

ZEN AND THE ART OF MULTIPLE OFFERS

Teacher, must a contract be signed and delivered in order to be binding?

No, it must be signed, but it need not be delivered.

But I am confused, I thought an offer could be withdrawn until the seller had delivered a signed contract.

That is because you have lost your center and forgotten life is like the sand of the hourglass. That or you have forgotten the elements of a contract since you studied for your license.

Beg pardon?

A contract requires an offer, acceptance, and consideration. Acceptance must be communicated. Communication, little grasshopper, is not the same thing as delivery.

I see. Thus if I call the other side and say the contract has been signed and accepted does that mean we have a binding contract without delivering it?

Yes.

What then, teacher, if I tell the buyer's agent the sellers accept the buyer's offer but they have not yet signed?

Then you may have a contract because the elements are satisfied, but that contract in our context is not enforceable. And just as the world turns, when a contract is not enforceable it is of no consequence.

Is a verbal real estate contract not enforceable?

Verbal means *with words* – as opposed to the awful face you make at your listing presentations when asked to cut your commission, which is non-verbal – and words can be either written or spoken. So, never say verbal when you mean to say oral. Do you mean to ask are *oral* contracts

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enforceable?

Yes, oh wise one, that is what I meant. Are they?

Not as you mean it. Under Va. Code § 11-2(6) oral contracts for the sale of real estate are not enforceable standing alone. They may be enforceable, however, under some circumstances. Be very careful: like the butterfly arising from the chrysalis an enforceable contract may arise when not expected – a signature may be other than a written signature, it may be the signature of the agent and not the party, and the thing which may be signed is not necessarily the contract. A wise and learned agent would always seek the wisdom of the broker and lawyer in such situations.

Does that mean the sellers could renege and accept a better offer before they did sign?

Yes grasshopper. But you must be like the butterfly and land quietly. Or at least be like an agent who realizes he may be branded as someone with whom other agents cannot reliably do business. But you must remember the mantra of the wise agent – chant with me: Who is my client? To whom do I owe my duty? What is it they seek? To ask these questions is to answer them inquisitive one.

Is that not unethical?

It is not because you said your clients had not signed. Do not lie about the signing because then you will be like the moth trapped in the VREB spider web.

Can I sit on offers because I expect better ones to come in?

Do you mean *can* as in are you physically able? Or do you mean *may* as in is it permissible? Oh never mind winged-one that is a lesson for another day. There is nothing to prevent your seller from sitting on offers. You as an agent are obligated to communicate offers promptly to your clients but they are under no obligation to respond promptly. Buyers may condition or limit the terms of their offer and the manner in which it can be accepted so be careful you do not run afoul of the express terms of the offer.

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If I am confused and not wise in these ways, how can I find out more?

You may make the holy trek and attend the April 25, 2002 VPAR Night Court entitled *Negotiating Pitfalls*, at which there will be many masters of this topic (and more) who will guide you in your journey from the bronze to the platinum. You may also email the author at bdlytle@erols.com

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