



WASHINGTON REALTORS®

Legal Hotline Q&A of the Week

From Get the Facts | February 18, 2025

Question:

As a listing broker reviewing an offer, when a buyer includes a Form 22A, option A financing contingency (no automatic expiration) wouldn't it be best practice to counter with the Automatic Waiver of financing contingency (option B) to avoid a perpetual survival issue with earnest money in the event of a failed sale?

Answer:

The ONLY appropriate response for any listing broker upon receipt of an offer from a buyer is for listing broker to discuss the financing contingency addendum with seller so that seller understands all of the options available to seller through a counteroffer. It is possible that countering buyer's offer with an automatically expiring financing contingency will terminate negotiations with the buyer. The "option A" contingency may be important to the buyer. Moreover, understanding proper use of "option A" and seller's timely delivery of the "Notice to Perform" accomplishes nearly the same effect as the automatically expiring financing contingency, from seller's perspective.

It is critical for broker to recognize that listing broker's role in negotiations is never to have rules of negotiating or countering that apply in every single transaction. Instead, broker's job in every single transaction is to have such a grasp of the forms and the specific provisions of each form, that broker can give thorough and good advice to seller based on all of the facts surrounding the negotiations. Different sellers who are selling different properties in different markets to buyers of varying qualification will absolutely include different terms in a counteroffer. Any bright line rules about what every seller should or should not do are necessarily misplaced and should not exist. (Needless to say, everything about this answer applies equally to buyer brokers.)

The Legal Hotline Lawyer does not represent Washington REALTORS® or its members. The advice contained herein does not constitute legal counsel. To browse through our database of past Q&A's, visit warealtor.org/legal-hotline. Attorney Annie Fitzsimmons writes the Legal Hotline Question and Answer of the Week. This is a WR members-only benefit so you will be prompted to log in with your MI number and password. Your Designated Broker is cc'd on Legal Hotline inquiries.

