

CURRENT LEGAL TOPICS Q&A

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to discuss today as you enter the
meeting

KNIPE | REALTY 

Question:

My client has 4 plex under contract. Two of the units are vacant. The other two are leased through a property manager. We asked the property manager to set up inspection access on Thursday afternoon, this being Monday. The property manager got back to us and said we cannot access those units for inspection. The property manager said he had attempted to do that on another property and the tenant refused, contacted the City of Vancouver COVID person who said they could refuse access, and the tenant contacted an attorney who told them the same thing. Is that correct?

Answer:

Whether the tenant has a legal basis for refusing or not is less important than the practical reality that tenant can refuse because landlord has no way of enforcing any right of entry. Landlord may not force a way into the unit if tenant protests. If tenant's protests are unreasonable and a violation of the Landlord / Tenant Act, there is nothing landlord can do while the Governor's Moratorium on Evictions is in place, currently until June 4.

Question:

Broker is representing the seller in a transaction that has an accepted offer from a willing buyer. During the inspection period there are requested repairs by the buyer that are agreed to be fixed by the seller. The contractor agrees to complete the repairs and be paid for their work through escrow at close. Following the completed repairs, the transaction fails and the contractor requests payment from seller's broker. Is the seller's broker obligated to pay?

Answer:

The seller's agent is merely acting at the request of the seller in coordinating the work to be done. The broker is not the beneficiary of the work, nor is he the owner of the home that has received the work. Unless the seller's broker has signed an agreement to pay, there is unlikely to be a contract for which the seller's broker is liable. If the contractor is able to claim they should be paid, depending on the contract, the beneficiary of the work in this scenario is likely the seller of the property and therefore there may be a claim they must pay the contractor.

Question:

Property is in probate and seller is exempt from disclosure. Mom died in the home and there was water running when she died which wasn't noticed for a few days causing extensive water damage. Does seller need to disclose water damage since seller is exempt and it will be fixed?

Answer:

Of course with any disclosure question, seller should consult an attorney. But likely yes, because it's a material fact about the property the seller and agent are both aware of. This also brings up the question of whether to disclose a death in the home.

Disclosures ask “if there is anything else a buyer would want to know”, meaning a material fact that a buyer may want to know. A death may be “material” to one buyer and not to another. Again, an attorney should answer the disclosure question. But if seller or agent are directly asked the question of a death in the home, they must answer truthfully.

Question:

Listing agent is putting an arbitrary deadline on buyer's response to seller's repair addendum which is several days before the end of the inspection contingency. Seller is anxious for a response and wants to know whether buyer is accepting or not, and feels like buyer is dragging their feet while looking at other homes.

Answer:

Seller isn't entitled to declare a deadline for response to seller's repair addendum. Even though buyers may not agree with seller's terms, they do not have to respond by seller's deadline. They have until the end of the inspection period to gather information as to whether they want to move forward or not. Furthermore, their motivation is irrelevant. Yes, it may be that they are shopping for a replacement home. That has no bearing on the terms of the contract, and their deadline for response.

Question:

In buyer's financing contingency in the contract, buyer stated they were getting an FHA, 3.5% down loan. In truth, buyer's financing failed because they were unable to secure a 0% down grant loan where their 3.5% down would actually be paid from the proceeds of a state grant. Buyer feels buyer is entitled to earnest money because of failed financing.

Answer:

Buyer is terminating because of a lack of financing but buyer is not entitled to recover the EM because buyer misrepresented buyer's financial wherewithal when buyer induced seller to enter the contract with buyer. There is a significant difference between an FHA loan where buyer is putting 3.5% of the purchase price down, from buyer's resources, versus one where buyer is not using any of buyer's personal resources to purchase the property and is, instead, entirely dependent upon contingent funds to purchase the property. In this case, buyer represented that buyer was not relying on any contingent source of funds for the down payment, which was a mis-representation of the facts.

Question:

If a buyer waves right to lead paint risk assessment on Form 22J, but during home inspection, inspector recommends an assessment, does the buyer have the right to have an additional inspection done by lead base paint inspector?

Answer:

Yes. Buyer can inspect the property for the presence of lead-based paint.

Question:

If an FHA or VA appraiser requires property repairs, seller must complete them, right?

Answer:

No, seller is not obligated or required to complete the repairs. However, the repairs ARE a condition of the appraisal and therefore must be completed prior to closing. Either party can pay for the repairs to be completed.

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THANK YOU!**