

# How to Avoid the Common Legal Pitfalls When Selling Your Home

By Attorney Melissa M. Tzanoudakis  
Lyons & Tzanoudakis, LLP

The buying and selling of a home is often one of the most significant transactions that a person will undertake. The process, while relatively routine, does have pitfalls that may impact the Buyers and Sellers differently. Three common pitfalls include sale contingencies, inspection waivers and financing waivers.

## Sale Contingencies

Sale Contingencies are very common in the sale of real estate, and may allow a Buyer to terminate their purchase contract if they are unable to sell their current home. An offer that has a sale contingency will impact the Buyer and Seller differently based upon how that contingency is worded.

A vague sale contingency that reflects a Buyer's obligations as contingent upon a sale of another home could allow a Buyer to terminate their purchase contract anytime up to the day of closing if the underlying sale falls through for any reason.

**How to Avoid This Pitfall:** A more specific sale contingency that creates a firm date under which the contingency will be deemed met can create more equity in risk between a Buyer and Seller. While the Buyer can still terminate the purchase transaction if the Buyer's underlying sale falls through, that burden of risk will shift to the Buyer at either a pre-determined event or date, so that the risk is shared and a Seller is afforded more predictability.

## Inspection and Financing Waivers

In most real estate transactions, a Buyer will undertake an inspection of the property. A home inspector or other professionals may be used. In addition, unless a Buyer intends to pay cash, financing is often sought in connection with the purchase.

In a Seller's market, Buyers often try to gain an edge when they submit an offer and employ two common practices; waiving a home inspection and waiving a financing contingency. These can have a significant impact on the rights of Buyers or Sellers if not entered into properly.

If an offer contains generic language, that is unclear, that a Buyer waives an inspection, the Buyer may be under the impression that waiving the inspection means that if they are not satisfied with the inspection they can terminate their offer. The Seller, however, may be under the impression that a Buyer's waiver of a home inspection means that the Buyer accepts the purchasing of the property as it is.

An additional complication is in the event that systems break down within the property prior to closing, a Buyer may be stuck taking the property in a defective manner as a result of not undertaking a formal inspection. Likewise, a Seller could incur costly litigation in defending a claim by a Buyer when there are ambiguities concerning

the timing of a property defect, and whether that would have been revealed by a home inspection.

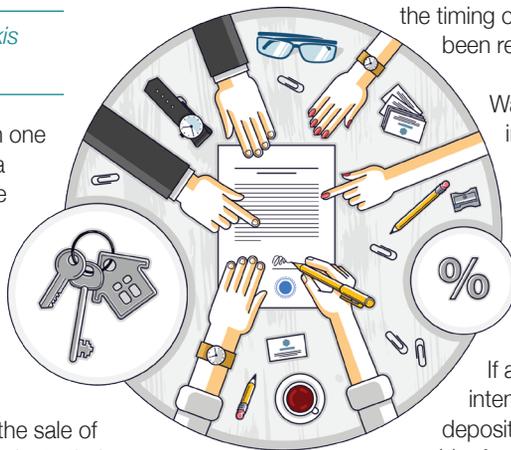
Waiver of a financing contingency can have a similar impact. Most purchase and sale agreements contain language that if a Buyer is unable to perform, the Seller may retain the Buyer's deposit. Most deposits are around 5% of the purchase price. A home being purchased for \$400,000 would have a deposit of around \$20,000. That would be a significant sum for most people to lose.

If a Buyer waives the financing contingency and intends to get financing, the Buyer puts his or her deposit at risk if financing is denied. Second, a Seller could refuse to cooperate with the financing process with the consequence that financing is denied as a result. This is especially important with loan programs such as FHA or VA, where active cooperation of the Seller is part of the loan approval process.

**How to Avoid this Pitfall:** If a Buyer intends to submit an offer with a financing waiver, a Buyer should do so only if the Buyer intends to pay cash. The more prudent approach where a Buyer wants to waive financing, but intends to get financing, would be to qualify the financing waiver to make sure the Seller will cooperate, and that the Buyer is not penalized for the Seller's lack of cooperation.

For a Seller, while waiver of a financing contingency may seem like a positive term. It can cause uncertainty and anxiety for a Seller, especially when a Seller is also purchasing a new home. The benefit of a financing contingency is that it gives both the Buyer and Seller the confidence that absent an unexpected event, the transaction is likely to close.

The failure to have clear language and a meeting of the minds concerning contract terms could have a costly impact on either, or both parties. Whether you are Buying or Selling a home, make sure that you understand all the terms of an offer or purchase and sale agreement before you sign. Be informed. Ask questions. Understand your risk so that you can make better informed decisions.



*Attorney Melissa M. Tzanoudakis is a founding partner of Lyons & Tzanoudakis, LLP. She holds licenses to practice law in MA, NH and NY, including Federal and State Courts. Attorney Tzanoudakis concentrates her practice in family law, real estate, business transactions, estate planning and administration, and related civil litigation.*

**Lyons & Tzanoudakis, LLP** is located at 111 Main Street, Pepperell, MA, Tel: 978-433-6271. [www.ltlaw.net](http://www.ltlaw.net)

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