

Brokers Guide: Termination and Release

The basics

There are important differences between *terminating* a contract and being *released* from it. Using the wrong one can cause anything from a mild headache to legal trouble. Know the difference.

Termination is generally a unilateral act: one party declares the contract at an end (when he has the legal right to do so).

For example, a buyer might terminate a contract upon being refused a loan (a financing contingency), or because the seller refuses to make repairs (an inspection contingency). A termination of this sort does not rely upon the agreement of the other party.

A release is a *mutual* act of the parties in which one or both sides are released from obligations under the contract based on an agreement they've reached.

For example, a seller can agree to release the buyer if the buyer agrees to forfeit his deposit. Remember, *both buyer and seller must sign the release for it to be effective*.

The point to remember is that just sending a release to the other side does not usually constitute the act of termination. If your client wants to terminate (and has the right to do so), be sure you do it unambiguously.

An important note: Termination may end the contract, but it does not release the parties from liability (i.e. they still may sue each other if one party feels the other party has done something improper under the terms of the contract).

On the other hand, a release not only terminates the contract, but releases each party from any and all liability. Therefore, if you send a termination it is a good idea to include a release to wrap all issues up.

This WorkSmart Kit will help ensure your agents remember these critical parts of the law — and stay out of trouble.

Presentation Q&A

Q: What's the essential difference between terminating and releasing a contract?

Terminating is when one party declares the contract is at an end.

Releasing the contract means both parties agree that it's over.

Q: My buyer client has a termination right under the contract. If he exercises that right and sends a termination notice, can I then release the earnest money deposit to him?

Not without a signed Release of Contract of Purchase. Even if your client has a termination right under the contract, you must still secure the signed, written consent of the seller(s) *and* buyer(s) to release the EMD. If either are unwilling to sign the release, you must not release the EMD until you receive a court order directing you to do so.

Q: Under which circumstances are the parties in a contract released from liability under the contract (i.e., they can't sue each other)?

- Only if the contract is released
- If either party terminates the contract a the provision of that contract
- A or B
- None of the above: A separate Release from Contractual Liability is required

A. Termination may end the contract, but it does not release the parties from liability (i.e. they still may sue each other). On the other hand, a release not only terminates the contract, but releases each party from any and all liability.

If you send a termination it's a good idea to include a release to wrap all issues up.

Q: So should I always use a release, just to be sure?

No. For example, if a buyer has a termination right but you ask for a release instead, the seller could refuse to sign it. In some cases, you could forfeit your right to terminate (e.g., if you miss a deadline).

Know when to terminate and when to ask for a release... and when to do both.