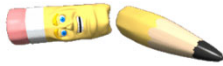



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You say tomayto I say tomahto,
let's call the whole thing off
May 2023 Legal Update



Presented by Kelly G. Richardson,
Esq.
May 10, 2023



Richardson Ober LLP 5-10-23



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Disclaimer

- This is a presentation of suggested best practices for responding to and minimizing exposure to liability.
- Nothing in this presentation is meant to convey any promise that the concepts in the presentation will prevent liability or claims.
- If a claim arises, seek guidance from experienced and qualified legal counsel immediately.


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Cancellation of Contracts

- Hot Market/Cold Market, COVID 19 Market, interest rates jump...

client tells you to cancel...

- NOW WHAT?



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Cancellation

Greed and Impatience...

Are the litigator's best friend...



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Cancellation of Contracts

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

NAR ETHICS CODE- Article 13

[Watch out for the fine line here]

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100% Completely Safe Cancellation

Mutual, and in writing.



CANCELLATION OF CONTRACT, DISPOSITION OF DEPOSIT AND CANCELLATION OF ESCROW

In accordance with the terms and conditions of the Purchase Agreement, OR _____ Other _____ including all amendments and related documents, on property known as _____ ("Property"), _____ ("Buyer"), _____ ("Seller"), and _____ ("Escrow Holder")

Buyer and Seller are referred to as the "Parties."

Both paragraphs 1 and 2 are escrow instructions to Escrow Holder. Cancellation under paragraph 1A or proposed cancellation under 1B requires the signatures of either Buyer or Seller, but not both. Disposition of deposit and cancellation of escrow under paragraph 2 requires the signatures of both parties to be effective.

A. CANCELLATION OF CONTRACT

A. One-party cancellation: This paragraph is used to cancel the Agreement by Buyer or Seller. Its terms apply whether or not both Parties agree to disposition of the deposit and cancellation of escrow in paragraph 2 below.

The _____ Buyer or _____ Seller (signing below) cancels the Agreement for the following reason:

(1) _____ (to be permitted by the good faith exercise of paragraph(s) _____ of the Agreement.

(2) _____ Buyer has failed to remove the applicable contingency or take the applicable contractual action after being given a notice to Buyer to Perform (C.A.R. Form NSP).

(3) _____ Seller has failed to remove the applicable contingency or take the applicable contractual action after being given a notice to Seller to Perform (C.A.R. Form NSP).

(4) _____ The other Party has failed to close escrow after being given a Different to Close Notice (C.A.R. Form DCC).

(5) _____ Other _____

B. Proposed mutual cancellation: The Buyer or Seller (signing below) initiates a mutual cancellation of the Agreement. The cancellation is only effective if agreement is reached and both Parties sign in paragraph 2 below as follows. This Proposed mutual cancellation (B) may be withdrawn by the Party initiating. Any withdrawal in agreement by the other party in paragraph 2 below, and (B) shall be deemed revoked unless by 5:00 PM on the _____ day after it is signed by the initiating Party in paragraph 1(B) by _____ ("AM") when _____ dies it is signed by the other Party in paragraph 2 and a Copy of this completed form is Delivered to the Initiating Party.

The Cancellation of Contract ("CC") form

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Cancellation

Reasons?

- "I'm just not feeling it"
- "I don't like what they did"
- "I've changed my mind"

Or

Grounds?

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Cancellation

- Grounds for Cancellation
 - Mutual Agreement
 - Exercise of Statutory Rescission Right
 - Failure of Condition Precedent
 - Material Breach by other Party
 - Force Majeur (???)

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Cancellation

- Consequences of premature or erroneous cancellation:
 - By Buyer: Suit for damages, forfeiture of deposit, specific performance
 - By Seller: Suit for specific performance, constructive trust, lis pendens, damages



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Cancellation

- Further consequences of erroneous cancellation
 - Attorney fees
 - Uncertainty for either side
 - Money and/or property in limbo



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Cancellation

- Is the reason for cancellation

MATERIAL???



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Those time deadlines...

- "Time is of the essence"... "Escrow to close on or before 60 days..."
- But:
 - Material breach or technical
 - Waiver
 - By Conduct
 - By Inaction
 - Prevention of other side's performance



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Cancellation

Just as the contract must be in writing,
so must the cancellation



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Last minute issues

- Missing inspections, disclosures or other information
- Last minute disclosures
- Other aspects of transaction not in order
- Client anxiousness

DANGER DANGER DANGER

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Those delaying buyers/sellers...

- The CAR forms:
 - NBP
 - NSP
 - CC
 - DCE
 - ETA
- [for how long?] CVA... Corona Virus Addendum

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Post Cancellation

- The quick transfer to a "BFP"
- The deposit
- Mediation Demand

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