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17 Days of Angst

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By Stella H. Ling, Esq.

Although literally at paragraph 14, the 17-day contingency period is figuratively at front and center of C.A.R.'s California Residential Purchase Agreement and Joint Escrow Instructions (Form RPA-CA). The 17-day contingency period begins when a buyer and seller enter into a purchase agreement, and continues for 17 more calendar days. If that's too long or short, the parties entering into an agreement may negotiate a different time frame.

The 17-day contingency period works as a protection for the buyer. It gives the buyer an opportunity to do certain things, such as obtain a mortgage loan, review disclosures, have the property professionally inspected and appraised, and investigate other matters affecting the purchase. The 17-day contingency period also protects the seller. Giving the buyer a meaningful opportunity to investigate helps to ensure that the buyer is satisfied with the property, and will not be suing anyone after acquiring title. A buyer who investigates thoroughly but cancels is still preferable over a buyer who doesn't inspect, but sues after acquiring title due to dissatisfaction.

Buyer's Right to Cancel: A buyer's contingencies give the buyer the right to cancel the agreement and get back the escrow deposit. Although a buyer must act honestly and in good faith, the contract does not require the buyer to give a reason for cancelling.

Buyers and their agents can make the mistake of offering up reasons for cancelling under their contingencies. Some of these reasons rile up the sellers unnecessarily and even raise legal issues as to who deserves the deposit. For example, a buyer may blurt out that he's cancelling for astrological reasons, or another buyer may wait 60 days into escrow before cancelling because her bedroom furniture set won't fit in the master bedroom. Instead of volunteering a specific reason for cancelling, the buyer can simply use C.A.R.'s Cancellation of Contract (Form CC) to indicate that cancellation is "as otherwise permitted by paragraph 14 of the Agreement."

Seller's Right to Cancel: A buyer's failure to remove contingencies in writing may give the seller the right to cancel. However, before cancelling, the seller must first request the buyer to remove contingencies. To do this, the seller may serve the buyer with C.A.R.'s Notice to Buyer to Perform (Form NBP) up to two days before the 17-day contingency period ends.

Upon service of the NBP, the buyer has 24 hours to remove applicable contingencies or the seller may cancel the agreement. However, what agents and their clients may fail to realize is that if the seller cancels after serving the NBP, the agreement requires the deposit to go back to the buyer.

To illustrate a trap for the unwary seller, let's say a buyer removed all contingencies, but fails to close escrow as scheduled. The seller serves a NBP to close escrow, but to no avail. If the seller now cancels, the buyer is arguably entitled to the deposit, even though contingencies have been removed and closing escrow is not one of the enumerated reasons for serving a NBP. To avoid this problem altogether, a seller should serve the buyer with C.A.R.'s Demand to Close Escrow (Form DCE), not the NBP.

Buyer's Removal of Contingencies: When the 17-day contingency period ends, a buyer's contingencies do not automatically expire. The buyer retains the right to cancel as long as the buyer's contingencies have not been removed in writing.

A possible blunder for buyers and their agents is voluntarily removing the buyer's contingencies without any prompting from the seller or listing agent. That the seller must serve the 24-hour NBP before cancelling is breathing room for the buyer. If nothing indicates that a NBP is forthcoming, the buyer may as well keep any contingencies intact—just in case.

A common mistake made by sellers and listing agents pertains to a buyer's request for repairs. Before agreeing to do repairs, a seller should consider requiring the buyer to remove any contingencies. Otherwise, the seller may incur the cost of repairs, yet may not be entitled to the deposit or to any reimbursement should the buyer subsequently cancel.

Your Scorecard: How many of the true-or-false questions should REALTORS® answer correctly? Five out of five, of course, to ensure you're doing the best job you can for your clients.

How savvy are you as a REALTOR®?

One way to see how you measure up is to test your knowledge of the 17-day contingency period in C.A.R.'s purchase agreement. How well you understand this provision and how well you avoid common pitfalls are good indicators of how well you represent your clients.

True or False:

1. The 17-day contingency period protects a buyer.
2. A buyer must give the seller a reason for cancelling.
3. If a buyer fails to perform despite receipt of a Notice to Buyer to Perform, the seller may cancel the agreement but return the deposit to the buyer.
4. A buyer's contingencies automatically expire when the 17-day contingency period ends.
5. A buyer who cancels must reimburse the seller for the cost of repairs made at the buyer's request.

Answers: 1. True; 2. False; 3. True; 4. False; 5. False.

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