

BUYER'S REMORSE HITS A SNAG

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Over the past two weeks, you and your agent have seen just about every house on the market in your price range. You've seen tall homes and small homes and homes that need a lot of structural work and homes that need only cosmetics. Some of the homes you saw during the first week are now under contract, so you've learned that the market is fast so, if you find a property you like, you should make an offer on it right away.

Finally, you think you've found the perfect home. Well, not exactly perfect, but you're pretty sure it's a home that will suit your needs. You always thought you would fall in love with the property you wanted to buy, but there's nothing else out there that satisfies your budget, criteria, wants and needs like this one. Besides, you're in "like" with this property, so it's probably right to submit an offer. What the heck, you think to yourself, go for it – there's always that three-day right of rescission thing.

You and your agent write up an offer and give it to the listing agent who presents it to the seller that night. Good news! The seller accepts your offer and signs the contract. Hurray! No, wait, I might have made a mistake. This is going too fast for me. Maybe a better property will come on the market tomorrow or next week. I have to get out of this deal. How can I get out of this? I know, I'll rescind. Buyer's remorse has set in.

You tell your agent you want to rescind the contract. Your agent doesn't get it. She asks you why you think you can rescind. You say you remember something about a three-day rescission period immediately after a contract is signed – you know, so a buyer can change its mind and get out of the deal. Your agent is looking at you like you've lost your mind.

There are two plausible explanations for this buyer's question and they hinge upon whether the buyer is buying a single family home or a condominium unit. First, because the buyer specifically mentions a three-day right of rescission, he or she may be confusing the sale of consumer goods or services with the sale of real property. Consumer goods or services are those items that are bought, leased or rented primarily for personal, family or household purposes (some examples include vacuum cleaners, refrigerators and house painting and, oftentimes, the sale of these items takes place on the buyer's front steps. The sale of such consumer goods or services is covered under the Home Solicitation Sales Act which does allow a buyer to cancel a transaction, without penalty or obligation, within three business days from the date of the contract signed by both the buyer and the seller. However, the Home Solicitation Sales Act does not apply to the sale or rental of real property.

Second, if the buyer is purchasing a condominium unit, the Common Interest Ownership Act requires the seller to furnish a buyer (or buyer's attorney) a copy of the condominium's declaration, bylaws, rules and regulations of the association and a resale certificate. The buyer has an opportunity to review the documents and resale certificate to evaluate his or her decision to buy. Here is where the "rescission period" concept fits. The purchase contract is *voidable* by the buyer until the expiration of five days after the certificate and documents have been *delivered* to the buyer (or buyer's attorney), or seven days after the certificate and documents were *sent* by registered or certified mail.

Therefore, if the buyer is purchasing a single family home, there is no three-day right of rescission period as there is for consumer goods or services, and unless the contract the buyer executed for the real property fails according to its terms and conditions (ex. the failure of buyer to obtain mortgage commitment relieves buyer), the buyer has no right to rescind based on a change of heart or mind. If the buyer is purchasing a condominium unit, there is either a five-day or seven-day right to *void* the contract, depending upon whether the condominium documentation package was hand delivered or sent by mail.

In the scenario above, if the buyer elects not to proceed with the purchase, the buyer should look to the writing (the contract) to determine what, if any, liabilities flow from that decision. Likewise, the seller should also look to the writing to determine what, if any, remedies are available to it pursuant to a buyer's default.

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