

2016 AREA Purchase Contract Revisions

Backgrounder: Negotiations and the Purchase Contract

A real estate contract negotiation has two key aspects: offer and acceptance.

All contracts start as an offer. Usually, the buyer makes the initial offer to the seller to purchase the seller's home.

Option 1 – Using the AREA purchase contract as the negotiating instrument

The buyer makes the initial offer written on the AREA purchase contract. If a seller sends back a counter offer, this constitutes a new offer. The original offer is destroyed and is no longer open for acceptance.

Each subsequent counter offer has this same effect. Each time there is a change to the offer, changes must be initialed by all parties to the contract. It is best practice to initial all changes to the offer, no matter how minor. If a change is made and not initialed, the contract can later be disputed by the party who has not initialed the change. In most cases, an offer can be revoked or terminated by the person making the offer at any time before communication of the accepted offer.

If there are a number of back and forth communications, best practice is to use a clean form and start with the agreed terms on the latest offer. This will make the terms and wording clearer, making it easier to read by anyone reviewing the contract.

All offer/counter offers should comply with the "open for written acceptance" time requirement in 17.2. This time may be amended as required. It is important to be mindful of the time/date until which an offer/counter offer is open. When an offer states that it will be open until a particular time, the offer terminates at that time if communication of the accepted offer has not occurred.

Option 2 – Using the AREA purchase contract to capture the outcome of a negotiation

In this scenario, the AREA purchase contract is not the negotiating instrument. The parties and their REALTORS® can negotiate anyway they choose. Once an agreement is reached, the contract is drawn up and all parties sign.

Note: When the offer and counter offer are made verbally or by text or email, there may be some uncertainty around the exact nature of the terms until written and agreed to in the contract.

In the case of both options 1 and 2:

The purchase contract **CANNOT** be accepted verbally. It must be signed by all parties and then communicated.

Communication means the accepted contract must be given or sent to the authorized representative in section 14 in a way that the parties have agreed to. Section 13 provides that a written notice will be delivered in person or sent by fax or email. Section 16 reinforces that the contract's legal obligations begin when the accepted contract is delivered in person or sent by fax or email.

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If another method of communication is mutually agreed upon, it must be written and agreed to in the contract. Regardless of the method of communication, it is good practice for the person communicating acceptance of the contract to get written confirmation that the contract has in fact been delivered or sent (such as a fax confirmation). If the communication of the accepted contract fails for technical reasons, there is no contract. Example:

A REALTOR® is emailing an accepted contract on behalf of their client. Just before hitting “send”, there is a power failure and therefore, contract acceptance is not communicated. There is no contract at this point – you must communicate the acceptance before the contract becomes legally binding.

Once the agreed upon contract is communicated by one of the accepted methods, the legal obligations stated in the contract begin. The parties to the contract are now on the clock to meet their obligations.