

REAL ESTATE



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Q | If real estate is subject to a purchase and sale agreement that hasn't closed yet, who bears the risk of loss if the real estate is damaged by fire or other casualty before closing—the buyer or seller?

A | If the agreement allocates risk of loss to one of the parties, the terms of the agreement will typically control. Under Washington law, if the agreement is silent on this issue, the seller bears the risk. This means the buyer may rescind the purchase and sale agreement if the property is damaged by fire or other casualty before transferring title and the loss constitutes a substantial part of the property's value. In many other states, however, courts place the risk of loss on the buyer. Accordingly, buyers and sellers should make sure the purchase and sale agreement specifically allocates risk of loss in a manner consistent with the parties' expectations.