

Sills & Settlement

There have been a number of significant changes to the REIN contract. As part of the Association's efforts to disseminate and highlight those changes, I thought I'd take this opportunity to review two of them again (and to be clear, these are not the only ones, even in these sections).

Previously, with respect to termite and moisture inspections the REIN contract, at paragraph 13(b), provided (in relevant part):

. . . showing whether the Property's principal dwelling and garage are free of visible wood destroying insect infestation with no visible unrepaired damage from said infestation and whether readily accessible areas of the foundation and understructure, including crawl space, doors, sills, joists, subflooring and substructure support timbers are free of standing water, visible moisture damage and wood destroying fungi.

And it now provides:

. . . shall show whether the Property's principal dwelling, garage, and the following additional structures [describe add'l structures] are free of visible wood destroying insect infestation with no visible unrepaired damage from said infestation. The Moisture Inspection Report shall show whether readily accessible areas of the foundation and understructure, including crawl space, sill plates, joists, subflooring and substructure support timbers are free of standing water, visible moisture damage and wood destroying fungi.

Ok, aside from the additional structures part, the changes are (a) the paragraph has divided the termite and moisture part to clarify the termite inspection is unrestricted whereas the moisture inspection is restricted to (b) foundation and understructure which no longer includes (c) "sills" and "doors." Instead of "sills" it

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now says “sill plates.” In technical terms a sill plate is the wood-thingy that sits on top of the block thingamajig upon which the floor joisty-things rest their little heads, and not the cute little piece of wood at the bottom of a window that seems to rot quite frequently.

As a practical matter we need to pay attention to the changes because it has been quite common for termite and moisture companies to report moisture damage to window sills and to doors (and other areas). They should no longer do so (and a listing agent should send them a copy of that language in the contract and ask them to inspect, and only inspect, what is described in ¶13(b)?). Regardless (did you know irregardless is not a real word?), they are not covered in the contract. If your buyer wants these looked at, and perhaps addressed contractually, then that should be done as part of the home inspection.

Previously, with respect to settlement, the REIN contract, at paragraph 7, provided (in relevant part):

. . . Settlement to be on or before [date] (“Settlement Date”) or as soon thereafter as possible allowing reasonable time to process the specified loan and to correct any defects reported by a title examiner. If through no fault of Seller settlement has not occurred within thirty (30) days after the Settlement Date, then Seller, at Seller’s option, may terminate this Agreement by written notice to Buyer. If through no fault of Buyer settlement has not occurred within thirty (30) days after the Settlement Date, then Buyer, at Buyer’s option, may terminate this Agreement by written notice to Seller.

And it now provides:

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... Settlement to be on or before [date]. **The Settlement Date may be extended by [no of days] days (if blank, the parties deem the extension to be 7 days) solely for the purpose of:**

- i. processing the specified loan and/or**
- ii. correcting any defects reported by a title examiner.**

The Settlement Date shall be deemed to include any extension ONLY as provided for in (i) or (ii) above. If through no fault of Seller settlement has not occurred by the Settlement Date, then Seller, at Seller's option, may terminate this Agreement by written notice to Buyer. If through no fault of Buyer settlement has not occurred by the Settlement Date, then Buyer, at Buyer's option, may terminate this Agreement by written notice to Seller.

Uh oh. No more "reasonable" period. No more thirty days (default is seven). And most importantly, it tries to make it as clear as is possible that the **ONLY** (and they used CAPS and **BOLD** for goodness sakes, so I guess that really, really means only) reasons for not closing are title and loan problems, and if the Buyer's loan isn't ready – regardless of the reason -- the Seller can terminate after the specified period, which by default is seven days; and the Buyer can terminate if there is a title problem that isn't resolved within the seven days. Note that the party in charge doesn't have to terminate, and I would infer from that and the balance of the language (not quoted above) that you can require the Buyer or Seller, as the case may be, to keep trying to close past the contractually agreed reasonable extension period.

Practice Pointer? For once I think I can actually make a practice tip that just so happens to help me as a settlement agent (and now you know why I chose this for a topic): you ought to start allowing more time between contract and closing, which will help alleviate the back end contractual time pressure. And in the current market those efforts should be more palatable.

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As always, if you have questions, comments, corrections or suggestions for future topics please email me at youdaman@sillplatelaw.com Nah, not really, it's the same old bdlytle@lytlelaw.com

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