

Clauses and Contingencies for Sellers

The various aspects of the Purchase Contract give both the Buyer and Seller a place to negotiate terms and conditions that are unique to each transaction. As the Seller you have the keys to the house, and can hold to the various clauses and contingencies that matter to you. This is really the best place to start with a successful transaction. You can counter terms, price or any aspects of the deal that you like. After you sign off and the deal is mutually agreed to, the Buyer must take the reigns and perform. **A Seller cannot cancel the contract until either a Buyer fails to perform or both parties agree to cancel.** In this sense, the Buyer is in control if they continue to meet the deadlines. The following are **typical contingencies** that can alter the course of the transaction, by accepting the terms, renegotiating them or canceling the contract.

All contingencies should be released or canceled in writing within the stated timelines of each contingency. **Failure to make an election in writing within the timeline means that the contingency will be waived- that is considered to be accepted.**

Financing

(Section H of the Purchase Contract)

Many Buyers need to use a lender to purchase their property. The sale is then contingent upon the Buyer getting the financing. The Buyer will be expected to be armed with a Pre-qualification letter from their lender that verifies the Buyer's ability to afford the loan and verifies the cash down payment. The Seller will expect that the Buyer will be diligent in following the timeline set forth in the PC and structured Purchase offer in Section C-2 Purchase Price and Section H1-5 F Cash Funds and Financing. If the Buyer is unable to obtain the loan, the contingency is invoked and O-2 Termination Within the Contingency Time Period will apply and all monies deposited are returned and escrow is canceled by written notice.

Property Inspections

(Section J-1 of the Purchase Contract)

The J-1 is a period where the Buyer is given reasonable access to inspect the property with an agreed upon time period. This time period is important so that the Buyer can inspect all aspects of the home. These inspections are paid for by the Buyer.

If the Buyer should discover aspects of the home that may need addressing the Buyer may elect to cancel the contract or request that the Seller make the necessary repairs or lower the price to one that is acceptable to the Buyer. It is important to re-negotiate these terms prior to the J-1 inspection deadline.

Title Report

(Section G of the Purchase Contract)

The Title report will be ordered by the Escrow company. This report will show the legal description of the property, and show any liens, loans, recorded easements, property boundary agreements, and special restrictions that may be associated with an Owner's association or private development. These might include boundary agreements, special restrictions such as condo documents, or association restrictions.

The Seller should transfer the title to the new Buyer "free and clear" of any encumbrances such as judgments, liens, mortgages, and others that may apply. Escrow will ask you to help them discharge any outstanding liens, loans or debts held against the property.

Termite Inspections

(Section L of the Purchase Contract)

The Purchase Contract calls for an independent inspection of the property for termite infestation. **Traditionally this is a Seller's cost, while the Buyer picks the company to inspect.** This is negotiable however.

If the report shows active infestation the Buyer may elect to cancel within the review period or elect to have the Seller treat the property accordingly. If the report shows no active infestation there is no automatic right to cancel the transaction.

If the report shows extensive previous damage that affects the value, a Seller must update the Seller's Real Property Disclosure and make appropriate disclosures under Section I-1 and I-2 as a "material fact" and then the Buyer may elect to cancel the contract as per O-2 and O-3.

Seller's Disclosure (Section I of the Purchase Contract)

It is a State law in Hawai'i (HRS Chapter 508D) "that unless exempt, all Sellers must disclose in writing, any fact, defect, or condition, past or present that would measurably affect the value of the property to a reasonable person, this is known as a "material fact"". The Seller will deliver to the Buyer a written disclosure statement after an agreed length of time after the Purchase Contract is accepted. The Disclosure is not a warranty and the Buyer should take great care in determining the validity of the disclosures by reviewing supporting reports that include but are not limited to the public record, reports from third party experts (termite reports, land surveyors, geologists, contractors, soils reports and the legal record).

All material facts must be in writing and a Buyer should be continually updated to any changes the disclosure statement by the Seller. If evidence is found to be a material fact after the initial review period, then the Seller will amend the statement and I-2 of the Purchase Contract will I-3 apply if the Buyer elects to rescind and cancel. It is important to make any elections to cancel within the time frames set forth in the Purchase Contract under Section I.

Staking and Survey

(Section K of the Purchase Contract)

If applicable the Buyer will request either a Staking or full Survey of the property.

This is traditionally a Seller's cost. The Buyer will have time to review the report and if boundary encroachments are present the Seller may be asked to remove the existing encroachments, repair them, or at the Seller's sole cost obtain encroachment agreements as needed. If the reports adversely affect the value of the property, the Seller shall make appropriate disclosures under paragraph I-2 and Buyer may exercise their rights under Paragraph I-3 within the timeline set forth in the contingency.

Documents that might restrict use or conditions of Use

(Section M of the Purchase Contract)

Private developments, condo projects, CPR projects or title reports all have particular documents that govern the use and condition for use of the property. Zoning and utilization are also part of the public record. These documents need to be reviewed, read and understood before proceeding to purchase any property.

For most condo projects and private developments (Mililani, Hawai'i Loa Ridge, Waikoloa and many others) restrictions apply to homeowners as to the use and the conditions of use for the projects. These might be pet restrictions, smoking areas, height limits and particular rules that apply to the home and development. Under Section M of the Purchase Contract the Seller is obligated to provide the documents that may exist are obtainable. **These documents are provided by the Seller at their cost.**

These include but are limited to House rules, Approved meeting minutes of the Board and Owner's association, financial statements, budgets, reserve studies, pending litigation and special paragraphs that limit the use of property. called Covenants, Conditions and Restrictions (CC&R's).

CC&R's contain the restrictions of use, house rules, and the terms and conditions of the project. These might include set color choices for homes in the subdivision, limit to roof top items such as satellite dishes or solar, view planes, parking on the street overnight, or that owners must keep their lawns mowed on a schedule. Condos may have specific rules regarding pets, their size and even breed.

**Read and understand the fine print here as you will be expected to follow the rules set forth. Fines and eviction may occur.*

Articles of Incorporation are created by the Developer and the Owners' association to operate as a non-profit entity on behalf of the owners.

Bylaws are adopted by the Owner's association and describe the association's rights and responsibilities of the Board. For example, collecting maintenance fees.

The Declaration is a lengthy document that acts like a master deed, outlining the developer's right and obligation to the project and outlines the ownership of units, shared areas (common interest), parking space #'s, and other elements of the project such as commercial units or manager apartments. All changes to the declaration must be recorded and requires 67% majority of the owner's approval to amend.

In some cases lenders will limit their lending to certain building that conform to their guidelines. VA and FHA have an approved list of buildings that their programs conform to. Conventional lenders will also review these governing documents to determine whether the building is sound financially or is in compliance with their commercial lending programs.