



## Contract Formation

REALTORS® deal with numerous types of contracts every day. The listing agreement, the purchase agreement, the independent contractor agreement, the lease, and the property management agreement are a few of the contracts realtors® use in their practice every day.

We often get questions on what elements or terms are necessary for a contract to be binding? The essential elements necessary for forming a contract are mutual assent, consideration, legal capacity, legal subject matter and a meeting of the minds. This article will discuss mutual assent.

Mutual assent begins with an offer that encompasses the agreement's essential terms. An offer is an expression of willingness to enter into an agreement so made as to justify another person in understanding that his or her consent to that agreement is invited and will conclude it. The person or company making the offer is called the "offeror". The person or company receiving the offer is called the "offeree".

The offeror delivers an offer to the offeree and generally limits the time in which the offeree may accept it. The offeror may revoke (withdraw) the offer at any time before the delivery of acceptance by the offeree. To revoke an offer, the offeror must give the offeree notice of his/her revocation in the same manner required to communicate the acceptance. An offer may also be revoked by the lapse of time set forth in the offer for the acceptance without a delivery of the acceptance, by failure of the person accepting the offer to fulfill a condition to acceptance, or by the death of the person making the offer.

An acceptance of an offer must be absolute and unconditional. All of the terms of the offer must be accepted without change or condition.

A change in the terms set forth in the offer, or a conditional acceptance, is a rejection of the offer. Once an offer has been rejected, it cannot be accepted, unless the person who made the offer remakes the offer following the rejection.

A change in terms, or a conditional or qualified acceptance communicated to the person who made the original offer, is a counteroffer. In other words, an offeree's new offer that varies the terms of the original offer is a counteroffer. A counteroffer may be accepted, rejected totally or rejected by a further counteroffer. A contract results only when an offer or a counteroffer is absolutely and unconditionally accepted.



To be effective, an acceptance must be signed and communicated to the person who made the offer. If the offer requires any conditions of how to communicate the acceptance, the conditions must be followed. ACCEPTANCE is defined as the date on which the offeree signs the agreement and delivers it to the offeror. DELIVERY occurs when an accepted agreement is faxed, received by mail, couriered or hand delivered to the principals or their broker.

It is important to buyers and sellers of real estate to be aware of these basic rules of offer and acceptance. Sellers must be sure that if they wish to accept the buyer's offer, they must deliver such acceptance to the buyer before the expiration date stated on the offer or the offer is revoked and cannot be accepted.

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