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ATTORNEYS AT LAW

**Q: MY BUYER DIDN'T GET HIS SURVEY UNTIL AFTER THE FEASIBILITY STUDY PERIOD.  
IS MY BUYER'S DEPOSIT AT RISK IF THERE ARE SURVEY PROBLEMS UNDER THE FLORIDA  
REALTOR'S VACANT LAND CONTRACT?**

A: It depends on whether the survey problem qualifies as a survey defect under buyer's contract. Most likely, the survey problem will qualify as a survey defect and buyer can object to it even though he isn't within his Feasibility Study Period.

If the buyer didn't receive the survey until 5 days after the expiration of the Feasibility Study Period and the neighbor's house encroaches 10 feet onto the Property, is this a survey defect covered under the Contract? Yes, under Paragraph 7(c), any encroachments on the Property shall be treated in the same manner as a title defect and buyer should notify seller of the survey defect. Seller has the Cure Period to cure the defects. If seller can't cure the defect, buyer can accept title subject to existing defects and close, or terminate the Contract.

What if there is a recorded 20' public utility easement running across the property not leaving the buyer with enough space to build his mansion? Is this a title or survey defect? Under Paragraph 7(c), this would be a survey defect, but might be considered a title defect under Paragraph 7 of the Contract. Under Paragraph 7 of the Contract:

*"Seller will convey marketable to the Property...free of liens, easements, and encumbrances of record or known to Seller, but subject to property taxes for the year of closing; covenants, restrictions, and public utility easements of record, existing zoning and governmental regulations... provided there exists at closing no violation of the foregoing."*

It has "free of easements", but then the Contract provides "subject to public utility easements of record." With this inconsistency, the latter would probably prevail over free of easements and the recorded public utility easement wouldn't be considered a title defect. In that event, buyer's deposit would probably be at risk if buyer fails to close.

In summary, buyers should obtain the title commitment and survey within the Feasibility Study Period. More importantly, buyers should retain a real estate attorney to assist them in completing their due diligence and making sure they end up with marketable title and a buildable lot. As always, should you have any questions regarding the foregoing, we urge you to consult with your local real estate attorney.

Sincerely,  
Berlin Patten Ebling, PLLC

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