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The Bowditch & Dewey Real Estate Blog

Sometimes an Offer to Purchase Is just an Offer to Purchase

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The question of enforceability of an offer to purchase real estate was addressed by the Massachusetts Appellate Court in *McCarthy v. Young*, 105 Mass. App. Ct. 203 (2025). In this case, the buyer offered to purchase real estate from sellers (the “Offer”). The Offer provided, in part, that the Offer created binding obligations, time was of the essence, and that the parties would execute a purchase and sale agreement by a date certain.

Before the sellers accepted the Offer, the sellers’ broker advised the buyer’s broker that although not mentioned in the Offer, the sellers intended to reserve a maintenance easement and that such easement would be addressed in the purchase and sale agreement. The buyer considered the easement to be a significant and material term of sale. The sellers ultimately accepted the Offer (absent reference to the easement) and the buyer paid the required deposit. The parties were unable to successfully negotiate and execute a purchase and sale agreement by the deadline set forth in the Offer. The sellers elected to abandon the purchase by the buyer.

The buyer filed suit in Land Court seeking specific performance in accordance with the terms of the Offer. The Land Court judge determined that “even though the buyer was not entitled to specific performance of the [Offer] alone, he was entitled to specific performance of the [Offer] ‘as amended by’ the easement reservation” set forth in one of the purchase and sale agreement drafts if the buyer could demonstrate that he was ready, willing, and able to purchase on the closing date set forth in the Offer. *Id.* at 206. The sellers appealed.

The Appellate Court overturned the Land Court decision writing, “for an [offer] to be enforceable, ‘all material terms’ must be ‘agreed to and contained in’ the [offer].” *Id.* at 208 citing *Fariello v. Zhao*, 101 Mass. App. Ct. 566, 570, (2022). The Appellate Court determined that because the easement was a material term but was not mentioned in the Offer, “it was error [for Land Court] to conclude that [the Offer] remained in force and imposed enforceable duties on the parties as they attempted to negotiate the easement and related issues in a purchase and sale agreement.” *Id.* at 210. The Appellate Court instructed that sometimes an offer to purchase is just an offer to purchase, not an enforceable agreement.

If the parties intend an [offer to purchase](#) to be enforceable, *McCarthy* makes it clear that all material terms must be incorporated into the document. Regardless of how valid a point may be, if it is material but does not appear in an accepted offer to purchase, the offer will not be deemed enforceable. Following *McCarthy*, a party who realizes that a material term has been introduced after an offer is finalized may wish to seek a written amendment to the offer to preserve the offer's enforceability.