



When can the seller terminate the contract under the COVID-19 Addendum?

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QUESTION: One of my listings went under contract early this year. The parties signed the COVID-19 Addendum (Form 790) a couple weeks ago, because the city imposed a stay at home order and the buyer and seller were not sure if more time would be needed to complete the transaction. So far, the transaction has proceeded without needing more time.

The buyer and seller have a mutual acquaintance, and today this acquaintance informed the seller that the buyer might lose their job. Now the seller is worried that if the buyer extends the deadlines under Form 790 to accommodate due diligence inspections, the buyer could lose their job in that additional time and end up terminating the contract. Obviously, this would significantly delay the seller's ability to resell to another buyer. Can the seller just terminate the contract?

ANSWER: No. Paragraph 1 in Form 790 provides that the seller or buyer can terminate the contract only if the buyer is unable to obtain a loan due to the buyer's loss of income related to the COVID-19 pandemic. In your situation, the buyer's job is rumored to be in jeopardy, but there is no indication that the buyer is unable to get a loan based on lost income related to the outbreak. Unless the seller has reliable information fitting all the requirements of paragraph 1, the seller cannot terminate.

If your seller is worried about the buyer's ability to proceed, you might consider sending the buyer's agent an email reminding them that a party's ability to complete the transaction is a material fact under the license law. Any buyer's agent failing to promptly inform a seller that the buyer may not be able to proceed because of a financial issue could be subject to discipline. Hopefully, this will ensure that your seller will get timely updates regarding the buyer's employment status and the feasibility of a loan.

If the buyer does lose their income due to the pandemic and their loan, your seller does not need to give the buyer more time to find a new job or a new source of funds. They can terminate at that time and begin the process of putting the home back on the market.

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