



How to Enforce a Contract of Sale When the Seller Threatens to Breach

When you enter into a contract to purchase a property, you expect that the seller will uphold their end of the agreement. However, there are cases where a seller might threaten to breach the contract, leaving the buyer in a difficult situation. This newsletter explores key steps and legal remedies you may consider to protect your interests if a seller indicates they may not fulfill their contractual obligations.

Anticipatory Repudiation and Its Legal Implications:

If a seller threatens not to honor the contract before the closing date, this is known as anticipatory repudiation. In essence, this is a signal that the seller intends not to fulfill their obligations, even though the deadline for performance has not yet arrived. In New York, anticipatory repudiation can give the buyer a right to act before the breach actually occurs. Recognizing this early allows buyers to seek remedies without waiting until the closing date passes.

Legal Implications of Anticipatory Repudiation:

1. **Right to Seek Damages:** Buyers may be entitled to damages based on the difference between the contract price and the property's fair market value.
2. **Right to Specific Performance:** Specific performance is a court order that compels the seller to go through with the sale. This remedy is often available in real estate transactions due to the unique nature of property.

Filing a Notice of Pendency:

A Notice of Pendency, or Lis Pendens, is a legal document that alerts potential buyers and lenders that there is an ongoing dispute concerning the property. When you file a Notice of Pendency, it becomes more challenging for the seller to sell or mortgage the property until the dispute is resolved. This step can be critical in safeguarding your rights and ensuring the property remains available as agreed in the contract.

Key Points of a Notice of Pendency:

- **Prevents Sale to Third Parties:** The notice effectively stops the seller from transferring ownership to another buyer while litigation is ongoing.
- **Secures Buyer's Interest:** By publicly recording the pending dispute, the buyer's claim to the property is documented, securing a right to enforce the contract through legal channels.

Next Steps and Protecting Your Rights:

If a seller indicates they may not fulfill their obligations, it's essential to act quickly and consult legal counsel to understand the options available. In situations like these, our experienced attorneys at James G. Dibbini & Associates, P.C. can provide guidance on filing a Notice of Pendency, initiating legal proceedings, and working towards enforcing the contract or obtaining damages.

Our goal is to protect your investment and secure the outcome you deserve.

Should you have any concerns about a real estate transaction, please do not hesitate to reach out to our team.

Contact Us

If you need any assistance, our team at James G. Dibbini & Associates, P.C. is here to help. Contact us today at (914) 240-8270 or jdibbini@dibbinilaw.com.

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