

## 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 advantages you as buyer may be forfeiting or risks you 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 aware that there are potential risks of not including contract terms that benefit you as a buyer.

CONTINGENCIES	
<p><b>What’s A Contingency?</b> A contingency allows you to get out of a contract and obtain a refund of your earnest money deposit under certain conditions.</p>	
<p><b>If You Have No Contingency or Waive Your Contingency, Some Risks Include:</b></p> <ul style="list-style-type: none"> <li>• You can still terminate the contract prior to closing, <u>but</u> you may forfeit your earnest money or seller may have other remedies against you. Confirm purchase agreement term marked for seller’s remedy upon a buyer’s default—is it earnest money only or seller’s election of remedies?</li> <li>• 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.</li> <li>• You may proceed with purchasing the property but without discovering <i>before closing</i> that the property can’t be used as intended because of title, land use or other restrictions.</li> </ul>	
EXAMPLES OF CONTINGENCIES AND SOME CONSIDERATIONS FOR BUYERS	
<p><b>A Financing Contingency</b> conditions the sale on buyer obtaining a loan and if the buyer is unable to obtain a loan, the contract terminates and if buyer has complied with the contingency terms, buyer is entitled to a return of the earnest money.</p> <p><b>Without this contingency</b>, if the buyer cannot close because a loan is not approved, the buyer forfeits the earnest money.</p>	<p><b>An Appraisal Contingency</b> allows a buyer to terminate the contract if lender’s appraisal is less than the purchase price and seller does not either reduce the purchase price or provide an appraisal at a purchase price that lender accepts.</p> <p><b>Without this contingency</b>, a buyer may be unable to close and seller keeps the earnest money, or loan type, amount, interest rate, or buyer contribution may change in order to cover the purchase price.</p>
<p><b>An Inspection Contingency</b> allows a 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><b>Without this contingency</b>, a buyer may fail to identify material defects in the home before closing.</p>	<p><b>Septic and/or Well Inspection Contingencies</b> allow buyer to review seller’s septic inspection reports and to have the well inspected.</p> <p><b>Without these contingencies</b>, a buyer may fail to identify problems with the functioning, capacity or environmental quality of the systems.</p>
<p><b>A Title Contingency</b> allows a buyer to review title for easements, covenants or restrictions that affect buyer’s intended use of the property. If seller does not cure buyer’s disapproved title issues, then buyer can terminate the contract with earnest money returned to buyer.</p> <p><b>Without this contingency</b>, a buyer may fail to identify title restrictions that prevent buyer from using the property as buyer had intended.</p>	<p><b>A Sale of Property Contingency or Pending Sale of Property Contingency</b> allows a buyer to disclose a contingent source of funds and to condition its offer on the sale of buyer’s other property or on the closing of a sale of buyer’s other property.</p> <p><b>Without these contingencies</b>, 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>

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

While removal of contingencies or including seller-favorable terms may be attractive to a seller and aid in the 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 statewide residential purchase forms, you are advised to seek the counsel of a real estate attorney.

To confirm you are aware that there may be monetary, due diligence 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