

BASIC PRINCIPLES OF OFFER AND ACCEPTANCE

In real estate, there are no verbal agreements. Everything must be in writing. There are three excellent reasons for getting all agreements, no matter how trivial, in writing. First of all, verbal agreements are not enforceable insofar as real estate is concerned. Secondly, by writing an agreement down, both parties are forced to consider exactly what was agreed to and the consequences of the changes to the agreement. Finally, parties to real estate transactions will (conveniently?) forget about promises made, especially as they are busy and distracted with their move from their old home to their new one.

There are established principles for the offer and acceptance process to keep in mind when negotiating the purchase or sale of real estate. Confusion about these rules can create hard feelings, misunderstandings and disagreements. Failure to understand and apply these rules should be avoided at all costs since they could result in lawsuits.

An offer may be accepted until it expires or until it is withdrawn by the offeror. An offeror is allowed to withdraw an offer (orally or in writing) at any time before it is accepted and is delivered back to the offeror.

After the offer or counteroffer has expired or withdrawn, it can no longer be accepted. The party who wishes to open negotiations again must write a new offer.

An offeree is not required to take any action with respect to an offer. A seller, for example, may accept an offer, reject it or ignore it. A buyer cannot force a seller to reply to an offer. Doing nothing is a rejection of the offer (or counteroffer).

During negotiations, keep in mind that if you make a counteroffer, this is a rejection of the original offer. And once an offer is rejected, it is dead and cannot be resurrected. A person who rejects an offer by any means cannot go back later and try to accept it.

An offer must be accepted in writing and must be delivered to the other party prior to the time and date specified in the offer. "Delivered" includes personally delivered or delivered by facsimile, mailed postage prepaid, or by any method where there is evidence of receipt such as courier, FedEx, UPS, etc. Delivery to the real estate licensee who is working with or who represents the Buyer or Seller also constitutes delivery to the Buyer or Seller.

Most people don't know that a seller is not required to accept an "on-terms" offer. In fact, properties offered for sale on MLS is an offer by the listing broker of cooperation and compensation to other real estate agents. It is not an offer by the seller to sell on any particular terms. Thus there is no "offer for sale" from a seller that a buyer might "accept" that could create a binding agreement. Only the buyer can initiate an offer, not the seller. A binding agreement is created only if the seller accepts the buyer's offer.

This is a limited discussion of the standards of practice in the real estate profession and is not a legal opinion. This summary should not be construed as a substitute for legal advice with respect to a particular matter. If you want a legal opinion of how the laws apply to your situation, please consult an attorney.