



PRDS[®] MEMORANDUM REGARDING MARKET CONDITIONS



Current Silicon Valley market conditions for residential real property have prompted this Memorandum, written for the benefit of prospective Buyers and Sellers. With housing demand significantly exceeding supply, **multiple offers** have become common. As a consequence, frenzied bidding sessions often end with radically **high purchase prices**, prices that are dramatically higher than the listed sales price and/or the comparable sales in the area. In an effort to make their offers even more attractive to Sellers, many Buyers make **non-contingent bids**, depriving themselves of contractual protections that exist in a normal market. The purpose of this Memorandum is to bring to the attention of Buyers and Sellers the risks attendant to these consequences of current local market conditions.

Purchase Price vs. Fair Market Value

One fact that is common knowledge among real estate professionals is that markets are cyclical. What goes up may well come down. The extraordinary and sudden wealth of local high tech and internet companies has provided the fuel for bidding wars. When and if that economic situation changes, housing values could well plummet. Homeowners who paid highly inflated prices in the current market may experience economic losses in the future.

Non-Contingent Offers

A non-contingent offer means that the Buyer will proceed with the purchase of the Property (or, if the Buyer fails to do so, forfeit Buyer's deposit to the Seller) (i) regardless of what the Buyer may learn about the **condition of the Property** prior to Close of Escrow and (ii) regardless of whether the **Buyer's financing** is approved by the lender.

Property Condition

If, after making an offer without a property condition contingency, a Buyer becomes aware of an aspect of the condition of the Property that affects its value or desirability, the Buyer must nonetheless proceed to purchase the Property or lose the deposit. If this is a condition that must subsequently be repaired, the Buyer may have no legal recourse against the Seller, the brokers, the agents or the inspectors; the Buyer will have to pay to fix the problem.

Note that in waiving the right to have a property condition contingency, even if the Purchase Contract has an "AS-IS" clause, a Buyer does not automatically concurrently waive the right to inspect the Property. Regardless of whether there is a property condition contingency, PRDS recommends that prospective Buyers have the Property thoroughly inspected by their own experts prior to Close of Escrow.

If, during escrow, the Seller becomes aware of new information that could affect the value or desirability of the Property that was not disclosed on the Transfer Disclosure Statement or the PRDS Supplemental Seller's Checklist, California law says that the Seller "may" (but *not* that the Seller *must*) amend the Transfer Disclosure Statement. Only if the Transfer Disclosure

Buyer's Initials () ()

Seller's Initials (SM) ()

Statement is amended in writing by the Seller and/or the listing agent does the Buyer have the right to terminate the Purchase Contract (within three days after delivery in person or five days after delivery by mail of the amended Transfer Disclosure Statement), and thereby become entitled to a refund of the Buyer's deposit. Therefore, absent fraud on the part of the Seller, discovery by a Buyer during escrow of previously unknown or undisclosed defects does not give the Buyer a new right to terminate the Purchase Contract.

Financing

The lender's approval of financing includes both the lender's determination that (A) the **Buyer is credit worthy** and can afford to make the mortgage payments and (B) **the Property is appraised** for at least the principal amount of the loan. Even if a Buyer has obtained a prequalification or preapproval letter from a lender, the lender may not ultimately approve the loan if the lender's appraiser determines the Property's fair market value is less than the amount of the purchase price.

If the Property does not "appraise out," and if the Buyer does not have sufficient cash resources to pay the difference between the loan amount applied for and the loan amount actually approved by the lender, the Buyer will not be able to perform under the Contract and will be forced to default. In that event, the Seller will have the right to retain the Buyer's deposit.

PRDS Recommendations

- If possible, a prospective Buyer should try to engage property inspection professionals before making an offer on the Property, as well as to review any disclosures and records supplied by the Seller.
- A prospective Buyer should carefully assess Buyer's financial situation with Buyer's own financial advisor prior to determining whether to waive Buyer's right to have a financing contingency.
- Even a prospective Buyer who intends to pay all cash (e.g. from the sale of stock options) might be wise to include a financing contingency if there is any chance that the Buyer's ability to pay might be jeopardized by a loss in value of those stock options during escrow.

Each Buyer must, upon careful deliberation, decide how much risk Buyer is willing to assume. THIS IS NOT A DECISION THAT CAN BE MADE FOR A BUYER BY AN AGENT.

BUYER/SELLER ACKNOWLEDGE THAT BUYER/SELLER HAVE RECEIVED A COPY OF THIS MEMORANDUM, AND THAT BUYER/SELLER UNDERSTAND IT.

Date: _____ Date: OCT 13 2006
Buyer: _____ Seller: Jennifer & Mark
Buyer: _____ Seller: _____