The New York Times

May 9, 2013

MORTGAGES:

When a High Bid Isn't Enough

by LISA PREVOST

In a housing market starved for inventory, buyers are stepping over one another to bid on desirable properties. But a high bid may not be enough — sellers are also seeking offers without mortgage contingencies.

Usually included in a sales contract, a mortgage contingency gives buyers the option of backing out if they can't obtain financing within a specified period. And if they do back out, they can take their down payment with them.

But the combination of a competitive market and a difficult lending climate has made sellers in New York less amenable to such conditions. They want noncontingent or all-cash offers.

"When you have a market that's heating up," said Marc Israel, the executive vice president of Kensington Vanguard National Land Services, a title insurer, "sellers feel emboldened to say to buyers, 'I'm not going to give you this clause because I don't want to take the risk that you can't get your mortgage.' "

The stance makes perfect sense from a seller's viewpoint. When the market is hot, added Mr. Israel, a continuing education instructor for real estate lawyers, "the last thing sellers want to do is tie themselves up with a buyer for some extended period of time just to have the buyer cancel the contract."

For buyers, however, signing a contract without a mortgage contingency is risky. If their financing was delayed or denied, they could forfeit their down payment.

Given the typical 10 percent down payment in New York, "you're talking about a very significant amount of money at risk," Mr. Israel noted.

In such a competitive market, buyers who need financing may find themselves up against those able to pay in cash or put at least 50 percent down, said Peggy Aguayo, an executive vice president of Halstead Property. It is not uncommon for high bids to be passed up for slightly lower bids that are noncontingent or all cash.

“A typical buyer with 25 or 30 percent to put down” Ms. Aguayo said, “if they don’t waive that contingency, the seller will go with someone else.”

The problem can be discouraging. Some of her buyers have decided to pull out of the market altogether until inventory loosens up.

Gea Elika, the founder and a principal broker at Elika Associates, an exclusive buyers’ brokerage, says that “almost every transaction that we’ve encountered recently has become a bidding war.” Properties that have struggled to sell may offer buyers more flexible terms, he said, but “the ones that have the momentum are the ones that just say, sorry.”

His agency never advises clients to go ahead without a mortgage contingency. For the few who decide that the property is worth taking the chance, the agency tries to minimize it by first ensuring that the building involved is warrantable — that is, that banks are willing to lend there.

“We’ll try to go to a major lender that’s preapproved the building in the last three months,” Mr. Elika said, noting that Wells Fargo and Chase have the largest preapproval lists in the city. “Then we may try to find a portfolio lender as a backup.”

Is going ahead without a contingency ever a good idea? Only if the buyer can afford it, Mr. Israel said. “The advice that I would give is, so long as you’re comfortable knowing that, if worse comes to worst, you may have to buy this property all cash, then it’s up to you whether you want to go forward,” he said. “The truth is, when you have bidding wars and people feel they’re going to miss out on an opportunity, it’s not the worst thing to go ahead without a clause — if you have the cash.”

KENSINGTON VANGUARD
NATIONAL LAND SERVICES