

MAR SPOTLIGHT 0 9/21/2010:

TERMINATING DIFFICULT SELLERS:

There have been a number of questions recently about difficult sellers, and is a listing agency able to terminate the listing agreement. The answer is yes. A listing agreement is a personal services contract. It does not require performance, but instead, states that if the agency finds a buyer (performs), the seller will pay a commission. It is not like a performance contract where the party agrees to deliver 10 widgets. In that case, the contract may not be terminated until performance has occurred or a breach of the other side's agreement. If the broker and seller client can't get along, or can't agree, or can't communicate, there is no question that the broker (through the agency, signed by the designated broker) can terminate the listing agreement. There is a termination form in Zipforms for that purpose. No reason need be given. The seller does not have to agree or sign the form. The agency should be sure to communicate clearly that the seller's legal obligations to the agency are being terminated as of a certain date, that the property is no longer listed in MREIS, and that the seller is free to list with another agency of their choosing. I suggest using both the termination form (again, signed by the DB, not the agent), as well as returning a copy of the Listing Agreement, marked terminated as of a certain date and signed by the DB.

PURCHASE & SALE AGREEMENT MEDIATION:

P&S - MEDIATION: Section 17 of the MAR Purchase and Sale Agreement sets forth a dispute resolution process that is effective and affordable. When there is a dispute between the parties (buyers and sellers) in a transaction involving the MAR P&S, that is not an earnest money dispute subject to jurisdiction of small claims court, there is a requirement to attempt to resolve that dispute through a specific mediation program, called the Maine Residential Real Estate Mediation Program, which is administered by the Maine Association of Mediators (MAM). If a dispute arises, call Eliza Nichols at MAM at 877-242-3566 or email mrremp@mainemediators.org, and she will explain the process to the parties. There are several mediators on the MAM roster who are experienced and skilled in resolving real estate disputes. As noted in the Rules, a flat fee of \$800 is split evenly between the parties as the administrative cost. The complete Rules are posted on the MAR site: <http://mainerealtors.com/DocumentsYouAskFor/MRREMPRules2010.pdf>