

South Carolina Residential Property Agreements Transitions to Due Diligence-Only Model

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Changes affecting the South Carolina Residential Property Agreement to Buy and Sell Real Estate (Property Agreement) went into effect on June 13, 2022. These changes, promulgated by the South Carolina Association of REALTORS (SCR), effectively transitioned the Property Agreement to a due diligence-only model and removed the previous repair procedure and “as-is” option.

The move comes as South Carolina continues to experience a buyer’s market in residential real estate. In light of the new model, all residential real estate purchase and sale agreements will need to be modified, and buyers, sellers, and realtors alike should understand what has changed. Rosen Hagood is here to explain.

The Previous Repair Procedure

In the past, a buyer could use the repair option under paragraph 8 of the Property Agreement to address property defects and other issues. The repair procedure allowed a certain length of time for the buyer to complete a property inspection. At the conclusion of the inspection, the buyer would be required to present the seller with a list of any systems or items that need repairs. The parties could then negotiate a final agreement of repairs to complete, a step which needed to be done before closing.

The Benefits of a Due Diligence Model

In essence, the seller is required under due diligence to address any issues raised by the buyer before a closing may be set. That includes providing answers to questions pertaining to property taxes, homeowners’ associations, the need for flood insurance, and more. If the seller does not respond during the set time for due diligence, the buyer has several options under the new model.

The Changes

Due diligence is generally favored by buyer’s agents. Under the new model, the buyer can still conduct or obtain inspections and deliver a Repair Requests Notice to the seller. But now the buyer has the option to proceed under an amended real estate contract, opt for an as-is contract, or unilaterally terminate the contract by properly delivering a Notice of Termination and termination fee to the seller. These changes will be reflected in the revised Property Agreement for residential real estate purchases.

What Buyers and Sellers Need to Know

Buyers (and their agents) should conduct all due diligence, and submit all repair requests, within the due diligence period, and ideally as early as possible. One advantage of the new model is that buyers have time to decide whether to accept the property as-is or to terminate the contract if changes are not made. Buyers should understand, however, that sellers are not obligated to respond to the repair requests. They should be prepared to proceed accordingly and exercise their options in the event repairs are not made.

If the buyer fails to deliver the above-mentioned termination fee, this would be considered an invalid termination and the Purchase Agreement becomes as-is. If the buyer tries to cancel the as-is contract, they could become liable for damages. However, a termination fee is not owed to the seller if the buyer terminates due to financing problems. The same is true for termination under appraisal or CL-100 Wood Infestation Report issues.

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