

Washington REALTORS Legal Advice on Buyer Love Letters



QUESTION: If a buyer broker includes a “love letter” along with a buyer’s offer, what is the best course of action for the listing broker to take? I recall in the past that we’ve been instructed that love letters are considered communication from a buyer to a seller, so the listing broker is required to share it with the seller. On the other hand, if the listing broker shares the love letter with the seller, and the seller bases their choice of which buyer’s offer to accept based on the love letter, couldn’t that put the seller in a possibly discriminatory situation? One possible solution we discussed at our meeting this morning is for the listing broker to review all offers with the seller and have the seller choose which offer to accept (or counter) based on the merits of the offer without reviewing the love letter(s). After mutual agreement, the seller could then review any love letters that were included with buyer’s offers. Would this solution work? I’m not comfortable with brokers being responsible for choosing which parts of buyer’s love letters to redact, so that doesn’t seem to be a solution that would help to limit the firm’s liability. Are there other options that we might consider?

ANSWER: Listing broker MUST timely present all written offers and other written communications to or from a party. Based on the question asked, listing broker MUST present all love letters in listing broker’s possession before seller enters a binding agreement with any of the buyers. Listing broker has no discretion to withhold any love letter or to redact and deliver only a portion of any love letter.

The correct order of events, in the opinion of the Hotline lawyer, is for seller to select the buyer with whom seller wants to do business based on the merits of the buyer’s offer and financial qualification. However, before seller actually signs an offer or counteroffer with the selected buyer, broker should present all love letters in a sealed envelope. Broker should remind seller as to what love letters are. A reminder should be appropriate because broker should have explained to seller, when the listing was taken, that seller may receive “love letters,” explained what love letters are and why receipt of love letters poses a risk to seller. Broker should have explained that broker must timely present all love letters to seller but it is up to seller whether seller reads a love letter. Broker should also have invited seller to provide a written instruction to listing broker to include language in the listing printout advising buyer brokers that seller does not want to receive love letters.

With all of that as background, when listing broker presents seller with the sealed envelope containing one or more love letters, seller can choose whether seller wants to read any of the letters. If seller wants to read, seller should proceed. Regardless of what seller then does with respect to signing one of the offers or a counteroffer, broker MUST document in the firm’s transaction folder, the “justifiable business reason” for seller’s selection of the buyer selected by the seller. (Broker must do this anytime the seller receives multiple offers, regardless of love letters.) However, if seller chooses not to open the envelope or read any of the contained letters, then that should be explained in writing on the outside of the envelope, signed and dated by seller and then retained in the firm’s transaction folder.

There is no perfect, right or wrong answer to this question. This answer suggests one protocol that should be protective of both seller and listing broker/firm under a Fair Housing microscope.

Source: <https://www.warealtor.org/legal-hotline-database/156167ff-f7d1-4f74-ac51-539a0b1e76b9>

