

Natural Disasters

Can a buyer or seller cancel a contract when performance is prevented by Act of God?

Maybe. California law permits cancellation on this basis under Civil Code Section 1511, but the cases limit broad application of this law and thus make it difficult to rely upon Act of God as a defense to non-performance. However, a second law, Civil Code Section 1662, is more explicit in its protections.

What happens in a real estate sales transaction when a natural disaster affects the property?

Under Civil Code Section 1662 unless the agreement between the parties specifies otherwise:

- If all or a material part of the premises are damaged by a natural disaster *before title or possession* is given to the buyer, either buyer or seller can cancel the contract and buyer is entitled to the return of any portion of the purchase price paid.
- *After the buyer has taken possession or has received title*, the buyer bears the risk of loss or damage to the premises (assuming no fault on the part of the seller).
- Bottom line, if the premises are destroyed or damaged after the buyer has taken possession or received title, the buyer must still complete the contract and pay the balance of the purchase price.

What if the damage is minor?

Minor damage does not necessarily allow either party to cancel the agreement. However, a purchase agreement may require the seller to repair such damage.

- Paragraph 7B of the RPA requires the property to be maintained in substantially the same condition it was in on the date of acceptance. Under this language, a seller could be obligated to repair disaster-related damage to the property.
- If the damage occurs before the buyer has removed an inspection contingency in the purchase contract, the buyer can exercise cancellation rights provided by the contract or make a request for repair of the damage.
- If the damage occurs after the buyer has removed his or her inspection contingency, the buyer generally no longer has the right to re-inspect or cancel the contract.
- Note that if the seller becomes aware of adverse conditions materially affecting the property during escrow, the seller must provide a subsequent or amended disclosure or notice, which then gives the buyer a right to cancel the agreement.

What happens to a lease when a natural disaster affects the property?

Under California law, the lease agreement is terminated automatically if the entire property is destroyed, unless the parties have agreed to something different. If the premises are only partially destroyed, the tenant can terminate the lease by notice to the landlord if the landlord had reason to believe at commencement of the lease or rental agreement that the portion destroyed was a "material inducement" to the tenant to enter into the lease.

- If the parties have used the C.A.R. Residential Lease or Month-to-Month Rental Agreement, paragraph 28 "Damage to Premises" will apply. This paragraph states that if the premises are totally or partially destroyed by a natural disaster that renders the property totally or partially uninhabitable, then either party may terminate the lease by giving the other party written notice. Rent is abated as of the date the property became totally or partially uninhabitable.