



## Am I required to terminate a listing at the seller's request?

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**QUESTION:** The seller on one of my listings recently called to tell me that although I've been doing a fine job, he needed to terminate the listing. When I asked him why, he told me that his favorite niece has just gotten her real estate broker's license and he wants to give the listing to her. I understand that blood is thicker than water, and he's a nice enough guy, so I may agree to a termination. But I've put a significant amount of time and effort—as well as some money—into marketing and showing this gentleman's property, and I want to know what my rights and responsibilities are. Am I required to let him make this change?

**ANSWER:** It's a yes and no answer. First, according to agency law, either the principal or the agent has the power to terminate the fiduciary relationship at any time, even though the parties have previously agreed that the agent's authority will continue for a definite period. If the principal exercises this power, the agent has no right to continue acting for the principal, and could actually be subject to liability for continuing to hold himself or herself out as the principal's agent if doing so causes loss to the principal.

However, just because a party has the power to end the fiduciary relationship doesn't mean they also have the right to terminate the contract by which that relationship was established. Assuming you used the Exclusive Right to Sell Listing Agreement (Form 101) to list the property, paragraph 18(a) provides that unless the seller has legally sufficient cause to terminate the listing or the listing is terminated by mutual consent, the seller's withdrawal from the fiduciary relationship prior to the expiration date of the listing agreement would be a material breach of the agreement. Further, according to paragraph 18(b), if the Seller is in material breach, the listing firm would be entitled to recover all damages it can prove were sustained as a result of the breach, which in addition to expenses incurred by the firm in marketing the property, could potentially include the fee the firm would have been entitled to if the property had been sold during the term of the listing agreement.

Note that under paragraph 7(b)(iii) of Form 101, if the seller lists the property with another firm after the listing has expired, it cuts off any rights the firm may have to be paid its fee arising during the Protection Period. However, this wording isn't applicable to a situation where the seller breaches the listing agreement prior to its expiration date, so any right a firm may have to recover its fee as a result of the seller's breach would not be cut off if the seller lists with another firm.

If you agree to the seller's request for a termination, the Termination of Agency Agreement and Release (Form 720) may be used for that purpose. You might consider attempting to negotiate the reimbursement of expenses you've incurred, the amount of which would be inserted in the blank in paragraph 5. If you don't agree to terminate the listing, you should make it clear to the seller that although you will honor his request to withdraw from the agency relationship and will discontinue any efforts to sell his property, you consider his withdrawal to be a breach of the listing agreement, and that you are reserving the right to pursue all remedies available to you for his breach.

[Here's a link](#) to a previous article that addresses this topic from the perspective of a buyer who changes buyer agents. The article also addresses the ethical issues involved for the second agent who is asked to enter into a buyer agency agreement with the buyer. Those issues would be the same for the agent who your seller client wants to give the listing to.

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