

THE CONTRACT IS MORE THAN JUST A ROADMAP

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Buyers and sellers often have a tendency to look at the purchase contract more or less as a roadmap to what they're buying rather than as a binding contract with legal implications.

Many times, things which aren't fully understood or realized by one of the parties or which was inadvertently left out of the original offer can be clarified or amended in an addendum.

But that's only if both parties agree. If not, the original contract holds. And since buyers and sellers make their initial decisions on whether to accept or proceed with an offer based on the terms written into the contract, it really is critically important for both parties to *really* know what they're agreeing to before they sign and present the contract.

In the standard purchase contract that most real estate agents use, there are eight tightly-worded pages of clauses, terms, conditions, and legalese. These aren't there just to take up space. They're there to clarify each party's intentions and to address items which could become bones of contention during the transaction or even after escrow closes.

At one time, the standard purchase contract was just one page. That was before the advent of disclosure laws and at a time when society wasn't nearly as litigious as it right now. And it was at a time when the legal side of real estate was far less specific than it is today.

Many of the clauses you read in the current real estate contract directly relate to lawsuits, disputes, or misconceptions that have occurred in previous real estate transactions. The purpose of these clauses is to prevent the same dispute from arising again.

Yet, many buyers and sellers still have a tendency to approach the stage of the transaction when you're writing or negotiating the contract as nothing more than a necessary evil.

Remember the last time you purchased a car. You spent five or 10 minutes with the finance manager, who said "sign here, here and here, initial here," and that was it. If you wanted the car, you signed it...and often without spending much time considering what all the legal mumbo-jumbo really said.

Well, when it comes to buying a home, many buyers and sellers look at the purchase contract the same way. They figure that since it's a pre-printed form, they pretty much have to sign it if they want the sale to go through.

Nothing could be further from the truth. In fact, the contract itself has all sorts of blanks that must be filled in by hand. Some items are usually filled in based on local custom. If you deviate from that custom, the other party is probably going to consider it the same as asking for a concession.

Nevertheless, there are instances where filling it out one way and not really knowing what you're signing can make a huge difference in what each party believes to be their rights and obligations.

For example, one standard clause provides the buyer with 14 days to complete all of their inspections and make requests of the seller for any repairs they feel are necessary. Many buyers automatically leave that figure alone since the default figure in the contract says 14 days.

Let's say you follow that approach and set up appointments to perform your inspections. However, a few days into it, you discover that most of the inspectors are pretty backed up. The termite company can't get out there for 10 days. It's 13 days for the home inspector. And the chimney inspector is booked for the next 12 days.

You decide to wait until you receive all the reports before making any requests of the seller. By the time that happens, it's been 15 days. You realize that there are some pretty serious problems – to the tune of about \$10,000. All are items you feel the seller should repair.

Well, by the terms of the contract, you gave up the right to ask for any such repairs the day before, which is when your inspection contingency expired. Why? Because you left that 14 day period stand at the time you wrote the contract.

Now, had you anticipated the possibility that the inspectors might be backed up (or better yet, checked the availability before writing your offer) you may have instead penciled in 18 or perhaps even 21 days. Such a tactic would have given you ample time to perform your inspections and still have a contractual contingency in effect.

In the example I just gave, the seller has no legal responsibility to address any issues the buyer discovers after that 14-day period passes. The buyer can ask, but the seller can simply say “sorry, Charlie, too late.”

Let's say a few days into the escrow period, you realize that 14 days wasn't enough. At that point you can ask the seller to grant you an extension. In many instances, the seller will agree to do so, as long as the extension period is reasonable.

But keep in mind that the seller doesn't have to agree to such an extension. And every so often, you'll come across a seller who says no. Often, their position is that the buyer should have known what they were signing when he or she wrote the contract.

Consider too, that the buyer may simply want to back out of the deal altogether once the inspections have been completed. If you read the contract, though, you'll see that that's not an option. The buyer can ask for necessary repairs, but as long as the seller says okay, the buyer is committed to proceed.

Many buyers, though, mistakenly think that they have the entire inspection period to decide whether the house is worthy enough for them to go through with the deal.

If they follow that assumption and fail to adhere to the time frames and specific method of addressing things, they could very easily end up walking away from their entire deposit if things go awry.

A real estate sale is one of the most complex transactions most people will ever participate in. There are all sorts of terms, conditions, requirements and expectations. They're all written in black and white.

There's always a presumption that the person signing that contract has read it and understands the ramifications of everything he or she has agreed to.

If you take a devil-may-care approach to things, you may find out mid-way through the transaction that something you paid little attention to when you wrote the contract is now a huge item of concern – with equally huge financial implications.

I always advise my clients to spend plenty of time reading the contract so that they fully understand exactly what they're signing. Take that extra time and you'll be prepared for most twists and turns that a real estate transaction can throw your way.

It sure beats the alternative. Just ask any buyer or seller who signed things in a hurry and later lived to regret it.

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