

DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL REGULATION
MAINE REAL ESTATE COMMISSION
REAL ESTATE TRANSACTIONS
OFFERS/COUNTER OFFERS – GUIDELINES
Approved June 2014

Guiding Principles – Seller/Buyer Client

<ul style="list-style-type: none"> • Communicate early and often 	<p><i>When taking a listing or entering into a buyer representation agreement the agent should explain to the client how offers and counter offers are handled and the possibility of multiple offers.</i></p>
<ul style="list-style-type: none"> • The agent advises – the client decides 	<p><i>The decisions about how offers will be presented, negotiated and ultimately accepted or rejected are made by the client – not the agent. All offers must be communicated and agent must keep client informed of stated interest in property.</i></p>
<ul style="list-style-type: none"> • Offers and counter offers in writing 	<p><i>Offers and counter offers should be in writing to ensure that the terms, time frames and legal obligations of the parties are understood. Written counter offers should include a specific time period for acceptance. Withdrawal of a written offer or counter offer should be made in writing.</i></p>
<ul style="list-style-type: none"> • Terms of offers and counter offers are confidential 	<p><i>The terms of offers and counter offers may not be disclosed by agent without the prior written consent of both the seller and buyer. Disclosing that a full price offer has been made is disclosing a term and is a violation.</i></p>
<ul style="list-style-type: none"> • The existence of an offer is not confidential 	<p><i>Disclosing that an offer has been made or that an offer may be received is not confidential information.</i></p>
<ul style="list-style-type: none"> • Full-price offer does not obligate the seller to accept the offer 	<p><i>Listing property for sale is an invitation from the seller for buyers to make offers. The seller is not obligated to sell the property even if a buyer makes a full price, cash offer.</i></p>
<ul style="list-style-type: none"> • No priority to offers 	<p><i>The first or highest offer made does not bind or otherwise limit the seller to act upon that offer before considering any other offers.</i></p>
<ul style="list-style-type: none"> • Agent communication 	<p><i>Agents should make reasonable efforts to keep cooperating brokers informed, consistent with client’s instructions.</i></p>
<ul style="list-style-type: none"> • Agents are not attorneys 	<p><i>Agents should advise clients to seek legal counsel from attorneys regarding any questions about the legal status of an offer or contract.</i></p>

The Seller Client – An informed seller will be ready to make the right decision when an offer or multiple offers are received.

<p>When taking the listing:</p>	<ul style="list-style-type: none"> • <i>Discuss seller’s motivation for selling.</i> • <i>Discuss impact of current market conditions, i.e., season, types of financing, length of time on market.</i> • <i>Review Guiding Principles (on page one).</i> • <i>Explain that multiple offers may be received and that the client decides whether to disclose the existence of other offers to other agents and/or buyers.</i> • <i>Confirm that decisions about how offers will be presented, negotiated and ultimately accepted or withdrawn will be made by the seller – not the agent.</i>
<p>When the offer is received:</p>	<ul style="list-style-type: none"> • <i>Discuss the terms of the offer(s) – if multiple offers, compare terms.</i> • <i>Inform seller of any other interest in the property.</i> <ul style="list-style-type: none"> ✓ <i>Potential of other offers</i> ✓ <i>Scheduled showings</i> ✓ <i>Recent showings that may require follow-up.</i> • <i>Seller may instruct agent to keep the existence of offers or interest confidential.</i>
<p>Seller’s options – one offer:</p>	<ul style="list-style-type: none"> • <i>Accept, reject, counter, delay during time for acceptance, seek out other offer or do nothing.</i> • <i>Explain pluses and minuses of each option – including the potential of a buyer withdrawing an offer during a delay.</i>
<p>Seller’s options – multiple offers:</p>	<ul style="list-style-type: none"> • <i>Accept one offer.</i> • <i>Reject all offers and encourage “best” offers.</i> • <i>Counter one offer (may withdraw counter, in writing, prior to acceptance) – do not inform other buyers.</i> • <i>Delay during time for acceptance.</i> • <i>Alert one or more buyers that they are in a multiple offer situation.</i> • <i>Reject all offers.</i> • <i>Do nothing.</i> • <i>Consider the pluses and minuses of each option – delaying or inviting all buyers to make their “best” offer may produce better offer(s) or may discourage buyers who may withdraw.</i>

The Buyer Client – An informed buyer will be ready to make the right decision when making an offer.

When entering into a buyer agent agreement:

- *Discuss buyer’s motivation for purchasing.*
- *Discuss current market conditions, i.e. season, types of financing, average length of time for properties on the market.*
- *Review Guiding Principles (on page one).*
- *Explain that multiple offers may be made on one property. In those situations, only one offer may result in a sale and one (or more) buyer(s) may be disappointed.*
- *Explain that buyer agent may have more than one client interested in the same property. In those situations, buyer agent will notify all clients who have expressed an interest in the property of any other interest and/or that an offer has been made.*
- *Explain that seller is not obligated to acknowledge, counter or reject an offer and may inform other buyers of existence of an offer or may do nothing.*
- *Confirm that decisions about how offers will be negotiated and presented or withdrawn will be made by the buyer – not the agent.*

When the offer is made – discuss with buyer the possibility of multiple offers:

- *Initial offer may be the only opportunity to buy.*
- *Inform buyer of any other interest in property buyer agent is aware of, even if from other clients of buyer agent who have expressed an interest in the property. Remind buyer client that buyer agent will notify those other clients that an offer has been made (terms and conditions remain confidential).*
- *There is no requirement that the buyer be informed by the seller or listing agent of the existence of other offers.*
- *Seller has the right to negotiate with only one buyer at a time and not reveal this to other buyers.*
- *The agent may not disclose the terms of buyer’s offer but the existence of the offer may be communicated to other buyers.*
- *Seller may accept an offer on terms other than the price.*
- *All buyers may be notified to present their “best” offer – buyer may choose to:*
 - ✓ *make different offer*
 - ✓ *leave original offer*
 - ✓ *withdraw offer in writing if period for acceptance is current*
 - ✓ *do nothing.*

Offers and Counter Offers – FAQ's (Customer Status)

A customer is a buyer or seller not represented by a real estate licensee in a transaction.

1. What should I expect when I make or receive an offer?

- Offers, counter offers or withdrawal of an offer should be in writing;
- Terms of offers and counter offers are confidential;
- The existence of an offer is not confidential;
- A full-price offer does not obligate seller to accept the offer;
- There is no priority to offers.

2. I'm ready to make an offer. Who can prepare the offer for me?

The listing agent (the seller's agent) or another licensee can perform ministerial acts* for a buyer such as filling in the blanks on the company's purchase and sale agreement

3. Can I ask the listing agent (seller's agent) to tell me if other offers have been submitted to the seller?

You can ask, but the listing agent is not required to answer your question. The listing agent has fiduciary duties to the seller client; the seller client may authorize the agent to inform you of the existence of other offers.

4. Can I ask a licensee for advice about offers I make or receive?

You can ask, but licensee may not provide advice to or counsel a customer.

*****"Ministerial acts" means those acts that a real estate brokerage agency performs for a person who is not a client and that are informative or clerical in nature and do not rise to the level of active representation on behalf of the person.***