

Legal Questions & Answers

September 2015

Question: We have vacant land currently in escrow that had a well and septic system installed in the '90s, but has never been used. If both parties agree that the well does not need to be tested at this time, is it still legally necessary to conduct a well test?

Answer: Oregon law requires a seller to perform a well test if the well provides water for domestic purposes. If the well is not used for domestic purposes, and the parties agree that the seller will not have the test performed, then the seller can refrain from performing the test.

Question: The OREF Earnest Money Agreement references the concept of "liquidated damages" (lines 304-306). Does the amount of damages claimed by the seller need to be proven, or does the earnest money amount constitute an agreement between the parties as to damages?

Answer: The liquidated damages provision indicates that the amount of earnest money constitutes the damages to be paid to the seller in the event of the buyer's breach. Accordingly, the seller is not required to prove the specific amount of damages in order to be entitled to recover the full amount of the earnest money.

Question: Does Oregon law require a seller to formally reject an offer? In a multi-offer situation, is the seller required to respond to offers they intend to reject?

Answer: Oregon law does not require a seller to respond to and/or reject an offer. However, it is considered good practice for a listing broker to have his or her seller formally communicate rejection of offers.