

IN LIGHT OF THE SLOWLY RECOVERING REAL ESTATE MARKET DID YOU KNOW?

SIGNED OFFER FORMS TO PURCHASE REAL ESTATE ARE ENFORCEABLE CONTRACTS!

Yes, the above statement is sadly correct. You very likely will be ordered by a court of law to sell or to purchase a home when The Offer Form has been signed by both parties. This is true despite the fact that the deal may no longer be in your best interest.

We all believe that an offer is an offer, and there's no binding agreement until the Purchase and Sale Agreement (P&S) is signed. Well, that is just wrong. And being wrong may really turn your financial and emotional life upside down.

Everyone quickly signs the Offer Form because they believe they want to move forward and exclude other buyers. At the point when no one wants "to lose this deal," the parties rush to sign the Offer Form

Some but not all Offer Forms actually state that additional and material issues will be addressed in a later P&S. That Offer Form expressly states that the parties intend in the future to execute a more detailed contract known as the Purchase and Sale Agreement. This provision in the Offer which anticipates a later contract (P&S) may not fully protect your interests.

Offer Forms in residential real estate have often been found by our state's supreme court (*McCarthy v. Tobin*, 429 Mass. 84 (1999)), to be fully binding and enforceable where both parties must perform. In other words, the Offer may be enough of a contract and the law will require that the Seller must sell or the Buyer must buy.

What should a buyer or seller do when ready to take the plunge and make the deal?

The *take away* is:

1. Before signing, understand the Offer may be an enforceable contract;
2. Read and understand all provisions in the Offer Form; and
3. Take the maximum precautions that you can, and insist that a provision be included that in essence states there is no valid contract until there a fully executed P&S and one that your attorney has reviewed before you signed.