

### CONDITIONS PRECEDENT (SUBJECT TO CLAUSES)

A condition precedent, known more widely as a "subject to" clause, is a condition that must be satisfied before the contract comes into force. Most real estate contracts contain such clauses.

In a quickly rising and active market there will always be buyers who try to tie up a property (in the hopes of flipping it) for thirty days or so with a clause like "subject to the purchaser arranging financing within 30 days". This leaves the purchaser with an awful lot of flexibility but it isn't much of a bargain for the vendor.

Adding the words "or sooner" is a waste of time, too, because it adds nothing to the agreement. On the other hand, the purchaser has to have some room to maneuver. So what can you do, as a vendor, to protect yourself?

There are basically four ways to protect your vendor when a condition precedent like that is being included.

First, you should provide in the purchase contract a specific time within which the condition is to be removed (the 30 days mentioned above was merely an example). What constitutes a reasonable period of time for removal of a financing condition will depend on the location and type of property as well as the type of financing that the purchaser is applying for. Usually one week or so is sufficient time for an application to be made to a bank and a decision received back.

If the time limit approaches and the financing is almost through most vendors will want to extend the limit. While some may suddenly get cold feet and want to back out, most won't want to blow what is so close to being a "done deal" and have to start hunting for a buyer again. Of course, in a rapidly rising market time limits become much less flexible

The third way to protect yourself as a vendor is with a 72 hour clause. Of course, the 72 hours could be 48 hours or 96 hours or whatever. The principle is the same. It is a clause which one party can invoke by fulfilling the condition (such as having another offer on the table from another prospective purchaser). It starts the clock running so that the first buyer has the agreed amount of time within which to fulfill the condition precedent.

A 72-hour clause is particularly handy when that another less conditional or more attractive offer comes in. It is also much better than tying up a property in which there is a great deal of interest or which the vendor is anxious to sell. While back up

offers are very nice for the vendor, they aren't too popular with purchasers who don't want to wait in line for a potential purchase.

The fourth way to protect the vendor's position when a condition precedent is inserted in a purchase contract is to include a covenant by the purchaser to do their utmost to satisfy the condition. While such a term may not seem too high powered or forceful at first glance (if only because it isn't), it will at least give the vendor a leg or two to stand on when the purchaser is dragging his feet and the vendor wants to build a fire under his tail to get him moving.

Generally, "subject-to's" are for the benefit of the purchaser. Therefore, it only stands to reason for a vendor to try to limit the number and scope of the subject-to's in the contract. The fewer conditions there are to be satisfied before the contract is binding, the closer it is to a "done deal" and a purchase and sale.