

Mortgage Contingency Clauses

For those looking forward to the bankruptcy column regularly appearing in these pages, not to worry: Bankruptcy will return. Due to increasing demand, this column will begin discussing other legal topics. This week: real estate. First, we will examine fundamental real estate concepts of which both property buyers and sellers need to be aware.

Beginning with basics, whether you are a buyer or seller, the mortgage contingency clause is unquestionably one of the most important aspects of a real estate contract. When buying a home, or any other type of property, this is the one clause you need to be extra sure you understand. The mortgage contingency clause works as follows: If a house is selling for \$500,000, chances are you do not have a spare half a million dollars sitting around with which to buy the house. Thus, in order to purchase the home, you need a loan. This is where a mortgage comes in. A bank will lend you money to buy the house. Before approving you for such a large loan though, the bank will require you to fill out an extensive application regarding your financial affairs. This process can take time and the formal loan application can only be made after your offer to the purchaser is accepted.

In a nutshell, the mortgage contingency clause requires the purchaser to receive a commitment from a lender that they will lend the purchaser the funds to buy the house. Typically the purchaser is given thirty to sixty days after the contract is signed to obtain the approval. The clause will also state the dollar amount of the loan for which the purchaser must be approved and the length of the loan term. Therefore, if the pur-

chaser applies for a mortgage loan and is denied, both parties may be entitled to back out of the contract without penalty and the purchaser will usually be entitled to a return of the down payment. This provision protects both the buyer and the seller.

To illustrate: Say the purchase price is \$450,000 and the buyer's down payment is \$50,000. The contract requires the buyer be approved for a \$400,000 loan. After spending countless hours and sleepless nights diligently filling out and submitting the extensive loan application, a few short weeks later the bank "regretfully" informs the buyer that he



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is *not* approved. Apparently, that lingering credit card judgement from college that the mortgage broker insisted was a "non-issue" turned out to be an issue after all. Without financing, there is no deal.

Good news for the buyer - thanks to that good old mortgage contingency clause he is entitled to a return of his down payment. If not for that safety measure, he would otherwise still be required to close on the property or risk

losing the down payment. Now, the buyer simply takes back the down payment and walks away. Good news for the seller too - he is likewise protected. The seller now has the option of simply canceling the contract without being forced to wait around indefinitely while the buyer valiantly but fruitlessly attempts to obtain new financing. The seller cuts his losses, returns the down payment, and immediately begins the search for a new buyer.

Bottom line for both buyers and sellers: The mortgage contingency clause is the underpinning of the entire contract. Consult with a knowledgeable attorney before signing on the dotted line to ensure your rights are fully protected.

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