

DEPARTMENT OF PROFESSIONAL & FINANCIAL REGULATION
OFFICE OF LICENSING & REGISTRATION
MAINE REAL ESTATE COMMISSION
REAL ESTATE TRANSACTIONS
OFFERS/COUNTER OFFERS – AGENT-CLIENT GUIDELINES
March 2003

Guiding Principles

<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 competing 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 seller decides whether the existence of an offer or competing offer is confidential. 	<p><i>Disclosing that an offer has been made or that an offer may be received is not confidential information unless the seller asks the agent to keep such information confidential.</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 competing 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.</i> • <i>Explain that competing 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 competing 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>
<p>Seller’s options – one offer:</p>	<ul style="list-style-type: none"> • <i>Accept, reject, counter, delay during time for acceptance to seek out other offers.</i> • <i>Explain pluses and minuses of each option – including the potential of a buyer withdrawing an offer during a delay.</i> • <i>Do nothing.</i>
<p>Seller’s options—competing offers:</p>	<ul style="list-style-type: none"> • <i>Accept one offer, and inform no one of the other offers.</i> • <i>Reject all offers and encourage higher offers.</i> • <i>Counter one offer (may withdraw counter, in writing, prior to acceptance) – do not inform other buyers.</i> • <i>Delay acceptance – waiting for another offer.</i> • <i>Alert one or more buyers that they are in a competing offer situation.</i> • <i>Alert all buyers that they are in a competing offer situation.</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> • <i>Do nothing.</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 verbally or in writing:

- *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.*
- *Explain that competing offers may be made – realize that in a competing offer situation only one offer will result in a sale and one or (or more) buyers may be disappointed.*
- *Explain that seller is not obligated to acknowledge, counter or reject an offer and may inform other buyers of existence of an offer to obtain better terms or price, 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 competing offers:

- *Initial offer may be the only opportunity to buy.*
- *There is no requirement that the buyer be informed by the seller or listing agent of the existence of other offers before another offer is accepted.*
- *Seller has the right to negotiate with only one buyer at a time and not reveal this to other buyers. This negotiation may continue until seller accepts an offer.*
- *The terms of buyer’s offer are confidential but the existence of the offer may be communicated to other buyers to obtain better terms or price.*
- *Seller may accept an offer on terms other than the price.*
- *All buyers may be notified to present their highest and best offer – buyer may choose to:*
 - ✓ *make better offer*
 - ✓ *leave original offer*
 - ✓ *withdraw offer in writing if period for acceptance is current*
 - ✓ *do nothing.*