



Can a seller be required to perform a contract to sell real property?

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QUESTION: My buyer client is under contract to purchase a property using the Offer to Purchase and Contract (form 2-T). We are in the Due Diligence Period. The listing agent has just informed me that the seller has changed her mind and no longer wants to sell her property. The seller is willing to refund the earnest money deposit, due diligence fee and any costs the buyer has incurred in doing his due diligence.

The buyer has been looking for a new home for a long time. This property is perfect for him so he really wants it. Paragraph 8 of the Contract entitles the buyer to recover certain damages if the buyer elects to terminate the Contract as a result of a seller breach, but my buyer wants to *enforce* the Contract, not terminate it. I've heard about something called "specific performance" but I couldn't find anything about it in the Contract. Can the seller be ordered to sell her house to the buyer according to the Contract?

ANSWER: The answer to your question is "yes." The seller's refusal to sell the property to your buyer client is clearly a breach of contract. As you correctly point out, paragraph 8 addresses a buyer's damages where the buyer elects to terminate the contract as a result of the seller's breach. However, paragraph 8 also states that the buyer's right to terminate the contract and recover certain costs does not affect any other remedies. Under North Carolina law, specific performance is an available remedy.

Whether the remedy of specific performance is available in a particular situation will depend on the circumstances. For one thing, the party seeking specific performance must show the existence of a valid contract, and that the terms of the contract are so definite and certain that the acts to be performed can be clearly determined by a court. Also, the party seeking specific performance must prove that he has either full performed his obligations under the contract or that he is ready, willing and able to perform. Thus, for example, your buyer would have to demonstrate with some degree of certainty that he has the financial resources to complete the purchase. You should advise the buyer to seek legal counsel to help him determine whether he should pursue specific performance of the contract.

In the 2007 case of Curran v. Barefoot, the NC Court of Appeals ruled that the buyer was entitled to specific performance of a real estate contract for property located on Lake Tillery in Mt. Gilead. A copy of the Court's opinion is available via [this link](#).

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