



CONTRACTS Q & A

Q: My seller is out of town, but has verbally told me to accept an offer that was received. Is this OK?

A: In Indiana, a contract for the sale of real estate is not enforceable unless it is in writing, which includes the signatures of both the buyer and seller.

Q: Since the seller is out of town and wants to accept the offer, is it OK for me, as his agent, to sign for the seller?

A: When an agent signs for their client, absent express written authority to do so (a/k/a Power of Attorney), the contract is not legally binding. Further, many principle brokers have strict office policies prohibiting this practice.

Q: My buyers submitted an offer to a seller yesterday and now they say they have changed their minds. Is there anything I can do?

A: An offer or counteroffer may be withdrawn by the offeror so long as the withdrawal is delivered to the offeree(s) prior to acceptance and delivery by the offeree(s). Therefore, the buyers' written notification of withdrawal would need to be received by the sellers (receipt by the seller's agent would constitute delivery as well) before the seller accepts and delivers the buyers' offer in order for the withdrawal to be effective. This withdrawal procedure is the same for counter-offers.

Q: I have received a counteroffer on a listing. I know the sellers will not agree to the terms presented in the counteroffer and I have just received a new offer from a different buyer. Do I have to present the counteroffer to the sellers?

A: The rules of the Indiana Real Estate Commission require all licensees to communicate all written offers to their principals "immediately upon receipt of such offer" (876 IAC 1-1-23(a)). In addition, all REALTORS® are required by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® to present all offers "as quickly as possible". Therefore, all offers must be presented immediately whether they are good, bad, or indifferent, even if another offer is pending, and for that matter, even if another offer has been accepted. The only exception to this rule is when the seller and the listing broker have agreed otherwise in writing. It is proper for the listing broker and the seller to agree in writing that no offers of less than a certain price, without a certain amount of earnest money, or no land contract, etc., be submitted.

Q: The buyer's inspection has turned up several items of concern for the buyer and, as a result, my buyer no longer wants to purchase the property. Does the buyer have to give the seller an opportunity to repair the defects or can the buyer walk away from the deal due to the bad inspection?

A: The buyer does have an obligation to submit an Inspection Response to the seller. If the buyer fails to do so, the buyer will likely lose their earnest money and may be liable to a seller for additional damages as well.

Q: My buyer asked for items on an inspection response. The seller replied that they were "unable or unwilling" to complete the requested repairs. My buyer then completed a second inspection response asking for half the repairs originally requested. Seller replied by sending over a signed mutual release. The seller can't do that – can they?

A: The inspection response process is, in essence, a re-negotiation of the purchase of the property. If the parties fail to reach an agreement regarding any repairs requested, that are not minor maintenance items, then either party, the buyer or the seller, may terminate the agreement.