

Essential Elements of a Contingency

3/2/04

1. Time Limit (T)
2. Specific Event (E)
3. Notices (N)
4. Disposition of the Earnest Money (D)
5. Disposition of the contract (D)

Putting pen to paper as a real estate agent is the quickest way to get yourself and your broker in trouble. Writing contingencies can be construed as the unauthorized practice of law and you are held to the same standard and care as an attorney. When you have to write a contingency, be careful and T.E.N.D.D to your business.

Essential Questions to be asked when writing a contingency:

1. What is the condition? What has to be done?
2. Which party initiates the act?
3. For whose benefit is it?
4. Can it be waived and by whom?
5. What is the time period? When must it be met or waived?
6. Who is to receive notification of the results?
7. How is notification going to be given?
8. What are the rights and obligations of the buyer and seller if the condition is not met?

When to use "contingent upon" vs. "subject to".

From your Designated Broker's perspective, there is no difference between "contingent upon" and "subject to". They are interchangeable. "Sometimes "subject to" seems softer, but requires the same essential elements and questions as "contingent upon".

Automatic Termination

Unless _____ by _____, this agreement shall terminate.

Automatic Waiver

This condition shall be conclusively deemed waived unless _____ by _____

Exercise: Write contingency language for the following conditions.

1. Parental Approval
2. Credit Approval
3. Spousal Signature
4. Verification of zoning
5. Septic Systems

Examples:

1. Parental Approval

This agreement is subject to the Buyer's parental review and written approval of said agreement to their sole satisfaction within 3 days of mutual acceptance. In the event Buyer does not provide to Seller Buyer's parental written approval within said 3 days of mutual acceptance, then this agreement shall terminate and the earnest money shall be returned to the Buyer.

2. Credit Approval Contingency

Buyer shall furnish to Seller within 3 days of mutual acceptance, a consumer credit report for the purpose of credit approval by the Seller, at their sole discretion, which approval shall not be unreasonably withheld. In the event Seller does not provide notice of written approval within said 3 days of mutual acceptance, then this agreement shall terminate and the earnest money returned to the Buyer.