

"Should Time Be of The Essence?"

A frequently overlooked clause in many real estate contracts provides that "time is of the essence." For example, the WB standard form offers to purchase provide that "time is of the essence as to: (i) earnest money payment; (ii) binding acceptance; (iii) occupancy; (iv) date of closing; (v) contingency deadlines and all other dates and deadlines in this offer except: ____." Typically, the parties fill in "none," meaning that time is of the essence as to all dates in the agreement.

Stating that time is of the essence means that the parties agree that time for performance is a critical issue and if the stated deadline is not strictly met, either the transaction may be dead or one of the parties may be in breach of the contract.

Many times when they are entering into purchase contracts people don't consider whether they really intend for time to be of the essence. For example, a buyer will frequently include a time is of the essence provision in a purchase contract even as to matters such as the deadline for satisfying contingencies. In reality, though, the buyer may not want time to be of the essence as to that matter. If time is not of the essence, the buyer may avoid a disastrous result if it misses a contingency deadline. From a seller's standpoint, a seller may, for example, not want the closing date to be of the essence since the seller may need to postpone a closing if it is waiting to find an exchange property.

While it is often appropriate to make time of the essence as to certain deadlines, the parties should consider whether they, in fact, mean time to be such a critical element for each particular deadline. Even if they do not state in their contract that time is of the essence, the parties will usually have a further opportunity to make time of the essence by notifying the other party and specifying a reasonable date in the future for performance and stating that time is of the essence for that date.

If time is of the essence as to all dates in the contract, the parties must ensure that they perform each of their duties within such time or they may either lose their rights under the contract or they may be in default. [Careful planning](#) at the time of entering into purchase contracts dictates that the parties understand their deadlines and what happens if those deadlines are not met.

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