

## Legal Hotline Q & A

### From Get the Facts 05/16/17

**QUESTION:** I have a buyer client who just closed on a piece of property and two days later, a neighbor told the new owner that there was going to be a road assessment due in several months of \$10,000. The seller had disclosed in the Form 17 that there was a pending assessment for road repair. In our PSA, we checked the box in regards to charges and assessment, items shall be prepaid in full by seller. The escrow company said that when they asked for demands from the HOA, the HOA did not disclose that there were any special assessments due other than annual dues, nor did the HOA make any comments about a pending assessment. In talking with the HOA, the road repair assessment has not been voted on yet. What can my client do at this point? Is the seller at all responsible for the future assessment?

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**ANSWER:** The Charges and Assessments provision of the PSA obligates seller to pay assessments that were levied at the time of closing but not due until after closing. Based on the facts presented, this assessment has still not been levied. As a result, the Charges and Assessments provision had nothing whatsoever to do with this situation. If seller has any liability, it would have to be based on a failure to disclose. It is not clear that that seller has liability in that regard. From the facts presented, seller disclosed that a road repair assessment was upcoming. It appears that buyer did not conduct due diligence to determine the status or amount of that road assessment. While a seller is obligated to put buyer on notice of certain issues, buyer is required to conduct due diligence based on that notice. Neither broker nor the Hotline lawyer can advise buyer as to buyer's rights or remedies in this situation. Broker must advise his client, in writing, to seek legal counsel.

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