REAL ESTATE VIEWS© By Gloria Kurz, REALTOR®

HUBBARD CLAUSES: WHAT ARE THEY?

Recently, someone asked how a person would make an offer on a house they wanted to buy if they needed to sell the home in which they were living and didn't have the home listed for sale yet.

Although this isn't an every day occurrence, there are situations when that "perfect" house comes up for sale unexpectedly and is too tempting to resist. What happens if you don't have the financial resources available, can't take out a bridge loan to finance the purchase or can't qualify for a new mortgage without paying off your existing one? What do you do?

Answer: consider a "Hubbard Clause", often referred to by real estate agents as a "Hubbard". A Hubbard Clause is a contingency in a Purchase & Sale Agreement that expressly conditions a Buyer's purchase of a property upon the Buyer's ability to sell and close on a piece of real estate (usually their existing home). There are a few elements associated with an Agreement having a Hubbard Clause that are different from a normal Agreement.

First, the home that a Buyer wants to purchase will continue to be marketed until either (a) the Buyer sells their home or other real estate and satisfies the contingency; or, (b) another offer is received by the Seller. Second, in the event the Seller receives a bona fide offer from a third party, the Hubbard Clause provides for a specific process that must be followed. This process is similar to a "kick-out" clause.

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In this circumstance, the Seller advises the Buyer, in writing, that another offer has been received and "demands" that the Buyer release the Hubbard Clause, making it void. There is a specific time period in the Hubbard Clause agreed upon during negotiations for the Buyer to respond to the Seller's demand. This time period may vary, but is often 48 to 72 hours after receipt of notice from the Seller.

When this happens, a Buyer has a very important decision to make. Is the Buyer willing to assume the risk that the Buyer's home will sell in a timely manner if it is not under contract? And, if the Buyer's own home is under contract but the contingencies on it are not fully satisfied, e.g. mortgage, inspections, is the Buyer comfortable that they will be satisfied and it will close in time to meet obligations under the Buyer's Agreement to purchase the new home?

If the Buyer is comfortable proceeding forward with the purchase, then there is a written waiver of the Hubbard Clause that must be signed by the Buyer and acknowledged in writing by the Seller. If the Buyer is not comfortable waiving the Hubbard Clause, then the Seller has the right to declare the Agreement with the Buyer null and void. If the Seller chooses to void the Agreement based on a Buyer's unwillingness to waive the Hubbard Clause, then any deposit made by the Buyer is returned to the Buyer.

Not every Seller is willing to consider a Hubbard Clause. If they do, there may be a premium associated with it (the selling price may be a little higher as an incentive for a Seller to consider a Hubbard). It never hurts to ask, particularly if a Hubbard is the only way you can make an offer because of your personal circumstances.

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