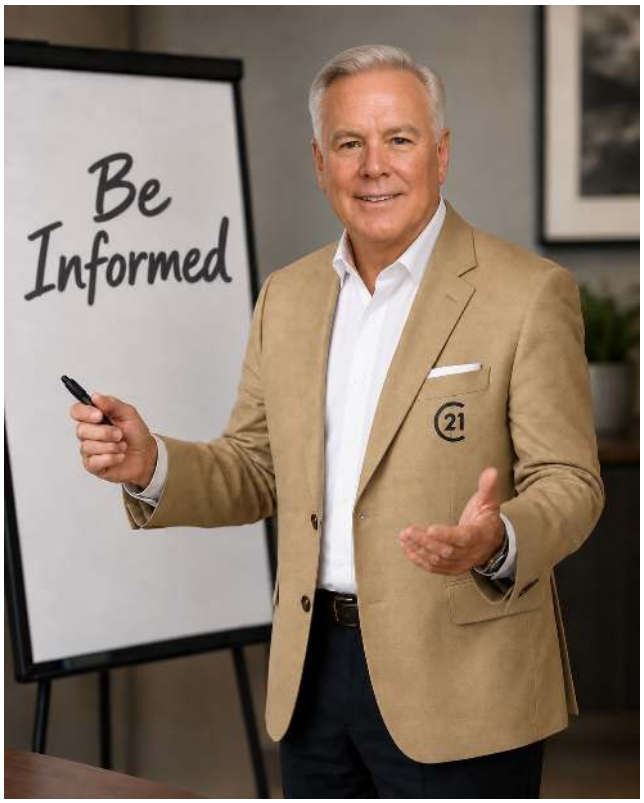
SELLERS

Real Estate Contract Contingencies



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Prepared for you by Bob Latigona | CENTURY 21 Alliance

NATIONAL ASSOCIATION OF REALTORS®

CONSUMER GUIDE: REAL ESTATE CONTRACT CONTINGENCIES

You've made an offer on a home—or you're selling your home and have received a contract offer. Regardless of which side of the transaction you're on, you need a clear understanding of any contingencies that are part of the real estate contract.

What is a contingency in a real estate contract, and how does it differ from a clause? *Clauses* in a contract describe the rights and obligations of the parties. A *contingency* is a condition that needs to be met before the purchase can be completed. Buyers and sellers must agree to and sign off on any contingencies before they are legally binding. It's a good idea to have a real estate attorney review all contract terms, including contingencies.

Common Contingencies and Clauses in Real Estate Contracts

Some contingencies and clauses are standard in a real estate contract. Others may be included depending on your priorities and needs:

- **Financing.** Gives buyers a specified time period to secure a mortgage.
- **Appraisal.** Enables buyers or their mortgage lender to have a professional appraisal done to ensure that the home's value is equal to or above the purchase price. Lenders typically will not issue a mortgage for a home that is sold for higher than its appraised value.
- **Inspection.** Gives buyers time to have a professional inspection so that they understand the condition of the home and can possibly negotiate for repairs before closing. (In some areas, additional inspections, such as a termite inspection or pool inspection, may be common.)
- **Home Sale.** Grants buyers time to sell their current home before closing on the new home.
- **Home Close.** Grants buyers who have a contract offer on their current home time to close on that sale before they purchase the new home.
- **Title.** Allows buyers to obtain a title search to verify that the sellers have clear ownership and there are no liens or legal issues. Lenders typically require a title search; in all-cash sales, buyers should order the search.
- **Homeowners Insurance.** Requires buyers to obtain a homeowners insurance policy for the home before closing. This can be requested by the seller or the mortgage company.
- **Homeowners Association (HOA).** Provides buyers a period of time to review HOA documents, if applicable, including the financials, before going through with the purchase.
- **Early Move-in.** Allows buyers to move into the property before closing if the sellers agree. Terms should be specific and carefully negotiated.
- **Property Condition Disclosure.** In most states, sellers are required to provide a disclosure form that lists material facts they know about the property. State law varies, but sellers generally must disclose known physical defects and property hazards. Federal law requires that sellers disclose any known lead-based paint hazard for properties built before 1978.
- **Continue-to-Show.** If sellers accept a home-sale contingency or a home-close contingency from a buyer, they can ask to continue to show their home to other prospective buyers.
- **Kick-Out Clause.** When sellers accept an offer with a home-sale or home-close contingency, they may continue to show the property. If another acceptable offer without any contingencies comes in, the first buyers typically have the "first right of refusal." That means, if they show they can perform on the contract without the home-sale or home-close contingency, their contract remains in place.
- **Rent-Back Clause.** Sellers may request to remain in the home after the closing for a period of time, based on their moving needs, if the buyers agree. Specific terms for rental compensation and a final move-out date should be carefully negotiated between the parties.

What happens when a contingency isn't met? Contingencies need to be clearly articulated and include timelines. If one or more contingencies aren't met within the time specified in the contract, the buyers or sellers can cancel the contract without penalty if the parties are acting in good faith. Understanding and including the applicable contingencies in a purchase contract will protect your interests when you buy or sell a home.

Your real estate agent will help you navigate the purchase or sale of a home. An attorney can provide guidance on the laws in the state where you're purchasing. Only real estate professionals who are members of the National Association of REALTORS® may use the term REALTOR®. Under the NAR's Code of Ethics, REALTORS® must work in their client's best interest and treat all parties fairly. Please visit facts.realtor for more information and resources.

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