

Properly Terminating the NABOR® Sales Contract
By: Adam A. Bleggi, Esq. and Jeffrey Jones, REALTOR

While the purpose of this article is to focus on how to properly terminate the NABOR® Sales Contract, it is important to remember that, at the outset of a signed contract, the seller wanted to sell, and the buyer wanted to buy. Therefore, unless there are circumstances beyond one of the party's control, on many occasions, there may be the opportunity for the parties to negotiate a settlement of the issues to keep the contract together and have a successful closing as the outcome.

However, it's almost a certainty at some point in the contract to close process that a REALTOR's customer will ask: "Can I terminate the contract and walk away?" The answer is simple—yes, contracts can be terminated. The real issue is whether the termination is authorized under the contract and what happens to the escrow deposit.

Under the NABOR® Sales Contract (Residential Improved Property), the buyer and seller may only terminate if a specific contractual provision allows it. Improper termination can result in loss of deposits, exposure to damages, or even a lawsuit for specific performance.

Below are some key termination triggers and the most common procedural mistake made by agents.

- Financing Contingency (Paragraph 4.B): If the buyer fails to waive the financing contingency by the deadline (45 days if left blank), either buyer or seller may terminate.
 - Buyer's termination must include required lender documentation.
 - Once waived, the buyer's deposit is no longer refundable.
 - Seller's termination right ends once buyer waives.

- Inspection / Defective Inspection Items (Standard D.2):
 - Buyer's Inspection Period is 15 days (if left blank).
 - Buyer's Election is due within 5 days after the Inspection Period ends.
 - Seller's Response is due within 10 days of receipt of Buyer's Election.
 - If the seller refuses, counters, or fails to respond, the buyer may terminate within 5 days.

- Title Defects (Standard B): Buyer has 30 days to examine title. If title defects are timely raised and seller cannot cure within the 30-day Clearance Period, buyer may elect to terminate within 5 days after expiration of the Clearance Period.

- HOA Disclosure (Standard H): Under Florida Statute §720.401, if the HOA Disclosure has not been provided to the buyer before executing the contract, the buyer may cancel the contract within 3 days after receipt or prior to closing, whichever occurs first.

- Condominium Documents (Standard I and Addendum to Contract Condominium): Under Florida Statute §718.503, the buyer has 7 business days after receipt of the required condominium resale documents to cancel the contract. The 7-day period runs from receipt of the complete set of required condominium documents.

- Association Membership Approval (Standard J): If required association approval is not obtained by closing (with buyer having timely applied), either party may terminate. Seller's termination right is conditioned on no association violations or past due balances.

Common Mistake: One of the most frequent procedural errors occurs when an agent sends the NABOR® Termination and Deposit Release Agreement, or similar form, but fails to first deliver formal written termination notice under the contract.

A termination and deposit release form is generally intended to authorize the escrow agent to release funds once both parties agree, as well as an agreement between the parties that the contract is terminated. It requires signatures from both parties and is designed to authorize escrow disbursement—not to serve as the contractual written notice of termination.

If proper written termination notice is not delivered within the contractual deadline:

- The termination deadline may pass without valid notice.
- The other party may claim the contract was never properly terminated.
- The terminating party may be treated as being in default.
- The escrow agent may refuse to release funds.

Best Practice: Written notice of termination first, then termination and deposit release form second.

- Deliver written termination notice within the contractual deadline.
- Cite the specific contractual basis authorizing termination.
- Attach all required documentation.
- Then circulate a termination and deposit release agreement.

NABOR® provides termination forms as a resource for members:

- Termination of Sales Contract – Buyer Notice
- Termination of Sales Contract – Seller Notice

These forms identify the contractual basis for termination and include certification of timeliness and escrow indemnification language. The use of these forms does not cure missed deadlines or failure to attach required documentation.

Notice Requirements (Standard Q): A buyer or seller must provide written notice of termination of the contract within the time-frame specified in the contract in order to properly terminate.

- Termination must be in writing (email/mail/personal delivery/fax).
- Text messages are not proper notice.
- Deadlines expire at 11:59 PM Eastern Time unless otherwise specified.

Failure to strictly comply with notice requirements may invalidate termination.

Termination isn't just about walking away. It's about preserving deposit rights, meeting deadlines, providing proper written notice, attaching required documentation, and avoiding litigation exposure.

Most termination disputes arise from procedural mistakes, as opposed to a lack of entitlement. Remember that while a contract may be terminated—not every termination is without consequences. Over the past few years, there has been a notable increase in the number of deposit disputes where the opposing party refuses to sign off on the deposit release form. In such cases, all parties should carefully evaluate the potential risks and consequences associated with a deposit dispute and consider alternative resolution options in lieu of expensive litigation.