



Manage Parties' Expectations in Multiple Offer Situations

by Will Martin & Bill Gifford

A broker-in-charge recently called with concerns about whether his firm had handled a multiple offer situation properly. An offer had come in on one of the firm's listings from a buyer represented by an agent with another firm (we'll call the buyer agent "Frank"). The property was priced to sell. The buyer's initial offer was for full price but was contingent on the sale and closing of the buyer's existing home. Following oral negotiations, Frank submitted a second offer from his client for full price but without the contingency. The listing agent (who we'll refer to as "Jane") contacted Frank and told him that his buyer's second offer was acceptable and that she had set up an appointment for the sellers to come in and sign it the next afternoon.

Shortly after her conversation with Frank, a buyer client of Jane's (who we'll call "John") called to ask about the property. Jane had been working with John, but hadn't bothered contacting him about this particular property because it was well outside the parameters he and Jane had established regarding the type of property he was looking for. John had seen Jane's sign in the yard when he had driven by the property and had instantly taken a liking to it. Jane told John the sellers had verbally agreed to sell the property to another buyer. John asked whether the sellers could consider another offer if they hadn't signed a contract and Jane told him that they could if they wanted to. She contacted the sellers and they indicated they would consider another offer. Jane showed John the property later that day. She did not disclose any terms of the first buyer's offer to John. John loved the property and, without advice

from Jane, asked Jane to prepare an offer on the property for five thousand dollars above the list price.

Jane called Frank to tell him another buyer had just made an offer on the property, and asked Frank whether his client would like to make another offer. After speaking with his client, Frank called Jane back to say that his client was not interested in making another offer. Frank did not ask whether or by whom the other buyer was represented and Jane did not volunteer that information.

Jane presented both offers to the sellers when they came in the next afternoon at the appointed time. The sellers decided to accept the offer from Jane's client, John. Jane promptly communicated the sellers' acceptance of John's offer to Frank. In response to Frank's question, Jane confirmed that she represented John. Frank became very angry and hung up on Jane. He called her back later to say that his buyer was extremely upset and was going to see a lawyer. Frank said that Jane should have told John the property had already been sold, and that she should have told Frank up front that she represented John.

The broker-in-charge asked us what Jane should have told Bill under these circumstances. Should she have said that the property was not yet under contract? Or should she have said that it was already sold, as Frank had suggested?

The answer is that Jane did the correct thing when she said that there was merely a verbal agreement to sell the property. A statement that the property had been sold would have

been a false statement that may have violated duties Jane owed to her seller clients and to Bill. Furthermore, because Frank had not asked, Jane had not been under any ethical duty to disclose that the other offer had been submitted by her client, according to Standard of Practice 1-15 of the Code of Ethics.

While Jane handled the situation correctly, there are a few additional things that agents facing a multiple offer situation should consider doing to best manage the situation. Agents should consider going over the Real Estate Commission's Q & A on Offer and Acceptance (available on the Commission's website at www.ncrec.gov) with their clients before offers are submitted or considered to educate them about the contract-formation process. When Jane called Frank to tell him that the sellers would be coming to her office the next day to sign the offer, it would have been helpful for her to remind him that the oral agreement would not become a binding contract until it had been signed by her clients and their acceptance communicated to Frank. Until those things had occurred, Frank's client could have revoked the offer or Jane's clients could have accepted an offer from someone else or even decided not to sell. Also, unless the sellers objected, it would have been helpful for Jane to have suggested that Frank present his client's offer to the sellers directly, with Jane in attendance, as permitted under MLS rules, and for a different agent in Jane's firm to have presented the offer from Jane's client to the sellers. While such measures may well not eliminate suspicions of unfair treatment by a buyer who loses out to an "in-house" offer, they should help establish that the firm handled the situation fairly. ■