



NEI's Real Estate Report

NEIRealty.com

Published Monthly By Anthony Newman of NEI Realty

 **MARCH 2005**
"Happy St. Patrick's Day"

Understanding The Kick-Out Clause

by Benny L. Kass

Question: Although we are being told that this is a strong real estate market, our house has been on the market for some time. Finally, we received an offer from a nice couple, but unfortunately, they cannot afford to buy our house unless they sell their house first. We would like to work something out with this couple, but are concerned about taking our house off the market for an indefinite period while the buyers try to sell their house. How do you resolve this dilemma?

Answer: While no one likes to sign contracts that are contingent on the purchasers' ability to sell their own house, unfortunately it is now a fact of life that must be recognized by every buyer and seller. With house prices having increased dramatically during the last few years, more and more buyers find that they can only qualify to buy a more expensive house if they first sell their current residence.

Generally speaking, when buyers present an offer to purchase, they can include a contingency for the sale of their house. This is known as a "contingent contract." In simple English, this means that if the specified event does not occur -- in this case the buyers do not sell their house -- then the contract to purchase the new property becomes null and void and the purchasers are entitled to a full refund of any earnest money deposit.

Needless to say, as you have suggested, sellers do not want to take their house off the market for an indefinite period.

Accordingly, a compromise has been developed, which is known as a "kick-out" clause. Under this arrangement, the sellers add language to the real estate sales contract stating that while they are willing to accept a contingency contract based on the purchasers' selling their current house, the sellers will continue to market their house. If another qualified buyer is found, the seller will give the current purchaser a certain amount of time -- usually 72 hours -- in which to remove the contingency (i.e. keep the contract alive) or exercise the contingency and decide not to purchase the new property.

This kick-out clause has to be carefully drafted. If the potential purchasers are confronted with the 72 hour kick-out period, and decide to delete the sale contingency, they may still be able to get out of the original contract if they cannot get financing. Keep in mind that most standard sales contracts also contain another contingency on the ability of the purchaser to obtain the necessary financing.

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10 Important Tips to Successful Real Estate Investing

by Unknown Author

When it comes to investing, everybody has certain goals and aspirations. However, we have found that there are certain guidelines every aspiring real estate investor needs to know:

1. Compare Property Values and Rents

Financial statistics only go so far; the best measure of a property's market value is often the sale prices of nearby properties. The same holds true for area rents. A low price can often be justified by a reasonable rent; renters who can afford a high rent can afford to buy instead, so reasonably priced rent is a need.

2. Be careful - Tax laws may change

Don't base your tax investment on current tax laws. The tax code is constantly changing, and a good investment is a good investment regardless of the tax code. The right property with the right financing is what you should look for as an investor.

3. Specialize in something you Know

Start in a market segment you know. Whether you focus on fixer-uppers, foreclosures, starter homes, low-down payment properties, condominiums, or small apartment buildings, you'll benefit from experience by specializing in one aspect of investment real estate properties.

4. Know the Costs going in!

Know the financial statements inside out. What are operating expenses? What are loan payments? Vacancy costs? Taxes? What does the cash flow statement look like? These are key issues that must be addressed before making a solid investment.

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RECENT HOME SALES IN OUR AREA

Address	Bed/Bath	Sales Price	Sale Date
4137 Terraza Drive	3/2	\$735,000	12/17/04
3909 S. Ridgeley Drive	3/1	\$568,000	12/06/04
3931 S. Ridgeley Drive	3/1	\$520,000	1/21/05
5615 Aladdin Street	1/2	\$455,000	12/23/04

Thinking of buying or selling a home
in the near future, please call
ANTHONY NEWMAN
for a personal interview and property
assessment with no obligation.

MARCH CALENDAR

8 International Women's Day



17 St. Patrick's Day



20 Vernal Equinox
(Beginning of Spring)



Palm Sunday

25 Good Friday



27 Easter



ANTHONY NEWMAN

Office: 310-338-1245 · E-mail: Anthony@neirealty.com

Thinking of buying or selling a home in the near future, please call **ANTHONY NEWMAN** for a personal interview and property assessment with no obligation.

CONT'D FROM PAGE 1 - "UNDERSTANDING THE "KICK-OUT" CLAUSE"

This creates a dilemma for both parties. If the purchasers remove the sale contingency but still have the financing contingency in the contract, it is probable that a lender will not give a binding loan commitment to the purchasers unless they sell their house first. Thus, the mere removal of the sale contingency does not meet the seller's needs. The purchaser can still find an excuse to back out of the contract, based on another contingency in the contract.

Thus, sellers should include at the very least the following language in any kick-out clause:

The parties agree that sellers' property shall remain on the market during the above contingency period. If the purchaser does not remove the above contingency and provide evidence satisfactory to sellers in their sole discretion of purchaser's ability to perform under the terms herein within (a specific number of) hours after receipt of written notice that seller has accepted a secondary contract, purchaser's deposit shall be promptly returned in full, and this contract shall be null and void.

Under this contractual arrangement, the potential purchaser has the right to delete the contingency and go forward with the purchase. But the purchasers also have to demonstrate, to the satisfaction of the seller, that they are financially able to qualify for the loan. In many instances, the purchasers will not be able to satisfy the seller, because they obviously do not have the funds to permit them to go forward with the purchase.

From the sellers' point of view, this is an acceptable arrangement. Although the sellers have signed a contract, in effect they are keeping the house on the market. The sellers have the right to continue to show it to other potential purchasers, and have the right to take back-up contracts if possible.

If you are dealing with a real estate agent, insist that the agent continue to market your house even after you have signed the first contract.

From the buyer's point of view, the kick-out clause is also an acceptable compromise -- but obviously is subject to abuse. The buyer can understand that a seller is reluctant to take the house off the market when the contract is subject to a selling contingency. On the other hand, if a seller obtains a higher price for the house from a third party, the seller has the ability to be arbitrary by using the excuse that the current purchaser is not financially able to purchase, thereby giving the seller the right to sell to a third party.

The kick-out clause is a compromise for both parties, and has become an acceptable practice in the real estate arena.

However, the sellers should also insist that the buyer immediately begin to market their own property -- whether it be through a real estate firm or on their own. Specific language should be included in the contract that if the purchaser does not begin to market the property within a reasonable period of time -- for example 5 days -- then the seller has the right to void the contract and look for another buyer.



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When following a low saturated fat and cholesterol diet, enjoy an abundance of grains, vegetables, and fruits, which are all naturally low in saturated fat and free of dietary cholesterol. Choose a variety of lean meats, skinless poultry, low fat and nonfat dairy foods, and heart-healthy fats and oils. This chart can help you make food selections that are kind to your heart.

Food Groups	Enjoy Adequate Amounts of	Limit
Grains	Breads, brown and regular rice, ready-to-eat flaky whole grain cereals, pasta, oats, tortillas, pita bread	Baked goods made with unhealthy fat
Vegetables	All fresh, frozen, and canned vegetables	Vegetables topped with cream sauces, whole milk cheese, and butter
Fruits	All fresh, frozen, and canned fruits	Fruits topped with cream
Dairy Foods	Nonfat and lowfat milk and yogurt, reduced fat and lowfat cheeses and light ice cream	Whole milk, 2 percent milk, whole milk cheeses, and full fat ice cream

For complete list visit foodtv.com

CONT'D FROM PAGE 1 - 10 IMPORTANT TIPS TO SUCCESSFUL REAL ESTATE INVESTING

5. Know where your tenants are coming from

If the last rent increase was recent, your tenants may be considering a move. If tenants have a short-term lease, they may be living there simply to attract unsuspecting buyers. It is also important to collect the tenants' security deposits at closing.

6. Assess the tax situation

Taxes are an integral part of successful real estate investing, and they often make the difference between a positive cash flow and a negative one. Know the tax situation, and see how it can be manipulated to your advantage. It may be a good idea to consult a tax advisor.

7. Investigate insurance coverage

If seller's coverage is based on lower-than-current replacement value, your insurance cost may increase when you pay a higher purchase price.

8. Confirm Utility Costs

Ask the local utilities to verify recent utility expenses, especially if any of these costs are included in your tenant's rent.

9. Consult Your Accountant

Taxation is a key element of successful real estate investing, so be sure to find an accountant who is well-versed with the constantly evolving tax code.

10. Inspect!

Make sure that you always perform a thorough inspection of the property before buying it. Never, ever buy any property without at least examining the site. In some cases, hiring professional inspectors to examine the structural mechanical system may be a sound investment.

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**Call ANTHONY today for your FREE Market Analysis:
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