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Bidding war rules – almost anything

When it comes to bidding wars, it sometimes sounds as though the real estate market in parts of the GTA are like the old wild west, where anything goes. I recently was told that a buyer in a bidding war put in an offer without a price, telling the seller to just “fill it in.” Here are answers to some of the bidding war questions that I have received:

1. What does “holding back offers” mean?

A listing real estate agent may try to create an atmosphere for bidding wars by inserting a term when the property is listed for sale, that the seller will not consider any offers until 5-7 days later. The strategy is to get potential buyers in to see the property, hoping to create interest, leading to a potential bidding war later. It also could permit a buyer to conduct a home inspection early if they wanted to present an offer without any conditions on the offer date.

2. If the offer date is next week, can I still submit a bid this evening?

This is called a pre-emptive or bully offer. It is permitted as the real estate agent is ethically bound to inform a seller about any offer received. If the seller changes their mind and does want to consider the bully offer immediately, the agent will update their listing information to provide that offers are now being considered and should also advise anyone who has expressed an interest in the property that offers are being considered earlier. In my opinion, there is nothing wrong with submitting a bully offer. The worst thing that can happen is that the seller says they will not consider it, and you can then join the bidding when the offer date arrives.

3. What does a listing agent have to tell all of the bidders?

The listing agent needs to tell everyone the total number of offers received, whether they have an offer from their own office and whether an offer contains a commission discount, which would provide the seller a higher net price. An agent cannot disclose the sale price in any offer.

4. Can I put in an offer that says that I will pay \$5,000 more than the best offer received, to guarantee that I will win?

This is referred to as an escalation clause. A real estate agent cannot accept an offer with this type of clause as it would mean that they would have to disclose the price that someone else bid, which they cannot do.

5. What about the case where the buyer puts in an offer with no price, and tells the seller to just "fill it in?"

In my opinion, this is not a valid offer as the price was not included and would likely be considered void for uncertainty. Imagine if the seller just picked a number over \$100,000 more than the property was actually worth. Not a good plan.

6. What if one offer was accepted but it is still conditional, and then a second offer is received. Does the listing agent have to tell the first buyer about the second offer?

The answer is no. Since the first offer was already accepted, there is no obligation on the agent to inform the first buyer about the second offer, although some agents may in fact disclose the information to the first buyer in the hopes that this will persuade the buyer not to try and change the terms of the agreement as a result of their home inspection, for example.

7. How should I prepare for the bidding war process, when there are so few rules?

Use an experienced real estate agent who has had success before in a bidding war situation. You need a professional who will tell you what the home is actually worth, so that you do not overbid so much that you will live to regret it later.

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