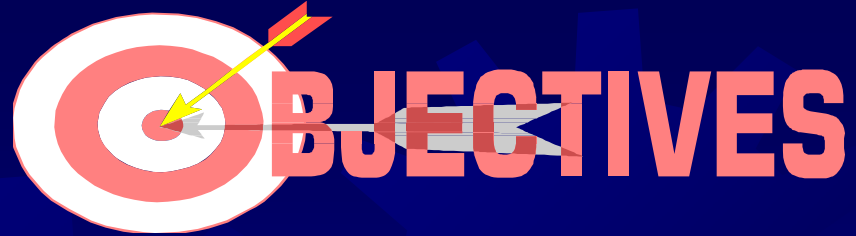




Chapter Eleven

Counter Offer
Contingencies and
Multiple Offers
Options

Chapter 11



1. Understand the process of turning an offer into a binding contract.
2. Define terms and the process.
3. Explain the highlights of a counter offer.
4. Respond to multiple offers.
5. Determine when to use an addendum
6. Explain contingencies.



I. From offer to BINDING contract

A. The listing agent helps the seller
The seller makes an informed decision
What to do after the offer(s) reviewed.

Accept the offer, as it is written or with minor
changes on an addendum

Reject the offer

Counter offer

Is a commission due if seller rejects an offer?

- ✦ It depends on price, terms and conditions of the listing agreement.
- ✦ legal ramifications if seller does not accept an offer at the price and terms of the listing agreement.
- ✦ As per the terms of the listing agreement, the listing agent may demand a commission.



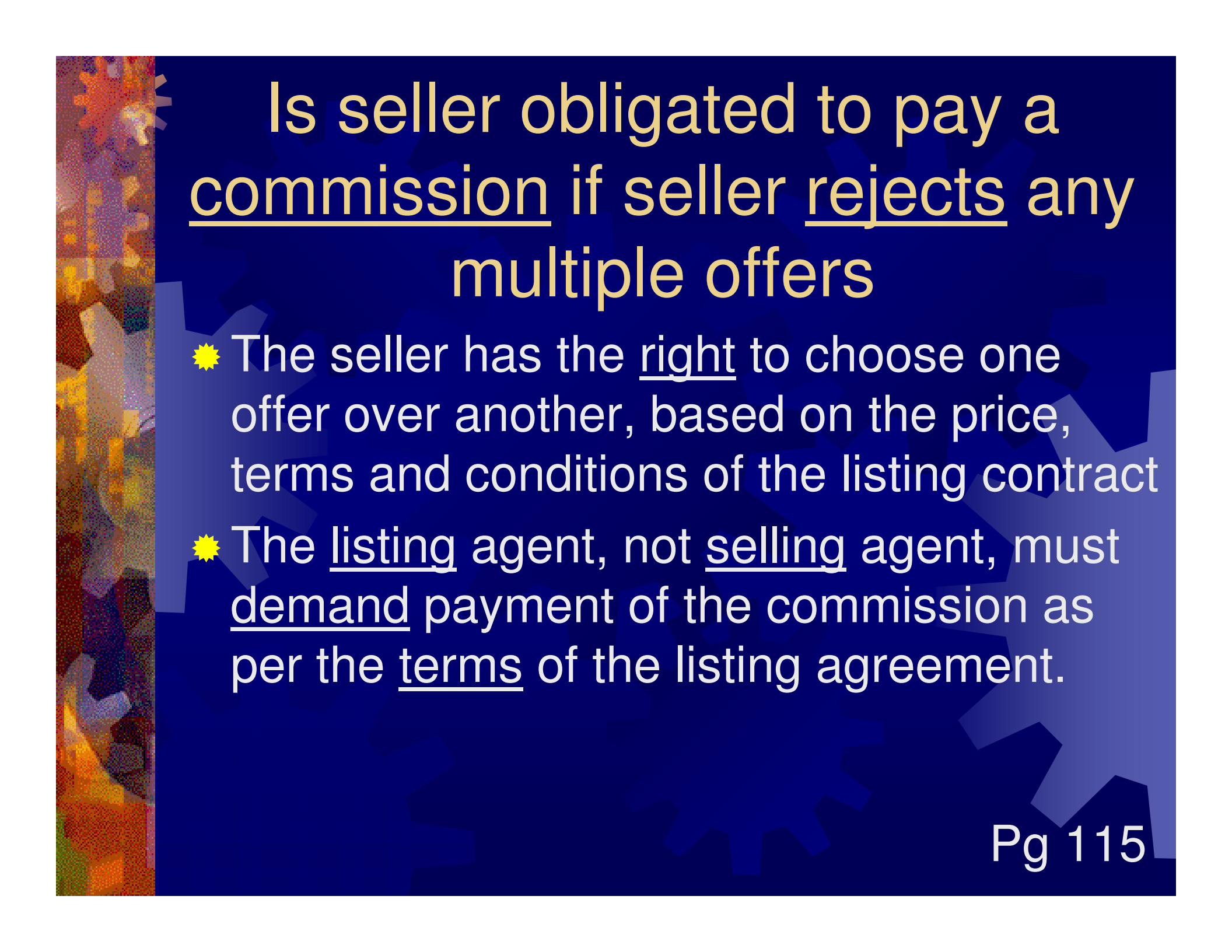
What if there are multiple offers?

1. Accept only ONE, reject the others
2. Accept only ONE, with minor changes on an addendum
3. Counter offer only ONE
4. Counter offer ALL or SOME with the same terms and conditions
5. Counter offer ALL or SOME with different terms and conditions
6. Accept only ONE, with back-up for other
7. Reject all offers

What constitutes approval?

- Signature by buyer & seller notified.
- For Multiple offers:
 - Buyer signature
 - Seller notification
 - Review
 - Acceptance





Is seller obligated to pay a commission if seller rejects any multiple offers

- ★ The seller has the right to choose one offer over another, based on the price, terms and conditions of the listing contract
- ★ The listing agent, not selling agent, must demand payment of the commission as per the terms of the listing agreement.

DEFINITIONS

COUNTER OFFER: A reply to an offer to enter a contract which introduces new terms and/or conditions and is thus an implied rejection of the original offer. This voids the original offer and does not require the seller to act.

MULTIPLE COUNTER OFFERS: Synonymous offers by different offerors to the same offeree. A reply to more than one offer. Each offer may be the same or be different.

ADDENDUM: (1) Written request to modify terms and/or conditions of an already accepted offer, (2) Additional terms and/or conditions included as part of the buyer's offer – Must be stated on the offer.

CONTINGENCY: A provision or condition included as part of a contract that must be completed by a specific time.

II. The Counter Offer

When?

☀ In a seller's market:

- Multiple offers
- Over bidding

☀ In a buyer's market:

- Only offer
- Under bidding

A. Need and Use:

The Counter Offer has ramifications.

The agent(s) must be objective in multiple offer situations.



Weight of Importance

Grouped common points

\$

Price

Costs/Fees

Repairs

TERMS

Contingencies

Financing

Repairs

Personal Property



TIME

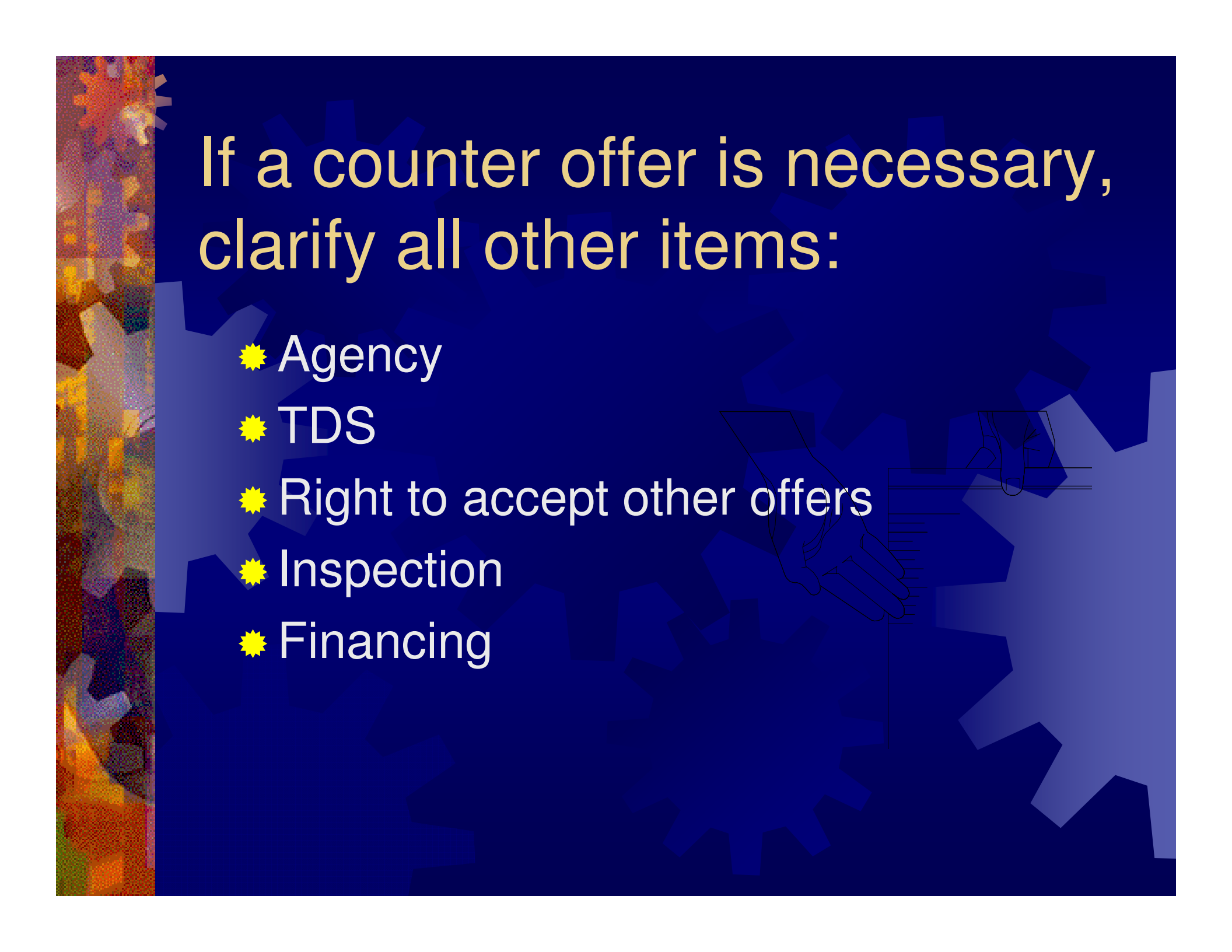
Occupancy

Escrow length

Contingency Removal

B. Highlights

- ★ May be used by buyer or seller
- ★ sequentially number all counter offers
- ★ 1A: require initials of both parties to contract paragraphs and clauses
- ★ 1B: Automatically adjusts dollar changes if price changes
- ★ 2: Avoids seller risk of being obligated to more than one buyer
- ★ 4: checked if multiple counter offers
- ★ A contract is not created until the counter is signed by the buyer, received and re-signed by the seller.

The background is a dark blue field filled with various shades of blue gears of different sizes. On the left side, there is a vertical strip with a colorful, abstract, and somewhat pixelated pattern. In the lower right quadrant, there is a white line-art illustration of a hand holding a document or a set of papers.

If a counter offer is necessary,
clarify all other items:

- ✦ Agency
- ✦ TDS
- ✦ Right to accept other offers
- ✦ Inspection
- ✦ Financing



1. Voids ALL of the original offer
2. Buyer – No obligation to accept counter
3. Buyer – No obligation to make any response
4. Ambiguity in the phrasing of a change can cause a failure of the contract in court.
5. Seller cannot “UN” counter if buyer rejects counter. Seller cannot go back and accept what was previously offered.

C. Cautionary Note

- ★ Use compromise and reasonableness.
- ★ Any change makes the offer void, unless both parties agree in writing.
- ★ A meeting of the minds is required for a binding contract.

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What is: First Right of Refusal ?

- ✦ A right that allows the holder to exercise the rights in an accepted contract.
- ✦ It is illegal to use first right of refusal in common interest subdivisions as a means of discriminating. (Commissioner's Regulation 2792.25)

III. THE ADDENDUM

- ★ If seller agrees with the buyer's offer
 - ★ Use the purchase agreement addendum (PAA)
OR
 - ★ Use a counter offer
 - To modify the terms/conditions after all parties have signed the offer.
- ★ The seller doesn't want to risk losing the buyer.
- ★ The seller signs the offer and does NOT make the transaction subject to a counter offer
- ★ A binding contract is created.
- ★ If the buyer does not agree to the change—The seller is obligated to the terms of the contract (30 day COE).



contingency: An event must occur within a specified time.

★ One or Both Parties May Terminate Agreement if Condition Does Not Occur

★ Examples:

- Financing
- Sale of Buyer's Home
- Inspections

Elements of a Contingency

- ★ Clear Statement of Condition
- ★ Notice Procedures
- ★ Time period for removal of contingencies
- ★ Rights of Parties if Condition not Met
- ★ always make any change in writing

Contingency Log

Item	Contingency	Party responsible of removal	Days From Acceptance	Days from receipt of report	Contingency deadline (Add number of days to date of acceptance)	Contingency Removal date
1-B	Additional Deposit	Buyer				
2	Loan Approval Loan Commitment Submit Loan Application	Buyer Buyer	5			
4	Closing Days to Close Escrow Instructions	Buyer/Seller Buyer/Seller				
8	Existing Loans Copies Loan Docs to Buyer Approval Loan Docs by Buyer Order Statement of Condition	Seller Buyer Seller	3 3	5		
11	Credit Approval Financial Statement to Seller Approval Financial Statement	Buyer Seller	3	10		
22	Examination of Title Preliminary Title Report Order Report Objections to Title	Buyer Buyer	3	10		

Contingency Log (continued)

Item	Contingency	Party responsible of removal	Days From Acceptance	Days from receipt of report	Contingency deadline (Add number of days to date of acceptance)	Contingency Removal date
26-A	Pest Control Inspection					
26-B	Existing Pest Control Report					
26-C	Subject to Buyer's Approval	Buyer	15			
26-E	Physical Property Condition Approval Inspection Report	Buyer				
26-F	Contingent Sale Property Waiver within days Contingency Removal by Buyer	Buyer Buyer		3		
26-P	Maintenance Reserve Notice of Non-Compliance	Buyer				

Financing Contingency

- ✦ Principal Amount
- ✦ Loan Term
- ✦ Interest Rate
 - ✦ Fixed or Variable
 - ✦ Initial Rate and Maximum Overall Rate
- ✦ Amortization Period
- ✦ Party to Pay Loan Application Costs
- ✦ Any Agreement by Seller to Pay Discount



Sale of Buyer's Property

Conditioned on:

- ✦ Acceptance of Offer by Buyer
- ✦ Closing of Sale
- ✦ Minimum Sales Price and/or Net Proceeds
- ✦ Date(s)
- ✦ Notice Procedures

“Bump” Clauses

- ✦ Seller may accept contingent offer and still keep house on market
- ✦ If seller accepts another offer, first buyer given limited time to meet or waive condition in first agreement

Inspection(s)

- ✦ Condition
 - Infestation or damage
 - Repairs needed over specified amount (Not to exceed \$)
 - Buyer satisfaction
- ✦ Party to perform inspection
- ✦ Time limits
- ✦ Party to pay costs
- ✦ Consequences
- ✦ Notice procedures

non-performance

- ✦ Before acceptance
 - The counter offer is revoked
- ✦ After acceptance of ratified contract by Buyer:
 - Arbitration/mediation
 - Terminate the contract
 - Sue for specific performance
 - require sale completion
- ✦ After acceptance of ratified contract by Seller:
 - Arbitration/mediation
 - declare sale void
 - Sue for damages or specific performance
 - Not returning the buyer's deposit
- ✦ Buyer does not perform= Escrow cancellation

Chapter 11 Last Slide

When the escrow is canceled, are the parties released from the ratified purchase agreement? No!

Risk Alert: Frenzy of multiple offer Situations

- ✦ Temptation to write offers on multiple properties at the same time? never do.
- ✦ legal ramifications for the licensee and principal
- ✦ Owe fiduciary duty to client and fair and honest dealings to third parties