

Friday, November 5, 2021
10:30 AM - 11:45 AM

Workshop 23

Defaults and Remedies: Deep Dive into Default and Remedies in Purchase Agreements

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- I. Introductions
- II. Common Defaults under Real Estate Purchase and Sale Agreements
 - A. Seller Defaults
 - a. Pre-Closing Defaults
 - i. Failure of a Representation or Warranty
 - ii. Failure to Perform
 - iii. Closing Condition
 - b. Post-Closing Defaults
 - i. Post-Closing Covenant
 - ii. Failure to Perform – Post Closing Condition
 - B. Purchaser Defaults
 - a. Pre-Closing Defaults
 - i. Failure of a Representation or Warranty
 - ii. Failure to Perform
 - iii. Closing Condition
 - b. Post-Closing Defaults
 - i. Post-Closing Covenant
 - ii. Failure to Perform – Post Closing Condition
- III. Toolbox of Available Remedies
 - A. Seller Remedies
 - a. Damages (Direct Damages / Consequential Damages)
 - b. Rescission / Termination

- c. Specific Performance

- d. Liquidated Damages

- e. Indemnification

- B. Purchaser Remedies

- a. Damages (Direct Damages / Consequential Damages)

- b. Rescission / Termination

- c. Specific Performance

- d. Liquidated Damages

- e. Indemnification

- IV. Other Factors that Impact Available Remedies

- A. Doctrine of Merger

- B. Public Policy / Statutory Requirements

- C. Indemnification Survival Periods

- V. Hypotheticals

- A. Liquidated Damages

- B. Specific Performance

- C. Actual Damages

- D. Post-Closing Defaults and Indemnification

- E. Merger Doctrine

- F. Indemnification