

When buyers and sellers contract for the purchase of a property, they are naturally more focused on the successful completion of the purchase rather than the possibility of the contract being terminated. Unfortunately, when a contract is terminated, the parties are often surprised that the title company, as escrow agent, will not release the earnest money without a written agreement between the buyer and seller. Different title companies have different procedures, but Allegiance Title will release the earnest money to the buyer without the seller's written consent only if the contract is terminated during the termination option period as required by the contract. In order to verify that the contract was terminated within the option period, we require proof that:

1. The seller received the option check (a signed and completed seller's receipt on page 8 of the contract is adequate evidence);
2. Page 7 of the contract reflects the Executed Date;
3. The buyer sent written notice of termination to seller within the time required; and
4. The termination notice was sent to the place and in the manner required by paragraph 21 of the contract. When all of these items have been completed and evidence of such is provided to us, then Allegiance Title will release the earnest money to the buyer.

After the option period has expired, most title companies require all parties to sign an earnest money release regardless of the reason for the termination. Buyers who terminate because of an inability to qualify for financing pursuant to a financing contingency are often upset that the title company will not release the earnest money without a seller's written consent, but the title company is justified in requiring the seller's consent since the seller may raise an argument that the buyer did not make a legitimate attempt to obtain financing. If either party is unwilling to sign the release, the title company will continue to escrow the funds until the parties agree or it receives instructions from a court.

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