

Guidelines for Handling Multiple Offers

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The bottom line in interpreting—and living by—Article 1 of the REALTOR® Code of Ethics is to always strive to put your client's interests ahead of everyone else's—even your own—while treating all parties to the transaction honestly.

Lately, we have seen an increasing number of complaints filed regarding the presentation of offers. Article 1 of the REALTOR® Code of Ethics addresses these issues. These complaints come in from other REALTORS®, but also from the public—both buyers and sellers.

Standard of Practice 1-6 states "REALTORS® shall submit offers and counter-offers objectively and as quickly as possible." And Standard of Practice 1-7 states "When acting as listing brokers, REALTORS® shall continue to submit to the seller/ landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing."

The complaints generally revolve around one of these scenarios:

1. The buyer agent calls to inform the listing agent that he has a contract on her listing. The **listing agent does not return the phone call** for days.
2. The buyer agent calls, the listing agent returns the call, the **contract is delivered** (usually by FAX) to the listing agent—**nothing happens**. No return phone calls, even when the buyer agent calls to see what's happening. The buyer agent, along with his buyer, is not even sure the offer has been presented.
3. The seller is presented with an offer. It's a good one and he accepts it. He later finds out that there was another buyer who had made an offer—or wanted to make an offer—and was **told it was "too late."** A similar situation occurs when two offers were presented and the seller accepts one and rejects the other. The **"rejected" buyer changes his/her offer** and wants it re-presented and the listing agent says "you had your chance."
4. A buyer makes an offer of \$200,000 on a property. When the offer is given to the listing agent he says "The seller rejected a \$210,000 offer. **I'm not going to even present this** unless it's over \$210,000."
5. The buyer agent finds out after the offers have been presented that his **buyer was in a multiple offer** situation. The **listing agent did not disclose** to the buyers' agents the other offers until the seller decided to send all the offers back for reconsideration.
6. In multiple offer situations, the seller accepts one offer and rejects the other. There is **no indication that the seller saw the offer** at all. Nothing is noted on the contract so the buyer's agent, and the buyer, are suspicious as to whether the offer was presented at all. In most situations where there are delays in getting offers presented—and those delays are not due to sellers being unavailable or unwilling to look at the offers—we find that the underlying problem is multiple offers—and many times the listing agent (or someone in the listing office) has the other offer.

When the facts are discovered, in most of these cases, the evidence shows that the listing agent made decisions for his/her client—rather than allowing the client to make the client's decisions. The sellers should be told of the offers as quickly as possible and the sellers are the ones who should decide how—and when—the offers will be presented.

Guidelines for the presentation of multiple offers can be found in the NAR Code of Ethics and Arbitration Manual (Appendix IX to Part Four). The guidelines emphasize that the **client is the sole decision maker** on whether to look at offers, whether the listing agent should disclose the existence of multiple offers and what, if any, counter offer will be made to the buyer.

It is, of course, **the listing agent's duty to give guidance and advice** to the listing agent's client on these issues, but the advice must not be biased in any way. The listing agent works for the seller and must put the client's interest ahead of everyone else's—including the agent's.

* It is important to note that NAR's Model MLS Rules (so likely your local rules) provide the buyer representative the right to be there when the offer is presented to the seller. This is the case unless the seller rejects this in writing. The buyer representative would then have a right to see the rejection.

So how should a listing agent handle offers?

1. Return phone calls promptly. When another agent calls to tell you she has an offer on your listing, return the call and prepare for presentation of the offer as quickly as possible.

2. Keep in touch with the other agent during the negotiations. Remember that the buyer could decide to withdraw his offer at any time and move on to another property. While the listing agent is dragging her feet in an attempt to possibly write an offer of her own, the first buyer (as a matter of fact – the only buyer at this point) could change his mind and withdraw his offer.

3. Let your seller decide how to proceed. If there have been numerous showings on the property and the seller (or you) believes there could be other offers, it is the seller who should decide whether he wants to look at the current offer or hold off until the other buyers have submitted theirs. The agent has overstepped her role as the listing agent if she makes this decision for her sellers. As a side note, the seller is the one who should be deciding whether buyer agents are present when the offers are present. It is an extremely high probability that your MLS rules state that the buyer broker, or agent, has the right to be present unless the seller has indicated—in writing—that he does not want buyer agents participating in the presentation of offers. That decision is the seller's to make, and if the seller so indicates, the listing agent should have a letter in the file stating that. The letter is to be made available to the buyer agent if the buyer's representative is denied the right to participate.

4. The seller decides whether to disclose that there are multiple offers. Although it would probably be safe to say that the seller would not be harmed, in most cases, by disclosing to the buyers' agents that the buyer was in a multiple offer situation, the possibility exists that it could cause one—or both—of the buyers to "walk away." Because of that possibility, it is the listing agent's duty to outline the options and their possible outcomes and let the seller decide how to proceed.

5. The seller must be told of all offers written on his property. Even if the seller has turned down a higher offer than the one currently written. And, even if the seller put in writing he does not want to entertain offers below a certain price (which, by the way, is hardly ever the case) a prudent listing agent would still call the seller to let the seller know of the other offer, again letting the seller decide how he wants to proceed.

6. A change in the offer makes it a new offer. Even if a buyer has had the offer rejected by the seller, the buyer may change that offer thus creating a "new" offer and the listing agent has an obligation to present it to the seller.

7. If the offer is rejected, have the seller indicate that on the contract. (If your local contract does not already have this pre-printed on it.) Many of the issues we've been seeing could be avoided if the seller had written "rejected" on the face of the contract, signing and dating that. Most buyers whose offers have not been accepted, in many cases, just want to be sure the seller saw the offer.

One could say that if we as agents would remember that the client is the one calling the shots and we are there to carry out their directions rather than making decisions for them, many of these problems would not be occurring. We should also remember that when one transaction is over, and after protecting our client's interest to the best of our ability, and never compromising on that principle, we need to be able to work with other agents on the next transaction.

Our reputation for honest dealing with other agents is an issue when it comes to being able to fully represent our next client in the next transaction. We should strive to be the agent others want to work with—not the one that causes the other agents to cringe when they hear we are involved. The Code of Ethics provides us the foundation and guidance upon which we should conduct our business in the dignified, professional way that all our clients—and our fellow agents—should expect