



A Primer On MULTIPLE OFFERS

As the housing market recovers, more and more buyers are finding themselves in a situation where they are competing with one or more other buyers for the home of their dreams. Understandably, in this situation, the unsuccessful buyers are disappointed and often angry. Many times, the unsuccessful buyers' anger is directed at the REALTOR® who helped them try to buy the home, and their anger is misplaced.

The only law governing the presentation of offers is a rule that requires a real estate licensee to forward all offers he or she receives to the seller. R 339.22307. After the offers are delivered, there is no requirement that a seller consider them in any particular order or that the seller reject the “first” offer prior to considering a “second” offer. Additionally, there is no requirement that a seller reject an offer in writing or even acknowledge receipt of the offer. A seller who receives an offer can accept, reject or counter that offer. In addition, the seller can choose to do nothing. A seller can choose to “sit” on an offer while waiting for a second offer, or not. A buyer can request that a seller respond in writing, however, the seller has no legal obligation to do so. Further, a REALTOR® acting on behalf of the buyer is generally prohibited from contacting directly any seller who is represented by a REALTOR®.

When considering multiple offers, there is no requirement that a seller treat each potential buyer equally or even fairly. A seller can even discriminate, so long as the seller does not

discriminate on the basis of religion, race, color, national origin, age, sex, disability or familial or marital status. A seller is not required to take the highest offer. A seller can decide to accept a lower offer because it is a cash offer or because that particular buyer has a preapproval letter from a lender. A seller could even accept a lower offer because she knew that the offer was from an avid gardener and believed that he would take good care of the garden she had put so much time into over the years.

That being said, it is certainly true that most sellers will in fact accept the highest price offer. In fact, REALTORS® and others in the real estate business often instruct buyers in this situation to present their “highest and best.” To some buyers, this term suggests that this is in fact an auction-type situation in which the terms of the offers must be kept confidential and the highest offer must be accepted. This is simply not true. As stated above, the seller can accept any offer. The seller can disclose the amount of the other offers to none, some or all of the other potential buyers. A seller can offer one buyer an opportunity to submit another bid, without offering the other buyers a similar opportunity.



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Buyers in a multiple offer situation should certainly put forward their “highest and best.” While there is no way for a buyer to guaranty that his offer will be the one selected, as a general rule, sellers prefer clean offers with few contingencies, short timeframes and evidence of ability to perform.

Finally, when competing with other potential offers, buyers should keep in mind the following rules of law relating to offers and acceptances:

- 1.** An offer cannot be accepted orally. Even if you are advised via telephone that your offer is the one that has been accepted by the seller, you do not have a binding contract until the written acceptance is delivered to you (or to your real estate agent).
- 2.** Generally, an offer or counteroffer can be revoked at any time before it is accepted. This is true even if the offer contains a stated expiration date.
- 3.** While offers and acceptances relating to the purchase of real estate must be in writing, an offer can be revoked orally.
- 4.** A buyer cannot simultaneously accept and materially change a seller’s counteroffer. If, for example, you “accept” the seller’s counteroffer, but add a provision whereby the sellers are required to throw in their pool table, you have in fact “countered” the seller’s counteroffer.
- 5.** Once an offer is countered, it has been rejected. So, in the above example, if the sellers do not agree to throw in their pool table, you cannot go back and “accept” the seller’s original counteroffer.
- 6.** A seller is not required to accept a full price and terms offer. A list price is not an “offer” that can be accepted by the buyer.

Buyers are cautioned not to get too caught up in the bidding process. For many of us, a home purchase is the biggest financial purchase we will make in our lifetime. While a waiver of an inspection contingency may make it more likely that you will be the successful “bidder,” it is certainly a risky course of action. Remember that there are many other houses out there. You will fall in love again.