
Real Estate Contract Terms

A Plain-English Guide for Home Sellers

Prepared by
Matt Warbet
Keller Williams Realty

mattwarbet@kw.com | 917-834-0159

Selling your home means signing a contract full of terms you probably haven't seen before. This guide breaks down the 20 most common contract clauses so you know exactly what you're agreeing to. Understanding these terms helps you protect yourself and make informed decisions about one of your biggest financial transactions.

1. Purchase Price

What it means: The number both sides agree to. This is the starting point for everything else in the deal.

Why it matters to you: The purchase price sets the foundation for your entire transaction. Make sure the number on the contract is exactly what you negotiated. Once you sign, this becomes the official agreed-upon amount. The buyer's mortgage approval, appraisal, and closing costs all depend on this number. If the number is wrong, it affects everything downstream.

2. Earnest Money (Good Faith Deposit)

What it means: Money the buyer puts down to show they're serious. Usually 1-3% of the price. Goes into an escrow account.

Why it matters to you: Earnest money gives you a financial safety net. If the buyer walks away without a valid reason, you keep this money as compensation for taking your home off the market. The more earnest money, the more committed the buyer is. However, if the buyer has a legitimate reason to cancel (like a failed inspection contingency), they get their money back.

3. Down Payment

What it means: The portion the buyer pays upfront (not financed). Don't confuse this with earnest money, they're different.

Why it matters to you: The down payment and earnest money are not the same thing. The earnest money is a small deposit (usually 1-3%) that goes into escrow and is credited toward the down payment at closing. The down payment is the total amount the buyer puts toward the purchase (often 10-20%). A larger down payment means the buyer has less to finance, which usually means a stronger, safer deal.

4. Mortgage Contingency

What it means: Gives the buyer a set number of days to get approved for a loan. If they can't, they can walk away and get their deposit back.

Why it matters to you: This contingency protects the buyer but creates risk for you. If the buyer's loan falls through, you have to return their earnest money and start over. However, a buyer with pre-approval or a strong mortgage application reduces this risk. The standard mortgage contingency period is 21-30 days. Push to make this deadline tight if possible. If the buyer misses the deadline, this contingency expires and they lose the right to cancel based on financing.

5. Inspection Contingency

What it means: Lets the buyer hire an inspector. After the inspection, they can ask for repairs, a credit, or walk away if something big turns up.

Why it matters to you: Inspections are standard and you should expect one. The buyer gets a set number of days (usually 7-10) to conduct the inspection and decide what to do next. They can ask you to make repairs, give them a credit at closing, or cancel the deal. Disclose any known issues upfront to avoid surprises. If something is found during inspection that you didn't disclose, it strengthens the buyer's position to renegotiate. The inspection contingency deadline is critical. If the buyer misses it without taking action, they lose the right to cancel on inspection grounds.

6. Appraisal Contingency

What it means: The bank orders an appraisal to confirm the home is worth what the buyer is paying. If it comes in low, the buyer can renegotiate or cancel.

Why it matters to you: The appraisal is the bank's insurance policy. If the appraisal comes in below the purchase price, the buyer's lender won't give them the full loan amount. The buyer can then ask you to lower the price, or they can walk away. You have no control over the appraisal, but overpricing your home increases the risk of this happening. If the appraisal comes in low and the buyer walks, you've lost time and must start over.

7. Title Search and Title Insurance

What it means: A title company checks that you actually own the property free and clear. Title insurance protects the buyer (and their lender) if something was missed.

Why it matters to you: Title issues can derail a deal. The title company searches public records to make sure there are no liens, mortgages, or other claims against your property. Title insurance covers the buyer and their lender if a claim appears later. Make sure all liens from prior mortgages or contractors are paid off before closing. If you have any title concerns, disclose them to the buyer's title company as soon as possible.

8. Time is of the Essence

What it means: This clause means deadlines in the contract are firm. Miss one, and the other side can claim you're in breach.

Why it matters to you: Deadlines matter. If the contract includes this language, missing a contingency deadline or closing deadline is serious. The other side could cancel the deal or sue you for breach of contract. Mark all deadlines clearly on your calendar. Communicate with your agent and attorney about each deadline. If you need an extension, ask the buyer in writing before the deadline passes, not after.

9. Closing Date

What it means: The date ownership officially transfers. Both sides need to be ready with paperwork and funds by this date.

Why it matters to you: The closing date is your exit date. All contingencies should be resolved well before this date. Make sure you have a place to move to and that all your logistics are planned. The title company will send you closing documents to review before the actual closing appointment. You'll sign paperwork transferring the deed and receive your proceeds (the sale price minus costs). If either side isn't ready on the closing date, it's a breach of contract. Keep your schedule flexible to avoid missing the closing.

10. Property Condition Disclosure

What it means: In New York, sellers either fill out a disclosure form or give the buyer a \$500 credit. Most sellers take the credit to avoid liability.

Why it matters to you: You have two choices here. You can complete the official disclosure form, answering questions about the condition of the property, or you can elect to give the buyer a \$500 credit and skip the form. Most sellers take the credit because it limits your liability for misrepresentations. If you do fill out the disclosure, be honest about known issues. Hiding problems creates legal liability after the sale. The \$500 credit is deducted from your proceeds at closing.

11. Lead Paint Disclosure

What it means: Required by federal law for homes built before 1978. You must tell the buyer about any known lead paint.

Why it matters to you: This is federal law, not optional. If your home was built before 1978, you must disclose whether you know of any lead paint. You must also give the buyer a federally approved lead disclosure pamphlet. Failing to disclose known lead paint creates major legal liability. The buyer gets a 10-day period to conduct a lead inspection if they want to. If your home doesn't have lead paint disclosure issues, state that clearly on the paperwork.

12. Fixtures vs Personal Property

What it means: Fixtures stay (built-in shelves, light fixtures, curtain rods). Personal property goes with you (furniture, portable appliances). Get specific in writing.

Why it matters to you: Don't assume the buyer knows what stays and what goes. Built-in items (countertops, cabinet hardware, ceiling fans, appliances) typically stay unless you specify otherwise. Items you plan to keep (family heirlooms, portable AC units, lawn equipment) should be listed as excluded property in the contract. If a dispute comes up at closing about what was supposed to stay, it can delay everything. Be specific. For example, if the dining room chandelier is a family piece, say so in writing.

13. Seller Concessions

What it means: When the seller agrees to cover some of the buyer's closing costs. Common ask, usually 2-3% of the sale price.

Why it matters to you: Concessions reduce your net proceeds but can make your deal more attractive to buyers. Buyers often ask for concessions to cover closing costs, inspections, or repairs. Lenders typically allow sellers to pay up to 2-6% of the sale price in concessions (depending on the loan program). If the buyer asks for concessions, factor them into your bottom line. A concession of \$10,000 on a \$500,000 sale equals 2%. Negotiate this carefully because it comes directly out of your pocket.

14. Representations and Warranties

What it means: Statements you make about the condition of the house. If something you said turns out to be false, the buyer could come back at you after closing.

Why it matters to you: Be truthful in all representations. If you say the roof is 5 years old when it's actually 10, the buyer could sue you for breach of warranty after closing. Review everything you say about the property for accuracy. Only confirm things you actually know. If something was repaired or replaced, keep the receipts and tell the buyer about it. Honesty protects you legally and builds trust with the buyer.

15. Default and Remedies

What it means: What happens if either side breaks the contract. Usually involves keeping the earnest money or going to court.

Why it matters to you: If the buyer defaults (fails to close or meet obligations), you keep the earnest money as compensation. If you default (fail to sign documents or close on time), the buyer can sue you or keep the earnest money and walk away. Understand what actions constitute a breach. Missing a deadline, refusing to sign, or not having title at closing are all breaches. Stay in compliance with every obligation in the contract.

16. Merger Clause

What it means: Says that once you close, the contract is done. The buyer can't come back later claiming you promised something verbally that wasn't in writing.

Why it matters to you: This clause protects you after closing. Once the deed transfers, the contract is finished. The buyer can't later claim you promised to fix something or include something unless it's written in the contract. Everything important should be in writing. Don't make verbal promises that you don't want in writing. After closing, you have very limited liability for anything not in the written contract.

17. Contingency Deadlines

What it means: Each contingency has a deadline. If the buyer doesn't act by the deadline, the contingency expires and they lose that protection.

Why it matters to you: Contingency deadlines are crucial. The buyer has a set number of days to hire an inspector, get mortgage approval, etc. If they miss the deadline without extending it, that contingency is gone. You move closer to having a firm contract. For example, if the inspection contingency deadline is day 10, the buyer must either conduct an inspection and make requests by day 10, or lose the right to ask for repairs or cancel. Track these deadlines carefully with your agent.

18. Attorney Review Period

What it means: In New York, both sides get a 3-day review period after signing. Either attorney can cancel or request changes during this window.

Why it matters to you: In New York, contracts typically include a 3-day attorney review period. This means even after both sides sign, either attorney can review the contract and request changes or cancel the deal. This period creates uncertainty in the first few days. After the 3-day attorney review period expires, the contract becomes binding and the contingencies begin. Know your state's rules. Some states don't have an attorney review period, so this may not apply to you.

19. Escrow

What it means: A neutral third party holds money and documents until all conditions are met. Protects both sides from the other acting too early.

Why it matters to you: Escrow is your protection. The earnest money goes into an escrow account held by a neutral party (usually the title company or a broker). Neither you nor the buyer has access to this money until closing or until the contract is resolved. If the deal falls apart, the escrow agent decides based on the contract and written instructions who gets the money. This prevents the buyer from controlling your deposit. Make sure the escrow instructions are clear and consistent with the contract.

20. Proration of Taxes and Utilities

What it means: Divides property taxes, water bills, and similar costs between buyer and seller based on the closing date. You pay your share up to closing day.

Why it matters to you: At closing, expenses get split based on how many days you and the buyer each owned the property. If you close mid-month, you pay property taxes, water, sewer, and utilities for the days you owned it. The buyer pays for their days. The title company calculates this at closing and adjusts the proceeds accordingly. If property taxes are due soon after closing, you'll be credited at closing for your portion. Understand your current tax bill and utility situation so there are no surprises at closing.

Quick Reference: Contract Terms at a Glance

Watch These Closely

- **Mortgage Contingency Deadline** - If the buyer misses this, they lose the right to cancel based on financing issues.
- **Inspection Contingency Deadline** - If the buyer misses this, they lose the right to ask for repairs or cancel based on inspection findings.
- **Appraisal Contingency** - A low appraisal can force renegotiation or give the buyer an exit.
- **Earnest Money** - Your financial protection if the buyer walks away without cause.
- **Title Issues** - Must be resolved before closing. A title problem can stop the sale.
- **Disclosure Decisions** - Choose between completing the disclosure form or taking the \$500 credit. This affects liability.
- **Fixtures vs Personal Property** - Get specific in writing about what stays and what goes.
- **Seller Concessions** - These reduce your net proceeds. Negotiate carefully.

Standard Clauses (Typical and Expected)

- Purchase Price
- Down Payment
- Closing Date
- Property Condition Disclosure or \$500 credit
- Lead Paint Disclosure (for homes built before 1978)
- Title Search and Title Insurance
- Representations and Warranties
- Time is of the Essence
- Default and Remedies
- Merger Clause
- Escrow arrangements
- Proration of Taxes and Utilities
- Attorney Review Period (in New York)

Ready to Sell?

Contact Matt Warbet today for a free consultation

mattwarbet@kw.com | 917-834-0159

Keller Williams Realty