

Fire (and Similar Natural Disasters) and Cancellation Rights

If a material part of the property is destroyed during an escrow by fire a buyer will generally have the right to cancel a real estate purchase contract.

If the destruction due to fire was not the buyer's fault, in most cases, the buyer will have the right to cancel the agreement. This cancellation right is based upon a law called the "Uniform Vendor and Purchase Risk Act" (Cal. Civil Code § 1662), which applies when all or a material part of a property is destroyed. This cancellation right is in addition to other potential buyer cancellation rights such as an un-waived investigation contingency, or a cancellation based upon receipt of the Transfer Disclosure Statement (TDS).

When a material part of the property is destroyed during an escrow by fire, a seller will generally have the right to cancel a real estate purchase contract.

In most cases, the seller will have the right to cancel if the destruction is not the fault of the seller. Case law provides that when a material part of the subject property is destroyed without the fault of either party and neither title nor possession has passed to the purchaser, the seller's performance is excused, and the purchaser is entitled to the return of any consideration paid. For either the buyer or seller, the result could be different if there was an express provision in the contract apportioning this type of risk.

If the property is damaged by fire during escrow but not "destroyed" would a buyer or seller have a right to cancel?

Neither the buyer nor seller would generally have the right to cancel unless a material part of the property is destroyed. But, a seller should be mindful that there are several buyer cancellation rights within the C.A.R. purchase agreements. For example, the buyer might have the right to cancel if they had not removed their investigation contingency or if they had not received a TDS.

In the C.A.R. purchase agreements there are no corresponding seller cancellation rights. So, where the property is not "destroyed," the seller would still be required to repair damage under the terms of the C.A.R. purchase agreements. Paragraph 11 of C.A.R.'s Residential Purchase Agreement requires the property to be maintained in substantially the same condition as on the date of acceptance.

Do these rules apply to destruction other than by fire?

Yes, these rules apply whether destruction was the result of earthquake, flood, fire or other casualty. The cause of the destruction does not matter, if neither the buyer nor seller were at fault.

Does it matter that the property is sold "as-is"?

No. The "as-is" provision is not intended to affect the risk of loss in the event of destruction but simply to emphasize that the seller is not obliged to make repairs or provide warranty beyond what might be legally required.