

The following guidelines are taken from the 2006 Code of Ethics and Arbitration Manual, Appendix IX to Part Four.

“Presenting and Negotiating Multiple Offers”

“When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their clients. This obligation to the client’s interests is primary, but it does not relieve REALTORS® of the obligation to treat all parties honestly.” (from Article 1 of the 2006 REALTOR® Code of Ethics).

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Standard of Practice 1-6).

Perhaps no situation routinely faced by REALTORS can be more frustrating, fraught with potential for misunderstanding and missed opportunity, and elusive of formulaic solution than presenting and negotiating multiple purchase or lease offers and/or counter-offers on the same property.

Consider the **competing dynamics**.

Listing brokers are charged with helping sellers get the highest price and the most favorable terms for their property.

Buyers’ brokers help their clients purchase property at the lowest price and on favorable terms.

Balanced against the Code’s mandate of honesty is the imperative to refrain from making disclosures that may not, in the final analysis, be in the client’s best interest.

Questions for consideration

Will disclosing the existence of one offer make a second potential purchaser more likely to sign a full price purchase offer...or to pursue a different property?

Will telling several potential purchasers that each will be given a final opportunity to make their best offer result in spirited competition for the seller’s propertyor will it result in a table devoid of offers?

What is fair? What is honest? What is to be done? Who decides? And why is there not a simple way to deal with these situations?

REALTORS® Obligations in Multiple Offer situations

As REALTORS® know, there are almost never simple answers to complex situations. And multiple offer presentations and negotiations are nothing if not complex. But, although there is not a single, standard approach to dealing with multiple offers, there are fundamental principles to guide REALTORS®. While these guidelines focus on negotiation of purchase offers, the following general

principles are equally applicable to negotiation of lease agreements. (Revised 11/01)

1. Be aware of the duties to your client – seller or buyer- both as established in the Code of Ethics and in state law and regulation. (Revised 5/01). The Code requires you to protect and promote your client’s interests. State law and regulation will likely also spell out duties you owe to your client.
2. The Code requires that you be honest with all parties. State law or regulation will likely spell out duties you owe to other parties and to other real estate professionals. Those duties may vary from the general guidance offered here. REALTOR® need to be familiar with applicable laws and regulations.
3. Be aware of your duties to other parties – both as established in the Code of Ethics and in state law and regulation.
4. Remember that the decisions about how offers will be presented, how counter-offers will be negotiated, and whether counter-offers will be made and ultimately which offer, if any, will be accepted, are made by the seller - not by the listing broker

When taking Listings:

1. **Explain** to sellers that receiving multiple, competing offers is a possibility.
2. **Explain** the various ways they may be handled
 - a. Acceptance of the “best” offer
 - b. Informing all potential purchasers that other offers are on the table and invite them to make their best offer
 - c. Countering one offer while putting the others aside
 - d. Countering one offer while rejecting the other offers
3. **Explain** the pluses and minuses of each approach.
 - a. Patience may result in an even better offer
 - b. Inviting each offeror to make their “best” offer may produce a better offer
 - c. or may discourage offerors and result in their pursuing other properties.
4. **Explain** that your advice is just that and that your past experience cannot guarantee what a particular buyer will do.
5. **Remind** the sellers that the decision is *theirs* to make not *yours*.

When entering into buyer representation agreements

1. **Explain** to buyers that you or your firm may represent more than one buyer-client, that more than one of your clients or your firm’s clients may be interested

in purchasing the same property, and how offers and counter offers will be negotiated if that happens. (5/01).

2. **Explain** the pluses and minuses of various negotiating strategies, that
 - a. a “low” initial offer may result in the buyer purchasing the desired property at less than the listed price or in another higher offer from another buyer being accepted;
 - b. that a full price offer may result in the buyer purchasing the desired property while paying more than the seller might have taken for the property, etc. (5/01)

3. **Explain** to the buyer that sellers are not bound by the Code of Ethics. Sellers, in multiple offer situations, are not prohibited from:”shopping” offers. Real estate agents may, unless prohibited by law or regulation “shop” offers. Therefore, REALTORS® assisting purchasers in formulating purchase offers should advise those purchasers it is possible that the existence, terms and conditions of any offer they make may be disclosed to other purchasers by sellers or by sellers’ representatives except where such disclosure is prohibited by law or regulation. (5/05).

4. Remember and remind buyers that the decisions are theirs to make – not yours, and that you are bound by their lawful and ethical instructions. (5/01).

If the possibility of multiple offers – and the various ways they might be dealt with – were not discussed with the seller when their property was listed and it becomes apparent that multiple offers may be (or have been) made, *immediately*, explain the options and alternatives available to the sellers – and get direction from them.

When representing sellers or buyers, be mindful of Standard of Practice **1-6’s** charge to “submit offers and counter-offers objectively and as quickly as possible.” (5/01)

With the sellers’ approval “...divulge the existence of offers on the property” consistent with Standard of Practice **1-15**.

While the Code of Ethics does not expressly mandate “fairness” (given its inherent subjectivity), remember that the Preamble has long noted that “...REALTOR® has come to connote competency, fairness, and high integrity....” If a seller directs you to advise offerors about the existence of other purchase offers, fairness dictates that all offerors or their representatives be so informed.

Article 3 calls on REALTORS® to “...cooperate with other brokers except when cooperation is not in the client’s best interest.” Implicit in

cooperation is forthright sharing of information related to cooperative transactions and potential cooperative transactions.

Much of the frustration that occurs in multiple offer situations results from cooperating brokers being unaware of the status of offers they have procured. **Listing brokers** should make reasonable efforts to keep cooperating brokers informed. Similarly, **buyer brokers** should make reasonable efforts to keep listing brokers informed about the status of counter-offers their seller-clients have made. (5/01).

Realize that in multiple offer situations only one offer will result in a sale and one (or more) potential purchasers will be disappointed that their offer was not accepted.

While little can be done to assuage their disappointment, fair and honest treatment throughout the process; coupled with prompt, ongoing and open communication, will enhance the likelihood they will feel they were treated fairly and honestly.

In this regard, "...REALTOR® take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, 'Whatsoever ye would that others should do to you, do ye even so to them.' (from the Preamble to the Code of Ethics).