Wisconsin REALTORS® Association Legal Hottips
Hot tips for May 1, 2017

**Question:** The property was listed in the MLS on Tuesday. In the remarks, it was indicated that offers would not be presented for three days, until Friday at 6:00 p.m. When the cooperating broker called on Wednesday to schedule a showing appointment for a buyer, she was told the seller had accepted an offer. Apparently a buyer had submitted an offer with an acceptance deadline on Wednesday, and the seller decided to accept it. When the cooperating broker told this to the buyer, asking whether he was still interested in seeing the property, the buyer was very disappointed and asked how this could possibly happen, questioning the integrity of real estate agents. Is this legal and ethical behavior on the part of the listing agent? What should the cooperating broker say to the unhappy buyer?

**Answer:**
There are several aspects to this scenario. First of all, did the statement regarding no offers being presented until Friday at 6:00 p.m. come from the seller, preferably in writing in the listing contract, or was this a choice made by the listing agent? If the seller gave written instructions to the listing agent to not present offers until Friday, and to advise cooperating brokers and prospective buyers of that fact, then the listing agent was following his client's lawful instructions per Wis. Stat. § 452.133(2)(c) and Wis. Admin. Code § REEB 24.13(1). If there was any change in those instructions, it would have been best if the listing agent had been directed by the seller in writing to remove the deadline or otherwise alter the MLS remarks.

Even if the listing agent was under instructions to not present offers before Friday at 6:00 p.m., that's not to say that the listing agent would not still inform the seller if any offers were received before then and mention when the acceptance deadline was. At that point, the seller might have a change of heart and give written instructions to present offers before Friday at 6:00 p.m. If the seller decided to act upon offers earlier than the time frame stated in the MLS remarks, it would have been best if the seller directed the listing agent in writing to remove the deadline or otherwise modify the MLS remarks. If the offer presentation time frame was simply added by the listing agent, the listing agent still would be required to promptly present any offers that were received under Wis. Admin. Code § REEB 24.13(2)(b). If the seller decides to act upon an offer before Friday at 6 p.m., then there is a risk that there may be allegations that the agent advertised in a manner that was false, deceptive and misleading and did not present a true and accurate picture.

When such a representation is not honored, it will likely generate significant bad feelings among potential buyers who will distrust the real estate agents in the situation, if not in general. If the accepted offer was from a buyer working with the listing office, then it would seem the MLS remarks gave an unfair advantage to that buyer.

In either case, there is a serious risk that while a strategy to indicate an offer presentation deadline, or an offer submission deadline, may ratchet up interest among buyers and get them to act quickly, it may inflict harm in the marketplace. Buyers may perceive that a deadline was given and that an agent and/or buyer who chose not to honor the time frame was rewarded by having the offer accepted. Such a strategy may be unnecessary if not counterproductive in a seller's market with exceptionally high buyer demand.

At present, there seems to be a seller's market where properties move at a fast and furious pace. It may be prudent for all agents working with buyers to set their expectations at a reasonable level and make sure they understand many properties will be hotly contested.

If the buyer or agent believe the listing agent has violated the advertising rules in Wis. Admin. Code § REEB 24.04, § REEB 24.13 or Article 12 of the Code of Ethics, a complaint may be filed with the REEB or the local REALTOR® association.

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