

A seller signed a valid contract with a buyer for the sale of a restaurant building. The contract provided that the closing would occur at the office of the seller's attorney 30 days after the date of the contract.

Twenty days later, the buyer asked the seller if the closing could be postponed for 15 days beyond the scheduled closing date. The seller authorized her attorney to email the buyer saying that the closing date would be extended for 15 days but that "time is now of the essence." The buyer emailed back that the change was reasonable and thanked them.

On the rescheduled closing date, the buyer was in a car accident on the way to the closing and was hospitalized for a month. When the buyer was released from the hospital, he told the seller and her attorney that he was now ready to close. They responded that the buyer had breached the contract and that there would be no closing.

Can the buyer still enforce the contract?

- A. No, because it was the buyer who had requested the change in the closing date. (0%)
- B. No, because time was made "of the essence" as to the rescheduled closing date. (65%)
- C. Yes, because the buyer's failure to appear at the rescheduled closing was justified. (27%)
- D. Yes, because the original contract was silent concerning time being "of the essence." (6%)

Correct

65% Answered correctly

51 secs Time Spent

2023 Version

Explanation:

A **real estate contract** is executed when the seller promises to deliver marketable title and the buyer promises to pay the purchase price. These promises need not be **performed** until **closing or a reasonable time thereafter—unless time is of the essence**. Time is of the essence, and strict adherence to the closing deadline is required, when:

the contract specifically states that "time is of the essence"

circumstances indicate that this was the intention of the parties *or*

one party gives the other party notice within a reasonable time before closing.

If the buyer cannot pay the purchase price on the date of closing, then the buyer is in breach and the seller can rescind the contract—even if the buyer's inability to perform at closing was justified.

Here, the initial contract did not make time of the essence **(Choice D)**. However, the seller later agreed to extend the closing date by 15 days and notified the buyer via email that time was now of the essence. Such notice was given a reasonable time before the rescheduled closing (as the buyer acknowledged), so strict adherence to the new deadline was required. The buyer failed to meet that deadline, and his accident provided no excuse **(Choice C)**. Therefore, the seller rightfully rescinded the contract by refusing to close, and the buyer cannot enforce it.

(Choice A) The fact that the buyer had requested the change in the closing date has no impact on his ability to enforce the contract. Instead, this question turns on whether time was of the essence for the new closing date.

Educational objective:

A real estate contract must be performed on the closing date when time is of the essence—ie, (1) the contract states that "time is of the essence," (2) circumstances indicate that the parties intended to strictly adhere to the closing date, or (3) one party notifies the other within a reasonable time before closing.

References

77 Am. Jur. 2d Vendor & Purchaser §§ 63, 66 (2020) (discussing when time of performance is of the essence).

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Performance deadlines for real estate contracts

