

Love Letters: Full of Risk or Reward?

By: Kacy Clouser, Esq. on April 16th, 2021 in Industry News

Buyer “love letters” is a hot topic that tends to come in a cyclical pattern based on market conditions. When the market gets hot, buyers focus on what they can put in an offer package that someone else cannot. That leads to considering writing what some people call a love letter, a letter drafted by the buyer to the seller explaining why they think they are the right buyer for the property.

The love letter has a lot of different potential issues, which can vary depending on what side of the deal someone is on. Some of the issues that can come up are the following:

- **Fair Housing:** Yes, a love letter has the capacity to create a potential fair housing violation. For example: Buyer A writes a love letter mentioning that they go to the church down the street from the home. They love the church and hope to raise their children in the home walking to church every Sunday. If the seller chooses Buyer A based in part on this reasoning, it means that the seller may have implicitly discriminated against all other buyers because of *their religion*. Even worse, PAR has fielded legal hotline calls about sellers who are motivated to keep certain types of buyers out of a property (or only allow in other types of buyers) and this sort of letter would facilitate that overt discrimination as well.
- **Code of Ethics:** Let’s circle back to that fair housing issue again. Not only is the seller potentially violating fair housing by choosing an offer based on a love letter, but if the agent is facilitating that fair housing violation, it can quickly escalate to a complaint against the agent.
- **Subjective Criteria:** Once a love letter is introduced, a seller now is making decisions with subjective criteria that could override objectively better offers. For example, a seller who

selects Buyer A in the example above may overlook credit issues or contingencies that make the offer objectively weaker. This can put the seller at risk if something goes wrong in the process... and who do you think they'll blame if that happens?

- **Personal Rejection:** On the buyer's side, once they write a love letter, the possible rejection now feels personal. In such a competitive market, the continual personal rejections can really affect an individual's ability to move forward.

So, what should agents do in these situations?

- For a listing agent, consider having a conversation with your seller about love letters prior to putting the listing active and what the potential fair housing violations could be. This could include a process on how they would like you to proceed if you do receive a love letter. Perhaps they don't want to see any love letters. Whatever the decision is, the direction has to come from your seller on how to proceed. (Or to put it another way, agents or brokers don't get to make unilateral decisions about this sort of thing – if you think it's a bad idea to write/present/accept love letters you need that from the client.)
- At the time of presenting offers, reiterate that the offers ideally should be accepted or rejected by objective criteria. Keep an internal record of all of the offers and all of the reasons why one was rejected, or one was selected. That way if there were to be a letter that led to a complaint, both you and your seller could point to the objective reasons why one was chosen over the other.
- For a buyer's agent, do not help draft the letter or facilitate the delivery of such a letter. Discuss the potential risks with your buyer to understand why a love letter could be a violation.