



Can parties reinstate a terminated contract?

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QUESTION: I am a listing agent. One of my listings went under contract. After arranging for a home inspection, the buyers submitted a repair request. The parties went back and forth trying to reach an agreement regarding repairs. When an agreement could not be reached, and before the due diligence period expired, the buyers submitted a notice that they were terminating the contract. Following delivery of that notice, the parties continued talking and were able to reach an agreement regarding repairs. The parties now want to move forward with the transaction. Can they reinstate the terminated contract?

ANSWER: While a terminated contract is generally and properly regarded as null and void, the parties to such a contract can legally reinstate it. How? In our view, only through a writing, signed and dated by all parties, clearly confirming their agreement to reinstate the terminated contract. There are several ways to get such a writing in place. Regardless of which method is used, agents should be careful not to be involved in the drafting process. The Real Estate Commission might well consider such drafting to constitute the unauthorized practice of law.

The ideal (and more formal) method to accomplish a reinstatement would be to have an attorney draft a simple reinstatement agreement and then have that agreement signed by all of the parties. The reinstatement agreement should identify the terminated contract and specify that once the reinstatement agreement is signed by all parties the terminated contract will be reinstated as if no termination had occurred, and that all terms and conditions of the contract shall remain the same.

An alternative (and less formal) method would be to have all parties exchange emails confirming their agreement to reinstate the terminated contract. Like the lawyer-drafted agreement discussed above, the exchanged emails should state that once all parties have sent emails confirming their agreement, the terminated contract will be reinstated as if no termination had occurred, and that all terms and conditions of the contract shall remain the same.

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