

PROPERTY PRACTICE QUESTIONS

QUESTION 22

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Topic: Real Property

Sub-topics: Real Estate Contract

Type: Essay

Difficulty: Moderate

Time: 45 minutes

Andrew, who has been looking to purchase a house in Houston for a number of years, finally found the house he liked. On October 15, 2005, Andrew and Rob the seller both signed a real estate contract. The contract contained a special disclosure in bold, uppercase, 14 point type font stating that the contract was final and could not be contradicted by prior or simultaneous contract provisions. The contract also identified the buyer and the seller and stated that the house was to be sold for \$150,000 on November 15, 2006. Even though the description of the property in the contract was incomplete, a person familiar with the locality would have been able to identify it easily.

Rob wanted to sell the house quickly because he needed the money. However, because Rob used a pre-printed Texas real estate form without modifying it, his contract with Andrew did not contain a “time is of the essence” provision. The form did, however, contain a liquidated damages provision. Andrew paid Rob a downpayment of \$15,000 for the house.

Andrew was trying to set up a deed of trust with a bank, but because his credit rating was poor, no bank was willing to lend him any money. Andrew continued trying to obtain financing for about a year with no result. While Andrew was seeking to obtain financing, the value of the house went down by \$10,000 because a several halfway houses were built in the area. Additionally, Houston experienced several rainstorms in the spring of 2006. These storms caused a roof leak damaging the wooden floor inside.

It is now fall 2006 and Rob has found another buyer, Angela, to buy the house from him. Rob and Angela signed the same real estate contract that Rob and Andrew had signed before, except the price was now \$140,000. Rob and Angela's contract did not state that it was subject to Rob's contract with Andrew.

Rob has come to you, his attorney, seeking advice on his house transaction. Rob does not think that he did anything wrong by signing a contract with Angela because he is convinced that his contract with Andrew had terminated due to Andrew's failure to obtain timely financing. Rob has asked you whether he can keep Andrew's downpayment and also obtain damages of \$10,000 as the benefit of the bargain. Rob is also wondering who is responsible for fixing water damage to the wooden floor.

What advice would you give to Rob? What possible defenses, if any, may Andrew have? Explain your answer.