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Request for Remedy

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The Real Estate Purchase Contract approved by the Columbus Board of REALTORS® and the Columbus Bar Association (01/05 Revision) contains provisions for inspections and requests for remedies if unsatisfactory conditions are discovered. Paragraph 4.3 of the Contract has a blank that must be filled in with a number for the days of the Specified Inspection Period. It is during this time period that not only inspections and tests may be performed but also any Requests for Remedy must be submitted.

Paragraph 4.4(a) has a blank that must be filled in with a number for the days of the Agreement to Remedy Period. This time period follows immediately after the Specified Inspection Period. The intent is to provide a pre-designated period of time after inspections during which the buyer and seller are able to negotiate the resolution of unsatisfactory conditions discovered during the Specified Inspection Period.

The importance of artful drafting of a Request for Remedy cannot be understated. Paragraph 4.4(a) of the Contract specifies that the Request be in writing, signed by the Buyer, stating the unsatisfactory conditions, along with the inspections or tests specifying the unsatisfactory conditions. I suggest that in drafting a Request for Remedy, careful thought be given to exactly what is being requested. It is not enough to say, "See items 4, 6, and 10 of the home inspector's report attached hereto." That will only identify what has been found, when what is really desired is to have the conditions fixed or a reduction in the purchase price.

One rule of thumb that I use is whether it matters who does the work. If it matters, I always want to specify the contractor, or to have approval from the Buyers of the contractor selected by the Seller. If the roof leaks or the plumbing needs to be repaired, the Buyer would probably rather have the well established contractor instead of the local handyman. Of course, the Seller would rather save money and have the handyman. Request the contractor by name, not just "a licensed contractor," or simply "fix the leak in the roof as indicated in the report." An important consideration is who will stand behind the work if there is a problem and whether they will warrant the work. It will be the Buyer's home and the Buyer should have significant input as to how the repairs are completed.

Request copies of the paid receipts prior to closing and the right to re-inspect the repairs. If repairs are not possible for whatever reason prior to closing, money may be placed in an escrow account with the title agency to provide for the repairs when possible in the future. (Be sure to check with the title agency before putting it in the Request or agreeing to it in subsequent negotiations.) Another option is to reduce the purchase price, however, that may not always provide cash to the buyer. Each situation is different and one should consider all factors, including what is acceptable with the lender, when drafting the Request for Remedy.

The temptation is to confine the writing in the space provided on the CBR Request for Remedy form. That is fine if that is all that is needed, but if the situation requires more words and space, simply refer to an additional page or two. Be sure to clearly reference all aspects of the original contract on additional pages, such as contract date, property address, buyer and seller names.

In some ways, drafting the Request for Remedy is more difficult than drafting the Contract. With the Contract, much of the drafting has been hammered out between the CBR and the CBA with only blanks to fill in. With the Request for Remedy, you are given a blank sheet; carefully think through what you write and what outcome you and the Buyer desire. You may want to have your broker, or the Buyer's attorney,

review it before submission. Try to write it in such a way that there is only one interpretation as to what is desired. Ambiguity will be construed against the drafter.

One last point, time is of the essence. If you need additional time for the Specified Inspection Period, immediately contact the Seller's agent and get a written extension of time signed by all the parties prior to the expiration of the Specified Inspection Period.

While following the suggestions in this article will probably result in longer Requests for Remedy than what you may have submitted in the past, your clients will be well served by your efforts.

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