

Due Diligence

Working for you and your clients



Paragraph 9 of the GAR Purchase and Sale Agreement provides for the property to be sold subject to a Due Diligence Period or As Is. The Due Diligence Period is offered so that buyers can have appropriate time to fully evaluate, inspect the property and its improvements, and get their finances in order. Realtors may feel that this allows buyers to terminate a contract too easily. In the past, realtors added a stipulation granting buyers a free look period but it was unenforceable.

The Due Diligence Period has definite advantages. First, let's examine the seller's rights, responsibilities and obligations. The seller must allow access to the property and have the utilities on. Other than those two responsibilities, the seller has no further obligations. The seller doesn't even have to respond to the buyer's amendment.

When there are multiple offers, the seller could choose to not respond and force the buyer to terminate the contract or buy the property "as is," allowing the seller to move on to the next offer. The same strategy may be used by the seller in the case of a difficult buyer.

From the buyer's perspective, the Due Diligence Period grants buyers many rights and burdens buyers and their agent with responsibilities. Primarily, this period grants buyers a specific time period to conduct all the inspections they desire, including but not limited to home, title, survey, termite, radon, lead, mold, neighborhood and schools. At the same time, they can complete their financing and conduct an appraisal. At this time, buyers must submit an amendment to the seller to address any concerns. This is all completed before the end of the Due Diligence Period, at midnight on the last day the buyer's right to terminate goes away. It doesn't matter if the

seller has responded to the amendment or not. The buyer's right to terminate expires at 12 midnight on the last day of the Due Diligence Period.

It is critical that the realtor watch the time line on behalf of the buyer. Buyers aren't happy if their right to terminate slips away.

Realtors need to think things through before writing a Purchase and Sale Agreement on behalf of their buyers. If the buyer's financing is incomplete at the time of the offer, you may want to shorten the time frame of the Due Diligence Period and add a financing contingency exhibit to the contract. Today, policies for obtaining financing are strictly enforced, so it may take longer to get a loan approved. You should know the type of loan the buyers are seeking before writing the offer.

Smart listing agents won't want a long Due Diligence Period as they want assurance that the buyers are committed to the property early on. Ask for a shorter Due Diligence Period, include a financing contingency in the offer and if you are concerned over an appraisal, use that contingency as well. Be sure to consult your lending representative to know how much time is needed to secure the appraisal and financing on behalf of your buyers. Your loan consultant is your partner, now more than ever.

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