



Writing Conditions – The Importance of Clarity

If you have ever been caught out by a poorly phrased condition, you know the devil is in the detail.

Lawsuits related to conditions and holdbacks are the type REIX sees the most often, almost always because they are poorly worded and/or ambiguous. It is little surprise then, that these types of conditions result in misunderstandings between buyers and sellers.

Imagine that a property that your client is purchasing comes with a hot tub. The inspection reveals that the hot tub is not working, so you write an amendment that says, “seller is to ensure hot tub is in working condition on or before possession date.”

Good enough, right? Wrong.

Based on that condition, the seller (who considers himself a bit of a handyman) plays around with the hot tub just enough to get it going. Happy days!

Then the buyer discovers that, a week after possession, the hot tub is no longer working – the seller’s jury-rigged solution did not do the trick. What the buyer really needed was the expertise of a plumber and/or electrician to fix the problem.

Unfortunately for the buyer, the less-than-specific, wholly inadequate wording of the hot tub condition provides no recourse, so the buyer is stuck with a broken hot tub.

Well-worded Conditions

Now imagine a happier scenario for the buyer, which could have happened if the condition or addendum were worded like this:

“The buyer’s lawyer shall holdback the sum of \$1,000 (or whatever the actual cost is to fix the hot tub). Should the seller fail to retain the services of a certified/qualified professional to effect the necessary repairs to the hot tub to place it in normal working condition on or before possession, and provide the seller with the paid invoice as evidence of the work being completed, the holdback funds shall be given to the buyer as full and final settlement of the hot tub issue.”

As you can see, there is a world of difference between the two approaches to the condition/holdback wording. It is this discrepancy that REIX sees lawsuits arising from.

Conditions need to be written in a way that clearly meets the expectations of the parties to the contract. They should also be written in a way that someone who is not a party to the contract can read the wording and understand exactly what the parties have agreed to.

Extending Condition Removal Dates

If a condition removal date goes by or expires without the waiver being received, the contract is considered dead. It must be re-written if both the buyer and seller are willing.

It is unacceptable practice to use an amendment to backdate the condition removal date to attempt to revive a dead contract. In the event of a lawsuit, there is a very good chance that a court would not recognize the amendment.

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