

Commission Position 11 - Sale of Items Other Than Real Estate

(Recodification adoption June 7, 2022: CP-15 Commission Position on Sale of Items Other Than Real Estate recodified to CP 11 - Sale of Items Other Than Real Estate)

Some real estate transactions may include the sale of personal property. A seller may include personal property to consummate the sale of the real estate transaction. This may cause complications with the buyer's financing that could result in both appraisal concerns and the reduction in the mortgage amount. The lender may deduct the value of the personal property from the lesser of the sales price or appraised value of the real property.

For instance, some real property may be advertised as "fully furnished" meaning that the transaction is to include personal property (e.g., furniture, artwork, pool table, hot tub, tractor, etc.) that resides and will transfer with the property as a condition of the sale. While including personal property as part of a real estate transaction is permissible, Brokers must be careful in how they structure these transactions as to not violate federal, state, or local laws particularly if the buyer is getting a loan.

In some of these transactions (particularly when the buyer is getting a loan), Brokers may be improperly advised to omit the personal property from the Commission-Approved Contract to Buy and Sell Real Estate and handle the personal property "outside of closing." Sometimes, Brokers are advised to leave the personal property in the Commission-Approved Contract to Buy and Sell Real Estate, but claim the personal property has "zero value" or is being left "for the seller's convenience". Handling personal property in this manner may have an adverse impact on the Broker's buyer client and might constitute loan fraud or another criminal violation under federal and state law.

When the buyer is purchasing personal property with the real property and the buyer's lender expresses concerns about the personal property remaining part of the real estate contract, the best practice is for the Broker to utilize the Commission-Approved Personal Property Agreement and check the appropriate box in the Commission-Approved Contract to Buy and Sell Real Estate disclosing that the full agreement between the buyer and seller includes a separate Commission-Approved Personal Property Agreement. When using the Commission-Approved Personal Property Agreement, the purchase price for the personal property must be paid by the buyer separately from the real property purchase at closing and must be for a fair market value. Brokers should not determine fair market value. The purchase price for the personal property cannot be for \$0 or some unrealistic amount. Doing so may also constitute loan fraud or another criminal violation.

In transactions involving personal property, buyers and sellers should be advised that the personal property may be subject to sales and use tax. If the sales and use tax is not collected or paid at closing (which is typical), the buyer and seller should be advised that the responsible party may be obligated to pay the sales and use tax after closing.

Additionally, for transactions utilizing the Commission-Approved Personal Property Agreement, any personal property paid for separate from the real property closing should not be included on the Real Property Transfer Declaration as the personal property was not part of the real property purchase price.