

“We’ve received multiple offers, now what?”

Not a bad place to be in when you’re representing the seller but sometimes can be a little tricky. There is generally no situation routinely faced by REALTORS that can be more frustrating than presenting and negotiating multiple offers. The competing dynamics are huge. The listing Brokers are charged with helping their sellers get the highest price and the most favorable terms for the property. The buyers’ brokers are instructed to help their clients purchase property at the lowest price and on favorable terms. Given the codes mandate of honesty is the need to refrain from making disclosures that may not be in a client’s best interest. Under Article 1 of the Code of Ethics you pledge yourself to protect and promote the interest of your client. That obligation is primary, but it does not relieve you of your obligation to treat all parties honestly. Specifically, under Standard of Practice 1-6 REALTORS shall submit offers and counter-offers objectively and as quickly as possible. The complaints generally arise in the interpretation of “objectively.” What is defined as objective can be vastly different depending on whether you’re asking the buyers agent or the listing agent.

Although there is not a single standard approach to dealing with multiple offers there are some fundamental principles to assist you. Most importantly, be aware of your duty to your client. You need to fully inform them of the pros and cons in a multiple offer situation and then let them make the decision. Let your seller know that competing offers are a possibility and there are various ways to deal with them. The seller can accept the best offer, inform all potential purchasers that other offers are on the table and invite them to make their best offer, counter one offer while setting the others aside, countering one offer while rejecting the others, etc. Explain to your buyer that your firm may represent more than one buyer-client, that more than one of your clients or your firms clients may be interested in purchasing the same property and how offers and counter-offers will be negotiated if that happens. Explain the negotiating strategy and get your buyers to sign a disclosed limited agency agreement right at the outset!!

Under Chapter 7 of the OAR Office Policy Manual there is a section on offers, specifically with respect to confidentiality, presentation of offers, counter offers etc. It is a good business practice and risk management tool to have an office policy in place addressing these sorts of issues. At a minimum Principal Brokers should make sure the brokers are aware of the company policy and understand it. The model office policy can be found on OAR’s website under the members only section.

The disclosed limited agency agreement gets the permission from your client to represent more than one party in a transaction. It doesn’t explain what the procedure will be if you face multiple offers. At the time you present the Disclosed Limited Agency agreement to your client attach an addendum or the office policy outlining how multiple offers will be handled. In addition it may be wise to have an addendum addressing all the potential issues a seller and buyer may face when confronted with a multiple offer situation. That would assist you in the event that an unhappy client claimed “You didn’t tell me this would happen.” As always document any addendum etc. you distribute to your client.

The fairness and lack of objectivity claims will always be directed at the listing agent since they are the ones generally presenting all the offers to the seller. One way to reduce lack of objectivity claims is to have the buyers agent present their own offers in multiple offer situations. That would help eliminate the argument that the listing agent put their own slant on the offers presented.

It gets real tricky when the listing agent is bringing an offer of their own to the table along with the other buyers. In those situations it is a good practice to have the Principal Broker stand in as the presenting agent. The Principal Broker will present the offer and negotiate the terms until such time as an agreement is reached. At that point the listing agent will resume the handling of the transaction through closing. This does not leave much room for the buyers agent to claim lack of objectivity in the presentation of all offers.

A good business practice is to notify buyer agents as to the procedure that will be used in dealing with the presentation of offers to the seller. This can be achieved in the agent remarks on the multiple listing form. Keep the selling agents informed throughout the entire process. There is nothing more aggravating than finally getting hold of the listing agent only to learn that your offer has been rejected. At the end of the day there are no magic solutions when you are in a multiple offer solution. Just remember to keep all parties informed, document all conversations etc. and hope the disappointed buyer doesn't sue!