

Sellers: Does Disclosing Multiple Offers on Your Property Make Sense?

That *depends*. What is your strategy, meaning what do you think will happen?

The Pennsylvania Association of REALTORS Listing Contract has a clause that states in part, “Unless prohibited by Seller, if Broker is asked ... Broker will reveal the existence of other offers ...”. Broker could mean Agent since the contract is really with the Broker.

This “conversation” should take place at the time the listing contract is being signed so that there is **no misunderstanding** about what the parties have agreed to do. Frankly, I am not sure that all agents really discuss what the seller is signing, that all agents completely understand the listing contract or that every seller really understands what they are signing or that they really care as long as their property gets sold. My experience as a mediator and serving on Professional Standards hearing panels has shown time and again that a number of sellers and buyers claim that they did not understand what they signed. The agents may have done their job or not. Electronic signing can make this more problematic as people rush to execute contracts and get properties on the market and under contract. How sad! Real Estate is typically our biggest asset and largest investment. Mistakes can be very costly!

At the very least, this **MUST** be discussed *before* there is any interest in a property or there could be a problem especially if the seller thinks their agent acted unethically. Absent discussing the paragraph, the “default” position **as stated** is that the agent has been “*authorized*” to disclose whether or not there are multiple offers. If asked, the answer could be *yes* or *no*.

Many buyer agents will call to ask if there are offers “in hand” or “other interest” in a property before preparing an offer; some will even call to ask before scheduling a showing. In “hot” seller’s markets these instances will increase. *Why* is this a concern at all?

From a buyer or buyer agent’s perspective, they may not want to waste their time pursuing a house that may be unattainable as doing so may result in their missing out on their “second choice” if a seller has or is about to sign another offer. Our multiple listing service requires that the listing status be changed within one business day of executing a contract but a lot can happen in that time. Listing agents may have advertised a due date for offers that others assume valid only to find that something was signed sooner than expected. Real Estate sales are a “*moving target*”. Even if I answer your question now, the answer could change.

As far as the disclosure, some buyers may be willing to “compete” so thinking that there is competition may cause them to make their “highest and best” offer at the outset. On the other hand, some may decide not to compete. Are they entitled to know anything short of an agreement of sale being signed? No they are not unless the seller grants that permission.

What should a seller do?

As far as how to respond to inquiries about “multiple offers”, a listing agent **MUST** have a conversation with their seller client about how to handle inquiries. We cannot lie and we cannot divulge the answer without our seller client’s permission. We can tell others that we are *not authorized* to answer the question, which may make others think there is competition. How they handle our

response is up to them.

I do not like to disclose that we have other offers but I believe that there is a time and place for doing that. Telling others that there are no offers makes no sense, *does it?* Whatever other agents and sellers do, throughout any given year, I see MANY listings *expire*, meaning that the listing contract ran out before getting an offer signed, or get *anceled*, meaning that the seller and agent decided to stop working together such as when the seller decides not to sell, that advertised in their “remarks” section that there was a “multiple offer situation”. That adds a “twist”: the listing agent is answering the question without being asked. *Did the seller authorize that?* The fact that these houses did not go “under contract” and sell can mean that multiple buyers thought them priced too high. Did that disclosure help the seller? Did it deter any serious buyers who may have offered enough to convince a seller to sign a purchase offer? There is no “one size fits all” answer.

There is no guarantee that, regardless of the type of market or the amount of competition, a buyer will have a “second” chance when making an offer to buy Real Estate. If they really like a house they may want to consider making their best offer at the outset. Should a buyer offer “*more*” if there is real or perceived competition or “*less*” if there isn’t? Shouldn’t they base their offer on HOW MUCH they like and want to own a house and what they can manage financially?

A market analysis is helpful as is concern about an eventual appraisal if financing is involved but why should a house be “worth more” because someone else may like it? Suppose money is “no object”? Here is the *underlying* question: **what is the point of making an offer on Real Estate?** I believe that the goal should be to lock it up to exclude other buyers. A buyer can do a number of inspections to see if there are any “material defects”. If their interest changes, they can request repairs or credits or even terminate a sale. I do not take any of these lightly but I do feel for buyers who misjudge the market and miss out on what may have been the best house for their needs and wants.

One interesting point of contrast is that a seller may entertain any number of offers, of course they can only sign one, but a buyer can really only pursue one house. I have heard of buyers making multiple offers but that can blow up if not handled properly.

My job as a listing agent is to “protect and promote” my seller client’s best interest. They rely on my experience, training and education even if we disagree about how to manage this specific topic. As I mentioned, I do NOT like to disclose the existence of other offers generally speaking but that can change when it suits our strategy. Let me share the possibilities.

Let’s assume we have a buyer agent with a buyer interested in making an offer. When the agent calls me to ask if there are any offers, which I presume to mean “in writing” and not a mere expression of “interest” which means nothing and does not always result in an offer being written and presented, if I do not know my seller client’s thinking, absent this paragraph in the contract, I would have to say that I have not discussed that with my client, which may lead some to think there are offers or not. Either of those could hurt my client.

Suppose I have at least one offer in hand and I disclose that. Will their buyer decide not to compete or could that make them try to win? *Who knows?* However, having one or more offers in hand does not guarantee that a seller will sign one or even be interested in what they may have offered. Suppose I have multiple offers but all are well below the stated asking price or have contingencies or conditions

that concern the seller? While that could help me convince the seller that the price is too high, what sense does it make to tell buyer agents that we have offers in hand if none are going to be signed?

The life of a listing agent would be easier if every listing had quality multiple offers to review and if telling someone that they have competition compelled them to do their best to “win” but human beings are unpredictable. In reality, an offer can even be retracted before being signed and returned, which we call “execution and delivery”. As I often say. It is never over until the seller has the buyer’s money and the buyer has the seller’s house keys.

Here is what I suggest and my seller clients have generally agreed with my thinking:

First, I do not want to disclose whether or not we have other interest or offers in hand.

Second, when I receive an offer, after doing what I need to do before presenting it to my seller, I will look at the recent and upcoming showing activity and review any feedback I may have received. I need to think about whether anything else might be coming in. If I think there is, we need to stall to allow that to develop. However, purchase offers have expiration dates and I never assume they are flexible. Waiting for an offer that does not materialize and letting one “in hand” expire makes no sense. Some buyers will just move on to another house, especially in a competitive market.

Third, if I have received at least one offer that a seller is strongly considering signing and someone inquires about the existence of any offers in hand, I will ask my seller for permission to report that we do have other offers. I won’t specify the number or disclose the details. Worst case, the caller does nothing and we are no worse off. Best case, they bring us an offer that is better than what we already have in hand. Absent a concern about an “appraisal”, before signing the latest offer, to be fair, I ask my seller for permission to let the other agents know that there is competition and ask for their buyer client’s “highest and best” offer. My thinking is that it would only be fair to let everyone now know since the latest offer was prepared with that knowledge. I have heard complaints about agents who were led to believe that a seller was going to sign their offer but changed their mind when a better one came in. We need to be conscious of what we say and do to avoid any misunderstandings. A buyer may be selling their house and have an offer they would sign if they knew they had a house to buy. Imagine signing an offer only to learn that the house you wanted to buy was sold to someone else!

Do I have to go back to those who took the initiative and brought offers in already? I don’t think so. If none of those agents ever asked the question, that is on them. If they did ask, regardless of how I answered, they should not assume or expect me to keep them up-to-date as the situation changes. Again, Real Estate is a moving target. The seller is my client and I work for them.

As I often say, this is NOT a “retail” environment. The asking price is not necessarily the final price and the purchase of Real Estate typically requires several steps allowing either party the opportunity to “change their mind”. It can be like a “roller coaster” and that aspect can wear on the parties or their agents.

This is especially true when the market is not “in balance”, meaning that sellers or buyers have a decided or perceived advantage. Our REALTOR Code of Ethics requires us to be honest, meaning that we cannot lie although our not being permitted to disclose something could adversely affect another agent’s client. I try to be “fair” meaning that I am treating all parties “consistently”. The public,

including my fellow agents, deserve nothing less regardless of what they “expect”.

There is NO TIME for inexperience, empty promises OR false expectations!

HIRE WISELY: We are NOT "all the same"!