

## LEGAL HOTLINE Q&A



**On the Legal Hotline we regularly receive questions concerning many topics of concern to REALTORS®.**

The following are based on recent actual questions received through the Hotline. By no means are these the only issues of concern to members, so please let us know if you have any questions. The Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday.

**Q.** The buyer's inspection has turned up several items of concern for the buyer and, as a result, my buyer no longer wants to purchase the property. Does the buyer have to give the seller an opportunity to repair the defects or can the buyer walk away from the deal due to the bad inspection?

**A.** The buyer does have an obligation to submit an Inspection Response to the seller. If the buyer fails to do so, the buyer will likely lose their earnest money and may be liable to a seller for additional damages as well.

**Q.** My buyer asked for items on an inspection response. The seller replied that they were "unable or unwilling" to complete the requested repairs. My buyer then completed a second inspection response asking for half the repairs originally requested. Seller replied by sending over a signed mutual release. The seller can't do that – can they?

**A.** The inspection response process is, in essence, a re-negotiation of the purchase of the property. If the parties fail to reach an agreement regarding any repairs requested, that are not minor maintenance items, then either party, the buyer or the seller, may terminate the agreement.

**Q.** I am the broker holding the earnest money in a deal that did not close and the parties will not sign a Mutual Release. I would like to send the 60 day letter but I don't know how to word it. Do you have a sample?

**A.** Yes. There is a sample 60 day letter on the IAR website ([www.indianarealtors.com](http://www.indianarealtors.com)). Go to the LegalLibrary tab and then select "earnest money" under the "Category" section. For easy reference, the sample 60 day letter is provided on the next page:

# SAMPLE 60 DAY LETTER

DATE  
SENT VIA CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED

Mr. / Mrs. Seller  
Last known address  
City, State Zip

Mr. / Mrs. Buyer  
Last known address  
City, State Zip

Dear Buyer(s) & Seller(s):

An agreement for the purchase of residential real estate located at \_\_\_\_\_ was entered into on \_\_\_\_\_ (DATE) between \_\_\_\_\_ (BUYER) and \_\_\_\_\_ (SELLER). Earnest money in the amount of \_\_\_\_\_ is currently being held in escrow through the agency of \_\_\_\_\_.

Notification has been received that one or more of the parties to the purchase agreement intends not to perform and no clear provision for the release of the earnest money has been made. Pursuant to 876 IAC 1-1-23, the earnest money will be released to \_\_\_\_\_ (BUYER or SELLER) unless either: 1) all parties enter into a mutual release; or 2) one or more parties initiates litigation within sixty (60) days of the mailing date of this certified letter.

If neither the buyer nor the seller initiates litigation, nor the parties enter into a mutual release, within sixty (60) days of the mailing date of this certified letter, the broker will release the earnest money deposit to the party identified above.

Further, pursuant to the Purchase Agreement, the parties have agreed to hold the Broker harmless from any liability, including attorney's fees and costs, for the good faith disbursement of the earnest money in accordance with 876 IAC 1-1-23.

Sincerely,

\_\_\_\_\_  
Principal Broker holding the earnest money