

Mark Weisleder Newsletter August 17, 2015

5 Things to know about Bill 55 and Bidding Wars

There is already confusion with respect to how real estate brokerages are to comply with Bill 55 and use the new Form 801 in a bidding war. Here are 5 things to know:

What was the main purpose behind Bill 55 in the first place?

The main purpose was to stop unethical practices when conducting bidding wars. For example, saying that you had another offer in order to trick a buyer into offering more than they intended to bid. You should keep this in mind when you say or do anything in a bidding war.

Why do we have Form 801?

The main purpose of completing form 801 is so that the listing brokerage can keep a record of every offer that is presented by a buyer brokerage and not accepted by the seller without having to keep a copy of the actual offer itself. This form can then be used as proof later if someone claims that you misrepresented having received another offer.

Can a buyer brokerage still register an offer?

The answer is yes. However, in order to register an offer, the buyer salesperson must know that the offer exists. In my opinion, this means that the buyer brokerage must have the original agreement signed by the buyer in their possession when they register an offer.

Can a buyer still change their mind once an offer is registered?

The answer is yes. Until the offer is communicated to the seller by personal delivery, fax or email, it can be withdrawn by the buyer.

Can the listing brokerage ask a buyer brokerage to complete and send Form 801 if they want to register an offer?

The answer is no. This is what is causing the most confusion. It is not appropriate for a buyer brokerage to complete Form 801 and send it in to a listing brokerage BEFORE they intend to actually submit the offer. By doing so, they would be telling the listing brokerage in advance the identity of the buyer. In my opinion, it is sufficient for a buyer brokerage to just send something in writing to the listing brokerage confirming that they have an offer which they intend to present later. They can identify the property but not the buyer name. For a listing brokerage, if you have this information in writing from a buyer brokerage, you can then inform others that you have received a registered offer. However, be careful to also state that no actual offer has been received.

If you have any questions about Form 801 or how to properly manage what you say or do during the course of any bidding war, please do not hesitate to call or email me for advice or to schedule a bidding war seminar at your brokerage.

Mark's Contact Information

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