



# WASHINGTON REALTORS®

## Legal Hotline Q&A of the Week

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### Question:

Buyers made an offer contingent upon the sale of their home signing Form 22B. A week before the contingency expired, the buyer's agent said they are going to try to make a sale and accepted a contingent offer without getting Seller's Consent but gave no notice that the contingency was satisfied. Seller gave notice of termination and demanded Earnest Money by default of the Buyer for not obtaining seller's consent. Lines 25 - 27 of 22B say: "If Buyer accepts any such offer without Seller's prior written consent, Seller may terminate this Agreement within three days from Buyer's notice that the contingency is satisfied." Can seller terminate if no notice was given by buyer, that buyer satisfied the Contingency (by selling buyer's property to a home sale contingent buyer)?

### Answer:

Yes, seller may terminate this PSA. Buyer's failure to timely deliver notice of sale constitutes a breach of contract. The contract language is clear: "Buyer shall give notice to Seller within 2 days of entering into an agreement to sell Buyer's Property ..." (Form 22B, paragraph 5). Buyer breached the contract by failing to give seller notice of buyer's sale of buyer's property.

Prior to that, buyer also breached the contract by failing to gain seller's consent prior to accepting an offer for the sale of buyer's property that included a home sale contingency. (Form 22B, paragraph 2). When buyer sold to a home sale contingent buyer without first gaining seller's consent, that gave seller the contractual right to terminate the PSA (Form 22B, paragraph 2). Buyer cannot insulate him/herself from the effects of selling buyer's property to a home sale contingent buyer without first obtaining seller's consent by breaching the contract and failing to deliver notice of the sale. Said differently, buyer cannot breach the contract in order to prevent seller from exercising seller's only contractual remedy for buyer's prior breach of the contract. If the parties cannot resolve their dispute, broker should advise broker's client to seek legal counsel.

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