

**LEGAL FORUM**  
**THE BEST OF THE GAR LEGAL HELPLINE**  
**Seth G. Weissman**

*what kind of trees?*  
*substantially -*  
*if purchasing for*  
*aside*

**INQUIRY #1.: GAR Forms**

**QUESTION:** Purchase & Sale Agreement paragraph C-3. Winter storm took a couple of large trees down. They did not hit anything but cannot be saved - they will be removed and yard cleaned up. Does this count as far as 'property being in same condition'? Is it any different than a tree dying, etc? Is this a question that I can get answered here? Thank you,

**INQUIRY #2.: Earnest Money**

**QUESTION:** A copy of an earnest money check was sent to the seller's agent but he had not actually received the earnest money. This was not disclosed at that time. After the due diligence period passed and the buyer would not close, the seller felt he had a claim on the earnest money. Since it was never actually received, the broker has no money for the seller to make a claim to. The agent was told verbally that the earnest money had never been received, but not until after the due diligence period had passed. To whom, if any, should seller make a complaint to? The selling broker assumes no liability. ~~Thanks for your help.~~

*found case about same -*

**INQUIRY #3.: License Law**

**QUESTION:** If my seller has not given permission to tell buyers of a horrific death in the house...and, the buyer is a personal friend of mine...if I disclose the death to the buyer, what penalties would I possibly face? And, if I am also representing the buyer, and now acting as dual agent, can I disclose without the seller's permission? Any court cases concerning this?

**INQUIRY #4.: Earnest Money / 10 Day Letter**

**QUESTION:** I have a question regarding the 10 day letter concerning earnest money refunds when the parties are in dispute over the earnest money. I was planning to send a ten day letter to all parties of a contract that fell through, stating to whom the earnest money should be refunded, and for what reason. The earnest money should go to the seller because the buyer could not obtain financing and did not get that denial in writing before the end of the financing contingency. In preparing the letter, I realized that the earnest money for the buyer was provided by someone who is not a party to the contract. I guess this person gave the earnest money on behalf of the buyer. Nonetheless, my question is whether I have to send a ten day letter to the party who provided the earnest money, or just the buyer, seller and agents? Thank you.

**INQUIRY #5.: Lease Purchase (Maintenance)**

**QUESTION:** In a lease purchase situation is it permissible if all parties agree for the buyer/tenant to be responsible for the maintenance and repairs of the property during the lease period?

*may have unlocally created an estate problem*  
*maintenance can be done by tenant*

*447 B*  
*landlord's responsible for repairs*

*excitation clause* *Seth said bad* *if people really*

### INQUIRY #6.: GAR Forms

**QUESTION:** About 3 months after closing and recent rains, a large sink hole appeared in the backyard of the property. According to the neighbors, the owner was aware of this problem for quite some time before selling the home. On the Sellers Disclosure paragraph 9.b "Is there now or has there ever been any visible soil movement or settlement?" This was checked NO. The owner has been non responsive to the buyer's request for additional information concerning the hole. Is there any recourse for the buyer to have this problem addressed/repaired?

### INQUIRY #7.: GAR Forms

**QUESTION:** Are realtors allowed to call for highest and best if there are not actually multiple offers??? Are they allowed to discuss the amount needed to an agent submitting a highest and best but not to the other agents submitting?

### INQUIRY #8.: Other

**QUESTION:** I'm an agent and I am considered to be the procuring cause of a sale, but the buyer went to another agent to submit the offer and is now under contract. The selling agent has agreed to pay me a 15% referral fee. If I agree to the 15% referral fee will I be able to go after the buyer for the remaining commission? Please advise or forward me to anyone that can assist. Thanks!

### INQUIRY #9.: Acceptance of Offer

**QUESTION:** Is a seller legally obligated to accept a full price offer on a listed property? If so, why? If not, why? Thank you for providing this service to us.

### INQUIRY #10.: Disclosure after Due Diligence

**QUESTION:** My question is about disclosing a defect in a material in a property that was discovered by the seller after due diligence had ended. I represent the seller and the property is under contract. The buyer had 10 days due diligence where they visited multiple times and hired a home inspector. We successfully negotiated an amendment to address concerns, this specific defect never came up. We are now 1 week from closing and the seller just now noticed the kitchen backsplash tile was coming loose from the wall in a few areas. This tile defect was never addressed by the buyer. We elected to disclose to the buyer that the tile was in need of repair but that my seller wasn't willing to have it replaced. The seller has asked for an appropriate monetary compensation. My seller is refusing to compensate and says that he was simply notifying the buyer about the defect. Furthermore, my seller has instructed me to notify the buyer that we will allow them to terminate this contract and receive a full refund of their earnest money. The buyer is refusing this offer and is threatening a suit in small claims court after the closing. Questions: Did we have to disclose the defect that was discovered in the first place, considering the buyer had due diligence and an opportunity to ask for it? Does the seller have an obligation to repair the defect? Can we move forward to the closing with this issue unresolved?

*Answers*  
*Will eventually be on help line*

