


[HOME](#)
[CALENDAR](#)
[MLS](#)
[NEWS/INFO](#)
[SERVICES](#)
[ABOUT CBR](#)
[CONSUMERS](#)
[HELP](#)
[SEARCH](#)

Thursday, 01/17/08 10:28 PM

[Safety](#)
[In Contract Magazine](#)
[Designations](#)
[New Builds](#)
[Area Realty Associations](#)
[Grants & Scholarships](#)
[Affordable Housing](#)
[Related Links](#)
[Tech Tools & Tips](#)
[Home Sales Statistics](#)
[Contact Us](#)
[News & Information : In Contract Magazine : September 2005 : How to terminate a Purchase Contract](#)

## How to terminate a Purchase Contract

By James A. Zitesman  
Attorney at Law



I have been asked to speak at several REALTOR® association meetings recently. In my discussions with the President or organizer of the meeting, I am asked, "what is the single most important issue affecting REALTORS®?" Without a doubt it is how to terminate a contract due to a contingency or inspection.

In the last year I have seen cases where buyers lost some or all of their earnest money deposits, or got sued, because the agents did not understand how to effectively terminate the contract. The two main culprits are loose lips and the wrong form.

### Loose lips

"Loose lips sink ships" is the old wartime phrase that I remember my father saying from his youth during WWII. The concept holds true today. You do not need to tell the other side all that you know about your client's position. In fact, you should probably consider any information you get from your client as confidential. Your clients may have many different issues to consider, but when it is determined that they want to terminate the contract, I suggest you only say what is necessary.

If the contract has a home sale contingency and the buyer's home has not sold, is it necessary to tell the other REALTOR® that the marriage is breaking up and that they will not be buying the seller's house. If the fact is that their house has not sold, that is the only fact that matters. If the marriage issue is brought up, it will only cloud the attempt to terminate, notwithstanding the clear home sale contingency. There will be questions of good faith, etc. The bottom line is that you need to think through every bit of information that you tell someone else. Do you need to tell it; is it objective?

### Use the Notice of Termination

The other problem is the use of the wrong form. Too often the Mutual Release Form is used to try to terminate a contract. Don't use it. Use the Notice of Termination Form. If you do not know what it is, go find it. I repeat, do not use the Mutual Release Form to terminate a contract due to a contingency or inspection.

The Notice of Termination Form has been designed to effectively and efficiently terminate a Purchase Contract. It corresponds to the relevant sections of the CBR/CBA Real Estate Purchase Contract and only requires you to fill in the blanks and to check a box. If you are terminating due to inspections, it tells you to attach the report. If you are terminating due to contingency that has been added in an addendum such as home sale contingency, there are several blank lines to write out the reason, such as "buyers' house did not sell."

### Mutual Release Form

The Mutual Release Form is the wrong form to use to terminate a contract due to a contingency or inspection. It is not designed to terminate a contract by only one side, such as the buyers. You can use the Mutual Release Form after the Notice of Termination Form if there is agreement on disposition of the earnest money.

Do not use the Mutual Release Form instead of the Notice of Termination Form to terminate a contract. It will not work. It may result in a lawsuit. The clients are looking to you for guidance, especially if they need to terminate the contract. Time is always of the essence and you normally have a small window of time to

get the termination delivered. There simply is no time to make a mistake. There are no mulligans.

One last point, if you are faced with this situation, suggest that your client involve an attorney to help out. It is much easier and less expensive to avoid mistakes than to deal with them after they occur. Do not wait until the time to terminate has expired and everyone is upset to call on the real estate attorney.

[\[Home\]](#) [\[Calendar\]](#) [\[MLS\]](#) [\[News & Information\]](#) [\[Member Services\]](#) [\[About CBR\]](#) [\[Consumers\]](#) [\[Help\]](#)

REALTOR® - A registered collective membership mark that identifies a real estate professional who is a member of the National Association of REALTORS® and subscribes to its strict Code of Ethics. For questions or comments about this site, please email us.