By Phil Hunt
Special to the Times
We are selling our property and it is not going well. Escrow is about two months late in closing and it looks like it may never close because the buyer does not have enough money down. The buyer signed the liquidated damages clause that said they were liable for 3 percent of the sales price for not closing. They deposited \$2,000 initially and an additional \$48,000 into escrow which was most of the down payment. The buyer removed all of the contingencies and is now not able to close. Are we entitled to 3 percent of the sales price or just the \$2,000?
I am not an attorney and can not give legal advice but from the experience I have had as a broker, I can give you the knowledge I have. The liquidated damages clause is in the contract to, hopefully, hold the buyer in the contract and to guarantee to the seller that the buyer will close or forfeit the deposit. It is, however, not automatic.
Purchase agreements are chock-full of not-so-obvious, subtle contingencies. And, not until all contingencies are removed, is the buyer's deposit actually in jeopardy of being lost to the seller.



