



Conditional Sale Contingencies

BUYER & SELLER GUIDE

BY SARA KURZ

What is a conditional sale?

A *conditional sale* is a contingency in a purchase contract requiring that a home or property sell in order for the Buyer to close. Typically, it's because the Buyer need funds from that sale in order to purchase a new home or property. It creates a chain of events that have to happen in order for the current property to close. Sometimes we see multiple conditional sales in a series of transactions, which means that a termination or requested extension in any one of those transactions could drastically affect all of the others.

A *conditional sale deadline* is the date in the transaction that the Buyer has to sell (i.e., close on) the conditional property. It is not the date the property is put on the market or the date it goes under contract (pending). Most of the time, it is 5 – 10 days before the Closing date (because the buyer will need the proceeds from that sale in hand in order to then deliver funds required for the new sale).

The conditional sale deadline date is designated in section 3.1 Dates and Deadlines in the Purchase Contract. If the Buyer doesn't close on the conditional property by that date, they have two options: ask the Seller for an deadline extension or terminate the purchase Contract on the new property. If the Buyer wishes to or has to terminate the contract on the basis of not successfully selling the conditional sale property, their earnest money should be

returned in full as long as they terminate on or before the Conditional Sale Deadline.

Here is the exact language in section 10.7 of the Colorado purchase contract:

“10.7. Conditional Upon Sale of Property. This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as [address inserted here]. Buyer has the Right to Terminate under §24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before Conditional Sale Deadline if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before Conditional Sale Deadline, Buyer waives any Right to Terminate under this provision.”

How it affects Sellers

The positive about a contract with a conditional sale is that they are often times cash offers (i.e., no loan/financing). The negative is that a conditional sale contingency can put a condition in your contract that is completely out of your control. The sale of the conditional property is its own transaction outside of yours with the potential to A.) not sell during the time frame the buyer has requested B.) terminate for any reason or C.) require an extension or time frame adjustment that can affect the time frame on your sale.

The conditional sale deadline is usually the last deadline in the purchase contract (unless the

buyer is obtaining financing), which means that all of the Buyer's due diligence, inspections and investigations are already passed. For example, the deadline could be on day 70 of a 75 day transaction period, which could be devastating or frustrating if your purchase contract falls through that late in the game. Sometimes conditional properties are local and with familiar agents; other times, they are in another state.

If there is a conditional sale contingency in a purchase contract that you are considering, ask your REALTOR® to find out:

1.

How long is the conditional sale period (i.e., what is the conditional sale deadline)? Does that contract have any timing conditions that don't line up with your needs/purchase contract conditions?

2.

Is the conditional property on the market yet? If so, how long has it been on the market and what has the showing and interest activity been like?

3.

Is the conditional property under contract already? When is it scheduled to close? When does that contract go hard (i.e., when are all of the inspections and contingencies over with)?

Seller considerations

The ideal scenario is that the conditional property is under contract already and passed their contingencies or near their contingencies. The toughest scenario is when there is a conditional sale contingency AND a financing contingency.

Why accept an offer with a conditional sale? When can a conditional sale work in your favor? Sometimes a conditional sale can give you the time and flexibility if you need an extended amount of time to move out, enjoy the house for a little while longer or find your own replacement property. In many cases, conditional sales are cash offers, which have no financing or appraisal contingencies. If you are in a multiple offer situation, sometimes we have to weigh the difference between an offer with a conditional sale versus an offer with financing, especially if there is any concern about the property appraising for the purchase price

(in that case, the conditional sale might be more appealing).

Ultimately, conditional sales require extra diligence and deadline management from your listing broker and the selling broker. Hopefully the selling broker is involved in the conditional sale transaction, but they may not always be (especially when the conditional property is not local), so there could be even more brokers involved. Therefore, as the seller, it is helpful to be as flexible as possible, but it is also important to know and understand all of the deadlines involved in not just your transaction, but in the other one as well.

It is also wise to consider the position the buyer is in and how a conditional sale affects their living situation and what they might need timing-wise in order to move from one house to the next. Please see the next section for more details there.

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How it affects Buyers

You may need to sell your home or property in order to have the funds needed to make your next purchase. That is very common among primary homeowners. As mentioned in the Notes for Sellers section, Sellers are often more comfortable accepting an offer with a conditional sale contingency if your current property is already on the market and, ideally, under contract already. But, the reality is, not all buyers are comfortable putting their existing home on the market, especially if it is their primary home, until they know where they are going.

Offers with conditional sale contingencies tend to be or need to be strong offers in order to get the Seller's attention and to incentivize them to accept, especially if the Buyer is in a multiple offer situation. Strong offers are usually close to, at or over the asking price. It helps if your offer is cash and not contingent upon financing. You can use other tools, such as offering the Seller a post-closing occupancy period or other creative methods that helps the seller achieve their goals/needs. A savvy REALTOR® will ask the listing broker the right questions to identify what other primary conditions are most important to the Seller so that you can do your best to meet them and make the conditional sale a secondary or lesser concern.



Buyer considerations

Additional considerations if you are the Buyer:

1.

Discuss the pros and cons of looking for a new home first or listing your existing home first. If inventory is low, you might want to start your search first. You can always start prepping your home for sale (i.e., clean up, repairs, decluttering) so that you are ready to list when the time comes.

2.

Also keep in mind that conditional sales can also go forward from your position in line (not just backwards!). You may encounter a seller who needs to sell the home you want to purchase in order for them to purchase their next property. So, your purchase contract may be conditional on getting the seller's new purchase transaction to the finish line. In that case, be sure to ask your REALTOR if your Seller has identified a replacement property, if it is already under contract and when it is scheduled to close.

3.

Timing with conditional sales and closings can be difficult to align perfectly, especially if there are more than one in a row. You (or a seller with a replacement property condition) may need to find a short term rental or stay with some friends for a period of time for things to work. You may even have to store your belongings temporarily or rent back your home from the new buyer after Closing so that you have the funds to close on your new property, but also have time to move out. Make sure your REALTOR is aware of your living situation and what your needs are during any transitional times that might arise.

Ultimately, a conditional sales contingency is a reality for both parties. I have written this blog because we are seeing a lot of them right now. While they do create a unique challenge, they can work to everyone's advantage and end up in successful sales. I've seen many conditional sale offers not only get accepted but close smoothly with everyone's help, patience and diligence. As my client, we will, of course, discuss conditional sales as they come up. Please feel free to reach out to me with any questions or concerns along the way!



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