

Examples of Contractual Clauses

Although a real estate agent may not legally draft a contract, he or she has the responsibility of filling out a preprinted sales contract in a manner that protects the interest of the client. When filling out a contract, licensees should be careful not to practice law by drafting too much legal language into an addendum or purchase contract. Below are a few examples of contractual clauses that may be of assistance. These clauses have been approved by the attorneys serving on the association's Forms Committee.

Additional Fees Charged by Condominium or HOA Management Companies

Other than a fee for the condominium Seller Certification in paragraph 20, any fees charged to the title company or closing attorney by the management company for the condominium or homeowner's association, shall be charged to (check one) Buyer or Seller or shared equally by Buyer and Seller.

Back Up Offer

This offer is submitted as a back-up offer, which means the property is subject to a previously accepted offer which has priority over this offer. If the previously-accepted offer is properly terminated and notice has been delivered to Buyer, this offer shall become the active, working Contract. All contractual time periods related to financing, inspections, and closing shall be calculated from the date Seller notifies Buyer, in writing, that Buyer's offer is the active, working Contract (notification date not included).

OR

This offer is submitted as a back-up offer, which means the property is subject to a previously accepted offer which has priority over this offer. If this offer is accepted, Buyer retains the right to continue looking for other acceptable properties. If Buyer finds another acceptable property before Seller has informed Buyer, in writing, that this back-up offer has become the primary offer, Buyer shall deliver written notice of termination. If the previously-accepted offer is properly terminated and notice has been delivered to Buyer, this offer shall become the active, working Contract. All contractual time periods related to financing, inspections, and closing shall be calculated from the date Seller notifies Buyer, in writing, that Buyer's offer is the active, working Contract (notification date not included). If this offer is terminated under this provision, both parties agree to sign a mutual release, returning the Earnest Money Deposit to Buyer. Time is of the essence as to this provision.

Closing Costs

Notwithstanding anything contained in paragraph 3, Seller agrees to credit Buyer at Closing \$_____ (or _____% of Purchase Price) toward the Buyer's Closing Costs, Prepaid Items and/or Miscellaneous Expenses (which shall not include fees or commissions to a real estate Broker.)

Contingency For Seller to Purchase/Lease Another Property

Buyer and Seller acknowledge that Seller’s proposed sale of the Subject Property may depend upon Seller’s ability to purchase or lease suitable replacement housing. Therefore, Buyer and Seller agree as follows:

Seller’s Right to Terminate, Expiration and/or Waiver Thereof. If Seller is unable to procure a fully executed contract for the purchase or rental/lease of replacement housing suitable to Seller by _____ (“Seller Contingency Date”), then Seller may terminate this Contract by delivering notice of same to Buyer no later than 5:00 pm EST on the Seller Contingency Date. Both parties agree to then sign a mutual release, returning the Earnest Money Deposit to Buyer. If, however, Buyer does NOT receive from Seller written notice of termination by 5:00pm EST on the Seller Contingency Date, then this Contingency shall be deemed waived by Seller and shall become null and void and of no effect. Seller may also waive and/or nullify this Contingency by delivering written notice of such waiver to Buyer at any time. In the case of such waiver or expiration of the Contingency, this Contract shall continue in full force and effect as if this Contingency never existed. Buyer and Seller agree that **“Time is of the Essence”** as to all provisions of this Contingency.

Buyer and Seller agree to the following additional terms and conditions in relation to the Contingency hereinabove (write “NONE” if applicable)

Contingency of Closing

This Contract is contingent upon the closing of Buyer’s Property located at _____, currently under contract and expected to close _____. If, despite the good faith efforts of the Buyer to close on Buyer’s Property, the closing on Buyer’s Property does not occur pursuant to the Contract, Buyer or Seller may void this Contract with written notice to the other party and both parties must sign the release. The Earnest Money Deposit shall then be refunded immediately to Buyer.

Disclosure of an Interest-Bearing Escrow Account and To Whom the Interest Will Accrue

Kentucky law allows you to place Earnest Money Deposit in an interest-bearing account so long as you disclose in writing to whom the interest will accrue. Please see KRS 324.111(2). You can use the following clause if the parties request the money to be placed into an interest-bearing account.

Buyer and Seller hereby authorize _____ (broker name here) to place the Earnest Money Deposit in an interest-bearing escrow account at _____ (bank here). The interest will accrue to the _____ (Buyer/Seller/broker).

Disclosure of Status as Licensee

If you are purchasing or selling a property, you must disclose your status as a licensee to comply with KRS 324.160(4)(e). You may use the following clause.

_____ (insert name of licensee) is a (Buyer/Seller/investor) in this transaction.
_____ (insert name) is a licensed real estate (agent/broker) in the State of Kentucky and is representing _____ (himself/herself/the Buyer/the Seller/both parties) in this transaction.

If you are not acting in a representative capacity (such as selling your own property without a listing or buying a piece of property without accepting a commission), but only as an individual, you may use this language:

_____ (insert name of licensee) is a (Buyer/Seller/investor) in this transaction.
_____ (insert name) is acting in an individual capacity only and is not representing (himself/herself) or any other party in this transaction.

Survey Contingency

Buyer reserves the right to have the property surveyed at Buyer's expense. This Contract is contingent on the Buyer's sole satisfaction with the results of the survey.

OR

This Contract is contingent upon a survey satisfactory to Buyer. Buyer has _____ days to notify Seller in writing if Buyer wishes to void the Contract or request corrections based upon the results of the survey.

Undisclosed or "Straw" Purchaser

The following clause could be used in situations in which Buyer does not want to be revealed to Seller. The first clause could be used when there is a "straw" Buyer standing in for the actual Buyer. The second clause could be used when Buyer just does not want to be disclosed. If you are going to sign on behalf of Buyer in scenario number 2, the Commission advises you to obtain a power of attorney through an attorney and specifically outline the duties Buyer has authorized you to perform.

Buyer is acting on behalf of an undisclosed purchaser. Buyer has written authority from the undisclosed purchaser to enter into this contract on behalf of the undisclosed purchaser and to bind the undisclosed purchaser to this agreement, if accepted.

OR

Buyer wishes to remain anonymous. The agent representing Buyer hereby declares that he/she has a written agreement from Buyer in which Buyer promises to be bound by the terms and conditions of this Contract, if accepted. This agreement also authorizes the agent representing Buyer to sign on behalf of Buyer and to bind Buyer to this Contract, if accepted. This agreement is hereby made a part of this Contract by addendum and will be attached to the Contract upon acceptance. Seller hereby acknowledges that he/she accepts this Contract without knowledge of Buyer's identity.

Buyer Releasing Contingency Notification to Seller

The Contingency on the Sale/Closing of Buyer's Property contains a contingency for the Sale and Closing of Buyer's Property located at _____.
Buyer hereby releases the contingency for the *sale* of Buyer's Property. The contingency for the *closing* of Buyer's Property remains in effect. All other terms and conditions remain the same.

Homeowner's Insurance

Completion of this transaction shall be contingent upon the Buyer's ability to obtain a favorable written commitment for homeowner's insurance within ___ days after acceptance of this Agreement. Buyer should consult with one or more insurance agents regarding optional, or additional, coverage.

Seller Paid Compensation

Buyer and Seller hereby agree that Seller shall pay a compensation of ___% of the agreed Sales Price to the Buyer's Broker at closing. This payment shall be made in accordance with the closing and settlement procedures.