



## ***Bill 55: Changes for handling of offers***

**June 29, 2015**

Effective **July 1, 2015**, brokerages across Ontario acting on behalf of sellers must meet new requirements for handling offers.

The changes stem from Bill 55, the *Stronger Protection for Ontario Consumers Act, 2013*. To review the relevant changes, see [section 35.1](#) of the *Real Estate and Business Brokers Act, 2002* (REBBA 2002) and [section 19.1](#) of Ontario Regulation 579/05 made under REBBA 2002.

The changes are intended to increase the transparency of the offer process, but it's important to remember that real estate professionals are required to conduct a fair and transparent offer process.

Brokerages are responsible for developing the processes and policies necessary to be compliant, and for training its employees on those processes and policies.

### **When you are representing the seller**

You cannot indicate that you have received an offer unless you have received a written offer. Please keep in mind that written offers must be signed to be valid.

The brokerage must keep a copy of all written offers that it receives, or a complete summary document for each offer, for at least one year from the day it is received.

The offers may be stored electronically or as a hard copy. For the purposes of the new amendments, each counter offer made by a buyer and received by the seller's representative is considered an offer, so the brokerage must retain records for the original offer and every change made to it during negotiations. Though offers from a seller to a buyer are not covered by this amendment, they should continue to be retained by the seller's representative.

For unsuccessful offers, the brokerage may retain a summary document instead of retaining the offer in its entirety. The Ontario Real Estate Association (OREA) has a form for this purpose, but a brokerage may create its own form, provided it contains the required information.

It's important to note that the summary document may be used only when the buyer is making an offer through a brokerage (brokerage acting for the buyer). For offers coming from a buyer directly, the brokerage must retain the offer in its entirety.

The summary document must include:

- The name and signature of the buyer.
- The name and contact information of the seller.
- The name of the buyer's brokerage and their representative.
- The name of the seller's brokerage and their representative.
- The address, legal description or other identifier of the property.
- The date and time the offer was made.
- The date and time the offer was received by the brokerage, and how the offer was received, such as in person or by fax.
- The date of presentation, if the brokerage presented the offer to the seller.
- The date and time, if any, until which the offer was irrevocable.

## **When you are representing the buyer**

All offers must be made in writing. Please keep in mind that written offers must be signed to be valid.

## **Process to confirm the number of offers that a property received**

For the purposes of the new amendments, if you are a person who has made a written offer or if you are a registrant acting on behalf of someone who has made an offer, you can request that RECO determine how many written offers the listing brokerage received for the seller on that property. You may use the RECO complaint form for your request.

Upon receipt of a completed complaint form, RECO may contact the listing brokerage to confirm the number of offers that a property received. RECO may also request documentation for each offer (either the entire offer or the summary document). The brokerage is required to provide this information to RECO upon request.

RECO will only disclose the number of written offers received to the person who requested it. RECO will not release any detail regarding the offers, or identify the people who made the offers.



## Q&As

**Q1:** I received three unsuccessful offers, along with one successful offer. Only two of the unsuccessful offers included summary documents. What should I do?

**A:** For the unsuccessful offer that did not include a summary document, you have to retain the offer. For the two unsuccessful offers that included the summary, you could choose to retain the offer or the summary document. The successful offer must always be retained in its entirety (Agreement of Purchase and Sale) for at least six years.

**Q2:** What about counter offers that amend the original offer?

**A:** Every written offer to a seller, including changes in the course of negotiating, is considered a separate offer. The brokerage must retain a record for every offer, including those made in any negotiations. So, if a buyer puts in an offer, and later makes two more offers in negotiations, the seller's brokerage will need to retain a record for all three of the offers. You could retain summary documents, or the offers in their entirety.

**Q3:** Can one summary document be used to cover all counter offers from one buyer?

**A:** The summary document could be designed to accommodate several offers.

**Q4:** What about offers that come directly from a buyer, and not through a brokerage?

**A:** The summary document may be used only when the buyer is making an offer through a brokerage (brokerage acting for the buyer). For offers coming from a buyer directly, you must retain the offer in its entirety.

**Q5:** If RECO asks for documentation for the offers on a property, how much time will I have to provide it?

**A:** Generally RECO will expect to receive the documentation upon request, but no later than a week, unless otherwise directed.

**Q6:** How long will it take for RECO to determine the number of written offers that a brokerage received?

**A:** RECO will aim to determine the number of written offers as quickly as possible. Each situation is unique, so it is not possible to offer a typical timeline. The volume of requests we receive will also be a factor.

**Q7:** If a buyer or seller is delivering or receiving offers directly, or through a lawyer, do I still have to retain records for the offers?

**A:** Your brokerage has to retain the offers it receives on the seller's behalf. If the seller receives offers directly or through their lawyer, you do not have to retain the offers.

**Q8:** How long do I have to retain the record of each offer?

**A:** For unsuccessful offers, you must retain either the offer in its entirety, or a suitable summary document, for at least one year from the day the offer is signed by the buyer. You must retain the successful offer in its entirety for six years.

**Q9:** Can I retain records for offers beyond one year?

**A:** You may retain records beyond the minimum one year. It is imperative that you ensure the confidentiality of those documents for as long as you retain them.

**Q10:** What happens to a failed offer presentation (no transaction occurs)?

**A:** All offers that a listing brokerage receives must be retained, whether the property in question was sold or not. If no transaction occurred, the brokerage may retain the summary document instead of the actual offer, if it was submitted through a brokerage (brokerage acting for the buyer).

**Q11:** What happens to collected paperwork/information when the transaction completes?

**A:** The successful offer must be retained in its entirety for the required six years; a summary document cannot be used. For unsuccessful offers, the summary or complete offer must still be retained for the required year.

**Q12:** When can I retain a summary document instead of a full offer?

**A:** The seller's brokerage may retain a summary document if:

- The seller's brokerage receives the offer on behalf of the seller;
- The offer did not result in a transaction; and
- The summary contains all the required information.

NOTE: The summary document cannot be used when an offer is made directly by the buyer.

**Q13:** What information must be included in the summary document?

**A:** The summary document must include:

- The name and signature of the buyer.
- The name and contact information of the seller.
- The name of the buyer's brokerage and their representative.
- The name of the seller's brokerage and their representative.
- The address, legal description or other identifier of the property.
- The date and time the offer was made.
- The date and time the offer was received by the brokerage, and how the offer was received, such as in person or by fax.
- The date of presentation, if the brokerage presented the offer to the seller.
- The date and time, if any, until which the offer was irrevocable.

**Q14:** Will RECO return the written offers that it obtains from the brokerage?

**A:** When RECO requests that a brokerage provide offers, it will identify whether the brokerage should provide originals or copies, and upon request RECO will return any original documents after the process is complete.

**Q15:** Does this only apply to competing offer situations?

**A:** No, the regulations apply to *all* offers received by a seller's brokerage.

**Q16:** If I have a letter of intent from a buyer, can I indicate that I have received an offer?

**A:** If the letter is binding, written and signed on the part of the buyer, you would then indicate that you have received an offer. (See Question 24)

**Q17:** Does this apply to offers to lease?

**A:** No, the regulations only apply to offers to purchase real estate.

**Q18:** Can my brokerage start retaining records of offers any time, or do we have to wait for July 1, 2015?

**A:** You can begin retaining records at any time, but you must retain records as stipulated under section 35 of the Act, as of July 1, 2015. However, RECO will only be able to determine the number of offers on a property for transactions that occurred as of July 1, 2015.

**Q19:** If the summary document is missing information can I refuse to convey or present the offer?

**A:** If you have an offer, you must convey the offer. You may only use the summary document as proof of the offer if it is complete. If it is not complete, you must retain the complete offer.

**Q20:** Is the summary document part of the offer, or is it a separate document?

**A:** The summary document is a separate document from the offer. It's important to remember that the summary document is an optional document that the seller's brokerage may retain instead of the complete offer. In practice, the buyer's representative can choose whether to provide the document.

**Q21:** What if the cooperating brokerage refuses to leave a copy of the summary document or the offer?

**A:** Once an offer has been conveyed to the seller, that copy of the offer is the property of the seller. The brokerage acting for the seller is responsible for making sure either a copy of the offer or a compliant summary document is retained.

**Q22:** What if I am acting for the seller and I receive a phone call indicating the brokerage representing a buyer has a written offer, but no summary document or copy of an offer is provided and they want me to arrange for an offer presentation. Can I contact the seller?

**A:** Yes, you may contact the seller, but make it clear to the seller that there is no evidence that there is a written and signed offer. (See Question 24)

**Q23:** If the buyer wants to amend their offer, should I return the summary document to them to make changes?

**A:** Once the summary document has been received by the seller's brokerage along with the offer, it must not be returned. If the buyer amends their offer, their representative can prepare another summary document for that offer. The OREA summary document has provision for use with sign backs. The seller's representative must keep a copy of the summary document but could provide another copy to the buyer's representative, providing it does not contain any confidential information.

- Q24:** Can I indicate that I have received an offer if I have an email, text or fax from a buyer's representative stating that they have an offer?
- A:** Yes, a text, fax or email is sufficient, assuming the language is specific and contains the sender's full identification as required under the REBBA 2002. Remember to retain that written message for the brokerage transaction file and your records.
- Q25:** As the seller's representative, must I have evidence that there is a written and signed offer before I can consider there is a written and signed offer?
- A:** Yes, a seller's representative must assure themselves that a written and signed offer exists and is ready for them to convey to a seller. (See Question 24)
- Q26:** How can I inquire about the number of offers a property received?
- A:** We encourage you to first contact the seller's brokerage Broker of Record with a request to determine how many offers have been made. You may also submit a request via RECO's [online complaint form](#). When you fill out the form, specify that you represent someone who has made an offer and that you would like to know how many offers were made on a particular property.
- Q27:** If the seller's brokerage keeps copies of the offers, then how would the buyer's brokerage prove that an offer has been rejected?
- A:** We would expect, as a professional courtesy, that a seller's brokerage or their representative would keep any buyer's representative(s) apprised of the status of their offer. The buyer's brokerage could also request a status update from the seller's brokerage Broker of Record. If all this fails, you can file a complaint with RECO.
- Q28:** What will happen if RECO finds after its investigation that the number of offers differs from what competing buyers were told by the seller's brokerage or representative?
- A:** This legislation adds new tools for RECO to use to address complaints about offers. If serious misconduct is found, it could result in disciplinary action or charges of an offence under the *Provincial Offences Act*.
- Q29:** I am a seller's representative and a buyer's representative who previously sent me an email advising of a written and signed offer has now advised me by email that their buyer is withdrawing their offer after I have advised two other buyer representatives there were three offers. What do I do?
- A:** First, advise the other representatives of the change as soon as possible. Second, retain all documentation for that withdrawn offer for your records and your brokerage's records.