

COOLING OFF PERIOD WHEN SELLING YOUR HOME PART III



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Small recap

This is the third of three articles regarding the Three Day Cooling Off Period.

In the [first article](#) I told you a bit about what the cooling off period means for you as a buyer and what requirements must be met for you to be able to invoke it.

The [second article](#) went deeper into the fact that the agreement to buy a house must be in writing. If the house concerned is the one you are going to live in, this means that there are actually no obligations for you to buy this real estate or pay damages if the agreement was only reached orally.

Can the seller of a home also invoke the Three Day Cooling Off Period and/or does the seller also have no obligations unless the agreement is in writing ?

In this third article I would like to give you the answer to the question stated above.

The cooling off period was introduced into Dutch law per September 1st 2003. As mentioned in my first article it was incorporated in [article 2 of Book 7 of the Dutch Civil Code](#). (Abbreviated as: Artikel 7:2 BW)

If you read that article you will find that it does not mention any rights for a seller (in Dutch: verkoper) to invoke the cooling off period. The word “verkoper” is not used, only the word “koper”. Which is the Dutch word for “buyer”.

On December 9th 2011 the [Hoge Raad](#), the highest civil court in The Netherlands, pronounced a [verdict](#) in an interesting court case. And this verdict is very relevant in answering the question whether you can invoke the Three Day Cooling Off Period if you are not buying a home, but selling your home instead.

The answer is: No or actually Yes. You can !

If you already lived some time in Holland you will probably recognize a Dutch treat in the answer given above. It stems from having rules and then not sticking to them (and certainly not to the letter). In the end you get a situation where even government agencies start “te gedogen”.

In this important case decided by the Hoge Raad, the judges did not give a new interpretation to the wordings of artikel 7:2 BW. They could hardly do so since the words are clear: no mentioning of “sellers”.

So at first it seems as if the answer must be:

No, the seller is not entitled to invoke the cooling off period.

Instead the Supreme Court decided that the intention of the lawmakers was to make sure that a contract of sale of a house is only valid if it is in writing and is signed by all parties concerned.

And because of this the judges stated that no one is bound by any agreement orally reached. This effectively means that the seller is only obliged to transfer ownership of his or her home if the buyer has signed the contract of sale.

Therefore, the answer to my question must be:

Yes, the seller of his or her home also has a kind of Cooling off period.

But this does not end three days after signing the contract of sale (as it does for the buyer). Instead it (only) ends after the seller has signed the contract. And that can be at any time after an oral agreement has been reached. So the seller can actually decide for his or her self when the cooling off period ends for him or her (and the

Three Day Cooling Off Period starts for the buyer) by postponing signing of the contract.

Warning

I must warn you though that this only works if artikel 7:2 BW applies to the situation. So check my [first article](#) and look over the requirements mentioned there.

In general you can say that if the house that is on the market is your own (i.e. you live there while it is being sold) and the buyer wants to move in after having bought it, the buyer is entitled to the Three Day Cooling Off Period. Whereas you, as the seller, have the right to refuse to sign the contract without having to pay damages.

There is one caveat though. The Hoge Raad also ruled that if the buyer already has incurred cost, for instance by hiring an appraiser to value the house with the view of asking for a bank loan, under certain circumstances the seller must reimburse these costs.

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