



## You Must Adhere to the Rules of the Game

**Dear Forms Guy:** Cal's the name. I've gotten into the real estate game after a first career in the major leagues. I represent a young lady who recently bought a nice little bungalow. The trouble started when the closing attorney did the title search and found a problem. The seller and his lawyer have been trying to convince the wife of some previous owner who inherited the property to sign a quitclaim deed ever since, but so far they've been striking out. The closing date was in mid-July and now it's early September. My buyer decided she'd waited long enough, so we notified the seller using form 350-T that she was terminating the contract due to the seller's delay in closing for more than 30 days.

**Forms Guy:** The old "bye bye bungled bungalow" play, eh?

**Cal:** I haven't finished my story.

**Forms Guy:** Sorry for interrupting. Play on.

**Cal:** Okay, now the seller's yelling "foul" and won't sign the bottom of the form to release my client's deposit. The listing agent tells me they're really close to getting the heir's wife to sign the deed and that the seller doesn't think that the buyer has the right to get out of the deal yet since time was not "of the essence" on the closing date. I told the listing agent that the buyer had the right to terminate the contract and that she should release the deposit anyway. Paragraph 18 of the Offer to Purchase and Contract says in black and white that after a 30-day delay the non-delaying party may terminate the contract and receive the earnest money. So I have two questions for you, Forms Guy. The first one is, am I not right about the buyer having the right to terminate the contract and get her deposit back?

**Forms Guy:** Have there been any extensions of the mid-July closing date?

**Cal:** No.

**Forms Guy:** Congratulations, you're one for one. I agree that paragraph 18 gives the buyer the right to terminate the contract and get her deposit back, even though the seller may soon be able to cure his title

problem. The listing agent is correct that time is not "of the essence" as to the closing date, but that's beside the point. Paragraph 18 clearly gives a non-delaying party – in this case the buyer – the unilateral right to terminate the contract if the delaying party delays the closing for more than 30 days from the last agreed-upon closing date. I think an ump – I mean a judge – would give full force and effect to the clear understanding of the parties regarding a party's right to terminate under the circumstances described in paragraph 18, or for that matter, to the numerous other provisions in the contract where one party or the other is given the express right to terminate.

**Cal:** Great. My other question is, am I also not right about the buyer's right to get her deposit back, even though the seller won't sign anything?

**Forms Guy:** Swing and a miss! Cal, your average just dropped in half.

**Cal:** Wait a second! Why would the listing agent have to get the seller to agree to release the deposit when the contract so clearly states that my buyer is entitled to it?

**Forms Guy:** I hear you, Cal, but you're in a different ballgame with different rules when you start talking about the return or forfeiture of earnest money. It can be absolutely clear under the contract and the facts that one party is entitled to the deposit, but if the other party doesn't agree, then the escrow agent is required by the rules of the Real Estate Commission to hold the deposit. See rule 58A.0107 in the Commission's rule book if you don't believe me, or review the "note" in paragraph 4 of the contract, which summarizes the rule. The parties cannot by contract relieve the escrow agent of its duty to hold the deposit if there is a later squabble between them about who is entitled to it.

**Cal:** But my buyer needs the deposit to put down on an eighth-story condo I've helped her find.


**Forms Guy:** Goodbye bungalow, howdy high rise!

**Cal:** This isn't a laughing matter, Forms Guy.

**Forms Guy:** You're right, Cal. I am sorry for your client that the seller won't play ball. But violations of the Commission's trust account rules aren't laughing matters down in Raleigh either. The listing agent might be looking at a stretch in the dugout if she returns the buyer's earnest money without the seller's written agreement. ■

*Have a question or questions for the Forms Guy? Email Will Martin at [wmartin@ncrealtors.org](mailto:wmartin@ncrealtors.org).*

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"Ask the agent if we can list the litter box as a third bathroom."

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