

Number and content of competing offers

This bulletin explains the requirement for the seller's agent to communicate the number of offers to each person making one of the offers, and, where the seller has provided written direction to share all or parts of the offers, the sharing of the content with each person making one of the offers.

Summary

With respect to competing offers, there are three key points to remember:

1. The number of competing offers must be communicated to every person who is making one of the offers.
2. If the seller directs in writing, the content of competing offers, or select parts of the content, must be shared with every person who is making one of the offers.
3. Personal information or any information that would identify the person making an offer must not be shared.

The requirement is to communicate the number of offers and, if the seller directs, share the content of the offers with each person making one of the offers. Nothing in the legislation prevents a seller from directing the agent to communicate the number of offers or share the content of offers with persons other than those making one of the offers or prevents the agent from following the seller's lawful direction.

The legislation does not address an "open offer process" or put rules in place regarding how an open offer process would be conducted. It simply permits an agent to follow the seller's written direction to share all or select parts of the content of offers.

Competing offers

The requirements related to competing offers apply to written offers received by the seller's brokerage. A verbal offer is not a competing offer under the legislation. An offer that has not yet been submitted is not a competing offer.

Communicate the number of competing offers

Agents are required to communicate the number of competing offers to every person who is making one of the offers.

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Sharing the contents of competing offers

Without the seller's written direction, the seller's agent is prohibited from sharing the content of offers.

A seller may direct that all or parts of the content of offers be shared. If the seller's agent obtains written direction, the agent must share the information with every person who is making one of the offers.

Agents must follow the direction of their seller clients, including any change in the seller's direction. The written direction must clearly identify what parts of the content the seller is directing the agent to share.

The sharing of content may be specific to select parts of the offers and may or may not include the price offered. Sharing of content might be used to negotiate closing dates, the inclusion or removal of specific clauses, or other content unrelated to offer amounts. The seller, based on the advice of their agent, will decide what parts, if any, they will direct their agent to share.

Personal and identifying information

Agents are prohibited from sharing the personal information of the person making the offer or any information that would identify the person making the offer. The seller cannot direct an agent to share this type of information. Such direction would be unlawful, and the agent could not follow the seller's direction.

Representing a seller client

The seller's decision to share or not share the content of competing offers will be guided by the advice the seller's agent provides relating to the particular property, market conditions, and other factors.

Ultimately, the seller decides how to proceed. Remember, the seller retains the right to change their instructions and update the direction at any time.

For example, a seller client might instruct their agent to share the content of offers and, a few days later, change their mind and instruct their agent not to share the information. It's also possible a seller might instruct their agent not to share the content of the offers and change their mind once the offers have been received. It may be that the decision to share is made based on the content of the offers received.

Agents representing a seller client should advise the seller about the benefits and impact of a direction to share the content and any change in direction, as well as how the seller might respond if a buyer wants to submit a confidential offer.

Representing a buyer client

Remember, there are no rules regarding how or when a seller's decision to share the content of offers is to be communicated to potential buyers who might submit an offer. There is also no requirement for advance notice.

The seller is under no obligation to decide to share any part of the offers nor are they prevented from deciding to share content after reviewing the received offers.

For these reasons, it is critically important that an agent representing a buyer client clearly communicate to their client that a seller is free to decide to share or not share the content of offers at any point in the process, whether before offers are received or after the offers are received, and that the seller can change their mind about sharing at any point in the offer process.

Buyer clients should not expect that the content will be shared or, if shared, that it will include the purchase price contained in other offers or other specific information. The seller decides what parts of the offers they will share.

If a buyer client does not want to participate in a process that shares offer information, the buyer's representative should discuss their concerns, including the possibility of attempting to submit a confidential offer.