



Do spouses both have to sign a contract to purchase real property?

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QUESTION: An agent in our firm prepared an Offer to Purchase and Contract (Form 2-T) in which his clients—a husband and wife—were identified as the buyers. The husband signed the offer but his wife was traveling and was not available to sign the offer at that time. The husband was afraid the property would go under contract with someone else and asked the buyer agent to submit the offer without the wife’s signature. The buyer agent asked me if he should do that. I told him to go ahead and submit it because I was always taught that although it takes two spouses to sell, it only takes one to buy. When my agent submitted the offer, the listing agent told him that since the wife’s name is on the offer, she had to sign it too. Is the listing agent right or can the husband enter into a contract to buy the property without his wife having to sign the offer?

ANSWER: Although you are correct that the husband could purchase real estate without his wife being a party to the transaction, since the wife was named as a buyer in the Offer to Purchase, the wife would need to sign it before the offer could become a binding contract. According to the short paragraph that appears immediately above the signature lines in Form 2-T, “[t]his offer shall become a binding contract on the Effective Date.” The Effective Date is defined in paragraph 1(g) as the date that the Buyer and Seller have signed or initialed the offer or any counteroffer and such signing is communicated to the party making the offer or counteroffer. In the offer that your agent prepared, both the husband and the wife were identified in the “Buyer” section (paragraph 1(b)). Thus, according to the terms of the offer, it cannot become a binding contract unless and until both the husband and the wife have signed it.

An alternative would be to remove the wife as a buyer from the offer. In that case, the husband could contract to purchase the property without his wife also having to sign it. Paragraph 8(h) could indicate that the deed would be made to both the husband and the wife. Note that if your agent’s clients intend to obtain a loan to complete the purchase, it is possible that the lender may nevertheless require that the contract be amended to include the wife as a buyer.

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