Real Estate Council Alberta

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RECA Resource
Information Bulletins

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Multiple Offers

Purpose

This bulletin applies to real estate licensees. It assists licensees in handling multiple offer situations.

Regulatory status: Information Bulletins provide guidance on how RECA interprets and applies existing legislative requirements. They do not create new legal requirements or amend the *Real Estate Act* or the *Real Estate Act* Rules.

Multiple offer situation

A multiple offer situation arises when a seller receives more than one offer to purchase a property at or around the same time. Sellers or buyers, and their real estate representatives, do not owe each other a duty of "fairness" during the buying and selling process. Ultimately, the seller determines what process will be followed.

Why this matters

It is critical for a brokerage and all its licensees to conduct themselves in a manner that preserves the client's trust and confidence in a multiple-offer situation. This includes maintaining the utmost loyalty, disclosing conflicts of interest, obtaining the client's written informed consent, exercising care and skill, not misusing the client's confidential information, acting honestly, and obeying the client's lawful instructions.

What the Rules require

Seller's representative. A seller's representative must:

- immediately inform the seller of the multiple offer situation;
- explain to the seller the choices and strategies available for offer presentation, before getting the seller's direction in writing;
- recommend the seller review each offer before deciding, and advise the seller of the buyers' options, including that buyers may, and often do, withdraw their offer in a multiple offer situation;

- follow the seller client's lawful instructions on whether to disclose the multiple offer situation to the buyers; it is the seller's choice, and the representative must not disclose without the seller client's consent; if the seller instructs disclosure to the buyers' representatives, the representative must do so;
- try to present all offers within the same time frame;
- where an offer includes a commission adjustment, discuss with the seller whether to share that information with other buyers' representatives, a seller's representative must not disclose it without the seller's consent; and
- continue to present all offers to the seller up to the end date of a previous offer, or to the end of the seller representation agreement, following the seller's instructions

The seller may choose to disclose all, some, or none of the offers, and may negotiate with only one buyer without disclosing to the others.

Buyer's representative. A buyer's representative must:

- tell the buyer of the multiple offer situation and advise the buyer of the seller's options;
- attempt to attend the offer presentation personally; and
- advise the buyer of their options, including increasing the offer before presentation, leaving the offer as is, withdrawing the offer, or reconsidering the fixtures, chattels, terms, and conditions of the offer, for example, through an escalation clause. Offers may be accepted based on price, dates, conditions, and other terms.

Other considerations that could improve the buyer's position include a term compelling the seller to deal with the offer at presentation or face withdrawal, and a requirement that the seller not disclose the price and terms to any other buyer or face withdrawal.

Special considerations - Multiple offers and conflict of interest

If a real estate licensee registered with a common-law brokerage represents the seller and one of the offers comes from a buyer represented by another licensee at the same brokerage, this is a conflict of interest that requires extreme care. Implementing designated agency within a brokerage can help reduce these conflicts: when the seller and interested buyers have written service agreements designating agents within the brokerage as their sole agents, each client can continue to benefit from representation, even in a multiple-offer situation, provided the same designated agent does not represent both parties. If a designated agent represents the seller and represents one of the buyers, the best option is to refer one party to another licensee within the brokerage.

Related Information

Legislation	Relevant Sections
Real Estate Act Rules	ss. 54, 55, 57, 58, 58.1
Additional Resource: Information Bulletins	Conflict of Interest Conflict - Representing Competing Buyers Conflict - Representing Seller and Buyer Disclose - Conflicts of Interest