

Managing a delayed offer presentation process

This bulletin explains the agent's obligations when representing a seller who is considering whether to use a delayed offer presentation strategy. This bulletin also sets out a step-by-step process for obtaining the seller's written direction.

Summary

A delayed offer presentation process typically means that the seller has decided that they do not want to see or consider offers until a specified date in the future.

Before confirming a seller client's written instructions to delay the presentation of offers, the agent is expected to have a candid conversation about:

- the benefits and risks of delaying the offer presentation to a specific date and time, sufficient to allow the seller to make an informed decision; and,
- the options for handling any pre-emptive offers (commonly referred to as bully offers), and the benefits and risks of each option, again to allow the seller to make an informed decision. **Note:** For more information about pre-emptive offers, refer to RECO's Bulletin No. 4.3 "Managing pre-emptive offers."

A seller may change their instructions by issuing a new written direction, and they should do so only after being advised of the benefits and risks of changing their instructions.

Legal obligation to convey offers

The law is clear that a seller's agent must convey an offer to the seller as soon as possible after receiving it unless the seller has given clear and detailed written direction to do otherwise.

An agent whose seller client chooses to defer their consideration of offers to a specific date and time may do so only if the agent has the seller's specific instructions documented in a written direction.

Written direction key steps

An agent must follow a client's lawful instructions, so it is crucial that a seller is able to make informed decisions that are documented in a clear, specific written direction.

The following are the key steps to getting informed instructions in the form of a written direction from a seller when considering a delayed offer presentation process.

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STEP 1: EXPLAIN THE BENEFITS AND RISKS OF DELAYING OFFERS

A seller's agent is expected to advise and inform a seller, ideally in writing, of the benefits and risks of delaying the presentation of offers or applying other offer conditions, and options for managing offers that do not comply with the seller's written and express conditions.

When discussing marketing strategies with a seller, the seller's agent must clearly and thoroughly explain the benefits and risks of each strategy, and that no strategy is guaranteed to produce competing offers or the highest sale price.

When explaining the option of delaying the presentation of offers, the agent should consider highlighting the following:

Possible benefits

- More exposure: The strategy might give buyers time to evaluate the property. This could generate interest from a greater number of buyers and a buildup of anticipation for the property as the offer presentation date nears.
- Competing offers: More interested buyers might result in multiple offers.
- Better price and terms: More competition might result in a higher price and desired terms for the seller.

Potential risks

- Buyers don't want to wait: The seller risks losing out on motivated buyers who don't want to wait for the offer presentation date.
- Buyers averse to delayed or competing offers: Some buyers are averse to the delayed process. Buyers may shy away from situations that are perceived by them as unfair or tilted in a seller's favour.
- Strategy doesn't generate offers: The offer date could pass without any offers, which might make the property less desirable, appear overpriced and remain on the market longer than expected.

STEP 2: EXPLAIN THAT A DELAYED OFFER PRESENTATION MIGHT LEAD TO PRE-EMPTIVE OFFERS

When explaining how a delayed offer presentation strategy works, the agent should advise the seller that in an active market, a delayed-offer approach may prompt some buyers to submit pre-emptive offers. Pre-emptive offers often expire before the delayed offer presentation date in an effort to avoid, or pre-empt, the established offer process.

It is important for the seller's agent to confirm the seller understands the options for handling pre-emptive offers so they can make an informed decision about the direction they will provide.

STEP 3: DOCUMENT THE SELLER'S INSTRUCTIONS WITH CLEARLY WRITTEN DIRECTION

Once the seller understands their options and is ready to provide informed instructions, the seller's agent will summarize the instructions in a detailed written direction for the seller to sign.

The written direction must clearly outline all the instructions the seller has provided with respect to various pre-emptive offer scenarios and how they are to be handled.

Caution: Simply having the seller sign brief general instructions that they do not wish to view offers until a specified date would not fulfil the agent's obligations. Having specific written instructions from the seller allows the agent and seller to proceed with confidence and reduces the risk of misunderstandings, which

could lead to complaints and disciplinary action. Since a delayed offer strategy may lead to pre-emptive offers, the statement placed in listing notes “seller reserves the right to view pre-emptive offers without notice” is NOT sufficient to ensure a fair offer process and could be considered misleading. This does not satisfy the obligation to notify all interested parties.

STEP 4: COMMUNICATE THE DELAYED OFFER PRESENTATION DATE AND OTHER NECESSARY INFORMATION TO BUYERS

The effectiveness of a delayed offer presentation strategy depends on communicating the delayed offer presentation date and time to buyer’s agents and self-represented buyers.

This is most commonly done by advertising on a real estate board’s multiple listing service or other online selling platforms. The information should be sufficiently detailed to communicate the offer presentation date and time, and any other important details to support the seller’s strategy.

Handling a change in the seller’s direction

The seller can change their written direction at any time, but the new instructions must be documented in a new written direction. For example, if a seller who previously directed that they did not want to see pre-emptive offers decides they now want to consider pre-emptive offers, a new written direction must be obtained by the seller’s agent, to override the previous direction.

If the seller changes their written direction, the seller’s agent must immediately do the following:

1. Update the listing notes and other online selling platforms for the property to accurately reflect the current written direction for offer presentations.
2. Notify in writing anyone who has expressed an interest in the property of the change to the offer presentation date and time.

If using some form of automated notification system, the seller’s agent should confirm the contact information and delivery of the notification to the necessary parties. The seller’s agent is responsible for making sure all interested parties are notified of the change. In addition to traditional forms of written notice, text message and email are also acceptable.

An expression of interest (interested parties) includes parties who may have:

- booked upcoming appointments;
- viewed the property (showing or open house);
- informed the brokerage or the seller’s agent that they will be submitting an offer on the property; or
- submitted an offer.

Why is this notification necessary? The aim of delaying offers is often to generate interest in the property. This is why it’s in the client’s best interest to inform those who may have shown interest in the property of any change to the offer presentation date or process so they may deliver their offers on time.

It is also essential that the seller’s agent promotes an offer process that ensures all interested parties have an opportunity to submit offers.

Complaints about delayed offer process

When RECO receives complaints about an alleged unfair delayed offer process, we look for clear and up-to-date written directions and request copies of all offers (or summary documents) received for the property to determine if the offer process was conducted ethically. We also verify if the most up-to-date directions were included in all listing notes — print and online.

Related Information

Bulletin No. 4.3 Managing a pre-emptive offer