



## OFFERS Q&A

**Q: The seller accepted an offer, but the earnest money check bounced. At about the same time that the check bounced, another offer came in. Is the first offer dead because the earnest money check bounced? Can the seller accept the second offer?**

A: The seller should give the first buyers a reasonable but short period of time to make the earnest money check good. There may have been justifiable reasons (for example, bank error or incorrect addition or subtraction in the checkbook register) to explain the bounced check. Make sure the notice is in writing and make sure they understand that unless the check is made good in say, 24 hours, that the seller will consider the offer to be dead. At the same time, if the second offer is acceptable, it may be accepted as a back-up offer. Be sure that the acceptance is clear that it is a back-up offer and that it will become the primary offer if, in fact, the first offer is terminated.

**Q: Is it legal to accept an offer without any earnest money even if the seller agrees to no earnest money?**

A: Yes, unless otherwise directed in writing by the seller. The Indiana Real Estate Commission requires all offers to be submitted to the sellers for their formal acceptance or rejection (876 IAC 1-1-23). The sellers can authorize you in writing not to present such offer. With regard to earnest money constituting the consideration, we have taken the position that the mutual promises to buy and sell constitute sufficient consideration to support the contract and make it binding on both parties. As a practical matter, however, it may be foolish in the ordinary transaction to accept an offer without sufficient earnest money. Usually, it is in the seller's best interest to have as large an earnest money deposit as reasonably possible.

**Q: Assume that a listing broker receives an offer which she is planning on presenting to the seller that same day. Before she does, she is notified by a cooperating broker that his buyer will be making an offer in the next day or so. Should the listing broker wait for the second offer to come in before presenting the first?**

A: Under the Indiana license laws, the listing broker must present the first offer immediately upon receipt of the same. Because the listing broker owes fiduciary duties to the seller, she should notify the seller that another offer may be forthcoming. It should be the client's decision whether or not to wait on the second offer. Further, the listing broker will want to make sure that the first offer does not expire before the seller can accept or counter it.

**Q: An appraisal was done in connection with a purchase agreement. The appraisal came back low, and the purchaser was not able to obtain the necessary financing. Does the appraisal need to be disclosed to a subsequent purchaser by the seller/listing agent?**

A: Because disclosure of the low appraisal could materially impact the seller's bargaining positions, it should not be disclosed. Appraisals do vary, and depending upon the amount of the down payment, the appraisal may not necessarily impact negatively on a subsequent purchaser's ability to obtain the necessary financing.

**Q: My seller is out of town, but has verbally told me to accept an offer that was received. Is this OK?**

A: In Indiana, a contract for the sale of real estate is not enforceable unless it is in writing, which includes the signatures of both the buyer and seller.

**Q: Since the seller is out of town and wants to accept the offer, is it OK for me, as his agent, to sign for the seller?**



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A: When an agent signs for their client, absent express written authority to do so (a/k/a Power of Attorney), the contract is not legally binding. Further, many principle brokers have strict office policies prohibiting this practice.

**Q: My buyers submitted an offer to a seller yesterday and now they say they have changed their minds. Is there anything I can do?**

A: An offer or counteroffer may be withdrawn by the offeror so long as the withdrawal is delivered to the offeree(s) prior to acceptance and delivery by the offeree(s). Therefore, the buyers' written notification of withdrawal would need to be received by the sellers (receipt by the seller's agent would constitute delivery as well) before the seller accepts and delivers the buyers' offer in order for the withdrawal to be effective. This withdrawal procedure is the same for counter-offers.

**Q: I have received a counteroffer on a listing. I know the sellers will not agree to the terms presented in the counteroffer and I have just received a new offer from a different buyer. Do I have to present the counteroffer to the sellers?**

A: The rules of the Indiana Real Estate Commission require all licensees to communicate all written offers to their principals "immediately upon receipt of such offer" (876 IAC 1-1-23(a)). In addition, all REALTORS® are required by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® to present all offers "as quickly as possible". Therefore, all offers must be presented immediately whether they are good, bad, or indifferent, even if another offer is pending, and for that matter, even if another offer has been accepted. The only exception to this rule is when the seller and the listing broker have agreed otherwise in writing. It is proper for the listing broker and the seller to agree in writing that no offers of less than a certain price, without a certain amount of earnest money, or no land contract, etc., be submitted.

Q: I have been informed that with every offer I write I also must submit the Alternative Dispute Resolution Addendum. Further, I've heard that this is a requirement my local board has directed. Is that correct?

**A: No. There is no requirement to use any specific forms unless required by law. No board or association can dictate which forms to use, but they can recommend forms.**

Q: I am the listing agent for a bank-owned property. The bank has a procedure for me to submit offers via the computer. Unfortunately, once the bank has received one offer, the computerized system is set so that no more offers may be submitted. I have received two subsequent offers and have no way to get them through the bank's computerized system. What should I do?

**A: As a REALTOR®, you have certain legal responsibilities and ethical obligations which may not always jive with the internal procedures set forth by banks that have foreclosed upon property. Indiana Code 25-34.1-10-10 (a)(3)(B) says you have the duty and obligation to "present all offers to purchase or lease to and from the seller or landlord immediately upon receipt of the offers regardless of whether an offer to purchase or lease has been accepted . . .". Further, Code of Ethics, Standard of Practice 1-6 states that "REALTORS® shall submit offers and counter-offers objectively and as quickly as possible."**

**The only exception to both the license law and the Code of Ethics is when the seller and the listing broker have agreed otherwise in writing (i.e. the seller instructs, in writing, that the broker NOT submit any further offers). Therefore, we would suggest that, absent a written document from the bank instructing you to not submit any further offers, that you get the offers to the bank in some manner, even if it means you must bypass the computerized system. Despite what the banks tell you are "proper" procedures, you must still abide by your legal and ethical obligations. Remember, it is you who will face the consequences, not the bank.**

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