What are contingency provisions? Do I need them?

A: **Contingency provisions** describe an event, activity or condition which needs to occur before the purchase agreement transaction can proceed toward closing. On the occurrence of the event or approval of information described in a contingency provision, the contingency has been *satisfied* and is no longer an obstacle to further performance and closing.

Contingency provisions authorize the buyer or seller to cancel the transaction when:

- the described event fails to occur; or
- the information received is disapproved.

Contingency provisions stating conditions allowing for the termination of an agreement are separated into two categories:

- **event-occurrence contingency provisions** — those provisions satisfied by the existence, completion or outcome of an activity or event which eliminates the contingency; and
- **further-approval or personal-satisfaction contingency provisions** — those provisions satisfied by the receipt, review and approval of data, documents and reports which eliminate the contingency.

Event-occurrence contingency provisions address the occurrence of specific activities and events, such as:

- the sale or acquisition of other property by the buyer or the seller;
- obtaining purchase-assist financing;
- the approval of building permits; and
- the elimination of title conditions, or the release of encumbrances, such as liens or leases.

Further-approval contingency provisions address the right of the buyer or seller to cancel the transaction on their disapproval due to unacceptable property conditions and material facts, such as:

- disclosures and inspection reports concerning the physical integrity and natural and environmental hazards of the property;
- appraisals;
- title reports; and
- rental income and expenses.

To terminate a purchase agreement under a contingency provision, the buyer or seller needs to have a reasonable cause to cancel for the cancellation to be enforceable. When a reasonable basis exists, they may avoid enforcement of the purchase agreement by the other person by notice of cancellation.

Contingency provisions contained in purchase agreements are **eliminated** by either:

- *satisfaction* of the contingency provision by the occurrence of an event or by someone's approval of the conditions contained in information, data, documents or a report; or
- *waiver* or *expiration* of the contingency provision.

Contingency provisions are unique as they deal with uncertainties at the time an agreement is entered into. As a matter of good practice, contingency provisions are included in purchase agreements to eliminate any uncertainty about aspects the property's title, income/expenses or physical condition. Before escrow is able to close, contingency provisions need to be eliminated.

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