

## How a Seller Can Cancel a Purchase Agreement

Preliminary: Attempt to negotiate an agreed upon cancellation using form "Cancellation of Contract." If an agreement cannot be reached, go to step one. Always choose the easy way first.

**Step One:** Make sure the seller has fulfilled all of their obligations. This generally means providing all of the required disclosures, allowing full access for buyer's investigations and in general not impeding the buyer's efforts to buy.

**Step Two:** Determine if the buyer has failed to perform within time required. The most common reasons will be the buyer's failure to remove contingencies after 17 days (or 21 for loan contingency) or failure to close on time. For the complete list of contractually specified reasons for which a seller may cancel, see paragraph 14D (1) and (2) and 14G of the RPA-CA.

**Step Three:** Complete the Notice to Perform (or DCE). The NBP (or Demand to Close Escrow) must be correctly filled out indicating what the buyer has failed to do, and the seller must sign it.

**Step Four:** Deliver the NBP (or DCE). The NBP (or DCE) must then be delivered to and "personally received" by the buyer's agent who is named in the broker box on the last page of the purchase agreement (or the buyer). The listing agent should obtain some type of verification that it was in fact personally received. "Verification" does not necessarily require the buyer's agent's signature. Obviously, that would be best. But otherwise it can be anything which tends to show that the NBP was actually received.

**Step Five:** Count the days, and then, issue a cancellation. A NPB by default allows the buyer two full days to perform (the DCE three days). The day it is personally received is day zero. The next day thereafter is day one. The last day cannot be a Saturday, Sunday or Holiday. If so, the buyer will have the next business day to perform. It is only then --the next day after the buyer's last day -- that the seller may sign and issue a cancellation using form CC ("cancellation of contract").

### **What to do after a cancellation has been issued:**

Once a cancellation is issued, some MLSs will permit you to advertise the property as active, but you must check with your MLS. A proper cancellation is effective in terminating the right of the buyer to purchase. But it does not by itself mean that the escrow has been cancelled. That requires the buyer's agreement. And an open escrow may create hurdles for a subsequent resale. If the first buyer refuses to cancel the escrow, then it will be prudent to advise the seller to sell contingent on cancellation of the pre-existing escrow. As a practical matter, it may be easier to give the buyer a few extra days even after the time for performance in the NBP or DCE has elapsed. For more information, see our Q&A "How a Seller May Cancel a Purchase Agreement: Checklist and Q&A".