

## Advice To Buyers and Sellers when Signing Contracts of Purchase and Sale in British Columbia

You are about to negotiate a contract for the purchase or sale of real estate in British Columbia. The effect of conditions on the contract allowed either party having the condition to perform more careful examination of the property and to have others answer questions if necessary, prior to completion. Once conditions are removed, the contract is firm and the parties must complete. Once the contract is firm, the REALTOR shall have earned their commission.

All contracts for the purchase and sale of real estate must be in writing otherwise they are merely discussions and are not enforceable. REALTORS are prohibited by law from negotiating verbal agreements.

### **ONCE YOU SIGN THE CONTRACT, YOU CANNOT CHANGE YOUR MIND & DECIDE NOT TO GO AHEAD.**

We always recommend contracts include the following conditions precedent:

1. **Subject to financing.** This means that the buyer must attend their bank and make reasonable efforts to obtain approval for any mortgage they plan to place on the property. Whether you need a mortgage before proceeding is something you should speak about with your financial institution. They will want to ensure that the property appraises at or near the price you have negotiated. Your REALTOR can assist you with meeting with a mortgage lender. The buyer should always obtain assurance from their bank that they will have the funds available to them in Canada in order to close. This should be done prior to removing conditions.
2. **Subject to inspection.** The REALTORS involved in this transaction are not owners of the property and are therefore not likely familiar with any problems that may exist. This would include mechanical equipment (furnace, hot water, air condition etc.), Structural issues, plumbing issues (water supply and drainage from the property) and finally condition of the roof. While the seller may provide a property condition statement (PDS) it is only to be to the best of their knowledge and they are not providing a warranty that there is no problem with the building. We advise all buyers and sellers that in order to protect themselves, they have an expert examine the property carefully to ensure that all parties know full information about the property prior to proceeding with the purchase.
3. **Subject to receipt of documents.** This would include a title search of the property, building plans if they are available, documentation on warranties, survey plans, Property Disclosure Statement (PDS). For strata properties all buyers must be provided copies of the by-laws and financial statements for the strata corporation, along with at least two years documented minutes of strata council and strata general meetings. Your REALTOR will provide assistance in obtaining these documents, generally at the seller's cost; however your REALTOR is not an expert in interpreting where the building has existing problems. Care must be taken by the buyer to carefully read those documents and if they require, to seek advice from experts, including engineers, accountants, and lawyers.
4. **Other conditions you may require for specific case.** Some contracts will provide for other specific conditions to be met before the contract becomes binding and must proceed to completion. Some examples are "subject to the buyer selling their existing home" and "subject to third party approving documentation". If you need these kinds of conditions, you must inform your REALTOR prior to the contract being negotiated. Otherwise, these conditions cannot generally be added after a contract is accepted.

**Advice on deposits**

Upon the contract being accepted, the contract will state that a deposit must be provided by the buyer on or before a certain date, generally once the conditions have been removed. BUYERS MUST NOTE THAT THEIR FAILURE TO PAY A DEPOSIT DOES NOT AUTOMATICALLY CANCEL A CONTRACT. There is no right of a buyer to walk away from a contract just because they do not pay the deposit. The seller will seek legal advice and generally take legal action against the buyer for breach of contract which could include monetary unspecified damages. IF YOU DO NOT INTEND TO PROCEED WITH THE CONTRACT, PLEASE DO NOT SIGN THE CONTRACT! If you do not provide the deposit funds to the REALTOR as agreed, the brokerage will advise the seller's brokerage immediately. The seller will then choose if they will still seek to enforce that contract against the buyer. This process is likely somewhat different from those practices in other countries, so please proceed accordingly.

It is the policy of Sutton Group - West Coast Realty when buyers are not local in the Metro Vancouver area (live out of the country) at the time of negotiating the contract, that the buyer must provide the deposit funds to their financial institution at the time of commencing negotiations and that upon the contract being accepted, the financial institution will immediately transfer the deposit to the Sutton Group - West Coast Realty Trust account.

The effect of trust account is that the funds are held in a secure account on behalf of both the buyer and seller. If the buyer backs out of the deal once all the conditions have been removed, they do not get their deposit back and generally the deposit will be forfeited to the seller ON ACCOUNT OF DAMAGES. If the seller backs out of the deal the buyer does not automatically get their deposit although a judge will likely order the return of the buyers deposit. In all such cases, a buyer and seller are advised to seek legal advice if they are uncertain of their rights and obligations.

MANY BUYERS BELIEVE THAT BY WRITING A CONTRACT WITHOUT CONDITIONS, THEY HAVE A BETTER CHANCE OF GETTING THEIR OFFER ACCEPTED. HOWEVER, BUYERS MUST BE AWARE THAT THERE IS RISK IN THIS STRATEGY AND BUYERS AND SELLERS ARE ALWAYS CAUTIONED TO ENSURE THAT THE CONTRACT THEY SIGN TRULY REPRESENTS THEIR INTENTION.

The buyer acknowledges having received this information prior to commencing negotiations.

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Buyer Date Buyer Date

The seller acknowledges having received this information prior to commencing negotiations.

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Seller Date Seller Date