

Leap Over Repair Hurdles with Ease

Q: What happens if a buyer and seller are in contract together and something falls into disrepair before close of escrow?

A: Under C.A.R.'s Residential Purchase Agreement (RPA), a seller is generally responsible for repairing any items that fall into disrepair during escrow. For example, the doorbell could stop working or the roof could start leaking for the first time when it rains. A seller who is about to vacate and sell the home may be reluctant to repair or replace these items. However, paragraph nine of the RPA requires the seller to maintain the property in substantially the same condition as on the date the parties entered into their purchase agreement. If, however, damage was caused by the buyer's investigation of the property, the buyer would generally be responsible under paragraph 10 of the RPA.

For REALTORS®, dealing with repair issues in a sales transaction can feel like jumping over hurdles in a track-and-field race. Even just one feature or item in need of repair can cause a property to sit on the market for months or cause buyer after buyer to cancel an agreement to purchase. Knowing what repairs are required according to the law, the purchase agreement and market demands can give you a competitive edge on your way to the finish line. Understanding how to handle repair issues is particularly important in the current market, given the high number of homes in disrepair after a foreclosure or short sale.

Repairs Before Listing

» Right from the start of the race, you can spot an experienced listing agent by the way he or she handles repair issues. Other than encouraging a seller to do minor repairs, newer agents tend to have a wait-and-see approach for handling repairs. They may list the property for sale in its present condition for a period of time to test the market.

In contrast, an experienced listing agent will have more of a take-charge approach and help the seller decide upfront which repairs should be made to effectively market the property for sale. To arrive at that decision, the experienced listing agent will help the seller analyze various factors, including, but not limited to, what items should be repaired, whether the seller has the ability to make the repairs, what the typical buyer of that type of property would accept, and what the market will bear. Average listing agents may or may not help their sellers maximize their return on investment; many experienced listing agents will.

Hiring Contractors

» Having a take-charge approach doesn't mean throwing caution to the wind. If repairs are needed, agents should heed the age-old advice of giving the seller a referral list of three or more reputable contractors, vendors, or other service providers to choose from. Recommending only one contractor may ex-

pose the agent to liability for negligent referral, if the contractor does a bad job.

Another precaution is leaving it to the seller to order a contractor to do the work. If a salesperson orders work to be done on a client's behalf without clarifying payment arrangements upfront in writing, and later on, the contractor doesn't get paid, the contractor may attempt to collect payment directly against the salesperson and even the salesperson's broker. This matter can be exacerbated if a contractor files a mechanics lien against a seller's property to recover payment.

Request for Repairs

» Agents representing buyers can also run into obstacles if they do not educate their clients upfront about repairs. After entering into a purchase agreement and going through the inspection process and reviewing disclosures and reports, buyers may mistakenly believe that their seller will take care of certain repairs. In reality, California law generally requires a residential seller to provide only two point-of-sale items—smoke detectors and water heater bracing. Certain cities may have additional local requirements (such as gas shut-off valves, low-flow toilets, or even government inspections). Other than these mandatory point-of-sale requirements, a seller is not legally required to make any improvements or repairs before transferring title, which can be quite a

rude awakening for the buyer.

For instance, buyers may not realize that, absent language to the contrary in the purchase agreement, their seller need not make repairs required by the buyer's lender. Also, some buyers who discover serious health and safety issues during their inspections, such as faulty electrical wiring, toxic mold, or rodent infestation, may be appalled to then be told their seller may not be contractually or legally required to fix these problems before close of escrow. Other than point-of-sale requirements, a seller is legally required to disclose, not fix, any known material facts affecting the value or desirability of the property.

Agreed-Upon Repairs

»» To keep a buyer from cancelling a purchase agreement due to a property's condition, a seller may voluntarily elect to make repairs that the buyer requests. However, we're still not home free. At times, a seller may want to cut corners when doing the buyer's requested repairs. Point out to the seller that para-

graph 15 of the C.A.R. Residential Purchase Agreement (RPA) requires repairs to be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials.

Repairs must also, according to the RPA, comply with any applicable legal requirements. Most notably, if a project costs \$500 or more for labor, materials, and other costs, the work must generally be performed by a licensed contractor. Unlicensed handymen can only do projects that cost less than \$500. Many projects may also require building permits, such as roofing, electrical wiring repair, window and door change outs, and drywall replacement, just to name a few. For more information about the permit process, the seller should check with the local Building and Safety Office.

Timing of Repairs

»» Another hurdle is timing. A seller may want to delay doing agreed-upon repairs absent assurance that the buyer will close escrow. Yet, under paragraphs 15 and

16 of the RPA, the seller must complete agreed-upon repairs before the buyer's final walk-through, which the buyer has the right to do five days before close of escrow.

Credit Instead of Repairs

»» Given these various hurdles (skillful manner, contractors, permits, and timing), a seller may be better off just giving the buyer a monetary credit instead. In exchange for the credit, the seller can require that the buyer release the seller and brokers from any liability regarding the repair items the buyer has requested. This release is included in C.A.R.'s Request for Repairs (Form RR).

Final Thought

»» Understanding the law, contract, and market will help you leap over repair hurdles with ease. See you at the finish line! ♦

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