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Sent: Tuesday, May 23, 2017 11:14 AM
To: pamd@grar.com
Subject: RE: Buyer's Letters

Pam:

We have been wrestling with the issue of buyer's letters for at least a couple of years, particularly as their usage has picked up here in Michigan. To make certain that we are all talking about the same thing, a buyer's letter usually accompanies an offer and is designed for the buyer to tell the seller why his or her house is special to the buyer and to establish a personal connection with the seller so as to positively influence the seller in what is likely to be a multi-offer situation. Some, but not all, buyer's letters include photographs of the buyers, their pets or such other objects as the buyers feel may positively influence the seller.

It is my understanding that buyer's letters are used almost as a matter of course in portions of the United States, such as the west coast, where home inventories are very low. I have seen estimates that 43% of all offers in the United States are accompanied by buyer's letters and almost 100% accompanied by buyer's letters in the San Francisco area. While I do not know the accuracies of these numbers, I point it out only to establish that the use of buyer's letters is a common sales practice in many parts of the United States, *i.e.*, it is well accepted. Further, in reviewing the literature on this subject, the use of photographs of buyers appears to be becoming more prevalent. It would appear in some areas a buyer's agent's failure to recommend to a buyer that he or she not submit a buyer's letter would almost be deemed negligence.

That being said, it also cannot be denied that the use of buyer's letters, particularly with photographs, could place a seller in an extremely difficult position under state and federal fair housing laws. If a seller receives an offer accompanied by a buyer's letter which from the text of the letter it could be determined that the buyer is from a protective class and there is an accompanying photograph confirming that fact, if the seller then accepts a similar but distinct offer from a buyer from a non-protected class, an inference could certainly be drawn that the seller used the information provided by the buyer to discriminate against the buyer. As all experienced Realtors® are aware, sellers can decline offers for numerous non-discriminatory and non-financial reasons. Those types of reasons can be very difficult to demonstrate before a judge and jury or administrative law judge to defend claims of discrimination.

It is perfectly lawful for a buyer to submit a buyer's letter. I assume from the perspective of a buyer and buyer's agent, there is no downside to a buyer submitting a good buyer's letter. Further, there are those who would contend that a seller has nothing to worry about with respect to buyer's letters so long as he or she does not intend to discriminate against any protected class or group. On the other hand, there is no question that a seller could sell his or her home without the benefit of buyer's letter and most certainly could unwittingly walk into an alleged fair housing violation by simply receiving and reviewing a letter.

The bottom line is that a rule prohibiting the use of buyer's letters could well be deemed an unreasonable restraint of trade by buyer's agents who believe it would be an effective tool for buyers. There is no case law on this topic, but I am concerned that complaints to the Federal

Trade Commission would draw at least some interest which could be very expensive. Thus, I strongly recommend that the Board of Directors consider a policy under which an addendum to a listing agreement would be prepared which would, as outlined in your email, instruct a seller as to the potential dangers of receiving buyer's letters and contain an instruction from a seller that the listing Realtor® is not to accept buyer's letters. Presumably, this information could be placed in the MLS and would eliminate any further discussion of the subject with buyers' agents. Obviously, the addendum would have to be very carefully worded.

As an aside, an issue could also be raised about a seller's reasonable reliance on the contents of a buyer's letter. In view of the information typically available about some sellers over social media, buyers could in fact invent information for buyer's letters to establish a "connection" with a seller, *e.g.*, a seller's oldest child went to Michigan State so a buyer's fake oldest child also went to Michigan State. In other words, a seller's reliance on a buyer's letter may well be misplaced.

Please contact me if you have any questions. Thank you. Greg

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