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[What Does "Time is of the Essence" Encompass in Real Estate Transactions?](#)

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Timing is of paramount of importance in real estate transactions. However, not always, "time is of the essence". In fact, there is no requirement, generally, for parties to contract about the timing of their performances. In most circumstances, if timing is "not of the essence", then the courts infer a "reasonable time" for performance. Nonetheless, in most real estate transactions, at least one party intends to see the project consummated on a particular date not later. Let us explore, to some extent, the practical implementations of "Time is of the Essence".

SOME BACKGROUND

There is no set rule requiring parties to agree in the contract about the time of their performances. In the absence of any timing deadlines in the contract, courts, generally, look at a "reasonable time" for performance of promises. Reasonable time could be nebulous and could still make liable the breaching party for some damages.

In fact, in such circumstances, the non-breaching party could sue the breaching party for lost rents, profits, higher interest on the buyer's mortgage and the like.

SOME ANOMALY IN THE ABSENCE OF "TIME IS OF THE ESSENCE"

Nonetheless, if time is not of the essence, the non-breaching party should generally, still perform. This principle is strictly complied with especially in sales of real estate where one party is late, time is not of the essence and the non-breaching party seeks to nullify the sale. In such circumstances, generally, the non-breaching party is not excused from performing. In fact, the breaching party, surprisingly, could demand specific performance OR even damages, based on some courts.



SALIENCE OF "TIME IS OF THE ESSENCE"

Given the anomaly just enunciated and the fact non-breaching party still has to wait for the breaching party for a "reasonable time" to perform, it behooves parties to make time is of the essence a condition of the contract. Hence, this is salient to ascertain what facts will make time of the essence.

SOME FACTORS TO MAKE "TIME OF THE ESSENCE"

1. "Time is of the Essence" In the Contract

It is very helpful to include "Time is of the Essence" language in the contract. Nonetheless, this could be insufficient, as there might be different deadlines for disparate performances under the contract. It might be useful to identify the language applies to what performances.

2. NO "Time is of the Essence" In the Contract: *Surrounding Circumstances*

Even if there is no "Time is of the Essence" in the contract, surrounding circumstances might still make time is of the essence. Evidence of such surrounding circumstances could include, but not limited to:

- If one party was concerned about prompt settlement and the other party knew about it.
- If land values were changing rapidly and parties knew about concerns of the other party.
- If one party made agreements depending upon the contract when the other party knew about.

SALIENT OBSERVATION

This article in no way supplants thorough analysis of the facts and the law in a particular case or serves as legal advice. In fact, this article *NARROWLY* provides *ONLY some* aspects of this important topic.

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