

THREE DAY ATTORNEY REVIEW IN JEOPARDY?

On March 6, 2003, the Appellate Division of the New Jersey Superior Court decided in *Romano v Chapman*, 358 N.J. Super. 48 (App. Div. 2003) cert. denied 176 N.J. 431 (2003) that the three day attorney review period can be terminated by the mutual consent of the attorneys for the buyer and seller in a residential sale. The Court found that the purpose of the attorney review period is the protect consumers and allow them an opportunity to consult with counsel. In this residential real estate sale, both the buyer and seller presented the standard realtor contract to their attorneys for review. When both attorneys agreed to the terms, the Court held that the attorney review period ended.

It should be noted that the New Jersey Supreme Court case of *Levinson v. Weintraub*, 215 N.J. Super. 273, 277 (App. Div. 1987), certif. denied, 107 N.J. 650 (1987), is still the law. This case holds the three day attorney review period can not be shortened. *Romano* is an Appellate Court case and can not overrule the New Jersey Supreme Court case of *Levinson* above.

How does this affect your business?

Until this decision, a seller could contract with buyer #1, amend the terms of the contract with the assistance of his lawyer, and still cancel the contract within the three day period if a better offer was submitted by buyer #2. I believe the Court rejected this practice in this decision. The purpose of the three day review period was to permit consumers the opportunity to have the contract reviewed by counsel. As a result of this decision, I expect seller's counsel to wait until the close of attorney review (or to extend attorney review) before amending the contract and determine if additional offers will be presented.

How does it affect you as a realtor?

The case should not affect the manner in which you conduct your business. As the listing or selling agent, you still need to accept/present all offers (and back-up offers) and present them to sellers. In both instances, you should not advise your clients when attorney review has ended. You should seek written confirmation from both attorneys that the attorney review period is over.

Are there different attorney review starting time periods for buyer and seller?

No, the three day attorney review is the same for both buyer and seller- when the signed contracts are delivered to **both** the buyer and seller. The Appellate Court in *Gordon Development Group Inc. v. Bradley*, 362 N.J. 170 (App. Div. 2003) on July 18, 2003 stated there are not separate starting time for buyer and seller.

Does the attorney review period begin if the seller never signs the contract?

No, since there is no signed contract by both the buyer and seller, the three day attorney review period never begins. See *Morton v 4 Orchard Land Trust*, 362 N.J. Super 190 (App. Div. 2003) decided July 21, 2003.