

Post-Closing Buyer/Seller Disputes

After a sale closes, sometimes problems arise. Disputes can happen immediately or many months later. Frequently, the source of the problem is the buyer discovers something unexpected. Often, the agent or broker is the first call made and you need to be prepared and strategic in your response.

Help identify the problem, not the source: Is it a leak, a crack, a blockage, an expense or something else? Once identified, you can direct the principal to an appropriate expert who can more fully analyze the situation. Good questions to ask include: When did the party discover the problem? What has the party done about it? What is the estimated cost to cure the problem? Is it likely a pre-existing condition or something new?

Look for potential solutions: Sometimes principals get so wrapped-up in the tension of the dispute, they don't consider obvious avenues to explore. Maybe the item is covered by a home warranty policy. Maybe an inspector or repair person involved in the sale will honor a warranty or agree to fix the problem. Maybe a title company can be of service. Maybe the principal just needs help understanding how something works. Maybe asking the other party about the problem, rather than making demands or threats, might be the most effective first response.

Remind the parties of relevant contract terms: Real estate licensees are expected to be familiar with basic contract terms. Paragraph 7B of the Residential Purchase Agreement (C.A.R. form RPA) states the property is sold "as-is" in its physical condition on the date of acceptance and Paragraphs 11M and 25D that the seller is obligated to disclose *known material* facts and defects. The questions in the Real Estate Transfer Disclosure Statement (C.A.R. Form TDS) and Seller Property Questionnaire (C.A.R. Form SPQ) ask if the seller is aware of issues not if they exist. In the Request for Repair (C.A.R. Form RR), the buyer releases the seller from claims regarding the disclosed condition of the property and in the Contingency Removal (C.A.R. Form CR) the buyer is deemed to have completed investigations related to those contingencies that are being removed.

Facilitate communications: Don't insert yourself into the dispute, or act like a lawyer and tell the parties what their legal rights and remedies are. Instead, your role should be as a conduit to convey information between the parties. There may be a temptation to advocate for the client with whom the licensee most closely identifies. If your brokerage company was a dual agent in the transaction you must especially resist that temptation. You can be caring, and sympathetic but you must also be neutral. Dual agents owe fiduciary duties to both sides.

Elevate within your company: Sometimes, in spite of your best efforts, the parties do not make any progress toward resolving their dispute. When that happens, bring in your office manager or broker. You may be considered too vested or involved in the outcome or even perceived as part of the problems. A supervisor may have different ideas and experiences, be considered more neutral and may have more success.

Know the dispute resolution alternatives: When negotiations fail, more formal methods may be needed. Disputes of up to \$10,000 may be resolved in Small Claims court. The RPA requires the parties attempt to mediate via C.A.R.'s Consumer Mediation Center (www.consumermediation.org) or other mediation provider selected by the parties. If the arbitration clause is initialed by both parties, it is required. If not, litigation, or going to court may be necessary.

Recommend the parties consult an attorney: Real estate licensees should not give their opinion of who is right and wrong and what a judge, jury or arbitrator will hold. The client should always seek the advice of their own legal counsel.