



# Should You Waive Your Mortgage Contingency?

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FORBES – Roger Ma – When a recent seller put up his Brooklyn apartment for sale last month, it took him less than a week to get an accepted offer. In the one and only open house needed, 50 people showed up, resulting in 12 offers, including four cash offers.

In markets like these, where inventory is still tight and all-cash buyers are plentiful, it's not uncommon for sellers to request non-cash buyers to waive their mortgage contingency to be able to just have their offer considered.

The million dollar question is, should you?

## What Is A Mortgage Contingency?

In a contract between a buyer and a seller of a house, there are typically a couple of standard contingencies built into the contract to protect the buyer, including a mortgage

contingency.

When an offer is accepted and a contract is signed, the buyer typically puts down earnest money along with the execution of the contract. This money is put into escrow, and will ultimately be used toward the payment of the home. For most of the country, buyers put down anywhere from 1-5% of the purchase price as earnest money, while in New York City, the standard amount is 10%.

The mortgage contingency gives the buyer a certain amount of time to secure a mortgage after contract execution. If the buyer isn't able to get a mortgage within the specified timeframe, then they can walk away from the transaction and get their earnest money back. The seller is left with going back to the drawing board to find another buyer.

### **Do You Feel Like Gambling?**

In super competitive real estate markets, waiving your mortgage contingency could make your offer more attractive to sellers or be the only way your offer is considered or accepted.

Julia Cocchi Kimball, the Team Leader of the Keller Williams Sparks Nevada office, said she looks at all the components of an offer to determine if accepting a cash offer is in the best interest of her seller. "Not all cash buyers are created equal. In certain situations, I have advised some of my seller clients to accept an offer with financing over an all-cash buyer."

The main risk of waiving your mortgage contingency, though, is if you aren't able to secure a mortgage, you could lose your earnest money and in some cases, more if the seller decides to sue.

Even doing preparation ahead of time in the form of a mortgage pre-approval doesn't necessarily guarantee you'll be approved for a mortgage since pre-approvals are non-binding and there are other factors beyond a borrower's financial status that could influence the result.

Jack Harari, a Manhattan-based real estate lawyer for Weidenbaum & Harari, says "it's important to be cognizant of the three types of situations that can jeopardize a loan: 1) issues relating to the property, such as inadequate financials of a condo or cooperative, 2) issues relating to the borrower, such as someone losing their job between contract execution and closing, and 3) issues that are neither a result of the property nor the borrower, such as a bank that goes out of business."

### **Improving Your Odds**

One way to mitigate this risk is to work with a lender that understands the local market

and has a history of successfully funding loans in your area.

Bruce Ailion, an Atlanta-based real estate agent with RE/MAX, recommends waiving the mortgage contingency frequently when there is a high, absolute assurance that the buyer will get a loan. But he is not comfortable doing so when a borrower is working with an unknown lender and for good reason. “The only circumstance when a buyer wasn’t able to get a mortgage and lost their earnest money was when they wanted to use their own lender, a relatively unknown player in the market.”

Having a lender review your asset and liability profile, debt-to-income ratio, and credit score in advance via a pre-approval will give them a glimpse of any potential issues.

Certain banks may even allow you to have your profile and application go through a more thorough review than a pre-approval – sometimes referred to as a pre-underwritten loan—which further strengthens the probability of you getting a mortgage.

Generally, the more mortgage “homework” you’re able to do upfront, the less likely you’ll have surprises or breakdowns in the process down the road. This may be especially important for applicants with non-traditional backgrounds, such as self-employed borrowers or borrowers with complex tax returns or less than stellar credit histories.

**Michele Portnof, an NYC-based Associate Broker with Rutenberg**, said “it has been my experience that buyers who give up their mortgage contingency are pretty confident that they’ll be approved for a mortgage. They have good financials, a great credit history, and little to no debt.”

### **Deciding Whether to Go All-In**

In the end, waiving your mortgage contingency could be the difference that gets you your dream home, but doing so comes with risks, so the decision should not be taken lightly.

Unfortunately, there isn’t a one-size-fits-all solution that can be applied to all circumstances. Be sure to weigh the pros and cons of your particular situation and confer with your mortgage banker, real estate agent, and in some markets, your lawyer before taking action.

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