

## Creating a Binding Contract

After working so hard to find a home, then finally agreeing on a price and terms, the last thing you want is for the contract to fall apart because of a technical oversight. Or even worse . . . to be locked into a contract that doesn't actually protect you.

Almost 85% of real estate contracts are not legally binding. In addition, due in part to laziness and in part to lack of education, contracts are written without clear guidelines and arbitrary clauses that can actually harm the client they were designed to protect.

The following information should provide some very basic tips that could make the difference between a smooth transaction and a lengthy legal battle.

### **Offer and Counter Offers**

The basic procedure is that the buyer will submit an offer; the seller will review it, make some changes and then return a counter offer. Once the counter offer is signed, the contract is accepted.

However . . .

Sometimes the buyer will submit an offer and since they may not know the seller's full name, they leave this space blank. Perhaps they are flexible on possession, so they leave this space blank. Perhaps they forget to sign it or put in the wrong date. The offer is not even a legal offer as it cannot be accepted without changes. Even if the seller were to simply add their name without any other changes, and sign the offer, it would only be considered a counter offer and would not be legally binding.

### **Changes and Initials**

Any time a change or an addition is made to the contract, everyone must acknowledge the change. This is typically done using initials. The change must be initialed by all parties listed on the agreement and this must happen before the time deadline (not as easy as it sounds). Even an addition of a phone number requires initials.

On modern contracts, the Realtor's information is written into the agreement. While the contract to purchase is between a buyer and seller, the Realtor's information becomes part of the agreement; therefore if something is added in or changed, we must get it initialed.

### **Methods of Acceptance**

A good agreement will outline the different ways a contract can be sent back and forth. This lets all parties know how you must communicate acceptance. Without this, someone could say they sent the contract to your work, someone signed for it, and therefore you are bound by it (even though you have never seen it).

The Realtor's information, must be filled out in an agreement, otherwise you may not have a legal method to convey acceptance. The big problem is a situation where someone wants the contract delivered to a location that is not on the agreement, or faxed to a different number than was agreed upon. If acceptance is not communicated by one of the agreed methods, then the contract is dead and not binding.

### **Timing**

You wouldn't want to submit an offer and then have the seller take a month to think about it; therefore deadlines are put on the contract.

Here is the catch . . . the times on the contract have nothing to do with signing. The times dictate the deadline when acceptance must be communicated by. For this reason, after signing the contract you have to communicate acceptance (based on one of the agreed upon methods) to the other party. Verbal is not good enough. Proof of signing must be provided.

## **Wording of Clauses and Additional Terms**

If you fill in an additional term in the contract, remember three things. First, be very specific. If you are asking for the home to be painted, ensure you specify the exact color, quality of paint, procedure (i.e. primer) and any other relevant details. Otherwise, as long as the home is painted, they have fulfilled their obligations. Second, be sure you put a date deadline on the term. And finally, ensure you state the repercussions if the term is not fulfilled. This might be worded to include a hold back of money on closing.

Conditions must be worded correctly, otherwise you could run the risk of not being protected at all. One example is the financing condition. If the condition reads: "The buyer will be approved for financing" and no criteria is issued, then if someone simply said to the buyer they would approve them for financing at 20% interest, the condition would be fulfilled. Another condition might be written as: "This contract is subject to the buyer viewing the property." In this case, as long as the buyer views the property (even if it is falling down), then the condition has been satisfied and the buyer is bound to that agreement.

The solution is very simple. Always add the following words to any condition: "to the buyer's satisfaction." This way, if the buyer is not satisfied with the result of their condition, they can walk away. For sellers: Be aware that accepting this wording, allows the buyer to walk away for any reason. Modify the clause to add a value in. This might read: "Buyer will have reason not to waive the home inspection condition if defects that exceed 1.0% of the purchase price are identified." Ensure you read the clauses carefully and determine who they protect and what the implications mean for you.