

Legal Hotline Q & A

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QUESTION: We have a seller who accepted an offer from our buyer, my buyer flew to the home to see the inspection and the inspection contingency was satisfied. The seller has now decided that they don't want to sell. Does our buyer have any options? Do we as the buyer's agent?

ANSWER: Assuming seller has no contingencies allowing seller to terminate (such as a short sale contingency), seller will be in breach if buyer tenders performance and seller fails or refuses to close. Depending on the facts surrounding this particular dispute, it may or may not be important for buyer to actually go through the steps of signing closing documents and evidencing preparedness to produce loan funds, etc. Assuming seller is in breach of the purchase agreement, however, there will be remedies available to buyer.

Buyer's remedies include the option to ask a court to order damages and/or specific performance. Damages could include anything from buyer's out of pocket costs for inspections, appraisals and the like up to the difference in value between what buyer would have paid for seller's property versus what buyer would have to pay for a similarly situated property. Specific performance is an order by the court requiring seller to perform the terms of the agreement and convey title in exchange for buyer's performance.

Broker has no ability to advise buyer or seller on these issues. Advice as to the consequences, rights and remedies of breach is clearly the practice of law. Broker is not licensed to give buyer or seller this information. Rather, each broker should advise his/her client, in writing, to seek legal counsel. Seller needs legal counsel before seller breaches the agreement. Seller's breach could take place by refusing to sign closing documents but seller's breach could also take place prior to the closing date, with seller's stated refusal to proceed to closing. Accordingly, listing broker's written advice to seller should be given sooner rather than later.

Buyer needs legal counsel for assistance in determining how to proceed in the face of seller's breach. Should buyer continue with efforts to obtain financing and actually sign closing documents? There is no answer to that question satisfactory to every scenario. Accordingly, buyer must seek legal counsel as to how to proceed. Moreover, assuming buyer can prove seller's breach, what are buyer's best remedies and what is the preferred strategy for achieving buyer's objectives with the least expenditure of

resources. Again, buyer's broker should immediately advise buyer, in writing, to seek legal counsel.

Finally, should seller breach the purchase agreement, both brokers have a claim for compensation through their firm. Seller agreed to compensate brokers if brokers produced a ready, willing and able buyer. The brokers did that in this case and earned compensation, regardless of whether seller breaches the agreement or not. Should seller breach, brokers and firm should seek legal counsel for assistance in determining how to proceed with respect to a commission claim.

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