

SLIDE 18 - Contract Negotiation (Cover Page)

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Parties to Offer

Offer and acceptance – The mutual consent required for a valid contract is reached through the process of offer and acceptance: The offeror proposes contract terms in an offer to the offeree. If the offeree accepts all terms without amendment, the offer becomes a contract. The exact point at which the offer becomes a contract is when the offeree gives the offeror notice of the acceptance.

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Offer

An offer expresses the offeror's intention to enter into a contract with an offeree to perform the terms of the agreement in exchange for the offeree's performance.

In a real estate sale or lease contract, the offer must clearly contain all intended terms of the contract in writing and be communicated to the offeree.

If an offer contains an expiration date and the phrase "time is of the essence," the offer expires at exactly the time specified. In the absence of a stated time period, the offeree has a "reasonable" time to accept an offer.

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Acceptance

An offer gives the offeree the power of accepting. For an acceptance to be valid, the offeree must manifestly and unequivocally accept all terms of the offer without change, and so indicate by signing the offer, preferably with a date of signing. The acceptance must then be communicated to the offeror. If the communication of acceptance is by mail, the offer is considered to be communicated as soon as it is placed in the mail.

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Counteroffer

By changing any of the terms of an offer, the offeree creates a counteroffer, and the original offer is void. At this point, the offeree becomes the offeror, and the new offeree gains the right of acceptance. If accepted, the counteroffer becomes a valid contract provided all other requirements are met.

For example, a seller changes the expiration date of a buyer's offer by one day, signs the offer and returns it to the buyer. The single amendment extinguishes the buyer's offer, and the buyer is no longer bound by any agreement. The seller's amended offer is a counteroffer which now gives the buyer the right of acceptance. If the buyer accepts the counteroffer, the counteroffer becomes a binding contract.

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Revocation of an offer

An offer may be revoked, or withdrawn, at any time before the offeree has communicated acceptance. The revocation extinguishes the offer and the offeree's right to accept it.

For example, a buyer has offered to purchase a house for the listed price. Three hours later, a family death radically changes the buyer's plans. She immediately calls the seller and revokes the offer, stating she is no longer interested in the house. Since the seller had not communicated acceptance of the offer to the buyer, the offer is legally cancelled.

If the offeree has paid consideration to the offeror to leave an offer open, and the offeror accepts, an option has been created which cancels the offeror's right to revoke the offer over the period of the option.

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Termination of an offer

Any of the following actions or circumstances can terminate an offer:

- Acceptance: the offeree accepts the offer, converting it to a contract
- Rejection: the offeree rejects the offer
- Revocation: the offeror withdraws the offer before acceptance
- Lapse of time: the offer expires
- Counteroffer: the offeree changes the offer
- Death or insanity of either party