



## **Contract Negotiation Issues:**

### **An Important Message regarding your Real Estate transaction.**

**Do you know that a request for changes or repairs after contract acceptance can constitute a counter-offer?**

**Are you aware that a counter-offer allows the other party to void a contract?**



**M**ost parties to a real estate contract view the terms of the contract as settled and done at the time the initial offer is accepted. Sometimes, however, sellers or buyers desire to have changes proposed after the date of acceptance pursuant to an Attorney Review or Professional Inspection clause in the contract.

If the changes are minor, or have already been agreed upon by the parties verbally and the attorney's involvement is just to memorialize the changes in writing, not much risk arises.

Other situations, however, present risks. **Buyers**, for example, sometimes want to increase the rate at which tax proration or credits are to be calculated, seek to have the seller repair items that a professional home inspection shows to be in unsatisfactory condition, extend the time to obtain a written mortgage commitment, or change other contract terms. **Sellers** sometimes wish to reduce the rate at which tax proration or credits are to be calculated (to save money on tax credits to be given to a buyer), or wish to change closing or other dates to better suit their schedule, or change other contract terms. In such cases, the proposal the attorney may be asked to communicate may constitute a **counteroffer**. These can be tricky. Requests, for example, for repairs or credits for items deemed "routine maintenance" or "minor repairs" can be dangerous.

What is a **counter-offer**? In the eyes of the law, an enforceable contract is generally deemed formed where there is an offer, acceptance, and consideration. After acceptance of an initial offer forming a contract, a counteroffer "opens up" the contract, and gives the other party the opportunity to (1) reject the counter-offer out of hand and void the contract altogether (e.g., where another, better offer from another buyer has been communicated to a seller in the interim since the first offer was accepted), or (2) reject the counter-offer and insist on proceeding with the deal on the original contract terms, or (3) accept the counter-offer and agree to the new terms.

Your attorney cannot read the mind of the other party or parties in your real estate deal. While he can provide legal advice and may be able to provide, based upon experience, a "statistical" analysis of how most sellers or buyers generally react to certain types of proposals, he cannot predict with certainty how an opposing party will react to any particular proposal. Therefore, if you are convinced the original deal you struck was a great deal and do not want to risk "rocking the boat", the safest course of action is to refrain from making any counter-offers. If you decide that you really want to try to "sweeten" the deal and propose modifications or additional contract terms, you should be aware of the risks involved and may want to limit such modifications or additional term proposals to important matters. If the other side calls the deal off, it may not be salvageable.

© 2014, LAW OFFICES OF RALPH J. SCHUMANN. The information contained herein is provided as a public service and should not be construed as legal advice on any specific issue. You should consult with an attorney to determine how matters discussed may relate to your specific situation. For further information, feel free to contact our office. We welcome your comments and suggestions. Visit our website at [www.SchumannLaw.com](http://www.SchumannLaw.com).

The LAW OFFICES OF RALPH J. SCHUMANN is a full-service law firm with developed concentrations in residential and commercial real estate, estate planning and administration, corporate and business law, and litigation. We utilize the benefits of current technology to make our practice and the delivery of our legal services more efficient and more economical. You can reach us by telephone or by e-mail ([rjs@SchumannLaw.com](mailto:rjs@SchumannLaw.com)).

Visit our web site at [www.SchumannLaw.com](http://www.SchumannLaw.com) for more information and forms.

1701 East Woodfield Road, Ste 910  
Schaumburg, Illinois 60173  
847.273.8700 | 847.273.8701 FAX  
[www.SchumannLaw.com](http://www.SchumannLaw.com)



RALPH SCHUMANN  
serves as President of the  
ILLINOIS REAL ESTATE LAWYERS ASSOCIATION  
[www.irela.org](http://www.irela.org)