

Impossible situations solved professionally

AFTER A SLEEPY SUMMER ADVICE ON GETTING YOUR WORK GROOVE BACK

by Ann Cutbill Lenane, Managing Director

It's time, my fellow brokers to put the flip-flops back in the closet, slip our work shoes back on and get back to business. With summer sadly a distant memory it is time to stop dreaming about the beach, start pounding the pavement and go after those deals!

Hopefully some of the ways that I have been able to get back into the groove will be of some help to you as well:

- **DE-CLUTTER:** Get your desk and home closets in order. The fundamental concept of Feng Shui is just to surround yourself with only the things you love. Remember, less is more.
- **DRESS FOR SUCCESS:** Put away your fun summer wear and dress in the outfits that make you look and feel your best. Give away those "second tier" clothes, you all know the ones I'm talking about. You should walk out of the house everyday looking the way you would want to if you were meeting with a \$5 million buyer. You never know who you are going to run into during the course of the day. Always dress like you are at the top of your game. Get to the hairdresser. Make sure your shoes are polished.
- **RECONNECT:** Come up with some creative reason to email your list of friends, family, current and former buyers and sellers. Maybe send an interesting real estate article or just a note with your thoughts on the current market conditions. Find some reason to reach out. Pay a visit to your favorite doormen or supers. Remind all of the above that you are still in the business and would appreciate any leads they could send your way.
- **SET GOALS:** Set up a meeting with your manager to set goals for the next 3 months. See if you can brainstorm about how you can increase your business.
- **GET OUTSIDE:** Most of us can't make money sitting at our desks. If you don't have exclusives, reach out to the brokers that do and see if they need help with open houses or any of their overflow buyers. Go to open houses!! You can not sell what you don't see.
- **YOUR HEALTH:** Make sure that you are taking care of yourself and get some exercise. It's good for your body and your mind! If you didn't do it over the summer, make sure you make all of your annual doctors' appointments. Life is only going to get busier as our season progresses.

USEFUL TIPS FOR THE CURRENT MORTGAGE ENVIRONMENT

by Lenny Holler/VP/DE Capital Mortgage

The appraisal process is slower than it used to be. A borrower can't be charged for the appraisal until a certain disclosure period has passed. In addition, most banks require the appraisal to be ordered through an appraisal management company. They will pick the appraiser who then reaches out to the appraisal contact. So make sure to prepare your buyer and the seller's real estate agent that it may take longer than expected for the appraiser to set up the initial inspection and you may see a commitment letter well before the appraisal process has been completed.

Do not schedule the closing until the file is fully cleared to close. These days banks are far more worried about not dotting every "i" and crossing every "t" than they used to be. With Fannie Mae and Freddie Mac sending a host of bad loans back to the banks if they found even minor errors on them causing billions in losses, banks now have additional underwriters reviewing and auditing files near the end of a transaction often causing additional conditions. It is important to prepare your buyer for this in advance.

Don't automatically lock in a rate at the beginning of a transaction. With transactions taking longer and extension fees getting pricey if you can't close on time (even if rates are the same or lower as banks now view this as a profit

center), it sometimes pays to float the rate and lock in only when you are fairly sure the transaction will close within that time-frame. At DE Capital through Wells Fargo we are now offering a free 90 day lock, which has mitigated this issue somewhat versus most other banks that are still offering only 60 day locks without additional charges.

Every large deposit within the last two months will have to be sourced. Although underwriters have some discretion on how to document this, many are requiring gift donors to provide full bank statements showing the withdrawal of funds from their account. This can cause some considerable consternation for your buyers and their donors. If at all possible advise your buyers to get the gift in as soon as possible to potentially avoid the need for this documentation.

Some banks no longer allow gift funds or retirement funds to be used as reserves on jumbo or non-conforming loans. If reserves may be an issue for your buyer this would be another reason to get any funds for the transaction in their account far in advance so that the bank will not have to consider it a gift.

Manhattan Real Estate Attorneys

LIOR ALDAD, ESQ.
212.268.6999
Lioraldad@aol.com

FILIPPO CINOTTI, ESQ.
212.825.0489
fcinotti@cbattorney.com

SCOTT CLAMAN, ESQ.
212.573.6703
SCLaman1@aol.com

STEVEN EBERT, ESQ.
212.290.4000
Steven.ebert@ejlaw.net

JERRY FEENEY, ESQ.
212.842.0237
Jerry@Jerryfeeny.com

BRUCE FRIEDBERG, ESQ.
212.829.9090
Friedberg@fccplaw.com

ANDREW GRABINER, ESQ.
212.344.0200
agrabiner@grabinerlaw.com

JOANNE GUADAGNO, ESQ.
DERIN EDIP, ESQ.
212.953.4441
joann@ge-lawyers.com
derin@ge-lawyers.com

PETER HERB, ESQ.
212.964.7133
herblaw@gmail.com

BRUCE KATZ, ESQ.
STEVEN MATZ, ESQ.
212.244.4630
bruce@katzmatz.net
steven@katzmatz.net

ANDREW LUFTIG, ESQ.
212.759.2600
andrew@ilclaw.com

ALAN PERLOWITZ, ESQ.
212.791.3747
aperlowitz@ccp-law.com

CRAIG PRICE, ESQ.
212.867.4466 x319
cprice@bbwg.com

KEITH A. SCHUMAN, ESQ.
212.490.0100
keith@schumanlawfirm.com

MATHEW SCHWARZ, ESQ.
914.644.8300
mschwarz@ssg-law.com

SCOTT SIEGLER, ESQ.
212.683.5372
Siegler.Scott@gmail.com

ALEX SUSLENSKY, ESQ.
212.929.7333
alex@suslaw.com

SHANE SUTTON, ESQ.
646.524.6900
shane@shanesuttonlaw.com

BRIAN M. TRACZ, ESQ.
212.366.4144
btracz@briantracz.com

BARRY WEIDENBAUM, ESQ.
212.832.7400
bjw@whfirm.com

continued on next page . . .

Attorney tips for brokers

TIP NUMBER 1 *by Karen Sonn, Esq.*

In the past, sellers of coops and condos often sold their apartments in "as is" condition. Today, many contracts will include a promise that at closing, the plumbing, electric (including electrical outlets), windows, fireplaces, and the like, be in working order. Given the market, the purchaser can be even more demanding if he so desires. In fact, it's not unusual for a purchaser to have a home professionally inspected just to ensure that the apartment is in good condition and bed-bug free. With that in mind, it can be a real asset for a listing broker to go through the apartment with the seller, checking its appliances, plumbing and electric, and have little fixes done throughout, be they for squeaky windows, loose faucets or faulty outlets. Anticipating this ahead of time can improve the selling process immensely. Further, it is important for the contracts between the purchaser and seller to accurately reflect the expectations of the parties. A good transaction sheet identifies what is included, excluded, and what does and does not work. If the apartment is already in contract when minor repair issues arise, I generally recommend that sellers credit some money to purchasers so they can do their own repairs. In this market, sellers must be flexible.

TIP NUMBER 2 *by Steven Matz, Esq.*

A few ways Brokers can ensure a smoother transaction: When listing an apartment with a multiple unit number (for example, 4B/C), or extensive renovation, inquire immediately if the Seller has all sign-off documentation for the combination; in a house, ask about the Certificate of Occupancy. Your attorney can work in conjunction with the staff at PDE Title to get you answers quickly. In representing a Purchaser of a Condo or Coop, prior to finalizing the offer, inquire if the building is on lender's "approved" lists, and/or meets FNMA approval. These simple steps at the beginning can save significant time and help get signed contracts faster.

techTips

SHORT-CUT for SOUND PROFILE

On MOST BlackBerries, if you want to change your SOUND profile from Vibrate to Normal or vice versa, just hold down the "Q" key and it will change it for you!

*by Michael Constantine
Director of Information Technologies*

PDETitle is your in-house Title Insurance Company working exclusively with PDE agents. Our goal is to ensure that your deals get to the closing table as smooth as possible because we really understand what's at stake and have your best interest in mind. Contact us at with any inquiries or questions at: 212.534.5318 or www.pdetitle.com.

continued . . . **USEFUL TIPS FOR THE CURRENT MORTGAGE ENVIRONMENT**

Mortgage contingency clauses are often stronger than in the past. While the standard clause in many contracts of sale usually just protects the buyer if they can't get financing based on their own financials and credit, it is more important now to have the clause include protection against the appraisal coming in low or being unacceptable to the bank and even against the bank's willingness to finance in the particular building in which your buyer is seeking to buy. It is now more common for financing to be a problem due to the appraisal or building than your buyer's own finances. ~

The Meaning of Mortgage Contingency

by Barry Weidenbaum, Esq.

Sellers and Buyers alike often inquire as to the meaning of the "mortgage contingency clause," one of the more significant clauses in New York real estate contracts. Simply put, a mortgage contingency clause ensures that if a buyer promptly applies for a loan from a qualified lender, but fails to obtain a firm commitment for financing within the specified time period, then the buyer may elect to cancel the contract and receive the return of the initial down payment. It should be noted that the commitment letter should not be confused with the "pre-approval letter." A pre-approval letter is typically a nonbinding letter of very little legal weight issued by a bank prior to conducting a more detailed investigation of the borrower and the property.

There is often a great deal of confusion in the New York real estate market as to whether a mortgage contingency clause is "necessary." The common explanation given is that buyers should request the clause because it affords them added protection if they are applying for financing, while sellers should avoid the clause because it may result in delays caused by the buyer's loan approval process, or by having to find a new buyer altogether in the event that the buyer in contract cancels under this clause.

Whether a mortgage contingency clause is "necessary" depends on several factors, including: (1) the financial status of the buyer; (2) the appraised value of the unit for sale; (3) in the case of co-ops and condominiums, the financial viability of the co-op or condominium community of which the unit is a part; (4) overall real estate market conditions (e.g., buyer's market, seller's market, lender's market). For example, a relatively wealthy individual buying a co-op unit that appraises below the contract price and in which the bank's underwriters are not satisfied with the financial condition of the co-op may be denied a loan, where a person with relatively less wealth buying a condo that appraises exceptionally high in a financially solid building might be approved. And in either case, the overall real estate market conditions may result in a very different reality. For example, in a "seller's market," a seller who has prospective buyers banging down the door with offers well above asking price will have little incentive to agree to a mortgage contingency, while in a "buyer's market," the same seller might have no other option but to include the contingency or lose a potential buyer.

It should also be noted that there is no "standard" mortgage contingency clause in New York, although there are a number of common clauses circulating through the industry. Some clauses act like protective bubbles that surround the buyer for a time, and then "pop" and disappear altogether once certain conditions are met. Other clauses act more like shields that guard the buyer from certain conditions throughout the entire contract process. It may be possible to find a middle ground that can will satisfy the buyer's need for financial protection, while reassuring the seller that the contingency period will be short. Therefore, we strongly urge prospective buyers and sellers to consult with their attorneys about this clause in particular, and about the overall process of negotiating a deal from the time of offer/acceptance, to signing the contract, to closing!