

Contingencies



Coldwell Banker Bain

Contingencies = Safety Nets for Home Buyers

If the deal goes haywire, contingency clauses give you a way out. See why.

It's cliché to say that buying a house is probably the biggest purchase you'll ever make. But it's true, and it's a deal you want to do right. Contingencies – clauses in your purchase contract itemizing conditions that must be satisfied within certain time frames before closing can take place – help strip away some of the uncertainty of home buying. Think of contingencies as a safety net for buyers, giving you a legal way out a home purchase if specific obligations are not met. Here are some of the most common contingencies written into a buyer's contract.

Seller disclosure

In many states, sellers are required to truthfully disclose the facts of their home's condition within a few days of both parties having signed the contract. This disclosure typically covers everything from the state of the systems (plumbing, heating, electrical), roof and appliances, to environmental hazards, past water or fire damage, presence of termites or other wood-eating pests, and more. Buyers who don't receive a completed disclosure form by the agreed-upon deadline have the right to cancel the purchase agreement and get their earnest money back.

Financing contingency

A mortgage contingency allows buyers to back out of a purchase agreement and reclaim their earnest money deposit if they're unable to get financing. Even with pre-approval a lender may choose to deny a loan, or grant one at a lower figure, based on new information about the property (e.g., the house appraises for less than expected) or the borrower.

Inspection contingency

Buyers have a right to hire a professional home inspector to thoroughly examine the property they wish to call home. This contingency gives buyers a certain amount of time – generally about three to 14 days – to perform whatever inspections are needed to:

- 1) confirm their interest in the house; or
- 2) cancel or renegotiate terms of the deal (e.g., ask the seller to make fixes; negotiate a lower selling price) if the inspection uncovers major problems or costly repairs.

Other tests

Some tests – such as radon, mold or pest inspections; sewer inspections; or lead-based paint inspections – are not part of a standard home inspection. Still, their outcomes may be a deal breaker for you. If so, include them as contingencies in your contract.

Appraisal contingency

Mortgage lenders require an appraisal before making a home loan and most banks won't lend more than 80% of a home's appraised value. This contingency gives buyers the option to follow through with their purchase only if the appraisal meets or exceeds the home's price. With an appraisal clause, buyers can walk away if:

- 1) the home's appraised value is not at least as high as the seller's asking price; or
- 2) if the buyer can't get an appropriate appraisal and asks the seller to lower the asking price but the seller refuses.

Sale of buyer's home contingency

Buyers who want to lock down on a new house before selling their current home might make a purchase offer contingent on the sale of their existing home. Sellers who accept contingent offers typically give buyers a certain number of days in which to perform. If a buyer can't sell within the period, the seller can cancel the contract. Likewise, this type of contingency lets buyers who can't sell their home in the allotted time walk away from the deal without penalty. Not surprisingly, contingent offers are less attractive to sellers and in a hot real estate market put buyers at a decided disadvantage.

There are a host of other possible contingencies, such as homeowner's insurance contingencies, attorney review contingencies, review of condominium documents contingencies, survey contingencies – to name just a few. Pay attention to the wording in these important contract clauses, otherwise you could lose money, miss deadlines or be obligated to buy a house you neither want nor can get financed.

