



Improper Use of the Due Diligence Request and Agreement (Form 310-T)

Release Date: 9/22/2022

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QUESTION: In one of my transactions, I received a Due Diligence Request and Agreement (Form 310-T) (“DDRA”) from the buyer’s agent. In the blank space the buyer’s agent wrote: “Seller will fix downstairs toilet. Seller agrees to credit buyer \$3,000 in lieu of other repairs.” I told the agent that Form 310-T is not the correct form to use when the seller is giving a credit toward the buyer’s expenses, but the agent told me that they do it all the time. Should the blanks in the DDRA be filled with anything other than repairs to the property itself?

ANSWER: No. Form 310-T is designed to facilitate any agreement on repairs to the property itself, and so it should be used only for that purpose.

The first note under paragraph 1 of the DDRA states: “If the parties agree herein to a change in the Purchase Price or the amount Seller agrees to pay toward Buyer’s expenses associated with the purchase of the Property, the Agreement to Amend Contract (Form 4-T) should be completed and signed by the parties to reflect the change.” Using Form 4-T to adjust the seller’s “credit” in your case is a better fit, and it will make sure there is no ambiguity about the change and how the funds should be applied.

Note that if your client were to sign the DDRA as written, it would be binding even though there is a better form to use. The first note under paragraph 1 of the DDRA reminds buyers and sellers that “failure to complete and sign Form 4-T will not affect the validity of any agreement reached hereunder.”

The guidelines to the DDRA (Form 310G) make clear that Form 4-T and Form 310-T can be used together. You should strike “Seller agrees to credit buyer \$3,000 in lieu of other repairs” from the DDRA you received, put the credit on Form 4-T, and send both documents to the buyer’s agent for signature and initials after your client has fully signed and initialed.

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