

Purchase Offer Submission Considerations

1. From the NYSAR Legal Line:

Question: What is the proper procedure for a listing broker to follow when several purchase offers are submitted to his or her office?

Answer: A listing broker owes to this or her client the fiduciary duties of reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and a duty to account (Real Property Law 443). The duty of full disclosure requires the listing broker to advise the seller of all pertinent information including all opportunities. This includes all offers, no matter how low or how late. Accordingly, a listing broker should promptly arrange for all offers to be transmitted to the homeowner. The listing broker should not, without the direction of his principal to the contrary, withhold subsequent offers while a prior offer is in negotiations. In the event that an offer has already been accepted in writing, it is recommended that the listing broker should advise the client in writing of this pertinent information, but as there may be contract rights involved, the client should consult an attorney regarding his or her rights and obligations.

2. The WNYREIS listing contract paragraph #6 states "SUBMISSION OF CONTRACT OF SALE OR LEASE. All offers to purchase, exchange, rent or lease will be presented by Broker and, with Seller's consent, the Cooperating Broker, if any."

A sub-agent or buyer's agent **contacting the seller directly** may be inducing the seller to breach their contract with the listing agent.

3. Section 175.9 of Article 12-A of the Real Property Law states "Inducing breach of contract of sale or lease. No real estate broker shall induce any party to a contract of sale of lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal."

A sub-agent or buyer's agent **contacting the seller directly**, after an offer has been accepted, with another offer may be inducing a breach of contract.

4. **Appraisal Problems** - A higher offer may look like it is better for the seller, but it may lead to the mortgage being denied because **it did not appraise** at that price.
5. **Possible Lawsuit 1** - A second offer is accepted and later falls through, the seller could sue, if they can prove that they lost a good first offer because **they were assured** that the second offer was a better deal.
6. **Possible Lawsuit 2** - The seller accepts a second offer without the first offer being released or receiving an attorney denial letter. **The property is now sold to two different buyers**, a lawsuit waiting to happen.
7. **MLS Rules** - Section 2. SHOWINGS AND NEGOTIATIONS: The member agrees to cooperate with all reasonable requests, from cooperating brokers, to arrange

appointments to inspect (show) all properties entered into the MLS. All appointments for showings and negotiations with the seller for the purchase of listed property filed with the Multiple Listing Service shall be conducted through the listing broker except under the following circumstances: the listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or after reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.

A sub-agent or buyer's agent **contacting the seller directly** with an offer may be in violation of MLS Rules.

8. **MLS Rules** - Section 2.2 - SUBMISSION OF WRITTEN OFFERS: The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller(s) obtain the advice of legal counsel prior to acceptance of the subsequent offer.

A listing agent that does not inform the seller that an offer exists and ask their permission to present the offer, even after an offer has been accepted, may be in violation of MLS Rules.

9. **Code of Ethics** - If a listing agent feels that a cooperating broker has interfered in their agency relationship with the seller, his remedy is to initiate a professional standards charge under various articles of the Code of Ethics. If a cooperating broker feels that he has been unfairly treated, his remedy is to initiate a professional standards charge under various articles of the [Code of Ethics](#).