

CANCELLATION OR WITHDRAWAL OF LISTINGS

The rights of an owner to withdraw a listing or of either party to cancel a listing agreement are determined by contract law and court decisions, and the facts in each case bear heavily on the result. As used in this guideline there are two specific terms:

- **Withdrawal of the Listing:** when an owner instructs a brokerage not to promote the property for sale, and not to deliver any additional offers. The contract remains in full force and effect.
- **Cancellation of the Listing Agreement:** when the broker, the owner or both fully terminate their listing agreement. Cancellation may be by either party, or by the mutual consent of both.

An owner may, at any time, “withdraw” from the broker the authority to sell the property. Some listing agreements specify a penalty for early withdrawal of the property from sale by the owner. Even if no penalty is specified in the contract, the court might award damages to a broker if the seller has acted unreasonably and the broker has acted in good faith.

When an owner “cancels” a listing agreement, (i.e., fires the broker), he or she is essentially “breaking” the contract. Unless the owner has sufficient *legal* justification to break the contract, he or she may be required to pay the losses, or damages, incurred by the broker. Such damages can include the out-of-pocket costs incurred by the broker, or the full commission the broker *would* have earned had the owner not cancelled the contract.

An owner who cancels a listing agreement might – or might not – have sufficient legal justification. In some cases, the owner may cancel because the broker is not adequately marketing the property or is not otherwise performing his obligations under the contract. In other cases, the owner may cancel in an attempt to avoid having to pay the broker’s commission.

Likewise, a broker who cancels a listing agreement could be held liable for breaking the contract. Unless the broker has sufficient legal justification to break the contract, the broker could be ordered by a court to pay losses that the owner proves resulted from the cancellation.

Owners and brokers may agree between themselves as to how to resolve their listing agreement disputes. If such disputes are not resolved between the parties, however, either party may bring a civil lawsuit and have a court determine whether breaking the contract was legally justified, or whether to order one party to pay money damages to the other.

The Idaho Real Estate Commission does not have authority to decide listing cancellation disputes.

This guideline is not a new law but is an agency interpretation of existing law.

For more information on this guideline, please contact:

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