

How to get Your Offer Ratified - Strategies for Multiple offers

NVAR Convention
September 22nd, 2020



INFORMATION FOR MAKING AN OFFER (OPTIONAL)

This form does not constitute a disclosure or offer and SHALL NOT become part of any Residential Sales Contract. This information is provided for the sole purpose of assisting Cooperating agent(s) in preparing offers. Seller makes no representations or warranties regarding the accuracy of the information contained in this Information Sheet.

SELLER'S INFORMATION

Seller Name(s): _____

Preferred Delivery: Mailing Address OR Fax OR Email (check all that apply): _____

FIRPTA: Seller IS OR IS NOT a "Foreign Person," as defined by the Foreign Investment in Real Property Tax Act (FIRPTA).

1031 Exchange: Seller is selling Property as part of a 1031 Exchange: Yes OR No

Real Estate Licensed/Related Parties: Seller is an active OR inactive licensed real estate agent in Virginia and/or Other _____, Listing Broker/Agent is related to Seller.

PROPERTY INFORMATION

Tax Map/ID # _____ Legal Description: Lot(s) _____

Section _____ Subdivision or Condominium _____

Parking Space(s) # _____ County/Municipality _____

Deed Book/Liber # _____ Page/Folio # _____

Street Address _____

Unit # _____ City _____ ZIP Code _____

Mailbox Number: _____

Storage Unit Number(s): _____

Getting to YES!

- What is the most important thing to know?
 - *What does the seller want?*
- **Listing Agents:**
 - **Make it easy for the buyer's agent to write a clean offer**
 - **Clearly indicate what the seller wants: strongly advise using "Information for Making an Offer (Optional)," NVAR form K1385**
 - **Upload all necessary forms to MLS (seller disclosure, lead forms, reports, etc.)**

Multiple Offer Side-by-Side Comparison

	Offeror 1	Offeror 2	Offeror 3	Offeror 4	Offeror 5	Offeror 6
Settlement date						
Financing Type						
Lender Letter/Proof of funds						
EMD Amount	\$					
Contingencies:						
- Financing						
- Appraisal						
- Home Inspection						
- Other						
Downpayment						
Seller subsidy/closing costs						
Other terms, e.g., post occupancy settlement						
Home warranty						
Settlement Co.						
Price	\$					
Escalation	\$					

Present the Offers

- When presenting, use a comparison chart – show the bottom line!

Buyer Agents – Next Steps

Call the Listing Agent

Show the Buyer's Financial Strength

Present Favorable Terms



Financing – Show the Buyers in their Best Light

Attach a Pre-approval letter not just a pre-qual; If all cash – show proof of funds

If all or part of the appraisal can be waived, do so!

Consider size of Earnest Money Deposit

How much of a down payment can the buyer afford?

Know your lender – will the lender work with you closely and keep good communication lines open? Can the lender reach out to the underwriters? Encourage communication with the lender and the listing agent

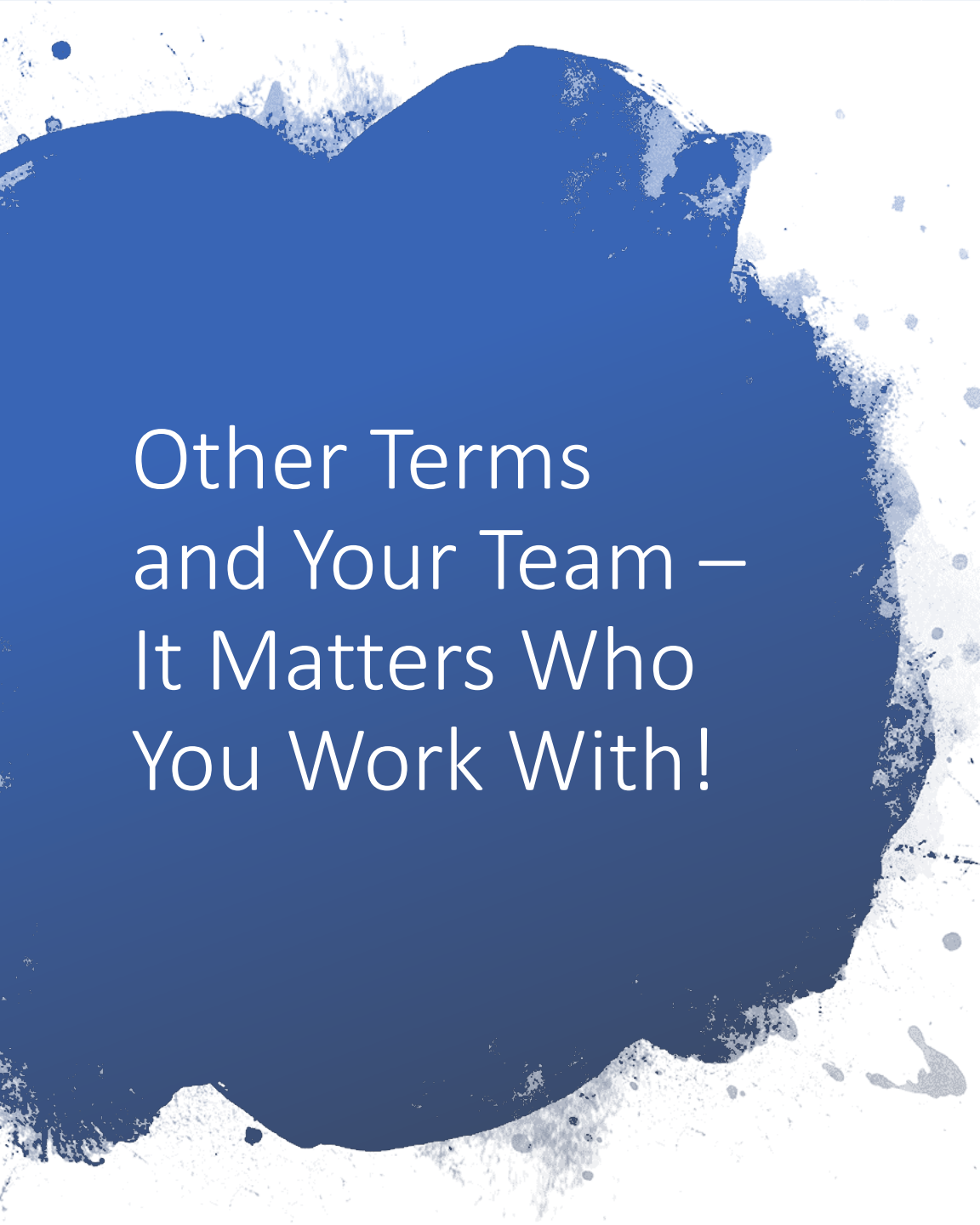
Pay for grantors' or congestion relief tax, home warranty, lender required repairs

Escalate vs. BAFO

Escalate	Best and Final Offer
Shows how high a buyer could go	Goes to the highest level and terms the buyer can offer
Must share the contract that escalates	No need to share offers
Seller can still negotiate rather than select	The seller can accept or deny
Can waive part or all the appraisal	Can waive part or all the appraisal
Listing agent MUST get the math right!	

Waiving Contingencies – Balancing the Risk

- Home Inspection – If possible do a pre-inspection to obviate the need for the HI contingency
 - Minimize number of other inspections
 - Void Only vs. Negotiating?
- Look at time periods – shorten as much as possible
- If can't waive appraisal or financing, shorten time periods for approval – explore the difference and risks with your clients about the automatic expiration vs. the automatic extension of financing contingencies
- Does the buyer need to sell or have his/her property on the market? Home sale contingency is rarely acceptable, but evaluate the situation.
- Strongly encourage use of Potential Adverse Consequences Form.



Other Terms and Your Team – It Matters Who You Work With!

- **Seller rent back** – the post settlement occupancy with no fee for the seller, low or no deposit
- **The “Love Letter”** – To write or not to write??
- **Present a strong lender/settlement team** – they can consummate the transaction in the time presented!
- **Kill with kindness** – forge a relationship with the listing agent; show that you can get the job done. *Your reputation matters.*
- **Communicate** with the listing agent, write the contract within the parameters set out if possible
- **Communicate HOW** the listing agent wants to receive the listing (send a video text if that’s appropriate; virtually present if allowed)

Inform Your Clients and Protect Yourself

- Use the “Potential Adverse Consequences” Form
- Set client expectations from the beginning
- Realtors are increasingly counselors – charged atmosphere in a low inventory market
- LISTEN to the clients, guide, explain risks and consequences – get the confirmation in writing (emails help!)
- Do what you can to avoid sellers’ and buyers’ remorse; remind them about why they fell in love with the house, why they wanted the house, provide options for moving on if necessary

BUYER'S ACKNOWLEDGMENT OF POTENTIAL ADVERSE CONSEQUENCES

This form is not part of the sales contract and is for discussion/disclosure purposes only.

This Acknowledgment of Potential Adverse Consequences is signed concurrent with an offer submitted by _____ ("Buyer"), dated _____, on the property located at _____ ("Property"). Buyer is represented by _____ ("Agent") of _____ ("Broker").

In submitting an offer, certain contract provisions may be waived or not utilized, some of which are referenced below. **Buyer's decision regarding these and other contract terms may lead to potentially adverse consequences.** Broker can counsel on real estate matters, but Buyer is advised to seek legal counsel and/or other appropriate professional advice regarding such potentially adverse consequences.

Despite the risk of potentially adverse consequences, Buyer elects to submit offer(s), and ultimately ratify a purchase agreement for the Property, without the following (**check all that apply**):

- Conventional, FHA, VA, and/or USDA Financing Contingencies
- Appraisal Contingency (does not apply to FHA/VA/USDA Financing)
- Home Inspection Contingency
- Radon Testing Contingency
- Well Water Potability Test
- Well Inspection Contingency
- Septic Inspection Contingency
- Sale and/or Settlement of Buyer's Property Contingency
- Other: _____

Witness the following signatures:

Date Buyer

Date Buyer

Date Buyer

Date Buyer

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NVAR Form #K1308

- A new version of this form was introduced in April 2020.
- It provides brokers with written confirmation that their agents discussed the possible ramifications of waiving certain contingencies with their clients before submitting an offer.

ESCALATION ADDENDUM

This Addendum is made on _____, to a sales contract offer ("Contract") dated _____, between _____ ("Purchaser") and _____ ("Seller") for the purchase and sale of the Property: _____

The parties agree that this Contract is modified as follows:

If, prior to ratification of this Contract, Seller receives one or more additional written bona fide offers to purchase the Property with terms acceptable to Seller ("Other Offer(s)"), and from which Seller would receive an equal or higher Net than the Net reflected in this offer, then this Contract's Sales Price shall automatically increase to an amount which generates a Net to Seller equal to \$_____ above any Other Offer's Net to Seller, not to exceed a maximum Sales Price of \$_____. If Other Offers include escalation terms, this automatic increase will be applied to the maximum escalated Net of the highest competing escalation addendum. In this Addendum the term "Net" is defined as the Sales Price less all Seller concessions.

Must select only one of the options:

Option #1 – Waives Appraisal Valuation – If the lender's appraisal is less than Sales Price, Purchaser agrees to proceed to Settlement without regard to the amount of the lender's appraisal. Purchaser agrees to pay the Sales Price from: (i) loan proceeds provided by lender on the basis of such appraisal, and (ii) any required excess amount in cash from a source acceptable to the lender. If Settlement does not occur due to Purchaser's failure to comply with the terms of this paragraph, Purchaser shall be in default. If VA or FHA financing is used, this paragraph is not applicable and shall NOT be selected **OR**

Option #2 – Retains Appraisal – The appraisal language from the above referenced Contract remains in full force and effect.

- A Buyer may choose to escalate with or without waiving the appraisal contingency.
- Waiving the Contingency Buyer agrees to pay difference between Sales Price and Appraisal.
- Not waiving it appraisal language stays in effect.

Specified vs. Alternate Financing

CONVENTIONAL FINANCING AND APPRAISAL CONTINGENCY ADDENDUM

This Addendum is made on _____, to a sales contract ("Contract") offered on _____, between _____ ("Buyer") and _____ ("Seller") for the purchase and sale of Property: _____.

1. **SPECIFIED FINANCING** "Specified Financing" means the terms set forth in Paragraphs 2A and 2B of this Contract and the following loan terms:
 - A. **First Trust.** Buyer will Obtain OR Assume a Fixed OR an Adjustable rate First Deed of Trust loan amortized over _____ years. The interest rate for this loan is at an (initial) interest rate not to exceed _____% per year.
 - B. **Second Trust.** Buyer will Obtain OR Assume a Fixed OR an Adjustable rate Second Deed of Trust loan amortized over _____ years. The interest rate for this loan is at an (initial) interest rate not to exceed _____% per year.
2. **ALTERNATIVE FINANCING.** This financing contingency shall not apply to any Alternative Financing. "Alternative Financing" means any change to the financing terms in the Specified Financing, including but not limited to Down Payment amount, the amount financed, loan type (i.e., Conventional, FHA, VA, USDA or Other), term of any loan, interest rate, or loan program (i.e., assumption, fixed or adjustable rate).

Buyer may substitute Alternative Financing for the Specified Financing. However, Buyer shall obtain Seller's written consent and shall execute a new financing addendum (if applicable) if Buyer wishes to retain the protection of a financing contingency. Should Buyer pursue Alternative Financing without Seller's written consent, Buyer shall waive the protection of this financing contingency.

Buyer's substitution of lender(s) to which written application has been made under Paragraph 2D of this Contract shall not: (a) constitute a change in the Specified Financing; or (b) constitute Buyer Default provided there is no additional expense to Seller and Settlement Date is not delayed.

- Specified Financing is the set of terms set forth in Paragraphs 2A and 2B of the Residential Sales Contract and in the Financing Addendum.
- If Alternate Financing is pursued and the Buyer wishes to retain the protection of the Financing Contingency, the Buyer must obtain the Seller's written consent and execute a new Financing Addendum.

Thank you for Attending!

Questions