



WASHINGTON REALTORS®

Legal Hotline Q&A of the Week

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Question:

Seller delivers bump notice to Buyer. Buyer's deadline to respond is 9pm tonight. Buyer is proposing to waive their home sale contingency but add the financing contingency to the offer. If the seller doesn't respond by tonight at 9pm which is the deadline, is buyer's earnest money at risk?

Answer:

The impact on buyer's home sale contingency depends upon how buyer presents this proposal to seller. Form 22B clearly states that once seller delivers the bump notice, buyer has X days to either satisfy or waive the home sale contingency and if buyer does neither timely, then buyer's PSA terminates. If the PSA terminates based on buyer's inaction, then buyer should recover the EM.

Broker's question describes a scenario where buyer is neither satisfying nor waiving the home sale contingency but rather, presenting an alternate proposal to seller. Buyer is suggesting to seller that buyer will waive the home sale contingency only if seller grants buyer a financing contingency or otherwise agrees to modify the existing PSA so that waiver of the home sale contingency will not cause a waiver of the financing contingency. If that is what buyer presented to seller and buyer does not timely deliver notice that buyer has actually waived or satisfied the home sale contingency, then buyer's PSA with seller terminates and buyer should recover the EM. If buyer wants to preserve the opportunity to purchase seller's property, buyer must timely deliver notice, without additional conditions, that buyer waives buyer's home sale contingency.

It should also be noted that buyer is asking something of seller that seller is likely prohibited from accepting. It is likely that seller signed a Form 39, "Second Buyer's Addendum" with the bumping buyer. The first paragraph of that form includes a statement prohibiting seller from modifying the terms of the first buyer's PSA. If seller does what first buyer seeks in this question and modifies the first PSA to either include a financing contingency or allow buyer to retain the financing contingency notwithstanding buyer's waiver of the home sale contingency, then seller will be in violation of seller's agreement with the "Second Buyer".

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