

Seller: Accept, Reject or Counter Offer



By Brian Madigan LL.B.

Most people seem to know that a Seller upon the presentation of an Offer, may:

- 1) accept the Offer,
- 2) reject the Offer, or
- 3) counter the Offer.

Actually, when it comes to the third option, this is really two separate steps. First, rejecting the offer and then providing an Offer to the Buyer.

Well, that does not appear to be an option in Ontario according to the standard form Agreement of Purchase and Sale prepared by the Ontario Real Estate Association.(OREA).

So, let's have a look at what the document really says:

“I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Brokerage the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Brokerage to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal”

So, what does it say? This is the complete section dealing with the Seller. The only provision dealing with the agreement as such are the words:

I, the Undersigned Seller, *agree to the above Offer.*

There are no other options, just acceptance alone. That certainly seems to be pushing the limits! I know that realtors would like to see the deal get done, but shouldn't the Seller at least be provided with the options. They are in some jurisdictions, but obviously not Ontario.

So, if you just wanted to reject the Offer in its entirety, you basically just refuse to sign anything. However, the agents probably won't let you do just that. You'll be harassed into signing something. So, here's where you'll be on your own. You'll have to write something like "REJECTED" diagonally across the front page, and not sign the Offer in the location marked for Sellers. Another option, is that you could cross out the preprinted word "agree" and add the word "reject". However, there is always a risk signing when there are several copies of the Offer. You have to make sure each and every one of them includes the word "reject".

The safest course is not to sign anything at all. Send the agent back, and get the Buyer to resubmit an acceptable Offer.

Your second choice is to counter the Offer. Another little problem here, 99% of the counter offers I see, will say "agree". This should not be the case. I appreciate that there will be some changes elsewhere that are initialled, but, with fax copies, sometimes errors in transmission occur and sometimes a change in light blue ink is not apparent at the other end.

And, what does the document say right above your signature: AGREE.

So, make sure the words "agree to" are deleted and you write in either "reject and counter" or simply "counter" or "submit". In all cases, in the key words contained in the standard form agreement of purchase and sale, you will be indicating your intention.

If you raise this point with your agent, you will likely be the first. And, don't get bulldozed by the response "that's the way it's done". It's just English! And, you might be better at English than the agents.

Most of the time, courts will be able to figure out what you were attempting to do, but you would have thought that the agents would make it easy and not that difficult.

By the way, documents prepared by legal stationers frequently had other clauses, and some included the words (agree/ counter / reject) so all you had to do was cross out the two words that did not apply.

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