



MULTIPLE OFFERS

Buyer, Seller & *YOU*



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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 buyer's) 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 offer's) 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 buyer's) will simply let their offers die.

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:

- a. Seller Accepts Your Offer - Break out the champagne!
- b. 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.
- c. 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:

- a. 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
- b. 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.

Warn your buyers that the standard practice in multiple-offer situations is for the listing broker and the seller to conduct a "blind" bidding process; your buyer will never know what the other offers were. If your buyer is successful, he/she will never know how much more he/she offered than the next-best bidders.

Some buyers may want to use the negotiating tactic referred to as a "Sharp Bid". It is a device designed to help the buyer leap over the other bidders in a multiple offer situation. The following clause is an example of the sharp bid in action:

Notwithstanding the purchase price offered herein, the Buyer hereby agrees to pay the Seller _____ dollars more than the highest offer price received by the Seller from another bidder for the Property.

"While a "Sharp Bid" is legal in most jurisdictions, it cannot be used if the seller has established the typical ground rule that they will conduct a blind bidding process. A sharp bid clause asks the seller to disclose to the sharp bidder the price and terms of the offer that the sharp bidder is required to beat. If the seller dictates that the terms of the offers received will not be shared with the bidders, the seller would have to breach their commitment in order to respond to the sharp bidder. That would be unethical, and could expose the seller to a lawsuit and the listing agent to a lawsuit and discipline proceedings.

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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.

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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. They are:
 - i. 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.
 - ii. 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.

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