



What Just Happened? **Recission of Counter Offers**

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The Legal Information Line frequently receives calls from buyer's agents experiencing heartburn from just getting beat out by another buyer. Specifically, the typical scenario presented into the Legal Hotline goes like this:

Seller and buyer are negotiating. Buyer submits an offer and seller counters. But before the buyer can tender an accepted counter offer the seller accepts another offer!

Buyer's agents left holding a counteroffer want to know: ***Does the seller's counter create exclusivity to the deal? Can the seller be forced to specifically perform on the counter?***

As always, we start by looking at the language within the counter. What are we looking for?

Does it have language that creates exclusiveness for acceptance, or the opposite, does it account for acceptance of other offers upon which the counter will terminate before final acceptance, or is it vague or say nothing about it all?

⇒ If the counter has language addressing exclusiveness, defer to that to guide assertions for claims of enforceability.

- 1) Buyers' demands for specific performance should come from their legal counsel to wield legal swords competently.
- 2)



⇒ **If it doesn't speak to it or it's unclear, best practices include:**

- 1) **We must keep fair dealing at the forefront.** If the seller plans to accept other offers, that information needs to be coupled with the counters!
- 2) **Keep it clean!** From a legal mechanics standpoint, the best way to handle this situation is to **properly rescind the counter first and then accept the other offer.**

Buyers and sellers can always hire their own attorney to draft language for their agent's to include in offers/counter offers to advance these goals.

Also, be sure to check out our article on a related topic, discussing the Mailbox Rule, on our Legal Library: [lifags_resalemailboxmarijuana_3-9-2021\(tb\).pdf](https://www.nevadarealtors.org/legal-library/lifags_resalemailboxmarijuana_3-9-2021(tb).pdf) ([nevadarealtors.org](https://www.nevadarealtors.org)),

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