



SUBJECT TO SALE

Q: Axel, how should I handle a subject to sale?

A: "Do I buy or sell first?" is one of the most common dilemmas we encounter, especially with homeowners looking to purchase. The first step is always to qualify their situation and assess their motivation—whether they're upsizing or downsizing.

Qualification continues with a referral to their mortgage specialist, so they can gain a clear understanding of their financial situation. In most cases, homeowners with significant equity tied up in their current home need to sell before they can purchase a new one. This is where a **subject to sale** clause comes into play. It's a common practice, especially in a buyer's market where the competition is less fierce. However, in a seller's market, this clause can be less effective and even disadvantageous due to higher competition.

SUBJECT TO SALE CLAUSE:

"Subject to the Buyers, on or before (insert date) in the Buyers' sole and absolute discretion, entering into an unconditional agreement to sell their property at [INSERT PROPERTY ADDRESS]. This condition is for the sole benefit of the Buyer."

TIME CLAUSE:

"Any time after [DATE, typically 3-4 weeks after acceptance], if the Seller receives an acceptable unconditional offer, the Seller may deliver to the Buyers or their agent a written notice requiring the Buyers to remove all conditions within (insert number, usually 48-72 hours) of delivery. This timeframe excludes Sundays and Statutory Holidays. If the Buyer fails to remove all conditions within the specified timeframe, this contract becomes null and void."

Expert Tip:

When drafting an offer, it's usually best to avoid including a time clause upfront since it favors the seller more than your buyer. Your fiduciary duty is to protect your buyer's interests. If the

seller accepts the contract without a time clause, it allows your buyer the full agreed-upon time to sell their property without added pressure.

However, it's important to note that experienced listing agents often counter with a time clause. If they do, and they propose a short window like 48 hours, remember that you have the power to counteroffer. If you believe extending it to 72 hours or more benefits your buyer, use that as leverage during negotiations and counter again.