

The Phantom Offers



By Brian Madigan LL.B.

The real question is: does the phantom offer really exist! Maybe, and maybe not.

A phantom offer, of course, is an offer which is make-believe, it's imaginary, it's simply pure fabrication. The offer exists only in someone's

mind. Now, the question is who?

With the hot real estate market in Toronto, more and more phantom offers seem to be in existence.

Recently, the issue surfaced in the election of a new President for the Toronto Real Estate Board. One candidate thought that there should be a better process and that offers should be properly registered. The other candidate thought that the status quo was fine. In fact, she had never experienced any phantom offers, nor was she aware of them. However, we won't likely see any changes since she won the election.

Phantom offers have become a rather widespread and growing problem. Yes, most agents have heard of them! These are offers that come out of nowhere.

A prospective buyer views a property and decides to submit an offer. All of a sudden, they hear "there's another offer". So now, rather than being able to negotiate they pretty well have to come up with the best overall offer that they can. Often this means deleting any conditions they might have had regarding the purchase including financing and home inspection. There are times when this can be crucial.

So, the a couple of things happen:

- 1) they are told that they are **in competition**,
- 2) both offers are **very close** to one another,
- 3) they should **go back**, revise their offer, and then re-submit it.

It has also been rumoured that some agents have arranged for their friends, relatives, and other agents to park their cars outside the house the evening that offers are submitted to create a frenzy of activity. Talk about home-staging, this really takes it to the next level. Stanley Kubrick and Steven Spielberg would be proud to have staged such a production.

Bidding wars have become the “norm”. However, surely not all properties are really worth fighting about.

And, of course, all these **phantom offers are illegal**. The present ethical guidelines clearly prevent this sort of tactic. Not only is it wrong and deceptive, it is against the law. There are consumer protection laws in the Province as well as federal legislation in the *Competition Act* and the *Criminal Code* which would prevent this type of behaviour.

If the status quo remains in place, then nothing is going to happen.

The real problem is that phantom offers although often suspected are rarely reported. Agents frequently don't want to become involved in this type of controversy. As a result, it falls to the Real Estate Council of Ontario (RECO) to investigate. And while they will, they first need these cases to be reported.

Actually, it is a lot like “speeding”. There are already rules against speeding, but if the police never set up radar, then it's unlikely anyone is ever going to be caught.

This is a matter of ethics, and it first should be addressed by the industry. The failure of the industry to police itself, reflects very poorly upon the industry.

In a hot market, on many occasions, there truly are second, third or multiple offers. But, surely there isn't always a mysterious second offer that suddenly materializes the same day as the first offer, after the property has been on the market for over 2 months. And, this same coincidence seems to follow the same listing agents.

Let me suggest the following:

- 1) all offers shall be properly registered,
- 2) the broker is responsible to maintain copies of all offers submitted through his office,
- 3) RECO shall periodically review the files of a brokerage to ensure that offers were in existence and legitimate in multiple offer circumstances.

If this is the case, then this is like radar for phantom offers. The perpetrators are caught and punished, then this will deter others and be of ultimate benefit to the consumer.

Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
www.OntarioRealEstateSource.com