



## Quiz Edition

### OFFERS AND MULTIPLE OFFERS QUIZ

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.



1.

Seller signed indicating acceptance of the buyer's counter offer. Listing broker emails buyer's broker saying that the seller signed the counter offer but the broker's scanner isn't working. Listing agent says she will get the signed counter offer delivered to buyer's broker the next day. Later that evening a different buyer writes a Purchase Agreement on the same property and it is presented to the seller.

**Seller:**

- A. Can't entertain the offer as anything but a back-up offer**
- B. Must reject the new offer because they already have an accepted offer**
- C. May accept the new offer**
- D. None of the above**

The correct answer is C.

The answer is not A or B because a necessary element of acceptance of an offer or counter offer is delivery. Until the delivery of the signed document, the counter offer was not fully accepted. Therefore, in this situation there was no accepted offer yet. In this case the buyer's broker should have insisted on getting delivery of the document in some other manner so that delivery (and therefore acceptance) would not have been delayed until the next day leaving an opportunity for the seller to get other offers.

**2.**

The seller accepted an offer but the earnest money check bounced. At about the same time the check bounced, another offer came in which seller accepted.



**Seller:**

- A. Sold the house twice**
- B. Was OK in accepting the second offer because there was no valid contract with the first buyer since the earnest money check bounced**
- C. Could have done a Multiple Offer Notification**
- D. None of the above**

The correct answer is A.

The answer is not B because the lack of earnest money does NOT make a Purchase Agreement invalid. Therefore, seller was already in a valid contract to sell the house to the first buyer. The seller may terminate the Purchase Agreement but the seller should give the first buyer 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.

The answer is not C because there was already a contract in place with the first buyer and therefore, it was no longer at the offer stage.

**3.**

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.

**Listing broker:**

- A. Should wait for the second offer to come in and then present both offers together**
- B. Must present the offer she has immediately**
- C. Should not tell the seller about the second possible offer**
- D. None of the above**

The correct answer is B.

The answer is not A because, under the Indiana license laws, the listing broker must present any and all offers immediately upon receipt of the same (assuming the seller has not given written instructions to the contrary to the listing broker).

The answer is not C because the listing broker owes fiduciary duties to the seller and therefore 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.



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4.

My buyer 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 time. Also, I found out later that the offer that was accepted by the seller was presented by listing agent.



**The listing agent:**

- A. Violated the Code of Ethics by not telling me of the other offer**
- B. Violated the Code of Ethics by representing another buyer on the property**
- C. Did not have to disclose the existence of another offer**
- D. Violated license law and the Code of Ethics by not presenting a Multiple Offer Notification**

The correct answer is C.

The answer is not A because two conditions must be met before a listing agent has any duty to disclose multiple offers according to the NAR Code of Ethics Article 1, Standard of Practice 1-15. 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 answer is not B because the listing broker may represent a buyer on the listing provided limited agency was agreed to by the parties.

The answer is not D because it is the seller's choice as to whether to notify buyers of a multiple offer situation and there is no obligation to do so. The seller may decide to reject all offers or accept one of them or counter one of them rather than do a Multiple Offer Notification.

5.

Seller received an offer and sent a counter offer to the buyer. Buyer was given a deadline of 5:00 on Wednesday to respond to seller's counter offer. On Tuesday at 3:00 the seller received a second, much higher offer. Listing agent contacted the first buyer's broker and said another offer has been presented and confirmed that the first buyer had not yet signed the counter offer (they had not). Before the listing broker had a chance to send out a Multiple Offer Notification (since that is what the seller wanted to do) the buyer signed and delivered the counter offer to the listing agent at 5:00 on Tuesday.



**The seller:**

- A. Had a binding agreement with the first buyer;**
- B. Can still issue the Multiple Offer Notification and then proceed accordingly**
- C. Should have rescinded the counter offer immediately**
- D. Could have issued a Multiple Offer Notification after rescinding the counter offer**
- E. A and C**

The correct answer is E.

Since the buyer was still within the time limit to respond to the counter offer, and because seller did not rescind the counter offer the buyer still had the ability to accept it. Seller should have verbally told buyer's broker that the counter offer was being rescinded so that seller could proceed with a Multiple Offer Notification. However, just telling the buyer's broker that another offer has been received by the seller isn't enough to rescind the counter offer.

***If you have further questions, please call the IAR Legal Hotline. As a reminder, the IAR Legal Hotline is available to Managing Broker members and their designated agents between the hours of 9am and 5pm, Monday through Friday. Call 1-800-444-5472 or complete the [online form](#). MBs, need to designate an agent to use the Legal Hotline? [Do it online here](#).***