

# Real Estate Contract Essentials: Basics and Contingencies

*By Charles J. Kovaleski*

The home-buying process is a series of very specific steps. Researching the neighborhood where you want to live, finding the right home at the right price, and securing the financing are all early steps of that process.

Each step is essential to the process, of course, but another major early step is probably the most crucial: Drawing up the contract. Considered the blueprint for the entire transaction, the real estate contract details everything from purchase price and occupancy dates, to whether or not the curtains are staying and who has to fix the leaky roof.

In addition to the standard language found in all real estate contracts, the document usually contains specific contingencies, or conditions, under which the house is being bought and sold. For this reason, it's wise to involve your attorney as early as possible in drafting the contract to protect your interests and your finances. He or she can also draft or review the document for you, spelling out properly the exact terms under which you will buy the home and making sure those terms are legally enforceable. Regardless of who provided the contract, who wrote it, who filled in the blanks or provided the form, you should not sign the contract before your real estate attorney has reviewed it with you.

The basic elements of a contract include:

- Purchase price-it may not be your final offer, but it should be realistic given the recent selling prices of homes comparable in terms of age, size, condition and location.
- Full names of buyers and sellers, plus their marital status.
- Address and proper legal description of the property-uses real estate lingo such as "plats" and "tracts" to pinpoint the property's exact location.
- Earnest money deposit-a.k.a. "good faith" money, usually 3% to 5% of the purchase price; placed into an escrow account is usually not released until closing.
- Closing costs and who pays them.
- Amount of commission paid to real estate agent.
- Bill of sale that describes and itemizes any exchange of personal property, such as window treatments or appliances.
- Date and place of closing.
- Date the seller will vacate the home.
- Responsibility for payment of utilities until you take possession.

Trickier are the contingencies contained in the contract, the minor and sometimes major details that must be clearly written into the contract. These provisions generally aren't contained in standard contracts found in the

local library or bookstore, and, therefore, must be added by your attorney to reflect your own unique circumstances.

A thorough real estate contract should also contain the following contingencies:

- **Financing contingency**, which is the most important provision in any real estate contract. This provision hinges the entire deal on the buyer receiving approval for his mortgage loan. The contingency should also outline cancellation rights and the return of earnest money deposit if you can't arrange financing.
- **Home inspection contingency**, which renders the sale of the home contingent upon a satisfactory home inspection by an inspector chosen by the buyer. This provision can take one of two forms: The first is a general clause that voids the contract if the buyer is not satisfied with the home inspection report. The second is a more specific clause that allows the seller to decide whether or not to make repairs in certain period of time-and can affect the final purchase price. The home inspection report should contain a thorough analysis of the structure and systems of the house, including plumbing, electrical, foundation, heating and air conditioning, and dry rot. Additional inspectors can check for termite damage and roof problems.
- **Appraisal contingency**, which gives the buyer the option to terminate the contract if the appraisal of the property comes in lower than the asking price.
- **Clear title**, which simply means that seller is responsible for giving the buyer a clear and marketable title to the property.
- **Home sale contingency**, which allows a specific timeframe for the buyer to sell his current home.
- **Return of earnest money**, which says you get your deposit money back should the deal collapse through no fault of the buyer. The earnest money deposit should be held in an interest-bearing escrow account until closing.
- **Liability for fire or other hazards**, which protects the buyer from liability should something happen to the house after the contract has been signed but before you actually move in.
- **Items that do or do not come with the house**, which can include anything from lawn furniture to special light fixtures. If there is something that the buyer wants to go with the house, it should be put in writing and included in the contract.

Finally, don't be pressured into signing a contract that your attorney has not thoroughly reviewed and revised. A real estate contract is serious business. Once it is signed, it is a legally binding document that often can't be altered without substantial penalty-either legal or financial.

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