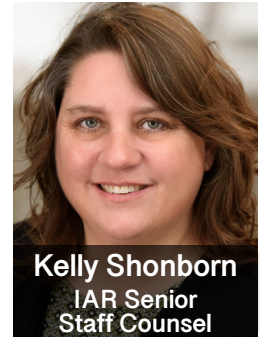


IAR LEGAL HOTLINE



DISCLOSURE OF OFFERS

On the Legal Hotline we regularly receive questions concerning many topics of concern to REALTORS®. The following are based on recent actual questions received through the Hotline. By no means are these the only issues of concern to members, so please let us know if you have any questions.



- Q:** My seller has accepted a Limited Purchase Contingency Addendum to Purchase Agreement along with a Purchase Agreement. Since this Addendum says that the seller must notify the buyer when they have accepted another offer on their home and that the contingency buyer gets no time to decide if they will remove the contingency, this offer doesn't have to be disclosed does it?
- A:** Yes. According to Standard of Practice 3-6 of the Code of Ethics, "REALTORS® **shall** disclose the existence of **accepted** offers, including offers with unresolved contingencies, to any broker seeking cooperation." I have added the highlights to emphasize two very important distinctions. One, the word 'shall' indicates that the Broker (or their seller client) does not have a choice – it is required that such disclosure be made. Secondly, this rule applies to all offers which have been accepted by the seller. A Purchase Agreement that has been signed by the seller as accepted is an accepted offer despite the fact that it is a contingency. Further, any MLS or BLC listing of the property must reflect the fact that there is an accepted offer.
- Q:** I am representing a buyer who wrote an offer on a property and was awaiting the reply from the sellers when the listing broker informed us that another offer had been accepted. We didn't even know there was another offer on the table at the same. Doesn't the listing agent have an obligation to tell us that before the seller can accept another offer?
- A:** Not necessarily. The NAR Code of Ethics Article 1, Standard of Practice 1-15 says, "REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the seller's approval, disclose the existence of offers on the property."

Two conditions must be met before a listing agent has any duty to disclose multiple offers accordingly. The first condition is that the seller must grant permission to the listing broker to disclose such information. The second condition is that the buyer or cooperating broker must ask the listing agent whether there are any other offers. Without the question of multiple offers being asked, the listing agent owes no duty to disclose.

Standard of Practice 1-15 goes on to say that, if authorization is given by seller to listing agent to disclose the existence of multiple offers AND buyer's broker inquires as to whether there are multiple offers, listing

broker must also disclose, if asked, whether the other offer(s) were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker.

The important distinction between Standard of Practice 1-15 and 3-6 (from the first Q & A) is that 1-15 deals with offers which are not yet accepted and it gives the seller the option of disclosure or not. Therefore, a seller may or may not want to disclose the fact that another buyer(s) has made an offer on the property to another prospective buyer when they aren't required to. However, once the seller has accepted an offer on the property they are required to disclose that fact.



Please remember that the Legal Hotline is available to assist managing brokers and their designated agents between the hours of 9 am and 5 pm, Monday through Friday at (800) 444-5472.