

## May One Renege on a Real Estate Contract During Attorney Review?

**Rabbi Daniel Dombroff**

**Question:** The process of purchasing real estate consists of three different stages: signing the contract, an Attorney review period (only in certain states), and closing. Is it permitted according to the halacha to renege on the transaction during the attorney review period?

**Answer:** The first issue that must be addressed here is that of *mechusar amanah* (a lack of trustworthiness after a commitment). According to the halacha, retracting on a deal that was agreed upon verbally but not executed is forbidden due to *mechusar amanah*, except if the conditions present at the time of the agreement changed dramatically (discussed in more detail in previous installments of Business Halacha Daily).

This particular case of a real estate contract is slightly more complicated than a standard case of *mechusar amanah*, since the fundamental basis for the prohibition of *mechusar amanah* is *semichus da'as* – the other side relies upon the commitment given that one will not break his word. However, in this case, the entire structure of the purchasing process is designed in order to allow one of the parties to break the contract during the stage of attorney review if a legitimate reason exists (though one must consider whether this is permitted if one wishes to cancel for no good reason). Therefore, it is unclear whether the parties assume that no retraction will take place. Some real estate agents believe that one should not show a house for sale to other prospective buyers if someone has already agreed to purchase it, even if they are only in the attorney review stage. However, many other agents believe that no problem exists with showing the house to other potential buyers, since as mentioned, this time of attorney review is specifically designed to allow a seller to attempt to find a better deal. Since this is a pragmatic question, different perspectives on it can legitimately exist.

If the other party with which the sale has been made is an Eino Yehudi, then the issue of *mechusar amanah* is not relevant. Rather, we would need to consider the broad question of whether a *chilul Hashem* may be caused, in order to determine whether it is permitted to renege on the deal during the attorney review stage.

The proper approach to these questions may also depend upon the location and time. In some places and times, it may be acceptable for either a Yehudi or Eino Yehudi to break a contract during the attorney review, while in other locations or times, it may be unacceptable to do so.