

Beware buyer fees

Adam Walker asks, are conditional contracts a legitimate way to sell houses?

During the last few months a small number of estate agents, mostly in London and the Home Counties, have started to use conditional contracts. In other words they have started to ask buyers to pay their fees. To my mind this is an alarming development that could have far reaching implications for the whole of the estate agency profession.

Under a conventional agency agreement where the buyer pays the fee, the agent's duty is crystal clear. They act on behalf of the vendor and are duty bound to achieve the best price for them and to act in their best interests throughout the sale.

Under a conventional retained agency agreement the agent's duty is equally clear, they act on behalf of the buyer and their duty is to buy the property as cheaply as possible. Buying agents operate almost exclusively at the top of the market and many prestigious and reputable estate agency firms have a buying division.

THE CONTRACT

A conditional contract is a horrible mish-mash of the two systems. The vendor is often attracted by a leaflet or advertisement that offers to sell their property for nothing or for a ludicrously cheap fee. Once instructed, the agent will market the property in much the usual way. However, buyers are told that a condition of their offer being accepted is that they must agree to pay the agent's fee. This causes all sorts of conflicts of interest.

The vendor may be confused about whether or not the agent is acting for them or for the buyer. They may also not realise that the buyer will probably deduct the agent's fee from the price that they offer. Many agents fail to explain this properly.

The buyer is not receiving any benefit in return for the fee that they pay – they still have to compete with other buyers, so what are they paying for?

Another factor is that some buyers may not be willing or able to pay the agent's fee. Some might even try to cut the agent out and negotiate directly with the vendor.



Conditional contracts are ethically indefensible, so why are so many agents starting to use them? Money..”

ETHICALLY INDEFENSIBLE

To my mind conditional contract agreements are ethically indefensible, so why are so many agents starting to use them? The answer is of course, money. It is easy to hook gullible vendors with the promise of very cheap fees and in a buyers' market it is easier to persuade desperate purchasers to pay a high fee, than it is vendors.

So what can you do if one of your competitors is operating the conditional contract model? The first thing I would do is to design a leaflet that explains in no more than 100 words the drawbacks of conditional contracts and demonstrates that saving a few thousand pounds on the agency fee could cost tens of thousands of pounds on the sale price. This message can also be repeated in an advertising

campaign and on the home page of your own website. The message could be reinforced by quotations from both vendors and purchasers who have agreed to a conditional contract agreement and lived to regret it.

The issue could also be discussed in more detail in an article in the local newspaper. It is also an excellent subject to discuss via social media.

You also need to make sure that your valuers are able to deal with the conditional contract objection during their pitch. It may even be best if they bring it up themselves in the pitch rather than waiting to be asked.

If the conditional contract system becomes more common there is, in my opinion, a real risk that it will undermine the fundamental principles of estate agency. At the moment a good agent can sell himself against the internet agents by showing how he can attract more purchasers and achieve a better price. If the buyers start paying the fees and receive nothing in return, estate agency services will become just a commodity and the internet agents could start to make real inroads.

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