

**OFFER AND ACCEPTANCE – TEN CONCEPTS
EVERY REALTOR® SHOULD KNOW**

1. A seller who receives an offer can accept, reject, counter or do nothing. A seller with multiple offers is not required to consider them in any particular order, or treat all of the offers “fairly.”
2. An offer to purchase real estate cannot be accepted orally. A buyer does not have an enforceable contract when the listing agent calls and reports that the seller has signed the buyer’s offer. Acceptance requires a signature and delivery of the signed acceptance.
3. A buyer does not have an enforceable contract when the listing agent emails the buyer’s agent and reports that the seller has signed the buyer’s offer. Again, acceptance requires a signature and delivery of the acceptance.
4. Generally, an offer or counteroffer can be revoked at any time before it is accepted. This is true even if the offer contains a stated expiration date. MR’s Buy and Sell Agreement says that the offer will expire on the particular date stated or upon seller’s receipt of revocation from the buyer, whichever comes first. This has always been the case – the language is intended to make clear that the offer can be revoked before the stated expiration date.
5. An offer can be revoked orally. So if a listing agent does call to report that the seller has signed the buyer’s offer, the buyer could avoid a binding contract by simply responding at that point that he was revoking his offer. (The buyer would be orally revoking the offer before the written acceptance was delivered.)
6. A buyer cannot simultaneously accept and materially change a seller’s counteroffer. Any alteration which changes the obligations of a party in any respect is “material.”
7. Once an offer is countered, it has been rejected. A seller who has countered a buyer’s offer cannot go back and “accept” the buyer’s offer as originally proposed.
8. Under Michigan’s Uniform Electronic Transaction Act (“UETA”),¹ electronic delivery is valid so long as it can be determined that the parties had agreed to conduct business electronically.
 - a. Where there is no specific language in a contract providing for electronic delivery, the parties’ intent must be determined “from the context and surrounding circumstances.” To avoid future disputes, it is preferable to simply include an express provision agreeing to electronic delivery.

¹ MCL 450.837.

- b. If parties agree to electronic delivery, the UETA provides that the delivery must be made to “the processing system that the recipient ordinarily uses for the purpose of receiving electronic records.” Again, to avoid future disputes as to whether the correct “system” was used, the contract should expressly state what delivery system/address will be used.
 - c. Under UETA, an “electronic signature” includes any symbol or process used by a person and intended as a signature. A signer does not need to replicate an actual signature so long as the intent to sign is clear.
 - d. Most forms, including MR’s forms, provide that an electronic communication shall be deemed delivered at the time it is sent or transmitted (as opposed to the time that it is “opened” by the recipient).
9. Where the parties agree to conduct business electronically, use of language such as “original to follow” may create ambiguity as to when the contract becomes binding – whether upon the transmission of the electronic signature or upon the follow-up delivery of the original. For this reason, use of this language is not recommended.
10. A “bottom line” signature is not required in order for there to be an enforceable contract. The “bottom line” signature serves only as verification that the signed purchase agreement has, in fact, been provided to the buyer as required under the Occupational Code. Even if the buyer refuses to sign the “bottom line” of the purchase agreement, it is nonetheless binding and in full force and effect.