

CONTINGENCIES

A Buyer's obligations and deposits are protected in an offer by contingencies.

These contingencies are usually things that Buyers cannot control, or do not have knowledge of at the time of an offer / throughout the transaction. Contingencies are most commonly protected by dates for completion.

Common contingencies in an offer are the following:

1. Offer acceptance window
2. Home Inspection
3. Purchase and Sales signing
4. Mortgage Commitment
5. Ability to insure the property
6. Title V
7. Satisfactory walk-through
8. Clear title
9. Home Sale Contingency
10. Closing

Suggested Language for Contingencies & Additional Terms

SEPTIC -

"Seller to provide passing non-conditional Title V report prior to the closing date in this offer."

**Softer more palatable to Seller but not a lot of teeth:

"Seller to provide Title V report prior to closing."

If there is to be a new septic system installed with sale there should be language additional language for this... *"Seller to install at their sole expense and deliver a certificate of compliance for a 3 bedroom gravity fed septic system prior to the closing date in this offer. Sale subject to Buyer's satisfactory review of final approved plans. Any and all affected areas will be returned to their original condition unless otherwise agreed to by both parties. Disturbed grounds will be brought to grade, covered with loam, raked level and seeded."*

**Softer more palatable to Seller but not a lot of teeth(careful here):

"Seller to install and provide certificate of compliance for a new 3 bedroom septic system prior to close."

HOME SALE CONTINGENCY –

"Sale subject to the closing and recording of the deed on the Buyer's home located at 123 Main Street on or before ???" Insert the exact date in the offer to purchase you are writing or whatever date the Buyer may be closing on their current home if they already have an offer accepted.

**Adding similar language as below can make the need to sell before buying more appealing:

"Sale subject to the Buyers having their property located at 123 Main Street under-agreement within 21 days of this accepted offer. If property is not under agreement at that time either party may terminate this agreement in writing, and all deposits will be returned to the Buyer in full." This can be used to make a seller feel comfortable if the Buyer's house is not yet on the market, but be aware this does not contain any protection of closing on Buyer's current home if used alone without home sale contingency language.

APPLIANCES –

"Sale to include range, refrigerator, dishwasher, microwave, basement refrigerator, wine cooler." Be very careful of writing *"all appliances included"*. Whatever a Buyer expects or wants should be spelled out individually. Yes, there are times when a buyer doesn't care what stays or goes...It might be good to have proof of this in an email or similar if you are not going to include appliances in your offer, or limit your language on them to make a cleaner offer.

FURNITURE / CHATTEL / ETC...

Do your best to avoid having a long list of furniture or similar being asked for in an offer. Often their inclusion will be offensive to the Seller, also if such items are stated in an offer an appraiser may/will need to somehow assign a value to these when trying to determine the value of the property...appraisers do not like this!! There can be a separate agreement for personal property...do not send this agreement to lender or attach it to Offer/P&S. You can add a few items like pool equipment or generator to your appliance list. If you must add items to offer a way to avoid appraisal issues would be to write *"The following items are being left at the property post close and have no monetary value – pool table, swingset, and greenhouse."*

CLOSING COST CREDIT

"Seller to credit Buyer \$5,000.00 for closing costs including prepaids, escrow, and or any allowable expense"....there may be a request by lender to have the language say "up to" before the stated dollar figure.

CONDOS, CO-OPS, MOBILE HOME / MANAGED COMMUNITIES

"Sale subject to Buyers satisfactory review of governing documents including but not limited to master deed, declaration of trust, rules and regulations, budgets, financials, and meeting minutes."

***Softer more palatable language: "Sale subject to Buyer's review of condo docs." This does not offer the protection the above language does, and leaves open dispute on what is considered a condo doc.*

Often needed in these communities..."Sale subject to Buyer/s receiving written approval from management"...or..."Sale subject to Buyers receiving approval for their 2 golden retrievers"

FLEXIBILITY –

"Buyer can be flexible with closing date only if any new date is mutually agreed to by both parties. The original closing date will remain in effect if parties can not agree to a change"

INCLUDING AN ADDENDUM –

"See attached addendum which is incorporated into this agreement."...make sure addendums get signed along with offer.