Is my behaviour acceptable? Part 3

We have been discussing practical case studies relating to the Code of Conduct, which we continue with this week.

Agent A receives a mandate to sell a property. The mandated price that the seller has agreed with the Agent A, is R1 200 000 and the seller has also indicated to the PP that he (the seller), will not entertain any offers below R1 100 000. Agent A receives an offer from a potential buyer (Buyer A) for R1 120 00, subject to the sale of Buyer A's own property. Agent A is also negotiating with another potential buyer (Buyer B), whom Agent A believes may very well make an offer at the full mandated price of R1 200 000. Agent A decides to wait to see what happens with an offer from Buyer B. The seller calls Agent A to get an update regarding the sale of his property and Agent A tells the buyer, "Things are happening; I'll keep you in the loop."

Whilst waiting for an offer from Buyer B, another buyer (Buyer C), approaches Agent A and completely unexpectedly puts in an offer for R1 110 000. This offer is a cash offer and not subject to any conditions. Another day goes by and Agent A has still not heard anything from Buyer B. It is now 4pm and the offer from Buyer A and Buyer C expires at 6pm. Agent A is not sure what to do.

Agent A's duties and ethical responsibilities in terms of the Code of Conduct are as follows:

1. Regulation 34.4.1 requires a Property Practitioner (PP), who holds a mandate from a seller to sell their property, to present all offers received by a purchaser to the seller, unless the seller has instructed the PP not to present such offer. In this case, the mandated price that the seller has agreed with the PP is R1 200 000 with no offers below R1 100 000. This means that it is Agent A's responsibility to present the offer obtained from Buyer A and Buyer C when obtained and not to sit on these offers. In terms of Reg 34.4.1, Agent A MUST present this offer to the seller. Agent A cannot decide that they will not present the offer received from Buyer A and C in the hope that they may receive a higher offer Buyer B, which will also mean that Agent A earns a higher commission. However, if Agent A received an offer below R1 100 000, then they do not need to present this offer to the seller, as the seller has instructed Agent A not to present any offers below R1 100 000.
2. Regulation 34.4.2 requires that a PP may not present competing offers to their client in such a way that the PP is trying to unduly influence the seller to accept one of the offers, UNLESS the PP has explained the advantages and disadvantages of each offer to their seller. In this case, Agent A must be able to explain to the seller that although the offer from Buyer A is slightly higher than the offer from Buyer C, the offer from Buyer C may be the better offer to accept as it is a cash offer. The offer from Buyer A could very well fall through as it is subject to the sale of the buyer's existing property and it may happen that the buyer is unable to sell their property. Hence, Agent A MUST point out the risks of accepting the offer from Buyer A, being a "subject to" offer and the fact that the cash offer received from Buyer C is low risk and a much cleaner offer.
3. Regulation 34.5.2 is also important for Agent A to be aware of. In terms of this Regulation, if an OTP has been accepted or not been accepted, the PP must notify

the person who made the offer of the acceptance or non-acceptance, as the case may be, as soon as possible. This re-iterates the point, that any offers received by Agent A, must be presented to the seller.

Look forward to another case study next week.

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