



Legal Information Lines - Frequently Asked Question: Implications of EMD Disputes on Relisting a Property

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Q: Can the seller relist their property while there's a pending earnest money dispute?

A: Sellers can, but should they? The ideal course is to have a formal termination of the contract which can occur by either the parties signing the cancellation instructions or as so ordered from a judge. The former is obviously preferred, and the listing agent/broker should facilitate that by reaching out to the buyer's broker directly to make headway, as well as initiating the mediation process through your local REALTOR® chapter.

If that doesn't work, inform the seller to seek advice from an attorney to understand the legal ramifications of entering into another purchase agreement without formal cancellation. It's important to note that title and escrow companies often refuse to open a second escrow on a property where the first contract has not been formally terminated because it carries legal risk.

Now, if the seller still wants the agent to re-list the property, it's important to disclose the dispute to potential buyers (such as by utilizing indicators/fields on MLS) and to write in the offers that the sale is contingent on the successful cancellation of the former offer.

Lastly, buyer's often incorrectly think they can threaten *lis pendens* to hinder the seller's subsequent sale. This is a prime example of why lay persons should not play lawyer. This is simply the wrong tactic because *lis pendens* actions require there to be an interest in the subject property, not just a monetary claim, which is what a suit for earnest money is. But the buyers can, if they have the time and money, file a lawsuit to stop the sale and enforce a valid contract.

Resources

- (1) Nevada Real Estate Division's Informational Bulletin #001 Multiple Offers Guidelines for Licensees: <http://red.nv.gov/uploadedFiles/rednvgov/Content/Publications/Bulletins/ib01-multipleoffers.pdf>
- (2) Consult your local association for regional forms/procedures, but as an FYI here are the National Association of REALTOR® resources:
 - (a) Mediation Forms: <https://www.nar.realtor/code-of-ethics-and-arbitration-manual/forms#mediation>
 - (b) Scroll down to Mediation Procedures section: <https://www.nar.realtor/code-of-ethics-and-arbitration-manual/appendix-vi-to-part-ten-mediation-as-a-service-of-member-boards>
 - (c) Code of Ethics and Standards of Practice: <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2020-code-of-ethics-standards-of-practice>
- (3) Nevada State Bar Lawyer Referral Service: <https://www.nvbar.org/lawyerreferral/lrs/>

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