

THE HUBBARD CLAUSE – THE DEVIL IS IN THE DETAILS

By Judith I. Johannsen

Your house is on the market and your agent calls to tell you that she has an offer to present to you. At the presentation, the agent tells you the offer is good – it has a purchase price that matches your asking price, the usual contingencies for financing and inspections and a closing date that suits your timetable perfectly. There is one more thing – the offer has a Hubbard clause.

A Hubbard clause is the generic name given to the language used in an offer to purchase real estate when the buyers need to condition their ability to purchase the seller's property upon the sale of their current home.

Most buyers who are already homeowners wonder if they should sell the home they own first and use the proceeds of that sale to buy the next home or if they should sign a purchase and sale agreement on a new home and hope to sell the one they currently own. The answer for many buyers hinges upon whether or not they need the proceeds from the sale of their current home to help pay for the new one.

A Hubbard clause is used to reserve your right to buy a particular property while trying to sell the one you already own; however, despite the fact that a Hubbard clause is used regularly, there is no standard language for such a clause and the devil is in the details.

Real estate transactions are, by nature, brimming with details. The details of a Hubbard clause should be explicit about timing (who does what when) and notices to the other party. For instance, the length of time that the sellers would agree to "reserve" their property for the buyers under their purchase and sale agreement should be specific. The parties can agree that if the buyers don't receive a purchase and sale agreement without contingencies (or one in which the contingencies have been either waived or fulfilled) before a certain date, the buyers' deposit is to be returned to the buyers and their purchase and sale agreement would have no further force and effect.

What if the sellers want to continue to market their property while their buyers are trying to sell their home? This is a logical and not unusual request. Sellers typically don't want to remove their property from the market because if their buyers' offer doesn't pan out, the sellers would have lost valuable exposure in the marketplace. The way to accommodate both the buyers and the sellers is to agree that the sellers will stop marketing their property upon receipt of written notice from the buyers that the buyers are ready to close in accordance with their purchase and sale agreement.

Under the Connecticut Real Estate Regulations an agent must present all offers. So, what if the sellers receive additional offers without Hubbard clauses that the sellers like better than the offer they've already accepted? A condition stating that the sellers must provide the buyers written notice if they wish to accept an offer without a Hubbard clause would cover such a situation. The notice should provide a specific period of time for the buyers to declare that they would either waive the Hubbard clause contingency (buy the sellers' property without having sold their own house first) or withdraw from the sale and have their deposit returned to them.

A Hubbard clause in a purchase and sale agreement is akin to tagging a Christmas tree in the fall. In both instances the buyer, with the agreement of the seller, reserves an item now so that he or she can take possession of it later on. Remember, though, that the details of the agreement can make or break the deal, so clarify, specify and nail them down.

Judith I. Johannsen is Assistant Counsel for Connecticut Association of Realtors, Inc.

Connecticut Association of REALTORS®, Inc. is Connecticut's largest professional trade association representing over 18,500 real estate professionals engaged in all aspects of the real estate business. Founded in 1920, the Connecticut Association of REALTORS®, Inc. is dedicated to enhancing the ability of its members to conduct their business successfully while maintaining the preservation of private property rights. Use of the term "REALTOR®" is exclusive to the members of the REALTOR® Association and signifies their allegiance to a strict Code of Ethics.