CONTINGENCY CLAUSES FOR SALE CONTRACTS

The use of contingencies is essential for an investor. Contingencies provide an “exit strategy” or “loophole” in case the deal cannot close, protecting the investor from possible legalities and also the earnest money deposit.

Here are some of the most popular contingency clauses – use them at your discretion, according to the purchase you are involved in, and also without over-abusing them, since too many contingencies will make the contract weaker in the Seller’s eyes, especially if you are dealing with a bank/lender (i.e. REO sales.)

“Subject To …”

- **Subject to Financing** – this contingency will protect buyer in case he/she cannot obtain financing
- **Subject to Seller’s Financing Remaining in Place** – this contingency is used for investors purchasing properties, whereas the existing mortgage/financing stays in place and the title is transferred from the present owner to the investor
- **Subject to Property Appraising for Purchase Price** – if the property does not appraise for the agreed upon purchase price, the seller and buyer will have to renegotiatie and agree on a new price, or the purchase will be cancelled.

“Seller to Provide Marketable Title”

- This inplies that if the property does not have a clear title, the seller must solve the problem or the contract will be null and void and earnest money returned to buyer.

“Seller Must Do the Following Repairs: …”

- If there are repairs that need to be done, the seller must satisfy the repairs (list them specifically) before you close or the contract will be null and void.

“Contingent on Inspection”

- This allows extra time to perform due diligence on the property, such as inspections and research of possible permits.

“Contingent on Partner’s Inspection and Approval”

- This contingency will provide the investor with extra time and reason to back out of a contract if necessary.

First Right of Refusal Contingency

If the investor/buyer is writing a contract with the right to flip or assign, and the seller is reluctant in tying up the property and take it off the market (since the investor/buyer might back up if an end buyer is not found), this is a great contingency/loophole to work in to give the seller peace of mind.

Part of the negotiation process for a contingent contract is whether the seller can cancel your purchase agreement if the seller receives another offer. Typically, the seller retains the right to continue marketing the property.

- **Removal of sale contingency (preferable.)** This option lets the seller kick you out of the purchase agreement if the seller receives another offer. Should the seller receive another offer, this provision lets the seller give you, by default, 72 hours to remove the contingency. This does not mean you need to sell, but your agreement would no longer be contingent on the sale. Removing your contingency means you have an end buyer and/or funds to close.
- **Back-up offers only.** This option does not let the seller kick you out of the agreement to purchase. The seller is legally bound to sell to you, providing you eventually sell your home within the time specified, but the seller can accept offers as a back up in case your transaction falls apart. Very few sellers will accept this option, however.