

Legal Questions & Answers

June 2018

Question: Buyer's broker leaves a voicemail for seller's broker notifying him that the buyer intends to terminate the transaction because the buyer's offer was significantly higher than what the buyer intended to offer. Escrow has already been opened. Does the seller have a right to claim the earnest money if the buyer terminates?

Answer: Parties to a contract are obligated to act in good faith. The buyer's mistake regarding the offered purchase price does not give him or her a right to recover earnest money upon termination of the transaction. If the buyer terminates under the inspection contingency, the seller could arguably be entitled to retain the earnest money because the buyer's basis for termination was not legitimately related to the condition of the property. The message from the buyer's broker is evidence of the buyer's intent and could be helpful to the seller in a claim for the earnest money. We would suggest that you advise the seller to consult with an experienced real estate attorney regarding his or her right to claim the earnest money should the buyer terminate the transaction.

Question: Should a buyer in a transaction involving Fannie Mae agree to send her earnest money out of state to a title and escrow company in California?

Answer: Although not recommended, the parties can agree that earnest money will be transferred to an escrow located in a different state. For more information, we would strongly suggest that you review the OREF form titled "Advisory & Instruction Re: Transferring Funds Out of State."