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PROPERTY REPAIRS BY BARBARA NICHOLS

Don't get in a fix

These days, property inspections are the norm, and even in hot markets buyers shouldn't skip them. As a result, buyers and sellers, with the advice and assistance of their

real estate practitioner, are spending more time than ever negotiating repair costs and credits. With this process comes the added risk of potential legal liability for both the seller and the real estate people in the transaction. To make certain you don't have to deal with a dissatisfied buyer in court, follow these steps.

1. Review inspections carefully. If you represent buyers, review the inspector's report with them and note any property defects the report points out. The principal focus should be on major defects, not items needing minor repairs. Further inspections suggested by the report or by the agents, required by the lender, or requested by buyers should be scheduled as soon as possible to avoid delaying the closing.

In one case that settled out of court in favor of the plaintiffs, a buyer and seller both sued an experienced dual agent because he failed to recommend having a specific completion date for repairs in the repair agreement. The transaction closed before repairs were made. It's in everyone's best interest

to have all the property defects revealed and addressed before closing.

2. Get repair quotes. The next step is for buyers to obtain estimates, or quotes, for the repair of major defects. Quotes should be specific as to what will be done, the materials that will be used, the cost, the effective dates of the quote, and whether any warranties will be provided. General property inspectors and mold inspectors should never make repairs to flaws they have noted in their reports as this is a direct conflict of interest.

Ensure that all repair quotes and repairs themselves come from licensed contractors or subcontractors when state building code requires it. Most states have a licensing authority for contractors, and many maintain Web sites that allow users to check whether a license is in good standing. In a California case, the seller hired an unlicensed handyman to make drainage and electrical repairs. The work was done incorrectly, and the buyer successfully sued both the seller and the buyer's agent.

3. Negotiate repair expenditures or credits.

Once buyers have received and reviewed all repair quotes, they should prepare a request to the sellers for repairs or reductions in the selling price in lieu of repairs. Attach inspection reports and quotes to the request.

Sometimes the seller may believe that a quote from a contractor is too high. In such cases, the seller may call in another contractor to quote on the identical repair. Any difference between the quotes can then be negotiated between the parties. Buyers should submit all repair requests in writing and sign and date them. Likewise, sellers should sign and date any counter to a repair request.

In some cases buyers may want to make sellers responsible for getting agreed-upon repairs completed. However, it's generally recommended that the sellers give the buyers credits against the purchase price rather than making repairs. There are several reasons: Sellers are busy packing for their

Better to repair the pen after the sheep have escaped than not at all.

Chinese proverb



own move and don't have time to do repairs or to work with contractors. When sellers do the work themselves, they notoriously underestimate the time required to make repairs. Contractors may not be available to do the work in time for the closing, thus causing delays. And buyers are rarely satisfied with the quality of repairs done by sellers.

It's important to be specific about exactly how much the sellers will pay to get repairs done. Just attaching a quote isn't enough. Language such as "the sellers will pay to repair the roof" should be avoided because it could obligate the seller to cover all repair costs involved. Instead the contract should include language such as "the seller will pay to repair the roof up to a specified amount."

Once buyers and sellers have reached a consensus on repairs, credits, and price reductions, the final terms of the agreement should be written in a clear and legible way. The sellers' agent shouldn't merely write yes or no next to each item on the list. The agreement should also state which repairs will be made by licensed professionals.

Since the final repair agreement is a contract or an amendment to the sales contract, it should be signed and dated by both parties. Preparing the agreement might constitute the practice of law, so make sure all such agreements are reviewed by an attorney before the parties sign. Also remember that only the buyers and sellers can authorize a change to the agreement. Changes agreed to by a buyers' or sellers' agent aren't binding on the parties.

4. Keep records of completed work. Sellers should provide a contractor's receipt stamped "paid" for all repairs that were their responsibility prior to closing. In states where funds are put in escrow, contractors can be paid directly from the sellers' proceeds. Buyers should also sign a memo or form indicating they've received paid contractor receipts for completed work.

By properly documenting every step of the repair process, you'll prevent transaction delays—and quite possibly protect yourself and your clients from legal trouble. **RM**



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