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## **A Buyers' and Sellers' Guide to Multiple Offer Negotiations from the Code of Ethics and Arbitration Manual**

### **Information for Buyers**

In some situations sellers will have several competing purchase offers to consider. Sellers have several ways to deal with multiple offers. Sellers can accept the “best” offer; they can inform all potential purchasers that other offers are “on the table;” they can “counter” one offer while putting the other offers to the side awaiting a decision on the counter-offer; or they can “counter” one offer and reject the others.

While the listing broker can offer suggestions and advice, decisions about how offers will be presented - and dealt with - are made by the seller - not by the listing broker.

There are advantages and disadvantages to the various negotiating strategies you can employ in the multiple offer negotiations. A low initial offer may result in buying the property you desire for less than the listed price - or it may result in another buyer's higher offer being accepted. On the other hand, a full price offer may result in paying more than the seller might have required. In some cases there can be several full price offers competing for the seller's attention - and acceptance.

Your buyer-representative will explain the pros and cons of these (and possibly other) negotiating strategies. The decisions, however, are yours to make.

Purchase offers generally aren't confidential. In some cases sellers may make other buyers aware that your offer is in hand, or even disclose details about your offer to another buyer in hope of convincing that buyer to make a “better” offer. In some cases sellers will instruct their listing broker to disclose an offer to other buyers on their behalf.

Listing brokers are required to follow lawful, ethical instructions from their clients in the same way that buyer-representatives must follow lawful, ethical instructions from their buyer-clients. While some REALTORS® may be reluctant to disclose terms of offers, even at the direction of their seller-clients, the Code of Ethics does not prohibit such disclosure. In some cases state law or real estate regulations may limit the ability of brokers to disclose the existence or terms of offers to third parties.

You may want to discuss with your buyer-representative the possibility of making your offer confidential, or of establishing a confidentiality agreement between yourself and the seller prior to commencing negotiations.

Realize that as a represented buyer, your broker likely has other buyer-clients, some of whom may be interested in the same properties as you are. Ask your broker how offers and counter offers will be presented and negotiated if more than one of her buyer-clients are trying to buy the same property.

Appreciate that your buyer-representative's advice is based on past experience and is no guarantee as to how any particular seller will act (or react) in a specific situation.

### **Information for Sellers**

It's possible you may be faced with multiple competing offers to purchase your property. Your listing broker can explain various negotiating strategies for you to consider. For example, you can accept the “best” offer; you can inform all potential purchasers that other offers are “on the table” and invite them to make their “best” offer; you can “counter” one offer while putting the other offers to the side awaiting a decision on your counter-offer; or you can “counter” one offer and reject the others.

If you have questions about the possibility of multiple offers and the way they can be dealt with, ask your listing broker to explain your options and alternatives.

Realize that each of these approaches has advantages and disadvantages. Patience may result in an even better offer being received; inviting buyers to make their “best” offers may produce an offer (or offers) better than those “on the table” - or may discourage buyers who feel they’ve already made a fair offer resulting in them breaking off negotiations to pursue other properties. Your listing broker will explain the pros and cons of these strategies (and possibly other) negotiating strategies. The decisions, however, are yours to make.

Appreciate that your listing broker’s advice is based on past experience and is not guarantee about how any particular buyer will act (or react) in a specific situation.

### **Information for Buyers and Sellers**

Perhaps no situation facing buyers and sellers is more potentially frustrating or fraught with potential for misunderstanding and for missed opportunity than presenting and negotiating multiple, competing offers to purchase the same property. Consider the following issues and dynamics.

- Sellers want to get the highest price and best terms for their property
- Buyers want to buy at the lowest price and on the most favorable terms
- Listing brokers - acting on behalf of sellers - represent sellers’ interests
- Buyer representatives represent the interests of their buyer-clients
- Will a seller disclosing information about one buyer’s offer make a second buyer more likely to make a full price offer? Or will that second buyer pursue
- a different property?
- Will telling several buyers that each is being given a chance to make their “best offer” result in spirited competition for the seller’s property? Or will it result
- in the buyers looking elsewhere?
- What’s fair? What’s honest?

Knowledgeable buyers and sellers realize there are rarely simple answers to complex situations. But some fundamental principles can make negotiating multiple offers a little simpler.

- Realize the listing broker represents the seller - and the seller’s interests, and the buyer-representative represents the buyer - and the buyer’s interests. Real estate professionals are subject to state real estate regulation and, if they are REALTORS®, to the Code of Ethics of the National Association of REALTORS®.
- The Code of Ethics obligates REALTORS® to be honest with all parties; to present all offers and counter-offers quickly and objectively; and to cooperate with other brokers. Cooperation involves sharing of relevant information.
- Frequently frustration and misunderstanding results from cooperating broker being unaware of the status of offers they have presented on behalf of their buyer-clients. Listing brokers should make reasonable efforts to keep buyer-representatives up-to-date on the status of offers. Similarly, buyer-representatives should keep listing brokers informed about the status of counter-offers their seller-clients have made.
- Buyers and sellers need to appreciate that in multiple offer situations only one offer will result in a sale, and the other buyers will often be disappointed their offers were not accepted. While little can be done to assuage that disappointment, fair and honest treatment throughout the offer and negotiation process, coupled with prompt ongoing and open communication, can enhance the chances that all buyers - successful or not - will feel they were treated fairly and honestly.

As a side note, MORe always recommends that when you are listing a property; have a discussion with the seller about multiple offers. This way, you know whether or not to disclose this to other brokers seeking cooperation, how to present them and your seller is aware of the pros and cons of each side.