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Country contingencies can differ from those in the suburbs and cities

By Curtis Seltzer

Landthink contributor

(This is the fourteenth in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

In an earlier column, I discussed the broad concept of a buyer using a contingency in a purchase offer to get a seller to disclose information, provide warranties about the property that will survive closing and make-good on things covered by such warranties. The make-good feature of a contingency is simply an extension of a seller's obligations to "fix," if necessary, something warranted under a General or Limited Warranty Deed.

Suburban buyers are familiar with two types of contingencies: home inspection and financing. Contingencies should be worded so that it is up to the buyer to decide whether the results of the investigation or other requirement is acceptable enough to proceed with the purchase. If the results are unacceptable, the buyer should be allowed to void his offer and have his deposit returned promptly and without penalty.

As a rule, however, I advise clients to do as much research as possible before submitting an offer. Pre-offer research helps buyers get their offering money right. But a contingency is sometimes needed when the seller is asked for confidential information or to provide access to the property.

Contingencies are generally set up to either allow a buyer to investigate one or more features of a property or have the seller do something. The buyer usually pays for the costs of research contingencies.

Here are some common issues in country real estate that I've seen as the subject of contingencies. This list is illustrative, not exhaustive:

#### Improvements

Residence. House inspection by certified inspector.

Inspection of condition and operation of barns and other out-buildings

Suitability of soil for new construction

Obtain estimates to build or remodel.

#### Infrastructure

Inspection of existing septic system. (Design and capacity will be on file with local agency that issued the construction permit.)

Percolation test. Contingency allows buyer to test soil for conventional septic-system site. Testing methods differ, but usually require a backhoe and a soil specialist. A conventional system is about 1/4th the cost of a

“constructed” septic system.

Quality and quantity of household water. Quality is determined by taking a water sample and having it thoroughly tested for both organic and inorganic substances, not just bacteria.

Cost of installing new utilities to house or house site.

Boundary survey or having a surveyor perform some specific task that’s of concern. One common contingency is to have a surveyor confirm acreage and boundaries using a deed-mapper program. I recommend against buyers splitting the cost of a survey with sellers.

Clearing up a physical or legal access road issue.

Having the seller resolve a boundary encroachment with neighbor.

Condition of road or bridge

Environmental and natural resources

Test agricultural soils for productivity and qualities.

Examine fields and forests for condition, pests, blights, infestations, etc.

Have a consulting forester perform a walk-through or cruise to inventory the seller’s timber and determine its quality and condition.

Perform tests to determine extent of wind resources or subsurface minerals, such as oil, gas, coal or non-energy minerals

Test water for quality, quantity and reliability for agricultural applications

Look into risks from natural hazards, such as earthquake, flood, coastal flooding, tornados, hurricanes, landslides, lightning, fire, drought, etc.

Regulatory issues that would limit buyer’s use of the property, such as the presence of wetlands, endangered species or archeological resources

Tests for air, water or land pollutants

Wildlife/game inventory

Zoning and other administrative/legal actions.

Sale contingent on property being rezoned to allow division, different use or new agricultural activity. Seller gets rezoning; buyer pays costs.

Sale contingent on state highway department issuing new-entrance permit

Contingent on seller warranting that the property is free of unrecorded encumbrances and claims of adversity, along with a promise to defend

the buyer against such claims and make the buyer whole if necessary

Contingent on getting Homeowner Association approval for something

Contingent on getting preliminary approval for a conservation easement, organic certification or land-use designation (which reduces property tax)

Contingent on getting acceptable answers from owners of minerals regarding their development plans

Contingent on obtaining an easement to cross a neighbor’s property, often used for access roads and utilities

Financial

Examination of farm tax returns, annual production records, timber records or mineral royalties

Preliminary approval or green light for participation in some federal program  
such as conservation cost-share or crop subsidy

Financing for purchase of property and operating capital

Purchase of some other property/asset the buyer needs to go with seller's

Property