

Contracts for the Win

**Negotiation and
Contract Tools for
Success**

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Contracts for the Win....

- Understand the importance of a sales contract
- Work to create enforceable agreements
- Strive to ensure that our clients get the best possible outcomes

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Contract represents all of the promises made from buyer to seller and seller to buyer

Contract Expectations

The entirety of the agreement should be clear

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The agreement should be enforceable in a court of law if needed

Contract Expectations

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Contract Expectations

- Agent should have enough knowledge to explain contract and provide guidance about important terms
- Agent should protect the interest of their client and obtain most advantageous terms

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Contract Formation

Are You Ready?

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Contract Requirements

- **Legally Competent Parties**
- **Not A Minor—At least 18 years old**
- **Mentally Competent**
- **Not Intoxicated**

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Contract Requirements



• **Voluntary**



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Contract Requirements



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- Agreement or Promise (Meeting of the Minds)



Why Not You...Why Not Now?

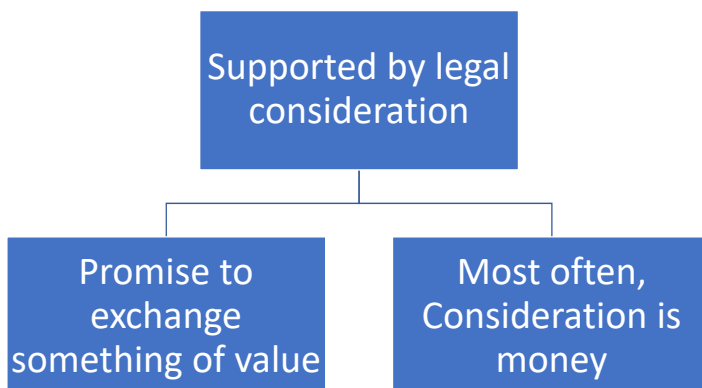
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Contract Requirements



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Contract Requirements

- **Must be a promise to perform a legal act**

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Enforceable...the magic word!



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- **Enforceable means that a court of law would honor the contract and hold the parties responsible**

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Enforceable... the magic word!

Contracts ultimately matter in
one place...a court of law.

If one party feels the other party
has not lived up to their promise,
they can settle the matter in
court.

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Validity of Contracts--Valid

- **Valid –
Enforceable on
both parties**
 - The promise is
legal
 - The parties are
competent

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Validity of Contracts-- Voidable

- **Voidable – Enforceable on only one party**
- **Could result from a breach by one party**
- **Contracts with minor or intoxicated persons**

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Validity of Contracts--Unenforceable



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Did you hear me?! I said the contract is
unenforceable!

- **Unenforceable – Not legally enforceable on either party**
- **Sometimes started as valid**
- **A breach by both parties would result in contract being unenforceable**
- **Real Estate sales contracts not in writing are unenforceable**

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Reality of Consent

- **The following must be absent:**
 - **Mistake**
 - **Fraud and Misrepresentation**
 - **Duress—Threat of physical harm**
 - **Undue Influence—Threat of Mental Harm**



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Offer and Acceptance



- **Offers are valid until they are terminated or they become a contract**
- **Acceptance is the signing of a contract by the Offeree**



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Transmission of Offers




- Offers must be in writing to be acceptable and binding
- Offers can be sent electronically
- Offers might be signed digitally


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Group Exercise—Submitting Offers



- Are most of your offers done on paper or digitally? Why?
- How much time do you spend going over the terms of the offer with the buyer before having them sign?



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Group Exercise—Submitting Offers



- Do you prefer to go over contract details as part of the original buyer orientation or do you wait until they're ready to offer on a property?



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Handling Counteroffers



Often discussed orally or summarized in email/text

Should be put into writing and signed to be binding

Counteroffers always terminate any offers that came previously and restart the contract formation process

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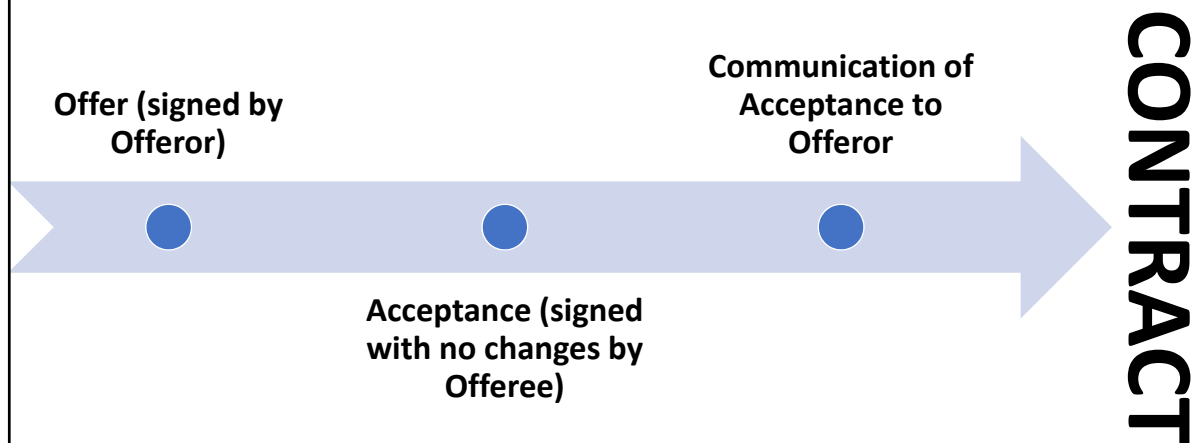
Agreement in Writing and Signed



- Statute of Frauds
 - Contracts to sell real property must be in writing
 - An oral agreement or a handshake is not enough
- Parol Evidence Rule
 - Can't change a written agreement with oral language

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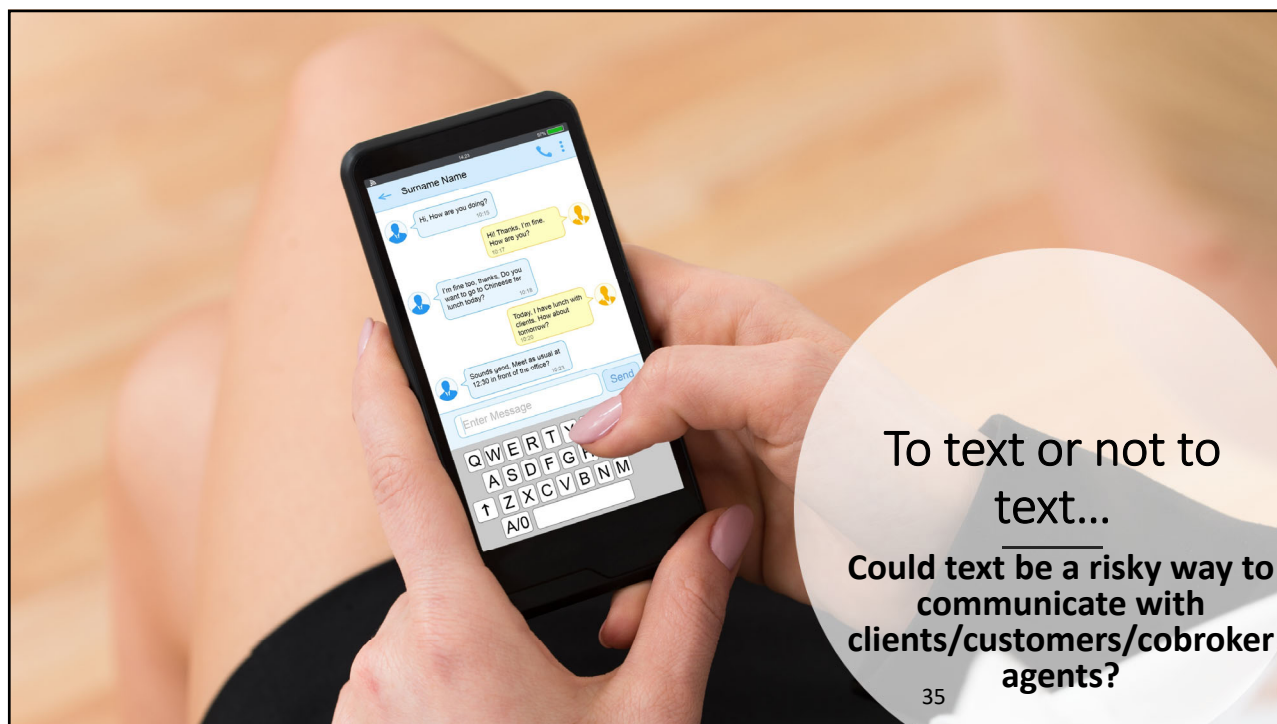
From Offer to Contract



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Time is of the essence....

- When the phrase “time being of the essence” or something very similar appears in a contract associated with a date, it means that date is firm and any failure to meet that date is a breach of the contract.

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What does the buyer want?

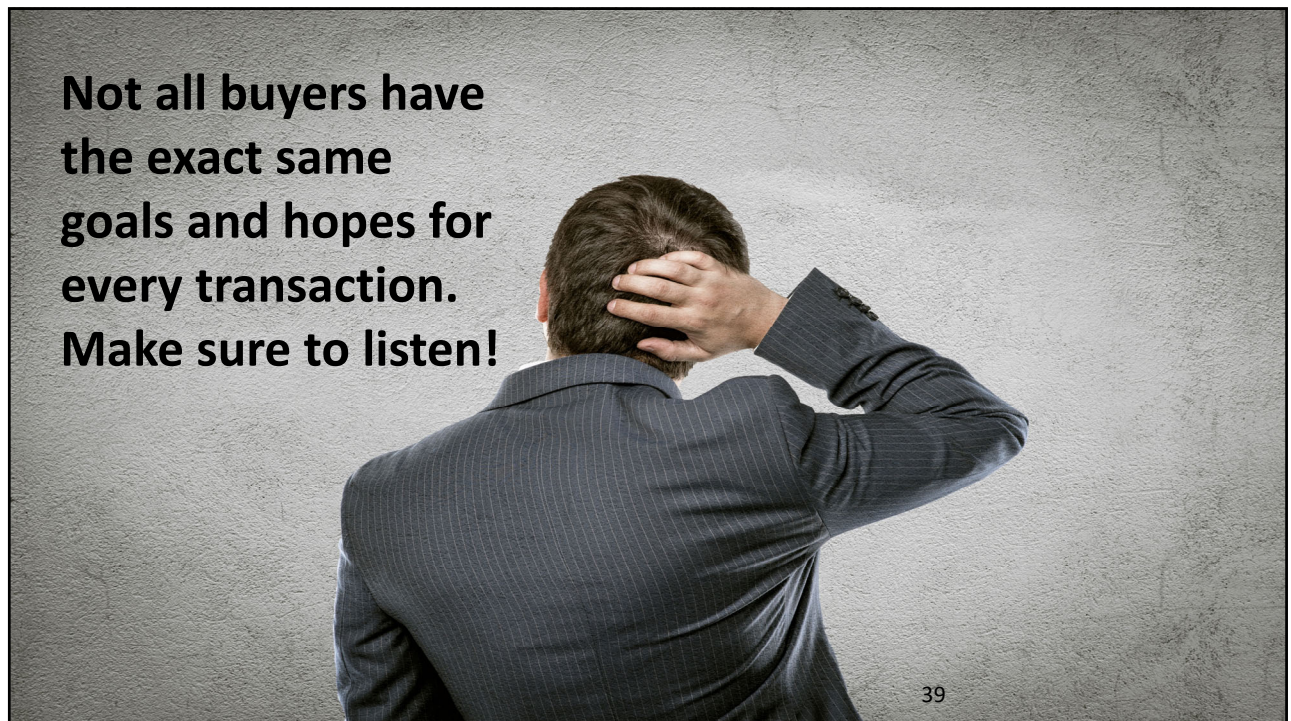
- **Issues that drive buyers**
 - Price
 - Condition
 - Timing

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Not all buyers have the exact same goals and hopes for every transaction. Make sure to listen!



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Seller Goals

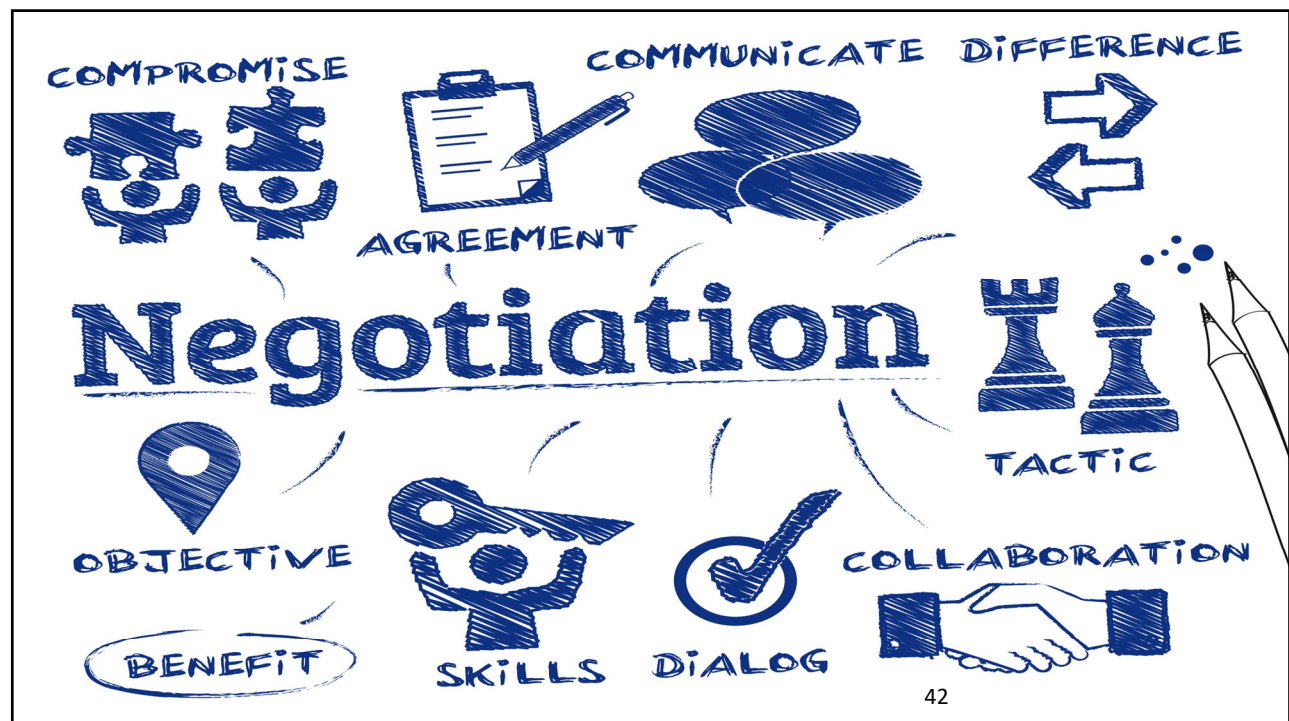
- Highest Price
- Perfect Timing
- Minimal Disruption to Lifestyle
- Perfection!

Why Not You...Why Not Now?



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Negotiation Tactics

- **Start with an ending point (price) in mind. This is the ultimate goal, not the starting point**
- **Consider potential responses to your initial offer. What advice would you give the sellers on how to respond? Anticipation is key.**

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Negotiation Tactics

- **Consider using the “two steps ahead” rule.**
- **Think about your current offer, the response you’re likely to get, and how you’ll respond to that...**

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The Planned Negotiation...



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Negotiation Tactics



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An illustration within a white circle with a blue, paint-splattered border. Inside the circle, several hands are holding up yellow signs with the word "BID" in bold black letters. The signs are at different heights, creating a sense of competition or bidding.

Multiple Offer Situation--Buyer

- Buyers who find themselves in multiple offers often want to know what it takes to “win” the contract
- Not all buyers will want to compete in this manner
- Buyers should be aware that terms more advantageous to the seller will inevitably be worse for the buyer

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Multiple Offer Situation—Seller



- **Present all offers at once (in no particular order)**
- **Explain the positive and negative attributes of each offer without showing favoritism**
- **Advise seller on possible ways to respond**
 - **Highest and Best?**
 - **Choose one offer to accept?**
 - **Respond to all offers?**

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Group Exercise—Create an offer destined for acceptance



- If you are the listing agent/seller, what is the #1 factor you are considering when evaluating an offer?



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Group Exercise—Create an offer destined for acceptance

- How can a buyer work to attract the seller's attention through their offer?



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Group Exercise—Create an offer destined for acceptance

- How do you come up with an opening number to recommend a buyer offer?



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Group Exercise—Create an offer destined for acceptance

- How would you advise a seller to respond to a very low offer?



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Know your market...

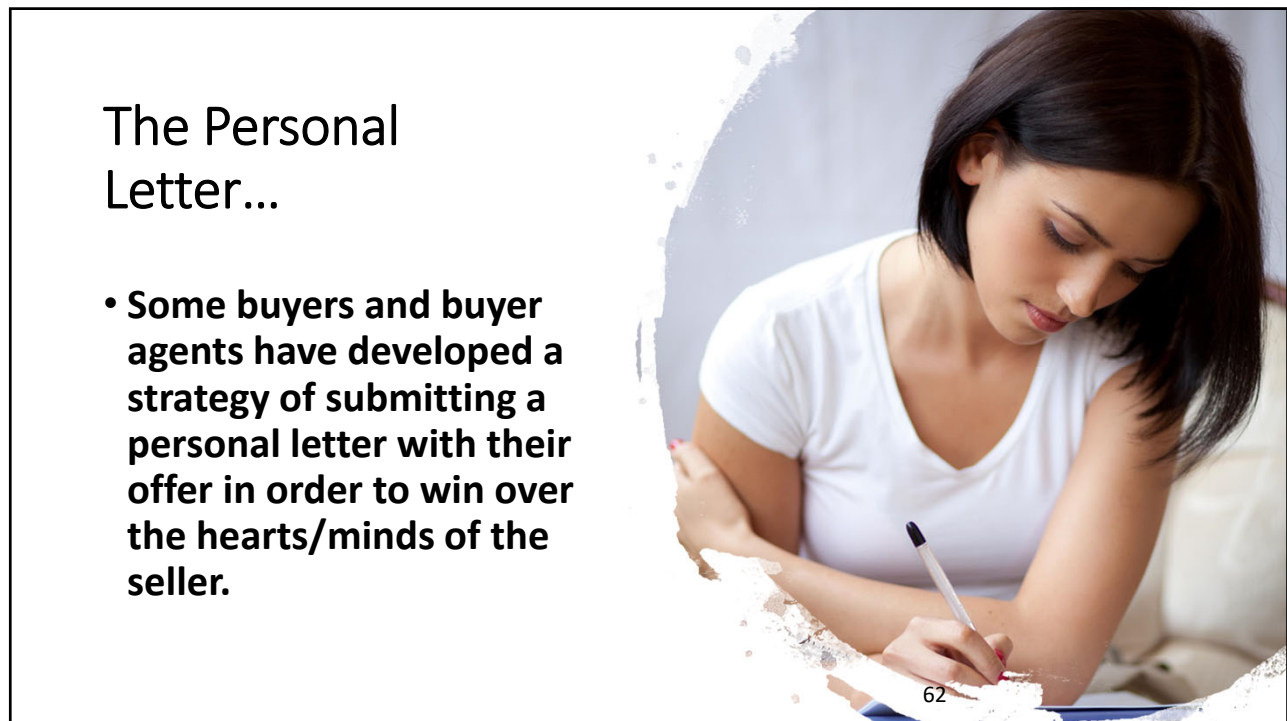
- If operating in a buyer's market, sellers should be wary of responding too harshly to low buyer offers
- If operating in a seller's market, buyers should always be aware that they might lose out on a property if they push too hard with negotiations

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Group Exercise—Create an offer destined for acceptance



- Do you include personal letters with your offers on behalf of buyers?
- As a listing agent, do you think they affect the outcome?



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Group Exercise—Create an offer destined for acceptance



- What are some examples of things that you might normally see buyers place in these letters?



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Group Exercise—Create an offer destined for acceptance



- Are you reading the letter before you forward it along



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Could an agent who forwards a personal letter that includes protected classes be guilty of a Fair Housing violation?

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Let's look at a couple found on these popular sites...

Why Not You... Why Not Now?

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897 Granite Drive
Pasadena, CA 91001
P 626.795-6262
F 626.795-4688

Dear Homeowner,

Our names are Mary and TJ Belongia. We've been married for four years and have one son, Jacob, who is 2 ½ years old. We also have one more baby on the way who will join our family in late April/early May.

We viewed your lovely home during the open house on Saturday and fell in love with it. We absolutely love the floorplan with the two living areas, the large picture window in the front living room, and the two fireplaces. We can already picture our family having Christmas there and making so many wonderful memories.

The pool in the backyard will be perfect for Jacob's birthday parties. He has a June birthday and it would be lovely to have friends and family over to celebrate his special day.

After we left the open house, we drove around and fell in love with the neighborhood, as well. The homes are so well maintained and so many of the houses are decorated for Christmas, making it a lovely neighborhood to raise a family in.

On our way out, we stopped and had a picnic lunch at the park just outside of the neighborhood and let Jacob play on the playground. It was the perfect ending to the afternoon, and we can envision ourselves doing that quite often.

We hope that you will select us as the next homeowners to raise a family and make memories in your home.

Sincerely,

Mary and TJ Belongia

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Dear Seller,

Thank you for the opportunity to make an offer on your beautiful home.

We'd like to introduce ourselves and share a bit of our history with you. My name is John Smith and I currently work in the automotive industry; however, my true passion lies in the small landscaping business that I am in the process of building. My soon to be better half Sarah, currently works in the medical field as a physical therapist, and her job focuses in helping veterans.

We are a young couple trying to buy our first house together, and we have completely fallen in love with your home. This property is ideal to us for many reasons. As we are anxious to start a family as soon as possible, the house has enough space for us to grow. The layout is just what we are looking for, and the beautiful huge backyard will provide us and our future children an ideal space to build wonderful memories of our first home.

The location is extremely beneficial to us as well. I recently lost my mother to cancer, and being in this home would put us much closer in distance to my father who needs more assistance taking care of himself and his property.

Furthermore, having the additional space and the garage at this home, will also allow us to fulfill our dreams of focusing fully on our landscaping business, which is our goal for ourselves and the family we are so excited to build.

We would be truly honored to live in your home, and we greatly appreciate your consideration.

Thank you so much for your time!

Sincerely,

John & Sarah

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What does it mean to be protected?



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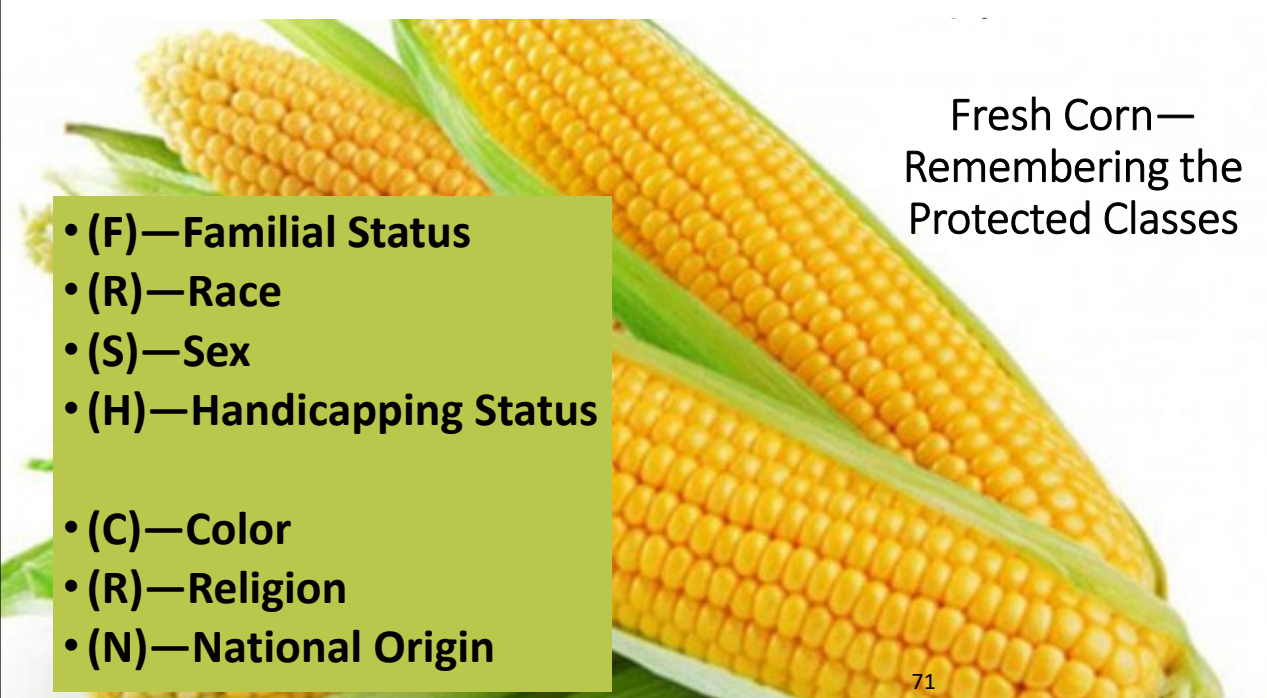
- **Protected status means that these topics cannot even be discussed in residential transactions when it comes to helping decide on what to show/sell/lease to someone**
- **Residential Real Estate Brokers may never engage in conversations about any of the protected classes relating to a real estate transaction**
- **Equal terms must be offered to all buyers/tenants**

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Fresh Corn—
Remembering the
Protected Classes

- **(F)—Familial Status**
- **(R)—Race**
- **(S)—Sex**
- **(H)—Handicapping Status**
- **(C)—Color**
- **(R)—Religion**
- **(N)—National Origin**

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New York Specific Protected Groups

- **Creed**
- **Age**
- **Sexual Orientation**
- **Marital Status**
- **Military Status**

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New Jersey Specific Protected Groups



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- **Creed**
- **Ancestry**
- **Nationality**
- **Marital, Domestic Partnership, or Civil Union Status**
- **Gender Identity**
- **Sexual Orientation**
- **Source of Lawful Income or Rent Payment**

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Pennsylvania Specific Protected Groups



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- **Ancestry**
- **Age**
- **Use of a Support Animal**

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Familial Status

- Refers to the presence of children under the age of 18
- Prevents discrimination against families with children
- Does NOT have anything to do with marital status

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Can personal
letters be written
without violating
Fair Housing Rules?

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Default/Breach of Contract— What's a Remedy?

Why NOT You...Why NOT Now?

- A remedy is a way of “fixing” or making someone whole after a contract has been breached
- Most Remedies come from a court of law

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Default/Breach of Contracts— Types of Remedies

- **Compensatory damages**
 - Compensates for loss (must sue)
- **Consequential damages**
 - Special Damages (must sue)
- **Specific performance**
 - Buyer suing a seller forcing them to abide by contract and sell the property

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Default/Breach of Contract—Types of Remedies

- **Liquidated Damages** are a contract remedy where the parties agree **IN ADVANCE** what the penalty will be for a breach
- This type of damages does not require a lawsuit
- Limits the amount of damages either party can receive to those specified in the contract

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