Time Is Of The Essence? What Does That Really Meanâ?¦

Description

â??Time is of the essenceâ?• is a clause in place in many of the real estate contracts in Virginia. It is also a clause that seems to me to be ignored to some degree. After teaching a number of classes on the contract, it is clear to me that real estate agents and their clients do not fully understand the implications of what the clause means and how it may be applied in court.

A great example can be found in the Northern Virginia Association of Realtors (â??NVARâ?•) Contract. The â??time is of the essenceâ?• clause can be found in the NVAR contract at Paragraph 35. Paragraph 35 states:

Time is of the essence means that the dates and time frames agreed to by the parties must be met. Failure to meet stated dates or time frames will result in waiver of contractual rights or will be a Default under the terms of the Contract.

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The language seems pretty clear. Meet the timelines and all will work out great. However, consider the language in the Home Inspection Contingency regarding negotiation between the parties regarding requested repairs when the home inspection notes deficiencies:

Negotiation Period *In the event of A.1** above, the parties shall have until 9 p.m. _____days after Buyerâ??s Delivery of Inspection Addendum (â??Negotiation Periodâ?•) to negotiate a mutually acceptable written addendum addressing the deficiencies. At any time during Negotiation Period, Buyer or Seller may make, modify, rescind, or alter as many offers and counter-offers as desired to reach mutually acceptable terms. Buyer and Seller may agree on terms by signing a written addendum describing agreed upon deficiencies and remedies within Negotiation Period. Otherwise, all offers and/or counteroffers terminate.*

***A.1 is the situation in which the buyer would like certain items repaired that showed up in the home inspection report.*

How does â??time is of the essenceâ?• factor in above? For example, what if the parties agree to a seven (7) day negotiation period? After receiving the home inspection report and the requested repairs, can the seller simply sit on the request and not respond until the last minute? This is a pretty common practice in my experience. No one has ever said why they sit on the request, but you can see how it would be potentially advantageous to stall until the last minute. If the seller waits until most of the period expires, the buyer would be pressed on time to make a decision and it would leave very little wiggle room for negotiation. Does this behavior fly in the face of the theory behind â??time is of the essenceâ?•? Or does it create an ethical dilemma?

According to legaldictionary.net, â??time is of the essenceâ?• means:

A time is of the essence provision is used in a contract wherein a missed deadline could damage one or more of the parties. For example, time is of the essence when a lender must fulfill a loan contract by funding a loan on time, else the buyer will miss out on his chance to buy the property in question, or

fund the pending business opportunity. Normally, missing a deadline does not immediately translate to breaching a contract. However, in a contract that is more time-sensitive, a time is of the essence clause is used to ensure that the parties will stick to their deadlines.

And:

A contract provision requiring the terms be fulfilled by a certain date.

That leaves drafters with the option of picking a reasonable timeframe or certain date. A reasonable time frame would require that whatever task is requested be completed in a time period that is considered to be fair for both sides of the transaction. Date certain is simple â?? the date sets the deadline. Having a date certain certainly creates a tangible piece of data. The language in the NVAR Contract does not actually create a date certain. However, the contingencies and clauses do. Does that leave room for interpretation on reasonableness or does the date of the contingency create the deadline in the NVAR contract? Can it be a mixture of both?

The idea behind â??time is of the essenceâ?•, regardless of how it is drafted, is to prevent negative impact to one party when another party does not meet a deadline, specific or otherwise. Drafters have the choice to create certain requirements. It appears to me the drafters of the NVAR contract did a little bit of both.

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