

A real estate investor found a house for sale that he was interested in buying. The investor spoke with the owner of the house and sent her a written offer to purchase the house for \$200,000. The offer stipulated that it would remain open for one month.

One week later, the investor suffered a stroke and was hospitalized. The stroke caused severe brain damage and permanent mental disability. The owner, having no knowledge of the investor's condition, decided to accept his offer. She signed the written offer and mailed it to the investor's address one day before the offer was set to expire. The investor received the signed offer two days later.

Is there an enforceable contract that binds the owner and the investor?

- A. No, because the investor received the acceptance after the stipulated one-month period.
- B. No, because the investor's offer terminated when he became permanently mentally incapacitated.
- C. Yes, because the owner had no knowledge of the investor's condition when she accepted his offer.
- D. Yes, because the owner mailed the acceptance within the stipulated one-month period.

## Explanation:

An **offer** to form a contract generally remains open for the time stated in the offer or, if no time is stated, for a reasonable time. However, an offer will **terminate prematurely if the offeror dies OR becomes permanently mentally incapacitated\*** before the offer is accepted—with one exception. An offer that is an **option will not terminate** under such circumstances because consideration was paid to keep the offer open for a specified period of time.

Here, the investor offered to buy the owner's house for \$200,000. Although the offer stipulated that it would remain open for one month, it was not an option because the owner had not paid any consideration to keep the offer open. The investor then suffered a stroke that caused severe brain damage and *permanent* mental disability. The investor's permanent incapacity caused his offer to terminate prematurely, so the owner's subsequent attempt to accept it was ineffective. As a result, there is no contract that binds the parties.

\*Permanent mental incapacity is presumed if there has been a formal adjudication that a party lacks the capacity to enter into a contract with another.

**(Choices A & D)** Under the **mailbox rule**, an acceptance that is mailed within the allotted response time is effective when it is sent—not when it is received. Because the owner's acceptance was mailed within the one-month period stipulated in the offer, it would have been effective had the investor's offer still been open.\*\* But since the offer terminated when the investor became permanently mentally incapacitated, there is no contract.

\*\*Had the offer specified that acceptance must be received within one month, the mailbox rule would not apply and the owner's acceptance would have been ineffective.

**(Choice C)** An offer terminates automatically upon death or permanent mental incapacity of the offeror (investor), regardless of the offeree's (owner's) knowledge thereof.

## Educational objective:

An offer will terminate if the offeror dies or becomes permanently mentally incapacitated prior to acceptance. However, an exception exists for an offer that is an option because consideration was paid to keep the offer open.

## References

Restatement (Second) of Contracts § 48 cmt. b (Am. Law Inst. 1981) (offer terminates when offeror is permanently deprived of capacity to contract).

Restatement (Second) of Contracts § 12 (Am. Law Inst. 1981) (capacity to contract).

## Effect of mental incapacity on contract formation

