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Once more into the unavoidable void

By Curtis Seltzer
Landthink contributor

(This is the 33rd in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)
Purchase-offer contracts are documents that gain life once the last required signature is affixed. They represent a meeting of the minds between the parties at the time they come into effect about what is to be sold to whom and under what terms.

But the agreement that has come alive usually carries with it contingencies that can kill or alter the basic understanding of the parties. So the signed purchase offer represents what might be called a first-step meeting of the minds.

If no contingencies are attached to a legal contract, it should be performed, that is, the deal closed by the parties on the terms established in the agreement.

There are, typically, two ways for a contract to become void: the first involves some flaw in the making of the contract, and the second involves aborting the contract as a matter of right within its language.

A contract becomes void when it fails to include all the required elements that make for a legal contract, such as, it lacks a required signature, or one party is not legally qualified to enter the agreement, or the contract is for some illegal purpose, or it does not reflect a meeting of the minds between the parties.

A contract also becomes void when one party with the right to cancel the agreement by way of a contingency declares the contract void and takes the required steps to inform the other party of the changed status. This should be done in writing, whether or not written notification is required in the contract. A contract that has become void is not enforceable.

In most contracts, the buyer will have inserted at least one contingency that raises an issue the buyer wants researched, inspected, provided or resolved to his satisfaction.
If a contingency fails to include words to the effect that "results are subject to review and approval of the buyer; where results are deemed unacceptable, the buyer may void the contract without penalty and receive all deposits back in a timely fashion"—it is not a contingency with a right to void the contract and the seller may enforce performance.

Where research within the contingency raises an issue that the buyer wants to be resolved, the buyer has activated a process that will either lead to a second-step meeting

of the minds or voiding the contract. A contract that is on the verge of being voided provides incentive to both parties to come to a meeting of the minds in the second step. A properly worded contingency inserts permission into the contract by mutual consent that allows the buyer to blow up the contract if there is no second round of agreement.

A voided contract is one that has been legally terminated. A voidable contract is one that can be voided within the contingency language included.

Now all of this may seem simple and obvious. But it is not, at least in my experience.

I have seen buyers get into contracts with contingencies that merely allow them to research financing, or boundaries, or timber volumes without reserving the right to void if results are not acceptable. They were forced to perform on the contract.

I have also seen buyers fail to properly void a contract that they have a right to void.

And finally I have seen both buyers and sellers assume that a contract has been voided (because it was voidable) when it wasn't.

Remember: a valid contract can be voided within contingency language; an invalid contract binds no one; a voided contract is dead; and a voidable contract may or may not go through.