

## The Investigation Contingency ... It's Baaaaack.

The early 2020s saw seemingly endless rising home prices, a trend starting back in the early 2010s that has favored the seller so much that in many areas contingent-free offers became the norm. That may be changing. But many new agents may not be familiar with how to write, respond-to, and address offers with an investigation contingency. This Quick Guide is a lesson for them and a reminder for agents who have seen markets fluctuate over time.

Paragraph 3L(3) of the RPA automatically gives a buyer a 17-day period of time to investigate all aspects of the property. Waiving that built-in right requires that a Contingency Removal form (C.A.R. Form CR) be attached to the offer or a counteroffer. Changing the 17-day time period to something longer or shorter requires inserting a different number in the blank field, or referencing the same in a counteroffer. The contingency gives a buyer a contractual excuse to cancel the contract, during the contingency period, if the buyer is not satisfied with its condition, or any other matter affecting the property. The contingency stays in place until removed in writing by the buyer. The buyer is entitled to a return of any deposit made if the buyer cancels. Once removed, the contingency cannot be exercised if the buyer later learns something new about the property. If buyer fails to remove the contingency within the stated time, the seller has an opportunity to cancel after first giving the buyer a notice to buyer to perform. When that happens, the buyer is entitled to a return of any deposit made.

The investigation contingency is all-encompassing. It includes inspections of the physical attributes of the property, such as a home inspection, lead-based paint inspection, and wood pest (termite) inspection, and more. The investigation contingency also gives the buyer the right to check out the neighborhood, crime statistics, schools, the availability and cost of insurance, permits, zoning requirements, proximity to shopping, restaurants, and bike paths to name a few, and other conditions that may affect buyer's property use.

If buyer has a good faith dissatisfaction with the property or any condition affecting it, the buyer may cancel the transaction during the investigation contingency period. Buyer may also use the Request for Repair (C.A.R. Form RR) to request that seller repair defects before close of escrow, or lower the purchase price, or give buyer a credit toward the purchase price. In order to entice seller to agree to buyer's requests, buyer agrees to remove the investigation contingency in order to continue with the transaction if seller agrees to buyer's requests. Buyer's requests may trigger a back-and-forth negotiation over the extent of the repairs, credits or price adjustments, as well as the conditions attached to the agreement – for example the seller may ask the buyer, or the buyer may offer, to remove all contingencies or additional contingencies such as loan and appraisal, rather than just the investigation contingency if agreement can be reached on buyer's requests. Forms RR, Seller's Response and Buyer's Reply to Request for Repairs (C.A.R. Form RRRR), or Amendment of Existing Agreement Terms (C.A.R. Form AEA) may be used for the negotiation. The contingency period sets the outside time to reach agreement, not the starting date on which buyer needs to make repair, price or credit requests.

### Best practices:

Buyers should interview home inspectors prior to writing an offer so that once an offer is accepted the buyers do not waste valuable contingency removal time finding an inspector.

Buyers should review the completed inspection report with the inspector.

Buyers should discuss with their agent the consequences of removing contingencies, attempting negotiations, and cancellation.

Do not wait until the final day of the contingency period to conduct investigations or request repairs.