

Best of the Hotline

By James L. Goldsmith, Esquire

Facts. The certificate of resale issued by a homeowners association gave notice that an assessment would be issued to all unit owners requiring the payment of \$5,000 to cover a particular item of repair or improvement (the exact purpose of the assessment is not important to this question). The buyer was surprised to learn of this assessment and clearly did not want to have to pay the amount when it became due after settlement. The buyer therefore had her buyer agent issue her demand that seller pay the assessment or reduce the sale price by an equivalent amount.

The buyer agent did her client's bidding and sent an email to the listing agent expressing the buyer's demands. She further articulated how disappointed the buyer was to learn of this in the certificate of resale rather than from the seller in the agreement of sale at paragraph 10(F) where homeowners association assessments were to be disclosed.

Rather than reply immediately to the written demands of buyer, the seller and her agent did nothing until the 5-day termination period following receipt of the certificate of resale had lapsed. The buyer agent then received an email from the listing agent advising that the seller had declined the buyer's "invitation" to amend the agreement of sale and that the seller would hold firm on the agreed upon price!

Q. Did, or can, the buyer terminate the agreement based upon the assessment disclosed in the association's certificate of resale?

A. While the buyer may have a way out of the agreement, it will not be based upon paragraph 16 of the agreement having to do with the resale notice. Under that provision, and pursuant to the Uniform Planned Community Act, the buyer has five days from receipt of the certificate of resale to terminate the agreement. Buyer did not do so. Had the buyer agent stated, in the demand to reduce the sale price, that unless the seller did so the agreement was deemed terminated by virtue of the information revealed in the certificate, all would be good for the buyer. It is clear, however, that the buyer did not terminate the agreement within the five days, despite her intent to avoid the \$5,000 charge.

Whether the buyer can get out of the agreement of sale is therefore left to other provisions in the agreement. Is there an inspection contingency by which the buyer can timely terminate the agreement? What is the amount of the deposit and is it a liquidated damage? If the deposit is low and it is a liquidated damage, the buyer may be willing to sacrifice it or use the threat of terminating the agreement to leverage a modification.

The lesson from this Hotline call is that the terms of the agreement of sale are to be taken literally. If a buyer has five days from receipt of a certificate of resale to terminate the agreement, then do so. Understand, however, that an invitation to modify the terms of the agreement is not a termination.

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08039-009/67013