyer be obligated to pay more than the contract's original purchase price.

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