

REPAIRS IN THE REPC



Let me illustrate this through a common scenario. Say Buyer and Seller are under contract. During the Buyer's Due Diligence, the Buyer discovers that there are elevated levels of radon in the property and needs a radon mitigation system installed. Let me address just a couple of basic options that the Buyer has at this point.

- 1) The option of doing nothing. With this option, the Buyer remains under contract, avoids possible underwriting issues, and ultimately the Buyer will have control over who installs the mitigation system and where it is installed after Closing. This is obviously the least rewarding option for the Buyer.
- 2) The option of asking for a purchase price reduction. I recognize that this option only lowers the Buyer's monthly mortgage payment by a couple of dollars at best. However, this option helps the Buyer and Seller avoid possible underwriting issues that may arise should repairs be mentioned in the REPC. Lastly, the Buyer will have control over who installs the mitigation system and where it is installed.
- 3) The option of asking for Closing costs. In asking the Seller for Closing costs in lieu of installing a radon mitigation system, the Buyer is receiving a tangible benefit since the Buyer's out-of-pocket expenses for Closing will be reduced. The Buyer and Seller avoid the issue of possible underwriting issues that may arise should repairs be mentioned in the REPC. Lastly, the Buyer will have control over who installs the mitigation system and where it is installed.
- 4) The option of asking the Seller to install a radon mitigation system. If the Buyer does desire this option, they may want to approach the Seller first via email, text, or verbally. The Buyer and Seller (or through their REALTORS®) are free to negotiate repairs outside the REPC. However, once the Buyer and Seller agree to a resolution, that resolution MUST BE part of the REPC. Agreeing to repairs outside the REPC and failing to disclose to the Buyer's lender may create a double contract.

So, in this case let's say the Seller is willing to install a radon mitigation system. The UAR's Resolution of Due Diligence Addendum allows for the Buyer and Seller to address repairs (and price reductions and Closing costs). However, as many of you are aware, having repairs as part of the REPC may impact the Buyer's loan process. Please help your clients be aware of this. Much of how repairs are addressed will hinge on the Buyer's lender. Lastly, know that no matter how clear the REPC language is regarding repairs, there may still be some subjectivity to repairs. Seller's idea of a completed repair may be different than the Buyer's.

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