
OFFER AND ACCEPTANCE

The negotiation process in a real estate transaction typically begins with a written offer from a prospective purchaser to the seller. To form a legally binding and enforceable contract, the offer must be accepted before it terminates. An offer terminates upon its expiration, death or incapacity of either party, revocation by the offeror (the party making the offer), or rejection by the offeree (the party to whom the offer is made). Contrary to common misconception, the offeror can withdraw the offer prior to its acceptance, even though the offer has not yet expired. If the seller makes a counteroffer, the purchaser's offer is deemed to have been rejected. Once an offer has been rejected, it terminates and cannot be accepted thereafter without the offeror's ratification, even if the offer would not yet have expired by its terms.

A purported acceptance which changes the terms of the offer in any material respect operates only as a counteroffer, and not as an acceptance. However, additional conditions contained in the acceptance which can be implied in the original offer do not constitute material variances so as to make the acceptance ineffective.

Acceptance of the offer is not effective until notice of the acceptance is given to the offeror. Most preprinted earnest money agreements specify when and how acceptance must be made to be effective.

The same rules apply to a counteroffer by the seller, including the seller's right to withdraw a counteroffer prior to its acceptance. Accordingly, a party who intends to accept an offer or a counteroffer from the other party should act promptly to assure that an agreement is reached.

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