



WASHINGTON REALTORS®

Legal Hotline Q&A of the Week

From Get the Facts | November 5, 2024

Question:

If an unrepresented buyer writes an offer on a funky form (thinking napkin or some internet form) can I counter back with the seller using a form 21? Also I'm sure it'd be wise to have something from them stating they want to be unrepresented? Can that just be an email statement from them?

Answer:

If an unrepresented buyer (or any buyer) makes an offer on any forms other than statewide forms and seller wants to counter buyer's offer, listing broker should write seller's counteroffer by replacing all of buyer's forms with statewide forms, completed so that they capture the portions of buyer's offer that are acceptable to seller and counter the remaining terms with seller's intended counteroffer terms. Broker is correct that she is not licensed nor insured to use or assist seller with forms that are not "standardized for broker's use" and "approved by legal counsel". This means that if seller wants to accept the offer that is written on non-standardized forms without countering the offer, broker must advise seller to seek the advice of seller's lawyer. Broker may not advise seller as to the terms of buyer's offer that is written on non-standardized, non-lawyer approved forms.

Broker is also correct that it is best practices for broker to advise the unrepresented buyer to get representation and if buyer persists in the desire to remain unrepresented, broker should confirm both her advice and the buyer's statement of intent to proceed unrepresented, in writing. This can be accomplished in a variety of ways including obtaining buyer's signature on a document that proves these communications and/or broker's follow-up email to buyer reconfirming the prior oral conversation broker and buyer had regarding these topics. If broker is relying on email to prove the oral conversation, broker should be able to prove delivery of the email, potentially with a reply email from buyer responding to broker's email. Thus, it may be a good idea for broker to include, in that email, a question that is likely to gain a reply from buyer. Broker should then preserve broker's original email and buyer's reply, which will prove delivery of broker's email.

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