

CONCLUSIONS & RECOMMENDATIONS OF THE MULTIPLE OFFER TASK FORCE

The Multiple Offer Task Force met over a six-month period and discussed in depth the entire multiple offer process. Mr. Tom Wright - CEO of Real Estate Council of Ontario, Mr. Larry Bremner – Vice Chair of Real Estate Council of Ontario, Mr. Alan Johnson – Registrar of Real Estate and Business Brokers Act and TREB’s legal counsel Paul Stoyan were in attendance at the meetings.

The task force came to a consensus on the following principles:

- The REBBA Code of Ethics deals directly with offers and offer presentations.
- Competition issues always had to be considered.
- Privacy issues must be a concern.
- TREB’s MLS Rules and Policies must only deal with the orderly operation of the MLS System on a member to member basis.
- Respect for the brokerage office policies, procedures and operations of individual offices.
- Respect for the salesperson/client relationship and the lawful instructions of the client.

The **conclusions and recommendations** are as follows:

Faxed Offers

Summary of Discussion:

Although faxing of offers tends to fuel distrust, it was the consensus of the task force members that this is a legitimate and necessary business tool and that a ban on faxed offers would be undesirable and unenforceable in any event as an unlawful interference in trading practices. The mitigation of distrust and the issue of “proof of existence” of faxed offers, and indeed “proof of existence” of all offers was the main concern.

Conclusion:

The task force concluded that this topic was an education process for all members and that it should be covered in education courses and encouraged in “*Best Practices Guidelines*”.

Presently Form 109 entitled “Offer Presentation Acknowledgement” is an excellent form for use by salespeople when offers are faxed (see attached copy).

The task force also concluded that if salespeople felt that faxed offers were being abused that it had to be dealt with by RECO under the REBBA Code of Ethics.

Bully Offers

Summary of Discussion:

The Task Force had extensive discussions regarding the fairness of the negotiating process in light of the evolution of buyer agency in residential real estate practice. It was acknowledged that each side, the Seller and their Sales Representative (Brokerage) versus the Buyer and their Sales Representative (Brokerage), had the right to set the terms of their own offering position. The term “bully offer” was likely a phrase coined by the media to create an impression and generate controversy. The task force members took the phrase to mean an offer with an extremely short irrevocable time period. Discussion centered around two main issues. The first issue was that the current REBBA Code of Ethics rules deals properly with consumers and members concerns. The second issue was that the most skilled (and knowledgeable negotiators) tended to succeed while salespeople who did not understand the process believed it to be unfair.

The task force requested a report from legal counsel regarding this topic.

The legal opinion in summary concluded that:

- A listing is an offer to treat and the buyer or seller has the right to negotiate the terms of the listing as part of the negotiating process.
- The seller may change their minds at any time as they are the ultimate decision maker in the sale of the property.
- TREB has no legal authority to infringe on the formation of contracts by private third parties from either buyers or sellers.
- Competition Law exists to maintain and encourage competition in Canada. TREB's interference in this could be considered anti-competitive.
- RECO under the REBBA Code of Ethics have the power and should be the authority that deals with issues of improper presentation of offers.

Conclusion:

- That the term "pre-emptive offers" should be used other than "bully offers".
- That "*Best Practices Guidelines*" should deal with "pre-emptive offers" and that it should be included in the education process for members.
- That TREB does not have the authority to interfere with pre-emptive offers.
- That RECO in their REBBA Code of Ethics have the authority to deal with unethical practices of members in this area.

On-line Offer Registry

Summary of Discussion:

In discussing this suggestion, the Task Force acknowledged that not all properties are placed for sale through the MLS system. Also, not all registrants or individuals handling offers would have access to the Toronto MLS to check on the status of offers on a property. It was recognized that the realities of last minute offer submissions, changes and withdrawals, particularly in multiple offer situations would grossly impact the practicality, accuracy and reliability of such a system.

Conclusion:

- That TREB could not get involved or control a central registry system because of all the variables.
- That TREB recognizes that individual brokerages could implement their own registry systems as part of their office policies.

Registration of Offers With Brokerages

Summary of Discussion:

The procedures of registration of offers within brokerages with respect to the co-ordination of offers are very different. Managing this is the purview of the Brokerage because factors such as the size, model of operation, office hours, front desk operation, relationship and degree of independence of salespersons all vary in each brokerage. It was also noted that there are no RECO requirements with respect to record keeping or paper trail with respect to offers, only with respect to accepted agreements.

During the discussion the question arose: Does the REBBA Code of Ethics require that brokerages keep copies of all offers received and provided to salespeople whether or not they are accepted or rejected? The conclusion from the Registrar was "NO" that the Code does not require Brokerages to keep copies of all offers. The legal opinion is that there are complications regarding Privacy Issues and therefore copies should not be retained without written consent of the buyer.

Conclusion:

- Individual brokerages should be encouraged to have specific policies on the handling of multiple offers. Part of this policy should include the salespeople keeping the names of

cooperating companies and salespeople registering offers. The policy should not include buyers' names and addresses.

- The Task Force recognizes this type of information to the brokerage would be of great assistance in case of a complaint to RECO regarding multiple offers.
- The Task Force concluded this was also part of the education process. This should also be added into the "*Best Practices Guidelines*".

RECO Update Course

Summary of Discussion:

The question was asked if RECO could add a detailed section regarding "Multiple Offers" to the RECO Update course? Mr. Johnson addressed the Task Force and reported that the new course content had just been approved until 2010. There was discussion whether or not a multiple offer course could be mandatory. Mr. Johnson reminded the Task Force that the only mandatory course that members are required to take was the RECO Update courses and if that was changed it would be a tedious process. It was also suggested that the "Multiple Offer Presentation Course" be included at this year's Realtor Quest and TREB conduct Multiple Offer Courses.

Conclusion:

1. The Education Department confirmed that a multiple offer presentation is already scheduled for this year at Realtor Quest.
2. In consultation with the Education Department it has been established that the following courses are presently being offered to members dealing with multiple offers:
 1. Multiple Offers: The Seller, The Buyer and You
 2. Multi Offers: Risk Rewards
 3. Legal Concerns for Residential Properties
 4. Realistic Buyer Representation

These four (4) courses have been scheduled to be conducted fifteen (15) times in the rest of 2008. This number does not take into account the number of "direct deliveries" to Brokerages. The Education Department policy is if a course is full another course is rescheduled as quickly as instructors and classrooms are available. Therefore the number may increase.

As well the Outreach Program discusses multiple offers in two courses that are currently being offered. They are "Best Practices when dealing with Clients & Customers" and "A Comprehensive Review of MLS® Rules".

1. TREB recommended to RECO that in the future when preparing RECO update courses that part of the course should contain multiple offers as it is the only course that is mandatory for all salespeople to participate in to acquire the C.E. credits.

REBBA Code of Ethics

Summary of Discussion:

In discussion with the Registrar, Mr. Johnson was asked to clarify the word "substance" in Section 26 of the REBBA Code of Ethics.

Section 26. Competing Offers

1. If a Brokerage that has a Seller as a Client receives a competing written Offer, the Brokerage shall disclose, the number of competing written Offers to every person who is making one of the competing Offers, but shall not disclose the substance of the competing Offers. O. Reg. 580/05, s.26(1)

Mr. Johnson explained that the intent is that "substance" is limited to the "content of offers, i.e. price and conditions." He explained that, in his opinion, the names of Salespeople/Brokerages were not part of Section 26 for disclosure.

RECO was also asked if there were a significant number of complaints received regarding multiple offers. The following report reflects the number of complaints received in Ontario from April 1, 2007 to December 31, 2007:

- 1 - complaint regarding phantom offers
- 37 - complaints regarding Section 26 in reporting the number of offers
- 19 - complaints regarding Section 24 in presenting offers in a timely manner

RECO estimated this compared to a total of approximately eight hundred (800) complaints. The Task Force mentioned that the number of complaints received was small in comparison to the 87,000 accepted transactions at TREB alone in 2007.

The Task Force discussed all of the REBBA Codes and Policies that affect multiple offers in general.

Conclusions:

- RECO's Code of Ethics is in place to deal with violations of the multiple offer process.
- It be recommended to RECO that perhaps the wording in the specific sections could be strengthened not to have doubt in the consumers' mind of the meaning of the code regarding multiple offers.
- The Task Force also recognized that the members must be educated regarding violations and that process is lengthy. All complaints must follow a legal process.
- Possible violations of multiple offer process are completely under the jurisdiction of RECO and not TREB.

Phantom Offers

Summary of Discussion:

After a lengthy discussion regarding Phantom Offers, it was concluded that it is "misrepresentation" and if proven that a salesperson committed such an act this allegation had to be dealt with under the present REBBA Code of Ethics.

Conclusion:

"Phantom Offers" are totally self-explanatory and are misrepresentations of the truth. The RECO Code of Ethics is the only avenue to deal with such complaints.

Best Practices

Summary of Discussion:

A discussion ensued regarding material to be developed for consumers and members regarding "multiple offers". RECO reported that their Board of Directors approved a one (1) page information consumer report on "multiple offers". It was agreed that TREB could use it for distribution to members.

The Task Force concluded that based on other "Best Practices" material especially from British Columbia, Maine and Alberta that TREB should develop additional material for the education of Members.

Conclusion:

- That RECO is developing a “*Best Practices for Multiple Offers*” for consumers and TREB should take RECO’s offer to distribute it as broadly as possible.
- TREB should develop a (maximum) two-page “*Best Practices Guidelines*” for members and distribute it as broadly as possible to all its members.
- Before distribution TREB would receive RECO approval as RECO is the body that enforces offer presentations.

Proposed MLS® Rule R-345/R-350

Summary of Discussion:

The new proposed R-345 as stated was viewed as helpful, but will not solve all multiple offer problems.

R-345

MLS® Listings appearing on the MLS® System shall be immediately available (subject to applicable legislation, the rights of and reasonable accommodation to the occupancy) for showings, inspections and registration of Offers.

In the event an existing listing becomes unavailable for showings, inspections or registration of Offers, the listing shall be suspended.

While under suspension a record of all requests by Co-operating Brokerages for showings, inspections and registration of Offers shall be kept by the Listing Brokerage.

Upon the Seller rescinding the suspension, the Listing Brokerage shall immediately notify all Co-operating Brokerages who have requested showings, inspections or registration of Offers.

Conclusion:

If R-345 is approved it was agreed it may not directly assist in multiple offer presentation, but it will assist members to communicate with each other better than they presently do.

Number(s) of Offers

Summary of Discussion:

It was discussed and suggested that the “Confirmation of Representation” Form 320, could be used to indicate the number of Offers that were presented on any transaction. TREB’s legal counsel cautioned the Task Force that the seller should not be involved from a liability standpoint, but that the listing brokerage could record the number and this would be a great benefit to the listing brokerage in the handling of complaints on the number of offers being presented.

Conclusion:

That OREA’s Standard Forms Committee be strongly encouraged to place a statement in Form 320 Confirmation of Representation for listing brokerages to sign indicating the number of offers received on any listing. This would assist in clarifying the number of offers being presented on a specific property, as well as good protection for listing brokerages in dealing with complaints regarding multiple offer situations.

It is with gratification to sincerely thank the Multiple Offer Task Force Members for their time, candid opinions and dedication. It was a genuine pleasure working with such a professional and elite group of individuals.

Thank you!!!

07/11/08

Note to users: Although TREB endeavours to ensure the accuracy and timeliness of information, it is not guaranteed. TREB accepts no responsibility for any loss arising from any use or reliance on the information contained herein.

All information on this site is copyright © 2008 Toronto Real Estate Board. All rights reserved.