



TRAINING TIP OF THE WEEK

What terms are agreed upon?

When the parties to a contract want to modify terms, they use an addendum. This concept is familiar to all of you. However, there are many legal hotline calls where the agents (and subsequently their clients) disagree about the REPC terms. Let's illustrate through a few examples...

WHILE UNDER CONTRACT

Buyer and Seller are under contract. Buyer conducts their due diligence and would like the Seller to make certain repairs.

- Addendum #1 is submitted and asks for the following: a roof repair, a sink repair and a carpet repair.
- Seller counters with Addendum #2, agreeing to repair on the roof.
- Buyer counters with Addendum #3 asking for a \$2,000 price reduction. Nothing else is mentioned or addressed in this addendum.
- Seller accepts Addendum #3.

What has the Seller ultimately agreed to? Certainly the \$2,000 price reduction, but what about the roof repair? The issue here is that Addendum #3 countered just the purchase price. There is a strong arguments that by accepting Addendum #3, the seller has agreed to the repair AND the price reduction.

WHILE NEGOTIATING THE PURCHASE

Buyer wishes to purchase a property and submits an offer at \$345,000, a price he feels is fair.

- Seller counters with Addendum #1 increasing the purchase price to \$355,000.
- Buyer counters with Addendum #2, requesting a purchase price of \$352,000 and asks for \$5,000 in closing cost concessions.
- Seller counters with Addendum #3 increasing the purchase price to \$353,000.
- Buyer accepts Addendum #3.

What has the Seller ultimately agreed to? Clearly the purchase price of \$353,000, but what about the \$5,000 closing cost concession? The issue here is that Addendum #3 countered the purchase price only, and not the closing costs. In this scenario, the seller has agreed to the price AND closing costs.

RESULT OF BOTH SCENARIOS

The sellers in both scenarios did not realize what they had agreed to until later in the transaction and understandably, became frustrated at the misunderstanding. You see, with multiple addenda going back and forth, sellers often don't fully understand what they are agreeing to. They may think if a term is NOT addressed, it means they are NOT agreeing to that term. However, every addendum states very clearly that the *"terms of the Real Estate Purchase Contract, including all prior addenda and counteroffers, not modified by this Addendum shall remain the same."*

One suggestion offered by Kreg Wagner, UAR Legal Counsel, is to have a final addendum that clearly states exactly what the Buyer and Seller are agreeing to. That way there is no equivocation about the terms of the contract. Remember... mistakes can cost your clients thousands. Your expertise with addenda language and contract modifications are a critical reason why Buyers and Sellers turn to Realtors® to represent them.

It's a reason WHY Buyers and Sellers should always use a Realtor®.

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