19 April 2024

DIFFERENCE BETWEEN AN IRREVOCABLE OFFER AND AN OFFER THAT LAPSES

Offers to purchase usually contain either of the following clauses:

Example 1

"**This offer is irrevocable until 25 June 2023 and is binding upon acceptance**, **irrespective of notification of acceptance to the purchaser**."

OR

Example 2

"**The Purchaser's offer shall constitute an irrevocable offer**, **which may not be withdrawn prior to presentation to the Seller**, **and which offer shall remain available for acceptance until 25 June 2023**, **whereafter it shall lapse and be of no further force and effect**."

There is a big difference on the effect this wording has on the date on which the offer lapses.

Example 1: Should the estate agent present an **irrevocable offer** to the seller, it is open for acceptance by the seller and cannot be withdrawn by the purchaser within the specified irrevocable time period as provided for in the offer. The purchaser can only revoke the offer should the seller not have accepted it on or before the **25th of June 2023**. The **irrevocable character of the offer simply falls away after the stated date and it becomes revocable** at the instance of the purchaser.

Should the seller accept the offer to purchase made by the purchaser at any given time before **25 June 2023**, a binding contract comes into being. Should the purchaser fail or neglect to revoke the offer after the date on which it was stated to be irrevocable, the offer does not lapse and is open to the seller for acceptance until the purchaser revokes the offer. Until it is revoked, it **remains open and is capable of acceptance by the seller**.

Example 2: Should the offer to purchase read that the offer **lapses** after the irrevocable time period, the seller must accept it before midnight (or such other time as contractually specified) on the 25th June 2023. The offer **lapses and will be of no force and effect** on the morning of 26 June 2023.

Our standard offer to purchase contains the irrevocable offer-clause. The advantage is that it provides flexibility where the seller may not be able to sign the offer on a specific date and the purchaser is willing to not revoke the offer before a specified date, after the specified date, the purchaser can revoke the offer if the seller has not yet accepted the offer, but the sale agreement does not lapse after the specified date.