

## The Art of the Offer Presentation “How to Increase Your Odds for Success”

1) Can Realtors really influence the outcome?

2) What is better? Presenting “in Person”, Zoom, Phone or Email? Why?

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3) What tools and ammunition do I need?

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A) As a Seller’s Rep : \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

B) As a Buyer’s Rep: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

4) Who’s in Charge? Why?

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5) The Listing Agent’s Role:

- The Pre-Offer Briefing
- Explain the Roles of Both Agents
- Explaining the Procedure
- Seating Arrangements: Does it make a Difference? Why?
- Controlling the Mood and Expectations: Cool, Calm & Friendly- Never Adversarial. All Working Toward the Same End. Humour Helps!
- Thank and Welcome Buyer Agent
- Invite Them to Share Background on Buyers

## 6) The Power Sequence:

- Review Offer: Allow Read Through, then Go Through it Together
- If you Hit a Roadblock, Go Around It!
- Find out all things you agree on, before tackling the tough stuff!
- When Required, Confer with you clients in private.
- Seek the Buyer's agent's input before signing back.

## 7) The Selling Agent's Role:

- Selling your offer and clients to the Listing Rep and the Sellers
- Sellers are more flexible when they like/relate to the buyers.
- Whenever possible, have your buyer's close by for sign-backs.
- Sometimes it is up to you to help the Listing Rep educate the Sellers- Have the ammunition, but use extreme discretion!
- Know the strategies for making your offer stronger in competition.

## 8) Commission Negotiations

- Never allow commission negotiations at the offer table!
- If necessary, these must be conducted in private, in confidence.

NEVER LET AN OFFER DIE IN YOUR HANDS!

Notes:

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## Form 244

for use in the Province of Ontario

**RE: LISTING AGREEMENT FOR:**

**PROPERTY ADDRESS:** .....

**BETWEEN:**

**SELLER:** .....

**AND**

**LISTING BROKERAGE:** .....

**MLS® NUMBER(S):** ..... **L/BR ID. #** .....

**INTERBOARD MLS® NUMBER:** ..... **BOARD:** .....

**LISTING COMMENCEMENT DATE:** .....

**THE SELLER ACKNOWLEDGES THAT THIS DIRECTION CANNOT BE CHANGED OR AMENDED OTHER THAN BY A NEW WRITTEN DIRECTION.**

**The Seller hereby directs the following:**

 **NO CONVEYANCE OF ANY WRITTEN SIGNED OFFERS** prior to ..... on the ..... day of ....., 20.....  
(Seller's Initials) (a.m./p.m.)  
(conveyance includes but is not limited to presentation, communication, transmission, entertainment or notification of)

 **OTHER DIRECTIONS**.....  
(Seller's Initials) .....

 **OTHER DIRECTIONS**.....  
(Seller's Initials) .....

**The Seller acknowledges that the Listing Brokerage has professional obligations to other brokerages and the Listing Brokerage will be complying with rules and regulations with respect to showing of properties and the conveyance of written offers.**


The Listing Brokerage agrees to immediately notify the Real Estate Board(s) of this Seller's Direction in accordance with the MLS® Rules and Regulations, provided that this is an MLS® listing.


The Seller and the Listing Brokerage agree that the said Listing Agreement shall remain in full force and effect.

**THIS IS NOT A CANCELLATION OF THE LISTING AGREEMENT.**

For the purposes of this Direction, "Seller" includes vendor, landlord and lessor, "Buyers" include purchaser, tenant and lessee and Real Estate Board(s) includes Real Estate Association(s).

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

..... (Seller)  (Seal) ..... (Date)

..... (Seller)  (Seal) ..... (Date)

..... (Name of Listing Brokerage)

..... (Authorized to bind the Listing Brokerage) ..... (Date) ..... (Name of Person Signing)

## The Golden Rule of Offer Handling

Ask Yourself if the Process is:

- Fair
- Ethical
- Open
- Transparent

## The Ten Commandments for Listing Agents Regarding Offers

1. Thou shalt present all offers to the seller “at the earliest practicable opportunity” unless otherwise lawfully directed in writing by the seller. In your absence, another registrant from your brokerage must be available to fulfill this obligation.
2. When listing a property, thou shalt discuss the pros & cons of setting an offer date and the possibility of pre-emptive offers with the seller and obtain their clear written direction (OREA form 244) regarding both, to be shared with all interested parties on the MLS listing.
3. No registrant shall represent to any person that an offer exists except if the offer or properly executed summary form (OREA Form 801) is in writing.
4. Should a Seller wish to revise their direction Re: Handling Offers or Pre-Emptive Offers, it shall be done in writing and the listing and appointment desk instructions will be immediately updated and all interested parties will be notified in writing.
5. Thou shalt keep all reps with offers continuously updated in writing as to the existence of other offers, including the number of offers, but NEVER the substance (price & terms) of competing offers.
6. Thou shalt advise all reps with offers in writing of the existence of any offers in which the Listing brokerage is representing a buyer as well as the seller.
7. Thou shalt advise all co-op reps in writing in the event that there are additional offers from their brokerage that would trigger consent required for multiple representations prior to offer presentation.
8. Thou shalt advise all reps with offers in writing should any competing offer contain a reduction of commission, including the precise amount of that reduction (\$ amount or %).
9. Thou shalt maintain copies (Form 801 or offer itself) of every offer, counter-offer, sign-back for every property for a minimum of 2 years and provide copies of same to the listing brokerage.
10. Thou shalt always strive to avoid and/or mitigate any real or perceived conflicts of interest. (ie. Have another rep from your brokerage represent buyers for your listing- This is a “Best Practice”- not a Rule)

# MULTIPLE OFFERS

## Buyer, Seller & *YOU*



# INTRODUCTION

While multiple offer situations are the seller's best friend, they can be very painful for the would-be buyers, and for salespeople who fail to follow proper procedures.

This course is designed to prepare you for multiple offers, whether you have the listing, the buyers, or both. The key to success in handling multiple offer situations is fairness. As long as all parties are operating on a level playing field throughout the offer process, nobody will have any valid grounds for complaint. The issues of agency disclosure and representation (customer, client, dual agency) further complicate multiple offer situations. It is critical that you tailor your approach to fit the agency relationships you have established with the participants. By the time you have completed this course, you will:

1. Be able to explain the multiple offer process to your seller/clients,
2. Be able to explain the multiple offer process to your buyers,
3. Have a clear understanding of the proper procedures to follow in presenting multiple offers,
4. Be able to tailor your approach to fit your agency relationships,
5. Be able to ensure that your actions conform to the requirements of your Board's rules and your Code of Ethics, and
6. Be aware of non-traditional multiple-offer situations.

There is no doubt that sellers benefit from the multiple offer process. It is common for the property to sell for more than the asking price. While the law typically dictates that products and services cannot be sold for more than the asking price, real estate is the one exception. Owners of real estate who list their property for sale are not obliged to sell, even if a buyer offers them the exact price and terms that they have indicated are acceptable. Sellers of real estate always have the right to change their mind about selling their property right up to the point that they accept an offer in writing.

## MULTIPLE OFFERS AND THE SELLER

Preparation is important to success in any activity. If you are taking a well-priced listing in a hot market, you may want to prepare your seller for the possibility of multiple offers. Point out to them that they will have several options if they receive more than one offer. It is your professional duty to point out all of the available choices to your seller/client, in order for them to be able to make an informed selection from the full menu:

- a. Accept one and reject the others,
- b. Sign one back and reject the others,
- c. Reject all offers, sending them back to the buyers for improvement,
- d. Sign one back and hold on to the other offers pending a response from the buyer getting the sign-back,
- e. Hold on to one or more offers while sending the other offer(s) back to the buyers for improvement, or
- f. Hold on to a couple of copies of each offer, and send the other copies back to the buyers for improvement if they so desire.

Each of the above options has positive and negative consequences for the seller:

- a. Accept One & Reject The Others - The benefit is that the seller has sold the property; the cost is the lost opportunity to try for a better deal.
- b. Sign One Back & Reject The Others - The benefit is that the seller may negotiate a better result with the buyer receiving the sign-back; the cost is the lost opportunity to get better offers from the other buyers.
- c. Reject An Offer - The benefit is keeping all buyers in play; the cost or risk is that all or some of the buyers may not return, or that the buyer who made the best initial offer may not return.
- d. Sign One-Back, Hold The Others - The benefit is keeping all buyers in play, the risk is that the buyer receiving the sign-back won't respond and the other buyers will simply let their offers die.
- e. Hold Onto One, Send The Others Back - The benefit is keeping the most appealing offer in your hands, the risk is losing the other buyers and not being able to reach a firm agreement with the buyer whose offer you held onto.
- f. Hold Onto Copies of An Offer, Send the Other Copies Back - This may be the most attractive option for your seller. He/she keeps all offers in play (at least until the irrevocable periods expire), while allowing all bidders the chance to improve. The message to the bidders is not that the seller is rejecting their offers, but that the seller is giving them an opportunity to improve their offers if they so desire.

Options d,e and f are possible because the standard Agreement of Purchase & Sale contains an irrevocable clause. "Irrevocable" means just that. Once the buyer's offer falls into the hands of the seller or the seller's agent, it becomes the seller's property until the irrevocable period expires. Point out to your seller that, in multiple-offer situations, it is standard practice to keep the details of each bidder's offer secret from other bidders. This "blind" bidding process can be contrasted with the "open" bidding process used at a traditional live auction, where bidders are made aware of competing bids and can tailor their bids accordingly. In fact; your seller could instruct you that he/she wants the essential terms of each offer revealed to other bidders. While you are required to abide by your client's lawful instructions, it may be wise to discourage your seller from establishing this "ground rule". Because it isn't common practice, and because it would have to be disclosed to the cooperating salespeople and their buyers, it may cause one or more of the bidders to withdraw from the process. If your seller still wishes to set this ground rule, get it in writing (see Guideline 14.4, RECO Code of Ethics). It is my opinion that a blind bidding process generally produces a better result for the seller. Buyers who don't know what the other bidders are offering tend to inflate their offers in order to win the "contest". By providing your sellers with this information, you enable them to make an informed decision from all available choices if and when the multiple-offer situation arises.

By discussing these issues with your seller when you take the listing, you can prepare them for the possibility of multiple offers in a relatively relaxed setting. It is more difficult to have such a discussion for the first time in the emotion-charged atmosphere that surrounds multiple-offer situations.





# MULTIPLE OFFERS AND THE BUYER

In a "seller's Market", you may wish to prepare your buyers for the possibility of locating their dream home, only to find themselves in a bidding war. Whether your buyer is a client or a customer, it is fair to them and smart from a business point of view to prepare them for battle by covering all possible scenarios as they begin their search for a property under your guidance.

Point out to the buyer the six possible choices (see above) that a seller can make when presented with two or more offers. By educating your buyer in advance, you ensure that they will not have a negative reaction when the multiple-offer situation arises.

Your buyers may simply decide that they will not enter a multiple-offer process. You will want to indicate to such buyers that, in a hot market they may find that every good property is attracting more than one offer. It is in their best interests not to rule out homes that attract more than one offer. Otherwise, they relegate themselves to offering on only those properties that no-one else wants. Point out to your buyers that, even in a multiple offer situation, they may be able to buy the property on terms acceptable to them.

Discuss with the buyer their options when participating in a multiple offer situation. Upon presentation of your buyers-offer to the seller, a number of results could occur:

- Seller Accepts Your Offer - Break out the champagne!
- Seller Signs Back Your Offer - The buyer can accept the sign-back, ensuring that he/she has bought the property, but losing the opportunity to negotiate a better deal.
- Sign-Back The Sellers Sign-Back - Keeps open the possibility of negotiating better terms, but runs the risk of reopening the table for other buyers.

Advise your buyers that, if they become involved in a multiple offer situation, the property will likely sell for more than list price. Your buyer may assume that a seller is obliged to sell them the property if they offer the exact terms specified in the property listing. Point out to your buyers that that is not the case.

Also, your buyers should:

- Be readily available on offer-presentation day to respond quickly in the event that the seller signs their offer back or sends all offers back for improvement, and
- Get pre-qualified for needed financing. Point out to your buyers that, even if the financial institution approves them for needed financing, such approvals typically are conditional upon the property appraising at a value equal to or greater than the price paid.

When buyers know they are entering a multiple offer situation, it is not Uncommon for them to get a professional inspection report PRIOR TO the presentation of their offer. That way they can go to the table with a good idea of the property's strengths and weaknesses, while avoiding the need for a deal-killing inspection condition.



# CONDUCTING MULTIPLE OFFER PRESENTATIONS

In a "seller's Market", It is the obligation of the listing broker, through its salesperson, to ensure that the presentation process is fair to all parties. By following a few simple rules, the duty of fairness can be met, while ensuring that the seller/client's interests are fully protected.

Here are the rules:

1. Inform salespeople who have called you to say that they have a signed offer immediately upon receiving word that another offer has materialized for the property. Salespeople and buyers with offers on your-listing have a right to know how many competitors they have for the property (RECO Code Guideline 14.4).
2. If necessary, seek your seller's instructions to delay offer presentations if a salesperson calls to indicate that they are in the process of preparing an offer but won't have it ready for the scheduled presentation time. It is in your seller's best interests to provide sufficient time to all interested parties to get to the table with their offers (RECO Code Guideline 14.2).
3. At the offer presentation, it is considered proper etiquette to present the offers in the order that the listing salesperson received notice of their existence, if possible. Make sure that the salespeople waiting to present their offers are situated far enough away from the room in which the presentations are being made to ensure that they will not be able to overhear the conversation.
4. Once all offers are presented and your seller has decided on a response, inform each of the salespeople with competing offers of your seller's decision. Buyers and their representatives have a right to know what the seller has decided to do with the offers.
5. If you or another salesperson with your firm has one or more of the competing offers, make sure that salespeople from other firms are aware of that fact. (RECO Code Guideline 14.1).
6. If you have one other competing offers and are offering your seller a reduced commission if your buyer is the successful bidder, you must inform the other salespeople with competing offers of the amount of the commission reduction you are offering to your seller. This is simply a reflection of the duty imposed upon the listing agency to keep the playing field level for all bidders.
7. If your seller chooses to sign back one of the offers, and the buyer who receives the sign-back comes back with a sign-back of their own, the seller has the opportunity to re-open the bidding to other parties. Point this out to your seller if the situation arises, and get your seller's instructions. They can choose to proceed with negotiations with the buyer in sign-back, or they can invite other bidders back to the table.
8. If your seller chooses to sign back or accept a second offer conditional upon their first sign-back not being accepted, make sure that you insert the proper condition in the second offer. Your seller does not want to be in the position of having sold the property twice! RECO Code Guideline 7.2 states: A Member should advise a client to obtain legal advice if the Client has accepted an Offer and is considering accepting a subsequent Offer.
9. Consult your Company Policy Manual, as well as local Board Rules, to ensure that your actions conform to the "in-house" rules. Understand that your company policies or local rules cannot in any way restrict the legal options available to consumers of your services.

By following the rules, you will honour your fiduciary duties to your seller/client, while meeting the duty of fairness owed to your colleagues and the competing buyers.





# COMMISSIONS AND MULTIPLE OFFERS

As was pointed out earlier, if the listing salesperson has one of the competing offers and is offering the seller a reduced commission if his/her buyer's offer is accepted, the amount of the commission reduction must be disclosed to the salespeople with competing offers.

This disclosure must be made as soon as the listing salesperson knows he/she has a competing offer. It is unfair, and therefore improper, to inform the competing salespeople when they arrive for presentations.

It is my opinion that it is a mistake to offer the seller a commission reduction if they accept the offer from Your buyer in multiple offer situations. It may discourage other salespeople from bringing competing offers, thereby weakening your seller's bargaining position with the buyers who do come to the table. Nobody wins.

Notes:

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# DUAL AGENCY & MULTIPLE OFFERS

It is conceivable that you or another salesperson in your firm will be working with a buyer/client who is interested in competing with other bidders for a property listed with your firm. This of course creates a dual agency situation for your company, because you have a buyer/client wanting to buy a seller/client's property. Before you proceed, you must do several things:

a. You must fully explain the limitations of dual agency to both the seller/client and the buyer/client, and get their informed consent to your acting as a dual agent. Without the consent of both, you cannot proceed. Remember, the broker enters into the contract with the client, not the individual salesperson. The same rules apply, whether you personally bring both clients to your firm, or you and another salesperson with your firm bring them in separately. There are two limitations that occur in 100% of dual agency situations. Both limitations must be disclosed to, and consented to, by the clients before you can proceed. The limitations are:

- Both clients must agree to waive their right to your negotiating skills. You can't try to get the highest price for your seller/client while trying to get the lowest price for your buyer/client. You can only operate as an-impartial mediator, favouring neither client's interests over the other.

- Among the fiduciary duties owed to all clients are the duties of confidentiality and full disclosure. You have a duty to keep your client's bargaining position secrets confidential, and you have the duty to disclose to your client anything about the other side's bargaining position that would be helpful to your client in the negotiation. When you are a dual agent, these duties conflict. You cannot both keep and share bargaining position secrets! Therefore, Your clients must choose between a "secrets kept" version of dual agency (preserving the duty of confidentiality and waiving the duty of full disclosure), or a "no secrets kept" version of dual agency (preserving the duty of full disclosure and waiving the duty of confidentiality).

b. You must advise the salespeople with competing offers that you (or another salesperson in your company) have an offer from a buyer/ client.

c. You must advise your buyer/client and your seller that your buyer will not get special treatment in the negotiating process, because you have a duty to ensure that there is a level playing field for all participants. (see Guideline 14.1, RECO Code).

d. In dual agency situations, you normally get the clients to choose between waiving the duty of full disclosure or the duty of confidentiality ("secrets kept" versus "no secrets kept"). In multiple offer situations, if the seller has dictated a blind bidding process, you must advise your clients that, in order for you to proceed as a dual agent, they will need to agree to preserve the duty of confidentiality and waive the duty of full disclosure. Otherwise, you would be required to reveal the contents of competing offers to your buyer/client, which would breach the obligation to the other bidders to conduct the blind bidding process.

e. It is possible that you or another salesperson in your firm will obtain an offer on your listing from a buyer/customer. This is NOT dual agency; only the seller is a client. Obviously you or the other salesperson will have explained the limitations of customer status to the buyer before proceeding. You must advise the salespeople with competing offers that you (or another salesperson in your company) have an offer from a buyer/customer.

In the past it was common to ask the office manager or broker/owner to act as "listing salesperson" in multiple-offer situations when the actual listing salesperson had his/her own offer. This practice while having no validity from a legal point of view did create the impression that the listing company was doing everything possible to equalize the playing field for all participants. For a variety of reasons this practice is less common now. Consult with your own broker or manager to determine what your company's policies are for multiple-offer presentations.

Notes:

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# MULTIPLE OFFERS LOG SHEET

Address: \_\_\_\_\_

Date: \_\_\_\_\_

#	Price	Deposit	Closing Date	Terms	Extras	Agent	Contact Info	Re-Visits	Rank
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									



# ***BROKER OF RECORD BULLETIN***

**PAUL FLETCHER, BROKER OF RECORD**

## **NEW RULES:**

### **Written Direction for Multiple Offers**

Although the changing market may make this a case of “closing the barn door after the horses have escaped”, RECO is on the war-path due to abuses and consumer complaints that have arisen from recent “wild west-style” mishandling of the offer process, particularly in relation to pre-emptive offers.

Clear, detailed and informed written direction from Sellers is absolutely required for every listing if a delay in offers is part of the marketing strategy. As well, documented written notification to all “interested” parties is also required regarding the offer process and/or any changes to that process.

Further, RECO cautions against the use of any disclaimers on listings, such as “Seller reserves the right to accept pre-emptive offers *without notice*” (or variations thereof) to be in direct contravention of REBBA.

It is imperative that every registrant take the time to read and fully understand the Registrar’s Bulletin attached here and to begin immediately to have OREA’s newly revised Form 244 explained to and signed by every seller.

The new forms will facilitate establishing informed consent with sellers and should lead to a fairer process for all parties.

If you still have questions after carefully reviewing the attached documents, please speak with your manager or give me a call at 905-858-3434.



## Multiple Representation

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 [reco.on.ca/registrars-bulletin/multiple-representation/](http://reco.on.ca/registrars-bulletin/multiple-representation/)

[Home](#) / [Registrars Bulletins](#)

March 1, 2016

Bulletin #2016-2

This bulletin describes the disclosure obligations of a brokerage before it enters into a multiple representation situation. This includes representing a buyer and seller or multiple prospective buyers in the same transaction.

### Services

In all situations, before entering into an agreement regarding trading in real estate, registrants are required to:

- Describe the services that are generally available to buyers and sellers;
- Describe the services that will be provided and the alternatives available to the potential client or customer;
- Inform prospective buyers and sellers of the possibility of multiple representation, including a description of the services the brokerage would provide in a multiple representation situation; and
- Make it clear to prospective buyers and sellers that the brokerage cannot represent multiple clients in a transaction unless all of the potential clients consent in writing to that representation.

### Written consent from clients

When a multiple representation situation arises, registrants must explain how the services provided to the client will differ from a single representation situation, including any differences in the sharing of information. These disclosures are to be made at the earliest practical opportunity and before an offer to purchase is made.

The brokerage must also obtain the written consent of all of the parties it is representing in that transaction, via their salespersons or brokers.

Written consent is required in situations where a single brokerage represents two or more clients in a trade, even if different salespersons or brokers are involved. Given that the brokerage has a fiduciary relationship with more than one client to a trade, it must be clear to all clients to the trade how information related to the transaction will be exchanged and how services will be provided.

Consent to multiple representation is required when:

- A brokerage is representing both the buyer and seller in a transaction; or
- A brokerage is representing multiple prospective buyers in a single transaction.

In the case of multiple buyers, it may not be clear to the buyer's brokerage that a single brokerage is representing multiple buyers until one or more buyers have expressed interest in the same property. This knowledge may come through the listing brokerage, or its representatives, as they are in a position to know the source of all buyers. The listing brokerage is then expected to pass on this information to the buyers' brokerage. In such situations, consent to

# RECO ALERT!

Please be advised that, as a result of a recent RECO Complaint Investigation, we are required to ensure that all our associates practice the following:

## MULTIPLE REPRESENTATION DISCLOSURE

When you are the listing representative on a property, it's imperative that you disclose situations of multiple representations. If any of the buyers are being represented by someone from our brokerage, whether by you or a fellow employee of our brokerage, that information **must** be disclosed to all other prospective buyers ***before*** an offer is made. Failing to do so may give other buyers the sense that the process was not conducted fairly, and that one buyer may have been given preferential treatment. That is the reason the requirements were put into place in REBBA 2002.

Upon knowing that there is a multiple representation scenario, the listing representative **must** notify the other buyers' representatives (or the buyers directly if they are not represented) ***in writing*** to let them know of the situation.

It is also mandatory that disclosure in writing be made to all buyer reps if there is a reduction in co-op commission on ***any*** offer. This must include details of the actual amount of reduction.

Documentation confirming that this disclosure was made (e.g., through email or text) is not only recommended, but required in order to prove compliance with the Code of Ethics.

Your cooperation and compliance with the above is greatly appreciated.

Paul Fletcher

Broker of Record