

The Scariest Thing in Real Estate By Richard Stanley

What's the scariest thing in real estate? If you're a buyer, "multiple offers" top the list. Multiple offers arise when two or more buyers compete simultaneously for the same property. Buyers dread this situation, because there can be more intrigue than in a Byzantine court.

There are no industry-wide standards, rules or laws that govern what should happen when a lucky seller has more than one suitor for his or her house. About the only thing a seller shouldn't do is to sell the house to more than one buyer at a time. Multiple offers become even more complicated when a brokerage represents both the buyer and the seller and creates a "dual agency". Sometimes, this dual agency can mean that both buyer and seller "sides" of a transaction are represented by the same agent. Obvious potential conflict of interest questions arise, and in some states, not including California, dual agency is illegal. In California, only the professional ethics of the brokerage and the agent determine if conflicts of interest enter a negotiation.

Generally, the larger the brokerage company, the more rules that company will have regarding the handling of multiple offers. Large companies usually require that a manager referee all multiple offers. Small companies and "100% offices" (brokerages where agents typically keep 100% of their commission and pay only desk and other fees) may have few, if any, multiple offer rules. *Regarding multiple offers, the fewer the rules, and the less strictly they are applied, the more likely buyers are to perceive unfairness in the negotiation—and the more likely sellers are to receive lower sale prices.*

Let's look at a few examples of how multiple offers are handled:

Example 1: *There are multiple offers, all from brokerages different than the listing agent's.* In theory, there is no conflict of interest in the handling of these offers. The listing agent may assist the seller in such a negotiation. The seller may: (1) select one offer and make a deal, or (2), the seller may issue counter offers to some, or all, of the buyers. The price and terms of any one counter offer may, or may not, be the same as, or equivalent to, the other counter offers. The seller may instruct his or her agent to disclose any details the seller chooses to the other buyers. In this scenario, the seller must mark the counter offer form as a "Multiple Counter Offer" that requires that the seller re-sign only one to effect a binding deal. In this way, the seller avoids selling the property twice. Or (3), the seller may reject all the offers.

Example 2: *There are multiple offers, at least one is from the listing agent's brokerage, but none is written by the listing agent. Sellers should be watchful that the listing agent does not attempt to steer the seller toward an in-house agent's offer. In-house incentives are not in the seller's interest. Sellers should judge each offer on its own merits.*

Example 3: *There are multiple offers, one is written by the listing agent. In this example, the listing agent has an obvious financial interest in steering the seller toward accepting the offer from the buyer represented by the listing agent. Brokerages that guard sellers' interests, forbid the listing agent from negotiating such offers with the seller. Reputable brokerages insist that a manager represent the seller temporarily during such a negotiation. A variant of this scenario is when the listing agent has detailed knowledge of offers "on the table" and is approached by a buyer to write another offer. It is unscrupulous for an agent to write an offer under these circumstances, as the agent could share confidential information about earlier offers to the advantage of both the agent's buyer—and the agent's own financial interest. In this instance, the agent should refer this buyer to another agent, and a manager should conduct negotiations. Sometimes, a "team" of agents represents a property. In multiple offers, it is a conflict of interest for one team member to represent the seller and for another team member to represent a buyer. It is also unscrupulous for an agent ever to represent more than one buyer at a time on a property.*

Seller tip: *At the listing appointment, ask how multiple offers are handled by the brokerage and the agent—and get such procedures in writing. Do not list your property with an agent and brokerage that will not guard your interests as outlined above. Good broker ethics are always in the clients' best interests.*

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