

Best Practices for Multiple Offers

➤ *Their Sale, Their Terms*

While the Buyer has the right to negotiate the terms of an offer, the Seller has complete discretion regarding the presentation, and the response to and acceptance of offers. The Seller has the right to determine the timing of these actions and to instruct the Salesperson/Broker accordingly.

Moreover, LSTAR has no legal authority to infringe on the formation of contracts between Members and Buyers/Sellers. While the REBBA Code of Ethics deals with offers, LSTAR has jurisdiction over the MLS® Rules and Policies that provide for the effective operation of the Multiple Listing Service.

➤ *Protection for You and Your Brokerage*

Each office should have a policy with respect to recording, presenting and responding to multiple offers. A procedure for keeping track of all documentation in multiple offer situations should be specifically outlined and could be useful in the event of a complaint to RECO.

The Listing Salesperson/Broker should advise the Seller of such policies during the listing presentation. Similarly, the Buyer should be advised as to such office policies when the Salesperson/Broker is discussing his relationship with the Buyer.

It is recommended that Members use Form 109 "Offer Presentation Acknowledgement" particularly when dealing with faxed offers. This Form, which is completed by the Listing Salesperson/Broker and sent to the Co-operating Salesperson/Broker, provides documentation confirming that the offer was reviewed.

➤ *Conveying Offers*

Section 24 of the REBBA Code of Ethics requires that Listing Salespersons/Brokers establish a method to

ensure that written offers are received and conveyed to the Seller at the earliest practical opportunity, regardless of whether the Listing Salesperson/Broker is available. The REBBA Code of Ethics does not, however, permit the Co-operating Salesperson/Broker to go direct to a Seller in the event that the Listing Salesperson/Broker is unavailable.

Section 26 of the REBBA Code of Ethics requires that the number of competing offers be disclosed to all Buyers who have submitted a written offer. The terms and conditions of each offer are confidential to the Listing Salesperson/Broker.

➤ *Before They Accept*

Section 25 of the REBBA Code of Ethics requires that the Listing Salesperson/Broker disclose to anyone who makes a written offer, at the earliest practicable opportunity and before any offer is accepted, the existence of compensation terms that may affect whether an offer is accepted.

➤ *Advising Buyers & Sellers of Competing Offer Risks*

REALTORS® should discuss the risks of competing offer situations with their clients.

Buyers should be aware of the dangers of removing key conditions such as financing and home inspection. Conversely, Sellers should be aware of the risk involved in accepting an offer with conditions.

Sellers should also be cognizant that competing Buyers might choose not to further participate in multiple offer situations.

Section 8 of the REBBA Code of Ethics requires REALTORS® to advise clients/customers to seek other advice when a matter is beyond their expertise. ✦

REBBA Code of Ethics (Applicable Sections)

Services from others

8. (1) A registrant shall advise a client or customer to obtain services from another person if the registrant is not able to provide the services with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the services.
- (2) A registrant shall not discourage a client or customer from seeking a particular kind of service if the registrant is not able to provide the service with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the service.

Conveying offers

24. (1) A registrant shall convey any written offer received by the registrant to the registrant's client at the earliest practicable opportunity.
- (2) A broker or salesperson shall establish a method of ensuring that,
- (a) written offers are received by someone on behalf of the broker or salesperson, if the broker or salesperson is not available at the time an offer is submitted; and
- (b) written offers are conveyed to the client of the broker or salesperson at the earliest practicable opportunity, even if the broker or salesperson is not available at the time an offer is submitted.
- (3) Without limiting the generality of subsection (1) and (2), those subsections apply regardless of the identity of the person making the offer, the contents of the offer or the nature of any arrangements for commission or other remuneration.
- (4) Subsections (1) to (3) are subject to any written directions given by a client.
- (5) Subsections (1) to (4) also apply, with necessary modifications, to,
- (a) written amendments to written offers and any other written document directly related to a written offer; and
- (b) written assignments of agreements that relate to interests in real estate, written waivers of conditions in agreements that relate to interests in real estate, and any other written document directly related to a written agreement that relates to an interest in real estate.
- (6) Subsections (1) to (5) apply, with necessary modifications, if a brokerage and a customer have an agreement that provides for the brokerage to receive written offers.
- (7) Subsections (1) to (5) apply, with necessary modifications, to brokers and salespersons employed by a brokerage, if the brokerage and a customer have an agreement that provides for the brokerage to receive written offers.

Agreements relating to commission

25. (1) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to a commission or other remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted.
- (2) Subsection (1) applies, with necessary modifications, to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

Note: Now have to reveal the details of any agreement that would affect commission. For example where a brokerage has agreed to reduce commission if the brokerage double-ends" the trade.

Competing Offers

26. (1) If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall disclose the number of competing written offers to every person who is making of the competing offers, but shall not disclose the substance of the competing offers.
- (2) Subsection (1) applies, with necessary modifications to a brokerage that has a seller as a customer, if the brokerage and the seller have an agreement that provides for the brokerage to receive written offers to buy.

Note: Must disclose the number of competing offers to everyone who is making one of the competing offers. There is a prohibition on disclosing any of the substance of the competing offers.

