QUESTION:

I am a buyer’s agent and I am looking for success for my buyers in what is a very competitive market. We have lost out on three properties so far in multiple bid situations. I am a relatively new broker and realize that there are strategies that I am unaware of and that might be helpful, but I am nervous to use them unless I fully understand them. I was told by a colleague that waiving financing (not including a 22A) and providing a 22EF may be beneficial. My clients have $25k as earnest money and a down payment of $225k. In previous offers I have attached a 22A, and have not waived financing, because they are very cautious people. I have never attached evidence of funds, except for a letter from their lender that states that they have the cash available and that he is pre approving them for the remainder. I have watched your videos on 22EF and it seems to me that I should be providing both 22A and 22EF? For 22EF, should I mark the box 2 for the non contingent funds and box 3 and just reference the lender and the lender letter?

ANSWER:

Broker could use Forms 22A and 22EF. If that is what buyer wants to do, broker would mark Form 22EF, box 2 for non-contingent funds and prepare buyer to prove that buyer has cash for the down payment and closing costs in a US financial institution, in an account in buyer’s name. Buyer must provide that proof to seller within three days following mutual acceptance. Broker would NOT mark Form 22EF, box 3 regarding the funds buyer is borrowing because buyer will account for those contingent funds on the Form 22A. Buyer should never reference the same funds on both a Form 22A and the Form 22EF. If buyer is using a Form 22A and a Form 22EF in the same transaction, the Form 22A is used to account for the funds buyer already possesses and will use for down payment and closing costs. (In an entirely different fact pattern, buyer could use the Form 22EF to account for the funds already in buyer’s possession and other contingent funds, such as gift funds, but that is not the scenario broker has set forth in this question.)

Rather than this approach, however, some sellers would prefer to have buyer simply provide the proof of funds at the same time buyer makes the offer. The reason this approach may be preferable to seller is because seller does not have to take seller’s home off the market for three days to determine whether
buyer actually has closing funds or not. With this strategy, buyer would include a Form 22A in the offer and separately, but at the same time, give seller documentation proving buyer has funds. Documentation for buyer’s proof of funds should be something along the lines of a bank statement with buyer’s account number redacted or a letter from buyer’s bank’s president/private banker, etc.

For the buyer who needs to include a Financing Contingency, the very best way to present a strong offer is for buyer to work with a lender who will give buyer an under-writing, pre-approval letter. This would require buyer to make full loan application and submit all required documentation to lender, in advance of making an offer to purchase seller’s home. The lender will compile the loan application package and submit buyer’s financials to the underwriter. The underwriter will deny the application or approve it, subject to buyer providing lender with a satisfactory title report, appraisal and proof of homeowner’s insurance ... but no other conditions. If lender issues this conditional approval, the letter will be good for a specified period which is typically somewhere between 30 and 90 days, depending on the lender and the loan type.

In other words, lender will complete all of the work necessary to know that buyer can obtain the loan so long as buyer purchases property that serves as sufficient collateral. An under-writing pre-approval letter is very different from a traditional “pre-approval” letter. Broker needs to make sure that lender is providing the product that buyer needs but buyer should understand that before lender can provide an under-writing pre-approval letter, buyer must provide lender with all documentation necessary for underwriting. Again, an under-writing, pre-approval letter is conditioned ONLY on buyer’s provision of a satisfactory title report, appraisal and homeowner’s insurance.

When a buyer makes an offer that includes a financing contingency but that is supported by an under-writing, pre-approval letter, seller can know that buyer is financially qualified for the purchase and the only financing hurdle between mutual acceptance and closing, is the appraisal. While that offer is still not quite as assuring to seller as a cash offer (no financing contingency), it is the next best thing and will put buyer at a negotiation advantage over other buyers with a financing contingency and only a standard pre-approval letter.