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The 48-Hour Clause in Real Estate

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What is a 48-hour Clause?

A 48-hour clause is a time clause that is used in real estate transactions when a conditional offer is accepted, but the seller continues to offer their home for sale while the buyer is working to satisfy those conditions. If another offer comes in on terms and conditions acceptable to the seller, they may provide notice to the original buyer that the seller is advancing the time in which that buyer must satisfy or waive those conditions (the Advanced Condition Due Time).

This Advanced Condition Due Time is typically 48 hours, which is where the name “48-hour Clause” comes from. However, the standard Time Clause document provided by The Manitoba Real Estate Association allows for any amount of time to be the Advanced Condition Due Time, as long as both the buyer and seller agree. This Time Clause is a schedule that forms part of the Offer to Purchase, and the Time Clause Notice is what the seller will provide to the buyer when they are advancing the Condition Due Time.

Time clauses are for the benefit of the seller and usually used when the buyer is requesting an extended period of time to satisfy the conditions. This is commonly seen when the offer is conditional on the sale of the buyer’s home; but time clauses can be put in place for any condition on an offer. The seller must ensure that a Time Clause is inserted into the Offer to Purchase if they wish to rely on it should they get a second offer on their home.

If the seller receives a second offer with acceptable terms and conditions, and they advance the Condition Due Time, then the original buyer has until that time (usually 48 hours) to either satisfy or waive those conditions. If the original buyer satisfies or waives the conditions within that time period, the seller is obligated to proceed with the original offer.

When does it start and what time is included?

When the Advanced Condition Due Time starts depends on the wording of the Time Clause that forms the Offer to Purchase. In the standard Time Clause, it states that the seller must give written notice to the buyer that the seller is advancing the Condition Due Time, and it begins when the buyer receives the notice. However, in the Time Clause Notice that the seller provides to the buyer, there will be a set time that the buyer must either waive or fulfill all outstanding conditions. If the buyer doesn't receive notice until 24 hours before the Advanced Condition Due Time, but the Time Clause allowed 48 hours, then the Advanced Condition Due Time would have to be extended another 24 hours to meet the 48-hour period that the buyer and seller initially agreed to.

Generally, the clause starts ticking when it is received by the buyer and the Advanced Condition Due Time shall not be on a holiday as defined by *The Interpretation Act* of Manitoba, which includes Sundays.

What triggers the waiving of conditions and what is the timeline do so?

The Manitoba Real Estate Association standard Time Clause Notice document that is provided to the original buyer when the seller receives a second Offer to Purchase states that if a **written notice** of the fulfillment or waiver of all outstanding conditions is not **delivered to the seller or the seller's brokerage** by the Advanced Condition Due Time, the Offer to Purchase will terminate.

The wording in the standard document created by the Manitoba Real Estate Association implies that if either the seller themselves or their brokerage receives written notice that the buyer has satisfied or waived the conditions prior to the Advanced Condition Due Time, then the seller must go through with the original offer.

What triggers the waiving of conditions depends on the wording of both the Time Clause Notice and the Time Clause that forms part of the Offer to Purchase. If a seller was using the standard Time Clause Notice mentioned above, and the buyers verbally indicated they were waiving conditions, but did not provide written notice of same, then it would not be enforceable, and the sellers would not be obligated to follow through with the original Offer to Purchase.

If the Time Clause Notice did not require the notice to be in writing, then the verbal communication between the buyer's realtor and the sellers that the buyer was waiving conditions would be sufficient notice, and the sellers would be obligated to follow through with the original Offer to Purchase.

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