

Legal Effect of Missing Contract Related Time Periods

What Happens if a Seller Wants to Accept an Offer After It Has Expired?

Paragraph 31 of the Residential Purchase Agreement (RPA) provides that the buyer's offer will be revoked unless the seller signs and returns the offer by 5 p.m. on the 3rd day after it is made. Seemingly, if the seller signs and returns it at 5:01 p.m. or thereafter, it is too late, and the buyer will not be bound. However, if buyer and seller agree, they can both sign a document extending the time to accept the offer until the date of the buyer's receipt of the seller's acceptance of the offer.

What Happens if No Extension Is Signed and Buyer and Seller Proceed with The Transaction?

It is possible that a buyer and seller's actions can be interpreted as a verbal agreement to waive the explicit response time in the RPA. If the buyer makes the deposit, pays for and conducts inspections, the seller provides disclosures and reports, and the parties negotiate over repair requests, one or more of these actions can be interpreted as an intent to contract and a waiver of the obligation for seller to respond within the specified time.

What if a Seller Issues a Counter Offer After the Acceptance Period Has Expired and the Buyer Accepts?

Legally, a counter-offer is a rejection of the buyer's offer and a new offer by the seller. Accordingly, it stands on its own and is capable of being accepted by the buyer. To prevent any disputes about the legal effect of the seller counter offer on the time period to accept, a seller can add language to the counter offer stating that the time to accept buyer's offer is extended until the date of the seller's signature on this counter offer.

What About a Seller's Response to a Buyer's Request for Repair (RR)?

Neither the RR nor the RPA include time periods within which the RR must be accepted, rejected or countered by the seller. The forms can be signed anytime prior to the contract being cancelled. However, if the buyer does not remove contingencies within the time specified, possibly because of being engaged in a negotiation, seller can issue a Notice to Buyer to Perform and then unilaterally cancel. Anytime prior to cancellation, the RR form can be mutually signed by both sides to the transaction and create a binding agreement between seller and buyer.

What About the Amendment to Existing Agreement Terms (AEA)?

Like the RPA, the AEA form is an offer that expires within 3 days after it is made. Unlike the RR, the AEA is not open-ended, capable of being accepted anytime after it is signed. The same rules that apply to a late acceptance of the RPA apply to the AEA. However, since the AEA will usually occur late in the transaction after deposit, inspections, and reports, there may be less risk of interpreting a waiver that can come more closely after the RPA is initiated.

What Should Not Be Done When An Agent Knows A Seller Will Not Sign the RPA Until After the Offer Expires.

An agent should make sure not to try to short circuit any legal or contractual requirements. The agent should not (i) sign the RPA for the principal, even if verbally authorized to do so; (ii) have one seller sign for another unless a Power of Attorney has previously been prepared; (iii) have the client back-date a signature; or (iv) verbally accept.