



MEUMANN WHITE

A T T O R N E Y S

**HOW CRUCIAL IS THE COMMUNICATION
OF AN ACCEPTANCE OF AN OFFER TO
THE OFFEROR?**

An agent had the following experience: -

A potential Purchaser signed an offer to purchase. The offer was forwarded to the Seller, who had until 5.00 pm on 20 July, 1998, to accept the offer. Before 5.00pm on 20 July 1998 (i.e. before expiry) the Seller accepted the offer by signing the agreement and left a message on the agent's cellular phone to advise her of his acceptance. The agent retrieved the message on the morning of 21 July 1998 and immediately contacted the Purchaser to advise him that his offer had been accepted. To the agent's surprise, the Purchaser advised that the acceptance had not been communicated to him prior to 5.00pm on 20 July 1998 and therefore the offer had lapsed, and he was no longer interested in purchasing the property at that price.

The question that arises is: Is the contract concluded as soon as the Seller signs the agreement OR only once the Seller (or the agent) has communicated the Seller's acceptance of the offer to the Purchaser?

The legal position is as follows :-

As a general rule a contract is concluded only when the Seller (the offeree) has communicated his acceptance of the offer to the Purchaser (offeror). This means that if a Seller signs an offer to purchase (thereby purporting to accept the offer), the contract is not concluded unless the Seller has notified the Purchaser that the offer has not been accepted prior to the expiry of the offer.

This leads to the question: What type of notification is required?

The notification need not be in writing unless this is stipulated in the offer. Thus a simple telephone call, prior to the expiry of the offer to the Purchaser advising him that this offer has been accepted would be sufficient. It is not necessary for the Purchaser to actually be furnished with a copy of the signed agreement at that stage.

Generally, the Seller (the offeree) must take all reasonable steps to inform the Purchaser (the offeror) of his acceptance. If the Purchaser changes his address stated in the contract or otherwise makes it impossible for the Seller to give notice of acceptance before the expiration of the offer, the contract will be deemed to be binding provided the Seller did his best to communicate the acceptance of the offer. Thus, in the example given above, if the Purchaser only had the agent's cellular phone number as a contact with the Seller, the message left on the agent's voice mail may well be deemed to be sufficient communication of acceptance.

It has not yet been decided by the Courts whether it is sufficient for the Seller (offeree) simply to inform the estate agent that the offer has been accepted. It is thus imperative that when acceptance of an offer is communicated to an estate agent, he should immediately inform the Purchaser (offeror) of this.

A Purchaser (offeror) may dispense with the requirement that he must be notified of acceptance. Offers to purchase immovable property often state that the offer will be deemed to be accepted "on signature by the Seller". The effect of this is that the offer is accepted once the Seller has signed his acceptance: and it is not necessary for notification of acceptance to be conveyed to the Purchaser.

We suggest that if your sale agreement does not reflect the above that steps be taken to amend your agreement to cater for the above.

To the extent that at present your agreement does not contain the above, in order to prevent any later disputes between the parties, we suggest that agents take all reasonable steps necessary to find out whether the Seller has accepted the Purchaser's offer and if so, to communicate such acceptance to the Purchaser, all before the expiry of the offer.