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Episode 11: Offer-Counteroffer – A Follow-Up Question to Episode 9

Call from the Agent: What is the effect of a counteroffer and when does it expire?

The Response: The question actually went like this – the buyer’s offer states it will expire on Wednesday at 5pm. At 4pm, the seller counteroffers. The buyer accepts the counteroffer at 6pm. Do we have a contract?

To begin, it helps to remember a counteroffer operates as a rejection of the offer (this was discussed in Episode 9). At the moment a counteroffer is made, the original offer becomes a nullity along with its stated time of expiration. More plainly, once the seller made his counteroffer, the buyer’s “expires on” deadline of Wednesday at 4pm no longer had meaning. Instead, there was a new offer – it was from the seller and, when the buyer accepted it at 6pm, the contract was bound. Still, there are a few things to be observed that will definitely be handy to know:

1. Let’s say the seller counteroffered at 4pm (which he did) and the buyer remained silent. The seller might have become nervous at 4:30pm and decided to then accept the buyer’s original offer – technically, it is too late. Even though the buyer said his offer would expire at 5pm, the seller already rejected it and the buyer’s offer was thereby extinguished at 4pm – the seller cannot revive the buyer’s offer by accepting it, even if he does so before 5pm. As a practical matter, the parties in that circumstance would probably want to go forward with the contract, but it is beneficial to fully understand the fundamentals of offers and counteroffers because they can sometimes be ticklish.
2. In the real-life situation this agent asked about, the seller’s counteroffer did not contain an “expires on” deadline. In the absence of a stated expiration date/time, the counteroffer remains open until: A) it is accepted; B) it is rejected; or C) it is revoked. With this in mind, let me conclude with a recommendation ...

When a counteroffer is made, it is prudent to ensure it contains its own “expires on” deadline. And, of course, there might be a series of counteroffers, counter-counteroffers, etc. – try to make sure each contains an “expires on” deadline. This can be done with an initialed notation within the original contract or in an addendum. Even when involved in quick contract negotiations, you will find it pays to ensure perfect clarity in everything you do. The topmost “top producers” know a client will appreciate a patient, detailed approach – it protects your client, makes you look good and serves the transaction.