



What should I do if my client disappears?

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QUESTION: I have a difficult client who lives out of state. They have never been good about returning phone calls or emails, and I have not heard anything from them in two weeks despite multiple attempts to reach them. An offer came in two days ago, and I sent it to the seller right away. There's been no response, and this is not the first time the seller has ignored an offer. I really just want to terminate the listing agreement with this client, but I know they are not going to sign anything. What can I do?

ANSWER: Standard Form 101, the Exclusive Right to Sell Listing Agreement, provides that the contract between you and the seller cannot be terminated "prior to the Expiration Date without legally sufficient cause." The term "legally sufficient cause" is not defined in the contract, and sometimes it can be difficult to determine if it exists. However, we believe the circumstances you describe would qualify. Standard Form 101 describes the seller's duties under the contract, including a duty to cooperate with you "in the marketing and sale" of the property. A seller who consistently fails in this duty would be in breach of the listing agreement.

Before you terminate the listing agreement unilaterally, contact the seller and see if the contract can be terminated by mutual consent. Be sure to document your attempts to contact your client in this effort. If mutual consent is not possible, reach out to the seller and inform them, in writing, that if they do not respond within a set time, say 48 hours of receipt of your communication, that you will terminate the listing agreement. If you receive no response, choose an effective date of termination and inform the seller in writing. We would recommend setting the effective date at least 14 days out to give the seller enough time to find another listing firm.

Please remember that if the seller does respond, and a dispute arises concerning the seller's breach of contract, you will have a duty to mediate under paragraph 18 of the listing agreement. You may also want to consider keeping the listing agreement in place and informing the seller that you will be marking the listing as withdrawn in the MLS. Once you terminate the listing agreement, you likely will not be entitled to compensation should the property later be sold.

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