



LEGAL TIP OF THE WEEK

What is in the CONTRACT?

When the parties to a contract want to modify existing 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 an example...

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 only the roof.
- Buyer counters with Addendum #3 asking for a \$2,000 price reduction. Nothing else is mentioned or addressed in this addendum (including repairs).
- Seller accepts Addendum #3.

What has the Seller ultimately agreed to? Certainly the \$2,000 price reduction. What about the roof repair?

The issue here is that Addendum #3 countered just the purchase price. Every addendum states that the "terms of the Real Estate Purchase Contract, including all prior addenda and counteroffers, **not modified by this ADDENDUM shall remain the same.**" So there is a strong argument that by accepting Addendum #3, the Seller agreed to a \$2,000 price reduction AND to repair the roof.

In situations where there are multiple addenda going back and forth, it may be prudent 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. Using this logic, the Seller in the example above, if only intending to agree to a price reduction and NOT the repair to the roof, would have countered Addendum #3 with Addendum #4 clearly stating these terms.

Mistakes like this can cost your clients thousands. Your expertise with addenda language and contract modifications are critical reasons why Buyers and Sellers should always use a REALTOR®.

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