

Legal perspective on the REALTOR®'s dilemma: How to handle multiple offers to purchase

By Leigh-Alexandra Basha

The following article first appeared in our April 16, 1986 issue. By popular demand, we have updated it and are running it once again.

Current market conditions have resulted in a great demand for residential properties. In fact, some sellers have found several agents at their door at the same time with offers to purchase their property. This requires REALTORS® to consider the following: What is the REALTOR®'s role and responsibility to the seller? What should the REALTOR- advise the seller? and, What rules govern?

In her role as REALTOR®, the agent is obligated to treat all parties fairly, including other REALTORS®, purchasers and sellers. Article 7 of the NAR Code of Ethics states:

"In accepting employment as an agent, the REALTOR® pledges himself to protect and promote the interest of the client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve the REALTOR® of the obligation to treat fairly all parties to the transaction."

Assuming a standard MLS listing agreement has been signed, under the law of agency, both the listing and selling agents must remember that they represent the seller and it is to the seller they owe their duty of loyalty and obedience. For the listing agent, this duty includes informing the seller of all offers to purchase—no matter how unattractive they may seem. Therefore, the REALTORS® cannot sit on an offer merely because she hears a better one is in the wings or, in her opinion, judges an offer to be inadequate. Rather, she must promptly advise her seller of all offers. The Virginia Real Estate Board Regulations warn that failure to promptly tender to the seller every written offer to purchase constitutes grounds for disciplinary action.

In what time frame is a REALTOR® bound to present multiple offers to purchase? Although, there is no explicit directive on this topic, given the spirit of the provisions found in the MLS Rules and Regulations, one may infer that the offers must be presented to the seller with all due promptness. The Suggested Procedures Manual emphasizes the slogan, "time is of the essence" by suggesting that "the listing REALTOR® should make every effort to immediately present an (or all) offer(s) to purchase, either in person or by telephone." The principles of agency law regarding obedience can be found primarily in the listing contract between the seller and the REALTOR®. Specific provisions may be included in such an agreement despite the standardness of the form. If a seller directs the REALTOR® not to bring offers under a certain price, then the REALTORS® should abide by that instruction. However, in the absence of such specificity, a REALTOR® owes a duty to present any

and all written offers. The REALTOR® should register all offers to purchase with the listing company only after all terms are in writing, deposit in hand, qualification sheet properly executed, and purchaser's signature(s) properly affixed.

When the time comes to actually present a contract to the Seller, certain rules apply. The Suggested Procedures Manual, Section V, Paragraph G, states: *"Multiple offers to purchase should be presented in the order they have been registered, complete with a written and signed offer, earnest money deposit, financial data for the purchaser, and an approximate net sheet for the seller. Multiple offers should be presented with all parties present, unless the seller requests otherwise. All parties in a multiple presentation should come to the presentation with the same information. If one party knows that there will be a multiple presentation, all should know."*

Standard of Practice 22-2 dictates that, *"The REALTORS®, when submitting offers to the seller, shall present each in an objective and unbiased manner."*

After the selling company presents and explains the offer, the listing company is obliged to advise the seller, but not to be derogatory about the offer to purchase. The seller evaluates all the factors affecting each offer and decides which offers to reject and which to accept. These factors include not only the price, but the integrity of the particular purchaser, the settlement date, various contingencies, financing provisions, points, and finally, miscellaneous items.

While the seller is free to evaluate all offers presented to him, time continues to be a critical factor. A general principle of contract law is that an offer is alive and remains alive ready to be accepted by the seller until withdrawn by the offeror. Since the offer may be withdrawn any time before it is accepted, it is incumbent upon the seller to act swiftly. Naturally, a purchaser may specify a time limit during which the offer may be accepted and after which the offer is withdrawn.

Given the above parameters of acceptable conduct, one may conclude that a few scenarios in the multiple presentation of offers to purchase should be avoided. One is where a REALTOR® sits back and waits for several purchase offers to come in and then presents all of them simultaneously. Then there is the "hip pocket approach" where a REALTOR® presents to the seller a purchaser's low offer and once the seller grimaces, the REALTOR® pulls out of her hip pocket an offer at the full listing price. Of course, neither of these approaches is ethically sound, given the REALTOR®'s duty to the seller.

The important points for the REALTORS® to keep in mind during a presentation of multiple offers to purchase are as follows: (1) treat all parties fairly, (2) remember that the REALTOR® normally is an "agent" of the seller, not the purchaser, (3) the REALTOR® has a duty to promptly present all offers, no matter how attractive or unattractive, (4) point out to the seller the peculiarities of each individual contract and assist the seller in weighing those factors objectively, and finally (5) advise the seller that he should respond to a purchaser's offer promptly, and to get legal advice from his attorney, if legal advice is indicated by a multiple offer situation.

Ms. Basha is an attorney at the law firm of Peterson & Pesner PC.

Northern Virginia REALTOR®, April 19, 1989. p. 4. Reproduced with permission of the copyright owner. Further reproduction or distribution without permission is prohibited.