

## Liquidated Damages in Real Estate Purchase and Sale Agreements: Maximizing Client Recovery and Reducing Risk

TUESDAY, JULY 9, 2019

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Keith B. Dunnagan, Managing Shareholder, **BPE Law Group**, Gold River, Calif.

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

## Sample Clause Example

**(1) Failure to Complete Purchase of Property as provided is the Agreement.**

In the event the of the Purchaser fails to comply with any provision herein and complete the purchase Property on or before the Closing Date, and/or such failure has been waived or extended in writing by the Parties, then as partial relief for the damages to the Seller by reason of any such delay in or reduction of its ability to sell the Property (*which remedy shall not be exclusive of any other remedies at law or in equity*), the Purchaser will pay as liquidated damages (the "**Liquidated Damages**") to the Seller, at the Seller's option at the sole discretion of the Seller, a cash amount within three (3) business days, after demand by Seller therefore, equal to **[Either – (\_\_\_\_) percent (\_\_\_\_%) of the greater of the Purchase Price or the amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) or the appraised value of the Property]** after the scheduled Closing Date, as may be extended in writing by the Parties at the sole discretion of the Seller, as the case may be. Notwithstanding the foregoing, in no event shall the Purchaser be required to pay any Liquidated Damages in the event that the failure to be declared effective on the requisite date results in whole or in part from either (a) the failure of the Seller to provide information relating to the Purchaser and/or the Property consistent to the Seller's proposed method of sale, or (b) any delays resulting from questions or issues raised by the legal or any other regulatory agency with jurisdiction over the Property.

**(2) Obligations Evidenced by the Loan Documents.**

The prompt and complete payment and performance of each obligation, and covenant of the Purchaser in favor of the Seller arising under (i) the Agreement, and any renewals or extensions thereof or amendments thereto; (ii) the Escrow Provisions and all other agreements and instruments executed pursuant thereto or hereto; and (iii) all of the P>provisions of this Agreement, together with any other agreement or instrument now or hereafter evidencing any of the foregoing; whether such obligation, or covenant be direct or indirect, joint or several, absolute or contingent, liquidated or unliquidated, and whether or not the same be from time to time is modified, extended, amended, or waived by the Seller in writing in the Seller's sole discretion; and including, without limitation, the payment of the Liquidated Damages which would become due, but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) and interest which, but for the filing of a petition in bankruptcy, would accrue on such obligations;

**(3) Purpose of Liquidated Damages.**

The Seller and the Purchaser hereto acknowledge and agree that the sums payable under subsection (1) above shall constitute Liquidated Damages and not penalties and are in addition to all other rights of the Seller, including the right to call a default. Under this Agreement The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified in such subsections bear a reasonable relationship to, and are not plainly or grossly disproportionate to the probable loss likely to be incurred in connection with any failure by the Purchaser to complete the Purchase of the Property pursuant to the express provisions of this Agreement, (iii) one of the reasons for the Seller and the Purchaser reaching an agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Seller and the Purchaser are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

Acknowledged and Agreed:

Acknowledged and Agreed:

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Seller's Signature

\_\_\_\_\_  
Purchaser's Signature