

# The Massachusetts Offer To Purchase Real Estate: Not A Mere Formality

by Richard D. Vetstein, Esq. on September 8, 2009

The first step in purchasing or selling Massachusetts residential real estate is the acceptance of an Offer To Purchase. Most often, the buyers' real estate broker prepares the offer to purchase on a pre-printed [standard form](#) and presents it to the seller for review and acceptance. Attorneys are not typically involved in the offer stage but given the amount of recent litigation over offers to purchase, it's never a bad idea to consult an attorney even at the earliest stages of the home buying process.

Many buyers and sellers (and their brokers) are under the misconception that the offer to purchase is merely a formality, and that a binding contract is formed only when the parties sign the more extensive [purchase and sale agreement](#). This is not true. Under established [Massachusetts case law](#), a signed standard form offer to purchase is a binding and enforceable contract to sell real estate even if the offer is subject to the signing of a more comprehensive purchase and sale agreement. So if a seller signs and accepts an offer and later gets a better deal, I wouldn't advise the seller to attempt to walk away from the original deal. Armed with a signed offer, buyers can sue for specific performance, and record a "[lis pendens](#)," or notice of claim, in the registry of deeds against the property which will effectively prevent its sale until the litigation is resolved. I've handled many of these types of cases, and buyers definitely have the upper hand given the current state of the law.



In some cases, the seller may not desire to be contractually bound by the acceptance of an offer to purchase while their property is taken off the market. In that case, safe harbor language can be drafted to specify the limited nature of the obligations created by the accepted offer. A safe harbor clause would look like this:

*The purpose of this Offer is to memorialize certain business points. This Offer is not intended to create nor does it create any binding legal obligation on the part of either party other than the obligation to negotiate in good faith towards execution of a mutually satisfactory purchase and sale agreement by [insert date]. If a mutually satisfactory purchase and sale agreement has not been executed and delivered by Buyer and Seller by [insert date], then all deposits paid hereunder by Buyer shall be refunded, Buyer shall have no further rights with respect to the property described herein, and this Offer shall be null and void and neither party shall have any recourse against the other with respect to this Offer.*

This is rather unusual, however, in residential transactions. It's rather common in commercial deals.

With the offer to purchase, I always advise buyers and their brokers to use some type of standard form [addendum](#) to address such contingencies as mortgage financing, home inspection, radon, lead paint, and pests. The home inspection and related tests are typically completed before the purchase and sale agreement is signed and any inspection issues are dealt with in the P&S. If they are not, there is an inspection contingency added to the P&S. See my [post](#) on purchase and sales agreements for that discussion. Another crucial aspect of the offer are the various deadlines: for closing, for inspections, for mortgage financing. Buyers push for more time, while sellers push for less time. Reasonableness should prevail here. It may be unrealistic for a financed transaction to close in less than 30 days in this market. And it's critical to build enough time to complete the home inspection process and get estimates for repairs. Any time the parties agree to an extension of any deadline in the offer (and the purchase and sale agreement for that matter) make sure it's in writing.

As always, if you have any Massachusetts real estate law questions, don't hesitate to contact me, [Richard D. Vetstein, Esq.](#)