

# MLS Changes Make Accepting a Contingent Offer Even Less Attractive

A "contingent offer" is one which is contingent upon the buyer selling his current home.

Until Jan. 1, 2011, a seller could accept such an offer and keep his home "active" on Metrolist, the Denver MLS, with a notation that it was under a "First Right" contract.

What that meant was that if the seller were to receive, and wanted to accept, a new contract that was not contingent on the sale of another property, the seller could give the first buyer a defined period of time (typically 48 hours) either to drop his contingency and prove that he could close without selling his current home, or to terminate the contract, allowing the seller to accept the new, non-contingent contract.

All that changed on Jan. 1, 2011, when new Metrolist rules went into effect. Now, if you accept such a contract, the status

on the MLS must be changed from "active" to "under contract" with a "kick-out/first right" condition.

"Kick out" is the more accurate term for the situation, since the seller has the ability to "kick out" the first buyer. "Right of First Refusal" is more appropriately applied to a situation in which a third party, such as other members of an HOA, have the right to match your buyer's offer and purchase your home.)

This is a huge change, because being "under contract" means that your home no longer shows up on any consumer websites such as realtor.com or those MLS/IDX search engines which are on every real estate company's website, including my own.

Because of this change, agents now, more strongly than ever, will (or should) discourage sellers from

accepting anything other than non-contingent offers, or offers that are contingent solely on the closing of a solid contract on the buyer's current residence — one that is past the inspection objection deadline, which is when most contracts tend to fall.

## There Are Other Changes That Just Took Effect

Although I'm not happy with the change I described above, there are several other changes implemented on January 1, 2011, with which I am quite happy.

I love the new state-approved Contract to Buy & Sell. The Colorado Real Estate Commission has made this all-important document much easier to understand — both for agents and their clients.

Different elements of the contract are now grouped together in a logical pattern — the agreement itself, the inclusions, the financing, closing provisions,

etc. It is a pleasure to use this new form.

The dates and deadlines are also grouped together logically to match the logical grouping of the contract sections.

I also like the version of it used for pre-foreclosure properties. And the short sale addendum now has a box which, if checked, no longer allows termination of the contract by seller prior to lender approval.

## ARMs (Adjustable Rate Mortgages) Are Back

With 30-year fixed rate mortgages at 4% or less, it was understandable that ARMs would not be very attractive, but don't overlook this product now that interest rates are easing upward.

Preston Lockett of Guild Mortgage told me last week about a 7-year ARM available at 3.5%. ARM loans makes sense if, like me, you expect to sell within 7 years.

Since the typical ARM adjustment is limited to 2% per year at the end of the initial term, even if you keep a 7-year ARM for 8 or 9 years, you still come out ahead.

## Loan Modification Can Save Over Refinancing

Don't assume that you must refinance to get a lower interest rate. For a \$500 fee, Coors Credit Union modified my home mortgage downward 1/2 percent just for asking. And Bank of West modified my commercial mortgage downward over 1% for no fee at all. Thanks!

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