

Legal writing: fundamentals of commercial code



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I. Pat v. Dan: Does Pat have an enforceable contract against Dan, and if so, what are the exact terms of this contract and what do those terms enable Pat to secure? UCC 2, UCC 9 and common law are all relevant to these determinations: However, UCC 9, which governs real estate directly(though not goods associated with it), is the most salient element.

R. An offer exists if one party communicates to the other party a concrete service or good to be provided and an intention to be bound by the terms of the offer. The expression of intention must also include, in the same stroke, the nature and terms of the agreement.

When Pat told Dan about her frustration about not being able to buy a home, this was not an offer: She was merely discussing with a friend.

When Dan offered a proposal, it was not yet an offer because it contained no concrete elements. Dan was saying he would help Pat find a home and finance it, not which home and not what elements.

When Pat found a home, this was still not an offer, though now there was a concrete price, location and piece of real estate being discussed.

But when Dan and Pat agreed to Dan helping her finance the \$250, 000 home, with Dan buying the property up front then promising that “[Dan] will sell it to [Pat] for \$250, 000 plus a reasonable commission”, that was an offer.

Under the UCC 9, owners of real estate, both lenders and inhabitants, have rights and responsibilities. Banks offering a mortgage to buy a property up front, what Dan did in this instance, do have some stake: They can foreclose the property in order to recoup their investment if mortgage payments are not made in a timely fashion. But there are some bankruptcy restrictions (for <https://assignbuster.com/legal-writing-fundamentals-of-commercial-code/>

example, people can retain their home in a bankruptcy), and if a mortgagee makes their payments on time, they are presumed to own the home, can make modifications upon it, live in it, bring people in without question except insofar as this violate the law, etc. Dan was acting as a broker or bank and Pat as a customer. (See *Jannusch v. Naffziger*).

A. Pat made reasonable payments under the aegis of an agreement. Dan showed a de facto acceptance of the terms of the deal not only by the terms of his offer, which Pat lived up to, but also by allowing Pat to live in the home and put up whatever carpeting and other elements she pleased, which is not the behavior of a renter. He also accepted her checks and failed to reply to correspondence about his legal obligations, a clear failure to meet his obligations under the verbal contract.

Dan cannot order Pat to move out: She has \$275, 000 on hand plus a total of \$11, 000 in installment checks, a full payment of the mortgage as agreed.

The only legal question is whether Dan has received a fair commission. This would be decided by the court based on local commission rates, but 10% is a fair offer from Pat.

C. Pat has an enforceable contract against Dan. Dan must accept the \$275, 000 or another sum that constitutes a “ fair commission”. Dan cannot order Pat to be evicted: He does not own the property.

References

Cornell University Law School. (2005). UCC: Uniform Commercial Code.

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Miller, R. L. and Jentz, G. A. (2009). Fundamentals of Business Law. Cengage.

Uniform Commercial Code. Article 9.