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Buying or Selling a Home



What about Multiple Offers?

Article #7

Written direction for multiple offers

Code of Ethics: Section 3, 24 as published by the Real Estate Council of Ontario. These are the instructions we receive from RECO to ensure our buyer clients are handled fairly.

OVERVIEW

The purpose of this Registrar's Bulletin is to explain and clarify the requirement of you, as registrants, to convey an offer to your clients and customers as soon as is reasonably possible, unless you receive very clear written direction to do otherwise.

This bulletin focuses on the conduct of seller representatives in multiple offer and delayed offer circumstances. However, it's important to remember that the requirement to convey offers applies to buyer representatives as well.

Before you can receive any written direction from your client, you must explain: the pros and cons of delaying the offer presentation to a specific time and date; and, the options for handling any pre-emptive offers (commonly referred to as bully offers) that you receive.

Clients may change their instructions, and we will explain what to do later in this bulletin. The framework set out in this bulletin is intended to promote a transparent and fair offer process. It is essential that all registrants deliver a fair and transparent process.

OBLIGATION TO CONVEY OFFERS

The law is clear: as a registrant, you must convey an offer to your client as soon as possible. An exception arises if your client has given clear, detailed, and unambiguous written direction to do

An exception arises if your client has given clear, detailed, and express written direction to do otherwise. A client may want to delay their consideration of offers to a specific time and date, typically as part of a marketing strategy to set the stage for multiple offers.

You must act in strict accordance with the instructions you are given, so it is crucial that the written direction is detailed and very clear, and that it is given by a client who is fully informed about the implications.

Step 1: Explain the pros and cons of delaying offers

When you are discussing marketing strategies with your clients, have a clear and thorough talk about the pros and cons of delaying offers, and the implications of the different options. For example, at a high level, the following would likely apply to delaying offers in general.

Pros: This strategy may generate increased interest in their property, and potentially multiple offers, and the best price.

Cons: Your client runs the risk of losing out on an attractive offer from a buyer who is not inclined to wait for a specified time. Your client should also be aware that if the offer date passes with no offers submitted, prospective buyers may see the property as less desirable or overpriced.

Step 2: Explain that a delayed offer presentation might lead to pre-emptive offers

Next, explain to your client that in an active market, a delayed offer approach may prompt some buyers to submit pre-emptive offers. These often expire before the delayed offer presentation in an effort to avoid, or “pre-empt” the established offer process. The written directions you receive must explicitly outline how you are to handle pre-emptive offers.

Step 3: Find out how your client wants to handle pre-emptive offers

Here are some sample questions you can ask your client to help them to determine how they would like to handle pre-emptive offers:

If a pre-emptive offer came in and you were not told about it, how would you feel?

How much information do you want about any pre-emptive offers that come in? Do you want to:

- be notified of a pre-emptive offer, without seeing the details?
- see the details, but not formally consider the offer until your offer presentation date?
- consider all offers received before the offer presentation date?
- only consider offers that are above a certain price or contain a certain condition (for example, no inspection)?
- not be informed about any pre-emptive offers at all?

While this list is not exhaustive and possible options should be explored based on your client's interests and level of knowledge, these are the points of discussion you should be hitting so they can make an informed decision. It is only after such a discussion that they can give you clear direction on how to manage any scenario that may arise.

If your client's instructions are still not clear after a discussion about these questions, continue the conversation until both you and your client understand and agree to exactly what their instructions are.

Step 4: Document your client's instructions

Once you have explained all options to your client, and ensured that they understand them, document, in written detail, their instructions.

CHANGES TO THE DIRECTION

Your client can change their direction at any time. However, a new written direction is required to do so. For example, if your client, who previously said they did not want to see pre-emptive offers, suddenly decides they now want to receive offers, a new written direction

needs to be made to override the previous direction.

If this happens, you must immediately take the following steps:

First, you must change the notes to any listing for the property, to accurately reflect the new offer process.

Second, you are expected to notify, in writing, anyone who has expressed an interest in the property of the change to the offer process. An expression of interest includes parties that have booked viewing appointments, have viewed the property, have informed the brokerage or the listing representative that they will be submitting an offer on the property, or have submitted an offer or an offer summary sheet on the property. In addition to traditional forms of written notice, text message and email are also acceptable.

Why is this notification expected? The aim of delaying offers is to generate interest in the property. In keeping with this reasoning, it is in your client's best interest to inform those who may have shown interest in the property of any change in the offer presentation date or process so they may deliver their offer on time.

RECO looks for written directions when investigating complaints

Unless you have clear, detailed, unequivocal written directions that clearly state that your client does not want to know about any pre-emptive offers, you must inform them when you receive pre-emptive offers. The law is clear that the default is that you convey the offer, unless you have clear direction not to.

When RECO receives complaints about an alleged unfair or biased offer process, we look for a client's written directions and request copies of all offers (or summary documents) received for the property to determine if the offer process was conducted fairly and transparently.

THE BOTTOM LINE

Foresight, open communication, and planning go a long way. Establishing clear directives with your client early on in the process ensures you are on the same page, you are able to protect their interests, and you can act on their behalf with fairness, transparency, competence, and good judgment.



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