

MATTERS RELATED TO PRESENTATION OF OFFERS

Upon release of this directive, registrants will be expected to strictly follow the provisions as noted.

1. NO OFFERS/NO SHOWINGS UNTIL

Many registrants have taken to the practice of marketing listed properties using the “no offers until/no showings until” protocol. If this technique is used, listing agents are strongly advised to have their sellers complete the recommended form of irrevocable direction. If a showing occurs or an offer is accepted (or countered) prior to the stated deadline, the listing agent will be subject to disciplinary action.

2. ADVICE TO BUYERS ABOUT CONDITION PRECEDENTS

It is critical that buyer agents properly advise buyers with respect to both the realities of the seller’s market AND the importance of due diligence in their purchase. Buyers need to be well informed about possible inspection options and/or condition precedents. Any decision made to “waive” such inspections or conditions must be done with knowledge of the potential consequences of same.

The MREA is considering a standard form of “disclosure of condition options” which will be signed by buyers to acknowledge their potential choices. Members are strongly advised to utilize this form when it is released to the industry.

3. CONFIDENTIALITY OF THE OFFER TO PURCHASE

Members of the public can expect that when they deal with a real estate sales registrant in Manitoba, the contents of any offer to purchase that they are a party to will be treated with the utmost confidence.

The offer to purchase and listing contract do provide that in certain circumstances (e.g. marketing and historical records) information related to the contract will be disclosed for limited purposes. Outside of these exceptions, the contract will be treated as a confidential document.

4. PROTOCOL FOR PRESENTATION OF OFFERS

Note that references in this directive to communications with a “buyer” are intended for situations where the buyer is either unrepresented, or represented by the listing agent in a limited joint information scenario. **There is no change to the general protocol that an agent should not communicate with another agent’s client.**

a) it is recommended that buyer/selling agents place offers in a sealed envelope for presentation to the listing agent. The envelope should indicate the following:

- 1) name of the selling agent,
- 2) the time and date that it is being dropped off;
- 3) name of the listing agent;
- 4) property address or description;
- 5) an indication of the time and date of the deadline for acceptance.

Any exceptions (e.g. faxed offers) must comply with the provisions of the “Electronic Forms Practice Directive” (Issued August 19, 2003 – [themfsa.ca/regulated-industries/real-estate/directives-elec-forms/.](http://themfsa.ca/regulated-industries/real-estate/directives-elec-forms/))

b) a buyer and their agent are entitled to expect that if their offer has been submitted in a sealed envelope, that it will not be opened until the listing agent (or representative of the listing brokerage) is in the physical presence of the seller. If the listing agent and/or seller wish to have the envelopes opened in some other manner, it is their discretion to do so, but they must advise the buyer/selling agent of that intention.

c) competing buyers **must** be advised that they are in competition without disclosure of any of the terms of those offers, directly **or by implication** (examples of disclosure by implication are described in a separate heading below). Upon receipt of the second offer, the listing agent is required to contact the first buyer (or their agent) and advise them that they are in competition and do so in a timely manner, giving the first buyer an opportunity to “amend” their offer should they choose to do so.

d) a listing agent **may** tell the buyer or their agent the **number** of offers they are in competition with, but if they do so, they are not obliged to continually update them every time another offer comes in.

e) a buyer or their agent may ask the listing agent how many offers there are and a listing agent will be **obligated** to provide an answer reflective of that point in time, but will not be obligated to continually update unless they have made a specific undertaking to do so. Precision in communication on the part of the listing agent is critical. For example, if there have only been 2 offers written, but 3 other agents have indicated that an offer “might” be written, the communication from the listing agent must precisely reflect that only 2 offers have been in fact been written, with no embellishment or interpretation respecting the potential other three. However, the listing agent is allowed to advise of the other “potential” offers, at their discretion.

f) if the circumstance arises where competing offers are withdrawn so that the sole remaining offer is no longer in competition, the listing agent must advise the buyer or their agent of that fact.

g) if there are competing offers and you, as listing agent, are submitting your own buyer’s offer (or anyone in your firm is doing so) you must advise the competing buyer or their agent of that fact.

h) listing agents **may** disclose the identity of competing buyer/selling agents that have submitted offers.

i) listing agents **must** disclose the identity of competing buyer/selling agents if asked by a buyer or buyer agent. Note that the listing agent must not disclose the identity of the competing buyers.

j) the seller will be requested to “sign-off” on rejected offers, noting that they have “declined” the offer, with a date and time. The seller’s signature will provide assurance to potential buyers that their offer was indeed presented to, and considered by, the seller. If the seller refuses to affix their signature in this manner, the listing agent **must** provide their own signature, noting the time and date that the offer was rejected.

5. COMMUNICATION WITH POTENTIAL BUYERS OR THEIR AGENTS

In a competing offer situation, the listing agent must be very precise in their communication to the competing buyers or their agents. Listing agents must not disclose any details of the competing offers by implication, and likewise, must take heed of contract law, and traditional industry practice related to the options of acceptance, rejection or counter. Some very limited degree of “pre-qualification” and “clarification” will be allowable as outlined herein. Any other variation will make the listing agent subject to discipline. Except as noted below, as a general rule, a registrant (acting on a seller’s instruction) may only accept, reject or counter an offer, and do so in writing.

By way of an exception to the general rule, a listing agent may contact the buyer or their agent and communicate in the following manner:

1) If there is something unclear (or there appears to be an error in drafting) on the buyer's offer, the listing agent can seek clarification;

2) The listing agent can enquire whether the buyer is flexible on a particular term (e.g. possession date, or the amount of the deposit).

In doing so, the listing agent must be precise in noting that they are not communicating a counter-offer, but are merely going through a pre-qualification or clarification exercise. Likewise, there is no guarantee that a seller will issue a counter-offer, or select the offer for further consideration, once the presentation process begins.

By way of example of what **will** be allowable communication as an exception to the general rule; if a seller has received 10 active offers, a seller "may" choose to enquire if some of the potential buyers wish to change their offers. They may outright reject 7 of the offers and choose to "work" 3. The nature of this communication by the listing agent is strictly limited to the following:

1. to the rejected offers: they can only be advised that their offer has been respectfully declined by the seller and that the seller is currently considering three other offers which more closely meet their expectations.
2. To the three "pending" offers: they can only be advised that they are one of three offers which are being considered by the seller. Do they wish to make any amendment to their offer prior to a final consideration by the seller?

In any event, the listing agent must communicate with **all** of the buyers or their agents to advise whether the offer has been rejected or is "pending" as outlined above. In the example above, all ten potential buyers or their agents must be contacted as soon as possible.

These examples of communication must be strictly complied with. If any additional detail is given beyond this limited communication, the listing agent will be subject to discipline.

If a seller wishes to be more specific about what terms they are prepared to accept, that can only be done by way of a properly executed, written, counter-offer.

6. DISCLOSURE BY "IMPLICATION"

Registrants should be very careful to limit their communications to those outlined in the previous guidelines. The terms of competing offers must not be disclosed. The "degree" of disclosure will be interpreted very strictly.

Examples of unacceptable communication:

- "your offer is within \$xxx of the best offer"
- "your offer is identical to another offer"
- "if you increase your offer by \$xxx the house will be yours"
- there are xxx (number) of offers within a range of \$xxxx"
- "your offer is second in price"

7. ATTENDANCE AT PRESENTATION

Presentation of all offers must be handled by the listing agent. At the discretion of the seller and listing agent, the individual submitting the offer may be allowed to accompany the listing agent on the presentation of the offer.

8. LIST OF COMPETING OFFERS

In the interests of transparency, a listing agent must keep a list of offers presented to the seller. The list will be maintained on a draft form provided by the MREA. The form will note the following information:

1. the number of offers presented to the seller;
2. the identity of the buyer agent/selling agent;
3. a notation of whether the offer was received in a sealed envelope;
4. a notation of whether sealed envelopes were opened in the presence of the seller;
5. the form will be signed by the seller and/or listing agent.

This list will be maintained on the listing brokerage's file and will be provided to any buyer, buyer agent or selling agent who wrote one of the competing offers, and requests a copy. As with all documentation, this shall also be provided to the MREA upon request.

9. HANDLING OF REJECTED OFFERS

The industry is reminded that whether an offer is accepted **or rejected**, the brokerage must keep a copy of all offers for a minimum of FIVE years. This is also true for both the listing broker and the selling broker.

Deposit cheques on void transactions should be delivered or mailed back to the buyer or their agent. They should NOT be put in a lock box, unless there has been a prior agreement to do so with the receiving agent.