

## How Reasonable Does A Corrective Proposal Have To Be?

No very! Take, for example, the buyers who sought replacement of the wooden deck railing. Their inspection report indicated that the deck was in good condition, though at some future date the wooden railing and balusters would have to be treated and ultimately replaced (the decking material was a composite with a lifetime guarantee). In response, the buyers submitted a Corrective Proposal which, among other nickel-and-dime repairs, sought replaced of the wooden deck railing and balusters with a vinyl substitute. The estimated cost was slightly over \$2,000.

The sellers were outraged that the buyers would demand replacement of an item that was hardly worn. Further, to replace the railing and balusters in wood would cost substantially less than one-half the cost of using vinyl. This the sellers were willing to do. They questioned the right of the buyers to be unreasonable in demanding replacement with an item that was not like-kind.

Despite the unreasonableness of the buyers, they will prevail. The Inspection Contingency, Paragraph 12 of the *Standard Agreement*, give the buyers the right to submit a corrective proposal “. . . if the result of any Inspection elected . . . is unsatisfactory to Buyer . . .” “Unsatisfactory to Buyer” is entirely subjective and may not be altogether reasonable! If the sellers fail to meet the Corrective Proposal or successfully negotiate an agreement with the buyers, then the buyers may walk.

We are thinking “like-kind” when an item or system fails after the *Standard Agreement* is executed. For example, if the old oil furnace fails before closing, the seller has an obligation to either repair it, replace it, or credit the buyer with the fair market value of the system. The seller is not required to meet the buyer’s demand that the system be replaced with a different type of system or any other system that the buyer specifically requires. The repair/replacement of an item that fails after the agreement is executed is controlled by a completely different provision in the *Agreement of Sale, Maintenance and Risk of Loss*.

When it comes to inspections, buyers may indeed be unreasonable. One would presume that after deciding to purchase a house and after spending money on inspections, that they would be reasonable in any Corrective Proposal submitted. In this market with ever declining prices, there are buyers who can take advantage of the opportunity provided by the Inspection Contingency and seek further concessions once the seller has removed the property from the market and perhaps is now in greater financial distress. Listing agents can help sellers guard against such buyers by making subjective evaluations during the original negotiation process. This is hardly a scientific approach, but sizing the buyers certainly makes sense.

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