

Untimely repairs

James L. Goldsmith, Esquire

It happens. Sellers agree to make repairs suggested by a home inspection, but fail to complete the job timely. When this happens a buyer is faced, unfairly, with proceeding under a contingent plan (e.g., having repairs made post-settlement or taking cash in lieu of repair) or of delaying settlement. Usually there is little choice. The buyer is packed and ready to move or the mortgage commitment can't be extended, etc.

What prompted this article was a recent call to the Hotline involving a transaction where seller was to have conditions repaired before settlement. For any number of reasons the repairs were not made. Buyers only learned of sellers' failure at the pre-settlement walk-through. The seller acknowledged the failure but offered to issue a check payable to the repairperson that would be given to buyers at settlement. When the buyers expressed their dissatisfaction, sellers became indignant. How unreasonable of the buyers not to accept a check in the full amount the repairperson had estimated! Likewise, the listing agent was incredulous that the buyer agent didn't find this to be an acceptable alternative to what had been agreed to: repairs made before settlement.

An agreement is an agreement is an agreement. If it was agreed that repairs were to be made before settlement! It really doesn't matter that the sellers and listing agent feel that providing a check in the amount of the repairs is an equivalent. It is not. Repairs frequently lead to the revelation of other issues requiring repair. The cost of materials can rise. Estimates are not always guaranteed. Repairpersons go out of business or get sick or worse. Further, the parties agreed that the burden of resolving the matter would be borne by sellers. When the sellers deliver a check at settlement, the burden of repair falls on the buyer. This was not the bargain the parties struck.

Certainly a buyer can hold firm and demand that the terms of the agreement are honored. But, at the price of delaying settlement and the well-made plans of buyer, this is usually not a satisfactory alternative. Further, listing agents and sellers quickly understand that buyers may have little choice. What do you, as a listing agent, consider appropriate? Beyond the legal obligation, is there a moral obligation that your sellers complete the tasks that they agreed to undertake? RELRA requires licensees to advise their clients of the status of the transaction and an argument can be made that as a listing agent you have an obligation to poke in every now and then to determine that your seller is complying with their agreement. Should a buyer agent be inquiring as to the status of repairs at the risk of being labeled a pest?

The fact is, buyers have a right to enforce the agreement, including seller-promised repairs. While it is rare that a buyer will refuse to attend settlement until the terms of the agreement are satisfied, it happens. Further, if I were negotiating on buyer's behalf, I might anticipate delays in repair and, as part of the change in terms agreement, require that repairs not made by settlement will exact a payment into escrow at settlement of 1 ½ to 2 times the projected cost of repair. It's not customary, but I do know agents who make this a routine point of negotiation when repairs have to be undertaken.

The best transactions occur when a seller receives all of the purchase money at settlement and where the buyer receives all of the property promised, at settlement.

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