

BUYER ADVISORY IN A SELLER'S MARKET: Some Risks Associated With Certain Offer Terms

Many prospective buyers are hearing about the “seller’s market” and tactics for competing in multiple offer scenarios. While some tactics may persuade a seller to accept a buyer’s offer, it is important to understand there are protections that a buyer may be forfeiting or risks a buyer may be taking on with each tactic. As your trusted real estate advisor, your John L. Scott broker wants you to be an informed buyer in the marketplace and be aware that there are potential risks when excluding contract terms that benefit you as a buyer.

CONTINGENCIES	
<p>What’s A Contingency? A contingency allows you to terminate a contract and obtain a refund of your earnest money deposit under certain conditions.</p>	
<p>If You Have No Contingency or Waive Your Contingency, Some Risks Include:</p> <ul style="list-style-type: none"> You can still terminate the contract prior to closing, <u>but</u> you may forfeit your earnest money or seller may be able to bring additional claims against you. Confirm the remedies available to seller if buyer defaults—is it earnest money only or can seller elect his or her remedies? You may proceed with purchasing the property <u>but</u> without discovering <i>before closing</i> any material defects in the home or other systems on the property. You may proceed with purchasing the property <u>but</u> without discovering <i>before closing</i> that the property can’t be used as intended because of title, land use or other restrictions or encumbrances. 	
EXAMPLES OF CONTINGENCIES AND SOME CONSIDERATIONS FOR BUYERS	
<p>A Financing Contingency conditions the sale on buyer and property qualifying for a loan. If buyer or property does not qualify for financing, buyer may terminate the contract and, so long as buyer has complied with the contingency terms, buyer is entitled to a return of the earnest money.</p> <p>Without this contingency, buyer may forfeit the earnest money if buyer cannot close because a loan is not approved.</p>	<p>An Inspection Contingency allows buyer to have the property inspected and to terminate the contract or ask for seller concessions (repairs or credits) if dissatisfied with the condition of the property based on the inspection.</p> <p>Without this contingency, buyer may fail to identify material defects in the home before closing, or may risk forfeiting earnest money if terminating the contract on the basis of the condition of the property.</p>
<p>A Sale of Property Contingency allows buyer to disclose a contingent source of funds and to condition its offer on the sale of buyer’s other property.</p> <p>Without this contingency, if buyer’s property does not sell or close, buyer will either need to find the funds to close or will need to terminate the contract and forfeit the earnest money.</p>	<p>Septic and/or Well Inspection Contingencies allow buyer to review seller’s septic inspection reports and to have the well and/or septic system inspected and tested. Notwithstanding these contingencies, Oregon law may require seller to test a well for total coliform bacteria prior to closing.</p> <p>Without these contingencies, buyer may fail to identify problems with the functioning, capacity or environmental quality of the systems.</p>
<p>A Title Contingency allows buyer to review title for easements, covenants or restrictions that affect title to the property and buyer’s intended use of the property. If seller does not remedy buyer’s disapproved title issues, then buyer can terminate the contract and recover the earnest money.</p> <p>Without this contingency, buyer may fail to identify title restrictions that prevent buyer from using the property as buyer had intended or that impact title to the property. In addition, buyer may risk forfeiting the earnest money if terminating on the basis of these title restrictions.</p>	

EXAMPLES OF SELLER-FAVORABLE TERMS AND SOME CONSIDERATIONS FOR BUYERS	
<p>All Cash Offer or No Contingent Funds. Some buyers offer to pay all cash or need financing but do not condition their purchase on securing funds.</p> <p>Consider:</p> <ul style="list-style-type: none"> • Buyer needs to have the funds and be able to deliver the full amount to escrow at closing. • Seller may require buyer to provide evidence of funds as a condition of accepting the offer. • If buyer offers to pay all cash but will rely on contingent funds (e.g., loan, a gift or withdrawal of amounts from a 401(k)), buyer must disclose in the offer and deliver on time. • If buyer cannot close, buyer may forfeit earnest money or seller may pursue other remedies against buyer. 	<p>Offer Price Greater Than List Price, or Escalation Offer. Some buyers offer a purchase price greater than the list price, or submit an offer with an escalation clause.</p> <p>Consider:</p> <ul style="list-style-type: none"> • The offer price may exceed the appraised price, and buyer will need sufficient funds to pay a larger down payment. • Lender may not fund the amount above the list price or appraised price. • With an escalation offer, buyer's highest amount will tip seller as to the greatest amount buyer is willing to pay.
<p>High Earnest Money Amount. Some buyers include a high earnest money amount to show that they are serious about purchasing the property.</p> <p>Consider:</p> <ul style="list-style-type: none"> • If there are no contingencies and buyer terminates the contract or cannot close, buyer may forfeit the earnest money. • Even if buyer terminates under a contingency, seller may attempt to keep the earnest money by disputing buyer's right to terminate. 	<p>Non-Refundable Earnest Money. Some buyers make earnest money non-refundable and agree to release the earnest money to seller prior to closing.</p> <p>Consider:</p> <ul style="list-style-type: none"> • Even if seller defaults and deal does not close, seller may be able to retain the funds. • Even if the transaction does not close through no fault of buyer, seller may be able to retain the funds.
<p>Pre-Inspection. Some buyers arrange a pre-inspection before submitting an offer without an inspection contingency. This provides buyer with information about material defects without including the inspection contingency in the purchase agreement.</p> <p>Consider:</p> <ul style="list-style-type: none"> • Sellers may not allow pre-inspections. • Seller may allow a pre-inspection but still not accept the offer, resulting in buyer spending money unnecessarily. • An inspector may recommend additional inspections by specialists, but buyer will not have the right to conduct those additional inspections if waiving the inspection contingency. 	<p>Lease Back To Seller. Some buyers agree to lease the property back to seller after closing. This allows seller time to purchase another property without finding interim housing.</p> <p>Consider:</p> <ul style="list-style-type: none"> • This may involve loan and insurance issues. • There may be disputes about repairs and whether they arose before or after closing. • Seller may refuse to vacate or may delay. • If seller won't pay, this is a cost to buyer. • If buyer delays closing in lieu of a lease back, buyer needs to discuss the delay with lender and availability and cost of an extended interest rate lock.

While removing contingencies or including seller-favorable terms may be attractive to a seller and aid in buyer's offer being accepted in a multiple offer situation, buyers are advised to consider that there are risks they take by not including contingencies or by including seller-favorable terms in the offer. For a more complete understanding of how contract terms operate and to draft any changes to the terms in the residential sale agreements, you are advised to seek the counsel of a real estate attorney.

To confirm you are aware that there may be monetary, due diligence-related and other risks to you as a buyer in excluding contingencies or including seller-favorable terms in a purchase offer, please initial below:

____ Buyer acknowledges there are risks
Initial Initial in excluding contingencies.

____ Buyer acknowledges there are risks in
Initial Initial including seller-favorable terms.