

## Seller Cancellation of a Purchase Agreement

### When does a seller have a right to cancel the C.A.R. Residential Purchase Agreement (RPA)?

- If the buyer does not remove contingencies by the end of the time specified in Form RPA (See Paragraph 14D(1));
- If the buyer does not meet specific contractual obligations (Eight obligations are specifically referenced in Paragraph 14D(2) of the RPA); OR
- If the buyer does not close escrow as scheduled (See Paragraph 14G of Form RPA.)

### Are there any pre-conditions to the seller's right to cancel?

Yes, if the buyer failed to comply with one of the circumstances above, the seller must *first* deliver to buyer a Notice to Buyer to Perform (Form NBP) or a Demand to Close Escrow (Form DCE), whichever is applicable. Only after the time period has lapsed after delivery of the required form (2 days for NBP and 3 days for DCE) does a seller have a right to sign and issue a cancellation. Use C.A.R. Form CC, Cancellation of Contract, Release of Deposit and Joint Escrow Instructions for this purpose.

Further, the seller should be in full compliance with the terms of the contract before seeking to cancel. For example, if the seller has not allowed the buyer access to the property, the seller may not cancel for failure of the buyer to remove the investigation contingency. If the seller does not allow an appraiser onto the property, the seller may not cancel if the buyer fails to remove the appraisal contingency.

### Does the seller need the buyer's consent to cancel?

The seller has the right to unilaterally cancel the contract if the procedure described above is followed and the buyer has failed to act in accordance with the contract. However, cancellation of escrow will ordinarily require mutual instructions from buyer and seller.

### May the seller keep the buyer's deposit after cancellation of contract?

If the seller cancels after issuing a Notice to Buyer to Perform, then the RPA requires the seller to return the buyer's deposit (See Paragraph 14D(1)). The RPA takes the approach of a contractual trade-off. By providing clear guidance on when and how a seller may cancel, disputes over whether a buyer's breach is material or not and thus whether a seller would have the right to cancel, are avoided. In return for this clarity, the seller is obligated to return the deposit. If the seller cancels after issuing a Demand to Close Escrow, the RPA does not automatically require the seller to authorize return of the buyer's deposit. In such circumstances, the facts of each situation will need to be analyzed on their own merits. Sellers should consult legal counsel before making a decision about the deposit after issuing a Demand to Close Escrow.