

Withdrawing Offers is a Matter of Communication

The Commission has received several complaints stemming from instances in which a buyer or seller has contacted the other party to say that he or she is withdrawing an offer or counter offer that has already been communicated to the other party.

While a party can withdraw an offer that has not yet been accepted by the other party, there are some things to be aware of when counselling clients who wish to retract communicated offers.

Two of the requirements for a valid contract are an offer and acceptance of that offer. In order for a party's acceptance of an offer to be valid, that acceptance must be communicated to the party who made the offer.

Communication of acceptance has been described as, "an external manifestation of assent, some word spoken or act done by the offeree or by his authorised agent which the law can regard as the communication of the acceptance to the offeror (*Paddon Hughes Development Co. v. Pancontinental Oil Ltd.*, 1992 CanLII 6123). The Commission's position is that a telephone call, a fax or an email are all valid means of communicating acceptance.

The courts have confirmed that, while acceptance and communication of that acceptance are needed for a valid contract to be formed, confirmation of that acceptance is not an essential element of a contract (*Pilon v. Rosu*, 2014 CanLII 140). This means that, provided acceptance has been communicated to the other party, confirmation of receipt or acknowledgement of that acceptance by the other party is not necessary for a valid contract to be formed.

It has also been established that communication of acceptance to a party's agent, by itself, is sufficient to create a contract (*Swamy v. London Life Insurance Co.*, 2004 BCCA 621). A buyer or seller need only communicate his or her acceptance of an offer or counteroffer to a registrant representing the other party to form a valid contract.

The important thing to take away from this is: once your client's offer has been communicated to the other party, your client can be bound at any time if the other party accepts the offer and communicates his or her acceptance to you. Once acceptance has been communicated to you, be it by a fax to your brokerage office after hours or an email that you have not yet read, the contract is complete and your client is no longer free to retract his or her offer.

As much as possible, registrants should be ensuring that clients are sure about their offers before they send them to the other party.

If your client has changed his or her mind about an offer that has already been communicated to the other party, you will have to act quickly to make sure that your client's offer has not been accepted and notify the other party of your client's intention to retract the offer, preferably in writing. If your client's decision to withdraw an offer he or she has made was prompted by receiving a better offer from another person, advise your client not to take any further steps with respect to that new offer until you have spoken to the other party.

If the other party claims to have accepted the offer prior to your client's retraction or disputes the retraction, advise your client of this fact and refer any further questions to legal counsel.