



Is the contract effective if a termination form and an extension request arrive in the same email?

Release Date: August 29, 2019

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QUESTION: The Due Diligence Period for one of my listings expires today, and I received an email from the buyer's agent this morning. In the email, the buyer's agent has requested an extension of the Due Diligence Period and said that if my seller does not agree, his client will terminate. There are two forms attached to the email: a signed termination on Form 350-T and a signed due diligence extension on Form 4-T.

My seller wants to put the house back on the market and has decided not to sign the Form 4-T. However, when I told the buyer's agent that my seller is moving on, he said that his client has changed their mind and that we are still under contract. He believes the termination he sent this morning is not effective because the email was intended only to present a choice to my seller. Are we still under contract?

ANSWER: No. Ordinarily, Form 350-T ("Notice to Seller that Buyer is Exercising their Unilateral Right to Terminate the Offer to Purchase and Contract") is effective as soon as it is signed by the buyer and delivered to the seller during the Due Diligence Period. However, in this case the buyer's agent made the signed termination conditional upon the seller's decision regarding the Due Diligence Period. Your client's decision to move on, and the communication of that decision to the buyer's agent, satisfied the condition and made the termination effective.

Agents should note that the two forms attached to the email should not be sent together. Form 350-T should only be delivered to a seller, or their agent, when a broker is certain the buyer is ready to terminate. The buyer's agent should have first sent Form 4-T ("Agreement to Amend Contract") and informed the seller of the buyer's intent to terminate unless the Due Diligence Period was extended. The same message would have been conveyed to the seller without the unintended consequence that occurred here. The termination form could have then been sent at a later time, in a separate email, once the buyer was certain of their choice to terminate.

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