

## **BEWARE OF MULTIPLE OFFERS AND SHORT SALES**

Short sales have become a common practice due to the current economic slowdown affecting the market. In a short sale the seller's net proceeds, after payment of all applicable closing costs and other charges normally paid by the seller from the sale of the property, are insufficient to pay all outstanding mortgages and other liens against the property at closing.

A practice has apparently developed in short sales for the seller to entertain multiple offers. In some cases, the seller enters into multiple contracts for the sale of the property subject only to the lender's agreement to approve the short sale. Aside from the issue of short sales, negotiating multiple purchase and/or counter-offers on the same property carries with it the potential for misunderstanding between the competing interests of the REALTORS® representing sellers or buyers.

Article I of the Code of Ethics and Standards of Practice of the National Association of REALTORS® indicates: "When representing a buyer, seller, landlord, tenant or other client as an agent, REALTORS® pledge themselves to protect and promote the interest of their client."

Two Standards of practice related to this are:

- Standard of practice 1.15 which indicates: "REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the seller's approval, disclose the existence of offers on the property."
- Standard of practice 1.16 which indicates: "REALTORS® shall submit offers and counteroffers objectively and as quickly as possible."

State license laws and regulations also spell out the duties of a licensee to their client and customers.

When sellers enter into written contracts for the sale of their property with more than one buyer, they are potentially legally binding themselves for the sale of the property to two different buyers. Attaching the *Short Addendum to Sale Contract* makes the approval of the lender a contingency to the sale similar to the inspection contingency in the base contract. The lender may be faced with different priced offers, different terms and buyers with different abilities to perform. The lender could approve more than one offer making multiple contracts legally binding on the seller.

More likely, the lender will select the offer that is most favorable to it and if it happens to be a lower-priced offer for other reasons, the buyer with the higher priced offer will certainly be unhappy with the loss of this purchase and may attempt to enforce the contract legally in a court of law. If the seller becomes legally obligated on more than one contract, the seller has subjected himself to potential damages and may feel that the REALTOR® handling the transaction failed to properly advise them in the potential legal pitfalls of entering into more than one contract.

**The proper way to handle multiple offers is to write a primary contract with any other offers clearly indicating their priority as backup contracts.** When listing the property, REALTORS® should discuss with sellers how multiple offers will be handled. Care is to be

taken in drafting backup contracts and the REALTOR® handling those transactions would be wise to advise the seller to seek their own legal advice regarding those transactions.

For information about how to process short sales in the MLS, the sidebar “Handling Short Sales in HMLS.”

*Source: Article by James R. Hubbard, KCRAR Counsel from the firm of Norton, Hubbard, Ruzicka, Kremer & Kincaid L.C.*