

# focus on: Legal Affairs

By: Kelly Shonborn, IAR Senior Staff Counsel

## MYTH BUSTERS – PART I 5 MOST COMMONLY MISTAKEN FACTS PERTAINING TO REAL ESTATE TRANSACTIONS

Here are some of the most common myths we hear on the Legal Hotline. Most of these myths have been handed down through the years and are still lingering out there among brokers. Whether it's a myth or not, the Legal Hotline is available to assist managing brokers and their designated agents with their questions between the hours of 9 a.m. and 5 p.m., Monday through Friday.



**MYTH #1:** No earnest money = No contract.

**REALITY:** Many people think that if the buyer never submits the agreed upon earnest money then there is no binding contract. That is not true. In a real estate transaction, the mutual promises to buy and sell constitute sufficient consideration to support the contract and make it binding on both parties.

As noted in the Purchase Agreement, the Seller may terminate the contract if earnest money is not received but the failure of a buyer to submit earnest money does not, by itself, invalidate the contract.

**MYTH #2:** Only a buyer may be entitled to specific performance if the seller breaches the contract.

**REALITY:** While specific performance is more commonly pursued and likely more often granted by a court to a buyer, it is a remedy that is also available to a seller when the buyer breaches the contract.

**MYTH #3:** If Seller has marked something “not defective” on the Seller’s Disclosure then that item is included with the property.

**REALITY:** The only instruments that determine what non fixtures remain with the property are the Purchase Agreement and corresponding counter offers. The Seller’s Disclosure is not made a part of the contract between the buyer and seller.

**MYTH #4:** Seller must accept an offer if it is for list price.

**REALITY:** There are other terms and conditions to Purchase Agreements other than the sales price and it may be that the seller is not agreeable to some of the other terms and conditions. However, seller may be liable to pay the commission to the listing broker if they refuse to accept an offer that was previously represented by the seller as an offer they would accept.

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**MYTH #5:** Buyer's broker has two business days to deliver the earnest money to the listing broker (provided the Purchase Agreement directs the listing broker to hold the earnest money).

**REALITY:** According to the pre-printed language of the IAR Purchase Agreement, which says, "Buyer submits \$\_\_\_\_\_ as earnest money . . .," the earnest money is supposed to be presented with the Purchase Agreement. The Purchase Agreement also says that "earnest money shall be returned promptly in the event this offer is not accepted." Further, according to the Purchase Agreement, if the buyer fails to deliver the earnest money, the seller may terminate the agreement. After the offer is accepted, the broker who was designated in the Purchase Agreement as the broker to hold the earnest money has two banking days to deposit the earnest money received into their trust account.

Please contact the IAR Legal Hotline if you have any questions or concerns regarding the above. The IAR legal Hotline is available to managing brokers and designated agents from 9am—5pm, Monday-Friday at 1-800-444-5472.