

MULTIPLE OFFERS: JUGGLING YOUR CLIENT'S BEST INTERESTS

We live in a litigious society where every REALTOR® has come to recognize the caveat "let the buyer beware." At the same time, REALTORS® are increasingly cognizant the caveat can now be extended to both REALTORS® and Sellers. Over the past months, numerous questions have been called into the Legal Hotline that clearly indicate some confusion exists as to the handling of multiple offers. Sellers and REALTORS® have to be on their toes to understand each other implicitly so as to protect their respective interests.

The handling of multiple or backup offers on a listed property, particularly when one or more offers are written by another agency, represents a difficult situation for any REALTOR®. No matter how one proceeds, someone is sure to be disappointed. Too often, no one ends up satisfied, even though the property is finally sold. Prospects and REALTORS® are quick to point a finger whenever there is even the slightest question concerning partiality or unfairness.

In answer to the questions of the members of the South Carolina Association of REALTORS®, the following "how-to" scenario is intended to show the REALTOR® how to best handle multiple offers and what precautions REALTORS® must take. The following scenario should not be regarded as legal opinion, but serves to provide direction to our members.

Perhaps one of the best ways to explain the responsibilities of the listing REALTOR® and the seller is by following this example:

REALTOR® Alex obtained an Exclusive Right-of-Sale listing to a desirable piece of waterfront property on Wednesday afternoon. Alex entered the listing into the M.L.S. that same evening and the paperwork was mailed to the board. The same information was distributed via the electronic bulletin, "The Hot Sheet," available to all members of the M.L.S. with computer access. The property in question was obviously considered very desirable, for REALTOR® Alex received numerous requests from fellow REALTORS® asking for additional information and for permission to show it to potential prospects. REALTOR® Alex was also aware of the fact that the particular property appeared to meet the requirements of a long-time friend and client, and immediately arranged to have his friend and client meet with him to view the property. REALTOR® Alex showed the property on Friday afternoon, informing his friend that because of the interest shown by other REALTORS®, it was imperative for a valid offer to be submitted as soon as possible.

On Saturday morning, REALTOR® Alex received two telephone calls from fellow REALTORS® Biff and Cindy, who said that they had offers to submit on the property. REALTOR® Alex immediately told REALTORS® Biff and Cindy that he had also shown the property to a friend and prospect who wished to submit an offer. REALTOR® Alex went on to say that he would immediately convey this information to the Seller and to provide an impartial opportunity for the consideration of all offers, would set up a meeting for the presentation of offers that Saturday afternoon. Subsequently, REALTOR® Alex spoke to the Seller, who was given all the facts and who agreed to meet with any and all REALTORS® who had offers to submit at 4:00 p.m. that Saturday afternoon. REALTOR® Alex then telephoned REALTORS® Biff and Cindy and asked them to be sure to make up "net" sheets and include them with their offers, which

should either be delivered to him beforehand or presented to the Seller at the prearranged meeting that afternoon.

REALTOR® Alex then contacted his friend and prospect, informing him that all offers would be presented to the Seller that afternoon. REALTOR® Alex informed his prospect and REALTORS® Biff and Cindy that any offers submitted should be their best offers as three offers would be considered. Later that afternoon, REALTOR® Alex and REALTOR® Cindy met at the Seller's home. REALTOR® Biff was unable to attend the presentation, but submitted his offer to REALTOR® Alex on the understanding that it would be presented in an impartial manner. REALTOR® Alex then arranged with the Seller for the presentation of the three offers in the order in which they had been received. REALTOR® Alex also cautioned the Seller not to comment on or make any decision concerning the offers until he had an opportunity to review all offers and satisfy himself that he understood them.

The offers submitted by REALTOR® Alex and REALTOR® Biff both appeared to meet most of the requirements of the Seller, though each had their limitations. The offer submitted by REALTOR® Cindy was considered unacceptable due to a number of contingencies it contained. REALTOR® Cindy's prospect, when advised of the fact that his offer was not being considered, withdrew. REALTOR® Alex then advised the Seller to review the two offers which he felt most comfortable with and that he could accept one or counter one or both of them. If he wanted to counter both, the REALTOR® Alex advised the Seller to have his attorney draft appropriate language to include so as to avoid becoming bound on both contracts. Alternatively, REALTORS® Alex advised that the Seller could request both prospects to submit another offer with terms that Seller would consider accepting. The Seller then considered both offers and agreed to counter to the offer submitted by REALTOR® Alex.

Following this meeting, REALTOR® Alex immediately telephoned REALTOR® Biff, advising him that the Seller had countered to REALTOR® Alex's prospect, but the offer from REALTOR® Biff would be held as a backup offer if REALTOR® Biff's prospect was still interested. REALTOR® Alex then telephoned his prospect, informing him that a counter offer had been made by the Seller, but that there was a backup offer available which would also be countered if the first counter offer was not accepted. REALTOR® Alex's prospect then discussed the counter offer with his attorney and advised REALTOR® Alex that he had accepted. This information was immediately conveyed to the Seller and to REALTOR® Biff. REALTOR® Biff's prospect then elected to withdraw.

Subsequent to the acceptance of the counter offer by REALTOR® Alex's prospect, the next day, REALTOR® Alex received a telephone call from REALTOR® Cindy to the effect that REALTOR® Cindy's prospect had decided to submit another offer at over full price. REALTOR® Alex immediately responded to REALTOR® Cindy that the Seller had signed a contract with REALTOR® Alex's prospect and a binding contract was now in place. REALTOR® Cindy then argued that REALTOR® Alex had a responsibility to submit his offer, which she said was obviously better than the contract which had already been signed. REALTOR® Alex responded that he would submit REALTOR® Cindy's offer as a backup contract. When REALTOR® Alex presented REALTOR® Cindy's offer, he advised the Seller that Seller was already bound by the terms of the contract with REALTOR® Alex's prospect and can only accept REALTOR® Cindy's offer with language added to make it clear that the Seller had no obligation to REALTOR® Cindy's prospect unless Seller did not close on the first contract as a result

of a default by the Buyer under the first contract. REALTOR® Alex advised Seller to consult legal counsel to draft an appropriate clause before signing the backup contract.

It is important to recognize that this information is for guidance only. In many cases, the circumstances involved will create additional problems and the REALTORS® involved should seek the advice and opinions of their own counsel, where deviation is considered desirable.

Listing REALTORS® should pay specific heed to the following points when confronted with similar situations:

- 1. Keep everyone informed.**
- 2. Avoid any act or reference that could be interpreted as partiality or unfairness.**
- 3. Maintain a record of the date and time all offers are conveyed.**
- 4. Arrange with the Seller a date, place, and time for the presentation of all offers and invite all selling REALTORS® to participate, but in their presentations only.**
- 5. Advise the Seller that he can accept one of the offers, counter one of them, or reject all and request that they submit other offers specifying the terms that would probably be acceptable to the Seller.**
- 6. If Seller elects to counter one offer, then the remaining offers should be listed in order of preference by the Seller for subsequent counter offers if the first counter fails. Keep selling REALTORS® informed at all times concerning the follow-up on the counter offers.**
- 7. Once a contract had been signed, submit any subsequent offers to the Seller and advise Seller to seek legal counsel so as to avoid problems associated with a Breach of Contract suit by the first Buyer and to include appropriate language to make it a backup contract.**
- 8. Prior to the signing of any contract, any additional offers should be communicated to the Seller.**
- 9. To assist the Seller in analyzing the various pro's and con's of multiple offers, it is suggested that cooperating REALTORS® be asked to submit "net" sheets with their offers.**
- 10. Don't hold up the presentation of offers but do advise Seller of any possible offers that may be forthcoming. Don't claim multiple offers exist unless it is true.**
- 11. Finally, remember the Golden Rule and adhere strictly to the REALTOR® Code of Ethics. Ask yourself, "What would I want if I was the Seller" and "What would I expect if I were the other REALTOR®?"**

FIVE ANSWERS TO FIVE COMMON QUESTIONS

1. How do you avoid having more than one accepted offer? Have the sellers respond to only one offer at a time. If negotiations do not result in a contract, they should turn to the next best offer.
2. What about agency conflicts? Your company needs permission in advance from the seller to act as a disclosed dual agent. Buyers must also consent.
3. How do you avoid an auction mentality? Make it clear that all buyers get one chance to make their best offer. Having the sellers choose the best of the offers is nothing like an auction.
4. Should all salespeople present their offers at once? Yes. Set up a time for the sellers to consider offers. Have each salesperson make a presentation while you are present. If you, too, have an offer from a buyer, present it directly to the sellers.
5. What if co-brokers complain that they are at a disadvantage because of the offers prepared by salesmen from the listing salesman's office? Understandable procedures and communication through every step of the process go a long way toward maintaining harmony between the salespeople.