

Rules of Engagement: Purchase Agreement Time Frames.

by Al Lewis

Purchase Agreement Time Frames

Welcome.

The Residential Purchase Agreement (RPA-CA) is chock-full of deadlines: three days to place the deposit into escrow; seven days to deliver disclosures; 17 days to perform investigations; and, of course, the day of closing. Issues involving time frames will often arise and constitute the most frequently asked questions by both buyers and sellers.

This article will help explain how to correctly plan for these deadlines and how to both look like and be a knowledgeable professional when called on to explain how things will proceed upon a sale.

Three Rules To Time Frames.

Rule No. 1: "Acceptance" requires the return and personal receipt of the signed offer back to the offer.

The day of acceptance is perhaps the most important calculation, since all other time periods depend on it. "Acceptance" has a very particular meaning in the RPA-CA. It is the day when the offer (or counter offer) is accepted in writing and then delivered back and "Personally received" by the other party. Only when this occurs is there a binding contract.

For example, imagine the buyer makes an offer on Monday, and the seller signs an acceptance of that

offer on Tuesday. The accepted offer, however, is only delivered back and personally received by the buyer on Wednesday. In this case, Wednesday is the day of acceptance and the day when a binding contract is created. For purposes of counting the contract, that day, Wednesday, is day zero. The next day after acceptance, Thursday, is day one.

What about the "Confirmation of Acceptance"? Must it be initialed to create a binding contract? No, the "Confirmation of Acceptance" is not required to create a binding contract. Only personal receipt of the accepted offer is required. Once that happens, there is an acceptance even if the confirmation is never signed. Nonetheless, the confirmation serves two purposes: it is proof positive that the offer has been personally received and it helps the escrow to determine the exact day of acceptance.

Notice, as well, that in the above example, it is the buyer, not the buyer's agent, who must personally receive back the accepted offer. What happens if the buyer's agent receives back the accepted offer? Well, in most cases, nothing. However, the answer is different if the name of the buyer's agent was written into the blank space just above the buyer's signature (in paragraph 31 of the RPA-CA). Writing in the name of the agent here will allow the agent's receipt of the offer

to create an acceptance. Otherwise, only the buyer's receipt of the accepted offer can create a binding contract.

All of the counter offer forms work in essentially the same way. When any counter offer is written, whether made by the buyer or the seller, the name of their agent may be stated in paragraph two of the counter offer form. This will allow the agent's receipt of the accepted offer to create an acceptance. (The multiple counter offer form is slightly different. It reserves the right of the seller to have final say as to whether a binding agreement is created.)

Rule No. 2: Count every day.

In all of the C.A.R. purchase agreements, "days" mean calendar days. You count every day whether it's a Saturday, Sunday, or holiday. For example, a common time frame in the RPA-CA is the delivery of disclosures which by default must be done within seven days after acceptance. Assuming acceptance is on a Wednesday, then seven days after acceptance will be the next Wednesday. You count the Saturday, Sunday, and any holidays that fall in between.

There are two exceptions here. The first is the time frames for placing the deposit into escrow. For that, the contract explicitly allows for three business days. The second

exception is when the last day falls on a Saturday, Sunday or holiday as discussed in Rule No. 3 (in the next section).

Rule No. 3: If the last day falls on a Saturday, Sunday or holiday, skip to the next business day.

Under the C.A.R. contracts, you skip to the next business day when the last day “for the performance of any act required by this Agreement” falls on a Saturday, Sunday or holiday. For example, the RPA-CA requires the buyer to remove contingencies within 17 days. Supposing acceptance is on Oct. 6. That's a Thursday. Seventeen days from Oct. 6 takes you to Oct. 23 – that's a Sunday (remember – You don't count the day of acceptance). However, removing contingencies is “an act required by the Agreement” so Sunday cannot be the last day. Instead, it skips to the next business day which is Monday, Oct. 24. The deadline for the buyer to remove contingencies is Oct. 24.

This same rule applies to delivery of disclosures, delivery of verification of down payment, the buyer's return of statutory and lead disclosures, and the day of closing.

Are there any exceptions to this rule? Yes. In the offer and counter offer stages, there is no extra time given should the expiration of the offer or counter offer occur on a Saturday, Sunday or holiday.

Also, if the seller has promised to deliver possession after close and the day falls on the weekend, the seller does not get to stay in the property until Monday. The seller must deliver possession on the day as promised.

Notice to Buyer to Perform.

In counting the Notice to Buyer to Perform (NBP), the day it is personally received is counted as day zero. The very next day is day one. It does not matter what time during the day that the NBP is received. Whether it is received early in the morning or late in the evening, the day it is received is day zero, and the next day (starting at midnight) is day one.

One of the differences in counting the NBP, as opposed to the contract acceptance day, involves who may receive the notice. Of course, a buyer may receive the notice directly. But personal receipt of the NBP by the buyer's agent may also count as receipt as long as that agent is named in the Real Estate Broker box on the last page of the contract. When delivering a NBP, a listing agent should always check to make sure that the buyer's agent is specifically named.

Sometimes listing agents complain that the buyer's agent is attempting to dodge receipt of the NBP. A new C.A.R. form, the “Delivery of Notices Addendum” (Form DNA), can help curtail the gamesmanship. This form allows receipt of a NBP to be effective upon delivery by either mail or email depending on how it's filled out. There is a backup delivery requirement to ensure that the buyer's agent is truly aware that the NBP has been delivered.

All of the above rules regarding the NBP apply equally to the Demand to Close Escrow (C.A.R. form DCE), as does the Delivery of Notices Addendum. Keep in mind that the DCE is by default a three day notice as opposed to the NBP which is by default two days.

If you want to find the source of these rules, turn to page nine of the RPA-CA, and under “Definitions,” you will see the rules laid out in black and white. Or, you can put in a call the C.A.R. Legal Hotline at (213) 739-8282, and a C.A.R. attorney can assist you.

When the NBP Needs to Be Delivered.

Per the terms of the RPA, the NBP cannot be delivered any earlier than two days prior to the “expiration of the applicable time.” Arguably this wording permits delivery of the NBP two days in advance of the formal expiration date even where the time for performance was extended because of a Saturday, Sunday, or holiday. However, it is predictable and inevitable that delivering the NBP “early” in this way will lead to endless disputes with the other agent. So the prudent broker or agent will simply wait until two days prior to the performance deadline to deliver a NBP.

Conclusion.

This article was written by Robert Bloom, Esq., who at the time of its publication, October, 2016, in the California Real Estate Magazine, was Counsel with C.A.R.'s Member Legal Services.

As you know, a real estate agent or broker is a person qualified to advise on real estate transactions and specifically not on the legal aspects of a contract as provided herein. If a customer (a buyer) or client (a seller that has listed a property with you) wants specific information relative to RPA-CA timelines you could refer to this article and highlight the issues in question as defined by Robert

Bloom and suggest that if they want or need more clarification than that provided by Mr. Bloom, that they consult an appropriate professional. Do not interpret contracts or give legal advice.

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