
HANDLING MULTIPLE OFFERS

This bulletin discusses the proper handling of multiple, competing offers on a property. Of course, agents are required under the agency and licensing laws to present to the seller all written offers.

If a second offer is received before the seller has accepted or countered the first offer, then both offers must be submitted for the seller's consideration. There is no ethical or legal obligation to counter the first offer before accepting or countering the second offer. The seller may accept the preferred offer, regardless of whether it was the first offer. Or, if neither of the offers are acceptable, the seller has several alternatives: (1) sign nothing and tell both prospective purchasers to re-submit their best offers, (2) make a counteroffer to the most promising offer, or (3) make simultaneous counteroffers to both prospective purchasers using JLS Form No. 340, "Simultaneous Counteroffers." **Counsel the seller not to sign more than one counteroffer at a time without our "Simultaneous Counteroffers" addendum.**

If a second offer is received after mutual acceptance of a prior offer, then the second offer must still be presented, but the seller should not be encouraged to back out of the existing agreement unless the seller has a legal excuse not to proceed with the agreement. The seller should be encouraged to seek legal advice before attempting to repudiate an existing agreement. Of course, the seller may counter the second offer as a "back-up agreement" (using NWMLS Form 38A), although the second buyer is not obligated to sign the back-up offer addendum.

If a second offer is received after the seller has countered the first offer, but before the first prospective buyer has accepted the seller's counteroffer, and if the seller prefers the second offer, then the seller may revoke the counteroffer and accept the second offer. In order to do so, the seller must give notice of the seller's revocation of the counteroffer before the first buyer has accepted the counteroffer. Acceptance is effective only when a signed copy of the counteroffer is actually received by the seller personally, by the listing agent personally or at the licensed office of the listing agent. Under the current NWMLS purchase and sale agreement, a revocation of a counteroffer must also be *in writing* to be effective. If there is any doubt as to whether the counteroffer has effectively been revoked, then the seller's acceptance of the second offer should be made expressly conditioned upon the termination of the first agreement within a certain period of time.

A buyer's agent may show the property to more than one buyer client, but may not represent two or more buyers competing to buy the same property. Once a buyer client makes a written offer, the buyer's agent owes a duty to that buyer to take no action that is adverse or detrimental to the buyer's interest in the transaction. If a second buyer client also wants to make an offer on the property, the buyer's agent must withdraw from representing the second buyer and may offer to refer the second buyer to another agent. The first buyer's agent may not disclose to the second buyer any confidential information concerning the first buyer's offer. Of course, a seller's agent or facilitator may write-up competing offers without creating any conflict of interest or breaching any duty.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.