



THE MOST COMMON CONTRACT ISSUES

The One to Four Family Contract defines when key actions must occur and keeps all parties on track toward a successful closing. A simple mistake, however, and that same document can create confusion, derail a deal, and be the basis for a lawsuit. Below are some of the most common issues we see and how you can avoid them.

THE BASICS – THE DATE & PARTIES. Often the times for performance in the contract are calculated from the “effective date” of the contract. If there is no effective date, it can be difficult to compute, with certainty, the time for performance. Also, failing to require all sellers or buyers to sign the contract can be fatal to enforcement. A seller or buyer who is not listed as a party and who does not sign the contract cannot be required to buy or sell.

IMPROPER USE OF SPECIAL PROVISIONS. You should only write into Special Provisions factual statements and business details related to the sale. Be careful, though; even sticking to facts and business details won’t guarantee compliance. Including factual statements or business details addressed in some other form promulgated by TREC is a violation of commission rules. Also, avoid the unauthorized practice of law.

UNDERSTAND WHO PAYS FOR THE SURVEY. When box 1 is checked in Paragraph 6C, the seller is responsible for furnishing an existing survey. If the seller can’t find the survey within the specified time period, the seller must pay for a new one. If the Buyer’s Box is checked in Paragraph 6C(1), it doesn’t mean the buyer must pay for a new survey if the seller can’t find an existing survey.

GENERIC V. SPECIFIC REPAIRS. The buyer has to accept the property in its present condition or write into Paragraph 7D(2) specific repairs and treatments that the seller will complete at the seller’s expense. Paragraph 7D(2) should only be checked if the buyer already knows repairs he wants the seller to perform.

DON’T ASSUME THE BROKER INFORMATION SECTION IS AN AGREEMENT BETWEEN THE BROKERS. The line on page 9 of the One to Four Family Contract that includes a blank for the amount of the total sales price the listing broker agreed to pay the other broker is informational only, not a contract between the brokers. The purpose is to instruct the title company what the listing broker has agreed to pay the other broker and authorizes the title company to pay the other broker directly at closing. The agreement to pay must exist somewhere else to be enforceable. Typically, that’s through the MLS, where listing brokers must specify the compensation being offered to cooperating MLS participants. That offer constitutes an unconditional, unilateral offer that becomes a contract between the brokers when a seller and a buyer execute a purchase contract and the cooperating broker is the procuring cause of that sale.

Dallas

5950 Sherry Lane, Suite 300
Dallas, Texas 75225
214.389.5100 (Office)
214.389.5104 (Fax)

Plano/Frisco

5600 Tennyson Pkwy., Suite 385
Plano, Texas 75024
972.473.0330 (Office)
972.473.0334 (Fax)