

**IF YOU ARE EITHER BUYING OR SELLING REAL ESTATE
IN MASSACHUSETTS, YOU MUST BE AWARE OF CHANGES
IN THE LAW !!!**

In 1999, the Massachusetts Supreme Judicial Court issued an important decision, which could possibly affect EVERY BUYER AND SELLER OF REAL ESTATE.

In the case of *McCarthy v. Tobin* 429, Mass. 84 (1999), the SJC clarified the law on whether an Offer to Purchase real estate (“OTP”) is a binding contract. In that case, McCarthy (“Buyer”) and Tobin (“Seller”) signed the standard Greater Boston Real Estate pre-printed offer to purchase form (“OTP”), which the majority of Massachusetts real estate brokers use. The OTP contained a description of the property, the price to be paid, deposit requirements, limited title requirements, and the time and place for closing, all of which are standard references in most offers to purchase real estate. The OTP also included language that the parties “shall on or before 5:00 PM August 16, 1995 execute a standard form purchase and sale agreement, (satisfactory to the Buyer and Seller) which when executed shall be the agreement between the parties hereto”. It also stated clearly...”NOTICE, this is a legal document which creates binding obligations, if not understood consult with an attorney”.

On the deadline date for the signing of the purchase and sale agreement (P&S”), the agreement had yet to be completed. Seller’s attorney sent a draft to the Buyer’s attorney five days later, and never objected to the fact the deadline had passed, nor requested an extension. The parties, through their attorneys, finally agreed to language for the P&S, which the Buyer signed. In the meantime, the Seller had accepted another offer from a third party. When the P&S signed by the Buyer was delivered to the Seller he rejected it, indicating he intended to take the new (higher) offer, essentially backing out of the deal. Before the new transaction closed, the original Buyer filed a legal action to stop the closing, and force a sale to him.

The Supreme Judicial Court found that the mere signing of the offer to purchase BOUND the parties to the original terms. The Court stopped the sale to the third party and forced the sale to the original Buyer, McCarthy, over four years later.

This case serves as a caution to any person either buying or selling real estate in Massachusetts. As real estate is a unique commodity, the Court ruled that money damages, as may be awarded in a typical breach of contract case, would be inadequate to compensate the Buyers here.

At the Law Office of William J. Walsh, we concentrate on real estate matters representing buyers, sellers and lenders. We offer all of our clients personal service that is affordable and unmatched. Whether you choose to contact us or another attorney, this case clearly points out the pitfalls of real estate transactions. Feel free to contact us for a free consultation at (617) 3980-5400.