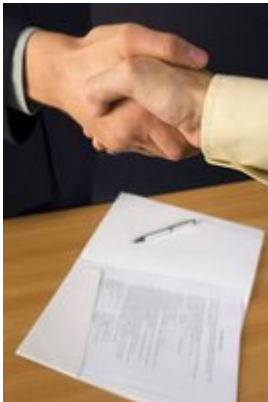


## Counter Offer ~ Difficulties with Standard Form



**By Brian Madigan LL.B.**

When considering the number of standard forms in use in Ontario as prepared by the Ontario Real Estate association (OREA), it is easy to conclude that this particular form was rather hastily put together.

Inherently, there are a number of fundamental concerns:

1) the preamble states “ Attached to and forming part of Offer to Purchase between....”, and,

2) the operative words are "The Seller accepts the attached offer and all its terms and conditions subject to the following, amendments, exceptions and/or deletions".

This is an unusual document. Most people in the business seem never to use it. It does have a certain “simplicity” which is attractive and compelling.

However, as I mentioned there were two concerns. The preamble is incorrect. The original Offer should be attached to the Counter Offer, not the other way around.

Also, there is a little glitch in the wording; it says:

"The Seller accepts the attached offer and all its terms and conditions subject to the following, amendments, exceptions and/or deletions".

You might recall from contract law, that partial acceptance is no acceptance at all. In fact, it is a rejection. There is no right to accept subject to any conditions whatsoever.

The **correct wording** might be: "The Seller offers to sell to the Buyer upon the same terms and conditions contained in the attached offer, subject to etc....."

At the end of this one page document, there appears the following statement:  
“SELLER SIGNING THIS FORM SHOULD NOT SIGN THE ORIGINAL OFFER”.

The Agreement of Purchase and Sale appears to require initials on each page. There are no initials on page 4 since the signature would be inserted here. It is the signing page. So, it would appear that initials would be required on all pages including somewhere at the bottom on page 4.

On page 4, is the standard Confirmation of Acceptance. This is the statement to be made by the last person to sign the document, noting that it was accepted within the irrevocable time frame. However, in this document, it was simply omitted.

So, with a number of substantial errors on the face of the document, which would obviously require alteration, the simplicity of the document is lost due to the fact that no one can clearly complete the document appropriately. And, there's not much point having a manual to complete a one page document.

It is also important to draft the changes quite clearly, otherwise this can lead to a misunderstanding. It is noteworthy that the purpose of the document in the first place was simplicity.

The easiest way to complete a counter offer would be to make the appropriate alterations on the original offer and initial them. That would be straightforward on the face of the document.

To proceed with the Counter Offer document, not being sure how to attach the offer, how to amend the Counter Offer so that the document is accurate and where to sign and what to initial on the original is both puzzling and risky. Maybe, it's best to just stick with the tried and true method that has worked for centuries.

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