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# Job cut jitters spur NYC buyers to ask for employment contingencies

Spooked by layoffs in the tech industry, New York City buyers are asking for exit clauses to be added to contracts in case they lose their jobs before the contract is signed.

This unusual escape plan is making a comeback and could also appeal to buyers concerned by recent bank failures, as per a recent report in the Wall Street Journal.

But buyers need to tread carefully: Any contingency makes a real estate deal more complicated and weakens a buyer's offer, real estate attorneys and brokers tell Brick. An employment contingency, more so than a financing contingency, can make co-op and condo boards particularly nervous.

**How does an employment contingency work?**
An employment clause is added as a rider to a contract and allows the buyer to back out if they lose their job or their employment status changes significantly during the buying process. Most importantly: The buyer gets to hold onto their deposit.

“In recent weeks we have seen a few buyers inquire about this type of contingency, notably those who are employed in the technology sector, which has been more exposed to layoffs,” says Jared Antin, managing director and broker at Elegran Forbes Global Properties.

**What does an employment contingency look like?**
Antin provides this example of employment clause:
*This contract is contingent upon the buyer maintaining their current employment status through the closing date. If, prior to the closing date, the buyer loses their job, has their hours reduced to the point where they no longer meet the lender's qualification requirements, or experiences any other significant change in their employment status, the buyer may terminate this contract without penalty by providing written notice to the seller. The buyer must provide proof of the change in employment status, such as a termination letter or pay stub showing the reduced hours, to exercise this contingency.*

*This employment contingency is subject to the following conditions:*
1. *The buyer must use their best efforts to maintain their employment status and income level during the home buying process.*
2. *The buyer must promptly notify the seller of any changes in their employment status or income level.*
3. *If the buyer exercises this contingency, any earnest money or other deposits will be promptly returned to the buyer.*
4. *This contingency will expire upon the closing date and will not apply if the buyer voluntarily quits their job or reduces their own hours.*

**A sign of economic turmoil**
Employment clauses are not new, Michael J. Romer, managing partner at law firm Romer Debbas, tells the Journal. They were popular after the 2008 Financial Crisis and became less common in the past decade.

He tells the site that he represents a buyer in the tech industry who asked for an employment contingency as part of a $1,000,000 offer. If the buyer was to lose his job before closing, he could walk away with only a small penalty and get his 10 percent deposit back. Without that contingency, he would lose his entire deposit.

**Do sellers accept employment contingencies?**
If you’re buying, you need to know that this is not a strategy that works universally. You have to choose your property carefully when making an offer that involves an employment contingency. Sellers with properties that have been on the market for three-plus months and have had multiple price drops are generally more inclined to accept employment contingencies, Antin says.

“Properties that are priced to sell and new to the market are likely to have more bids and therefore be less inclined to accept buyer contingencies beyond the more common mortgage contingency,” he says.

The buyer runs the risk of the seller choosing another offer or not accepting the contingency,” Antin says.

That’s because a seller who has multiple offers is likely you to turn you down.

When there’s competition, “you’re less desirable with an employment contingency,” explains real estate attorney Christopher M. Tarnok, a partner at DL Partners.

“You’re adding a risk that the seller could lose valuable time and money. It’s a serious consideration for the seller to tie up their property” with a potential buyer who is indicating they may have to walk away.

**A funding contingency may be a more acceptable alternative**
Mortgage contingencies, otherwise known as financing contingencies, are more common and easily accepted than employment contingencies, even when there are multiple bids.

A financing contingency gives a buyer the right to cancel if they are unable to get a mortgage. In this situation, the buyer gets the deposit back without a penalty and the seller can relist their property.

In addition, there are funding contingencies, which are more comprehensive and cover a buyer if they cannot get the funds to close for any reason.

This would include if a buyer lost their job or their hours or wages were reduced and no longer met the bank's lending guidelines,” Antin says.

Funding contingencies were a trend in the early days of the pandemic, Antin notes, then went away when the sales market heated up. They’ve been increasing again in the past eight months, he says.

“I've seen a funding contingency accepted before an employment contingency,” he says.

**Employment contingencies can rattle some co-op and condo boards**
Tarnock explains that employment contingencies complicate the timing of a deal. At the critical end of the buying process, they create a question mark about a buyer's employment for co-op and condo board members. Closings are typically scheduled about two weeks after a board reviews and approves an application.

“You’re making your offer less competitive on a risk window of two weeks,” he says.

But other boards may appreciate the opportunity to avoid a bad situation.

Real estate attorney Daniel Gershburg, a partner at the law firm Konner Gershburg Melnick Darouvar, considers employment contingencies a “win-win” for buyers and sellers looking to get deals done and boards who don’t want to force a newly unemployed buyer to go through with a deal. He’s seen some for townhouse deals too. “We’ve been putting them in for some time,” he says.

And buyers may find sponsors of new development especially open to these contingencies as well because of the long time it takes to deliver a new condo. “A sponsor doesn’t want to sell to someone who can’t make payments,” he says.

Similarly, boards don’t want someone who won’t be able to pay their maintenance or common charges.

“It’s a reasonable shift given the market,” and a sign that sellers are trying to make things work because “they no longer have three other buyers to fall back on,” Gershburg says. “It’s much tougher now to get deals signed, so it’s an acceptable risk.”

Plus, as he points out: Nine times out of 10, the buyer doesn’t end up losing their job after all.

https://www.brickunderground.com/buy/buyers-request-employment-contingency-job-layoffs-contract-rider-nyc