



Bill 55: Changes for handling of offers

March 20, 2015

Starting **July 1**, brokerages across Ontario acting on behalf of sellers must meet new requirements for handling offers.

The changes stem from Bill 55, the *Stronger Protection for Ontario Consumers Act, 2013*. To review the relevant changes, see [section 35.1](#) of the *Real Estate and Business Brokers Act, 2002* (REBBA 2002) and [section 19.1](#) of Ontario Regulation 579/05 made under REBBA 2002.

The changes are intended to ensure the offer process is transparent, but it's important to remember that the vast majority of real estate professionals conduct a fair and transparent offer process.

Brokerages are responsible for developing the processes and policies necessary to be compliant, and for training its employees on those processes and policies.

When you are representing the seller

You cannot indicate that you have received an offer unless you have received a written offer. Please keep in mind that written offers must be signed to be valid.

The brokerage must keep a copy of all written offers that it receives, or an equivalent summary document for each offer, for at least one year from the day it is received.

The offers may be stored electronically or as hard copy. Each counter offer/sign back is considered an offer, so the brokerage must retain records for the original offer and every change made to it during negotiations.

For unsuccessful offers, the brokerage may retain a summary document instead of retaining the offer in its entirety. The Ontario Real Estate Association (OREA) expects to have a form for this purpose by July 1, 2015. Alternately, your brokerage may create a form for you to use.

It's important to note that the summary document may only be used when the buyer is making an offer through a brokerage. For offers coming from a buyer directly, the brokerage must retain the offer in its entirety.

The summary document must include:

- The name and signature of the buyer.
- The name and contact information of the seller.
- The name of the buyer's brokerage and their representative.
- The name of the seller's brokerage and their representative.
- The address, legal description or other identifier of the property.
- The date and time the offer was made.
- The date and time the offer was received by the brokerage, and how the offer was received, such as in person or by fax.
- The date of presentation, if the brokerage presented the offer to the seller.
- The date and time, if any, until which the offer was irrevocable.

When you are representing the buyer

All offers must be made in writing. Please keep in mind that written offers must be signed to be valid.

RECO is developing a process to confirm the number of offers that a property received.

If you are representing a buyer that placed an offer on a property, you can request that RECO determine how many written offers the listing brokerage received for the property. The buyer or seller may also make this request to RECO directly.

Upon such request, RECO may contact the listing brokerage to confirm the number of offers that a property received. RECO may also request documentation for each offer (either the entire offer or the summary document). The brokerage is required to provide this information to RECO upon request.

RECO will only disclose the number of written offers received to the person who requested it. RECO will not release any detail regarding the offers, or identify the people who made the offers.



Q&As

Q1: I received three unsuccessful offers, along with one successful offer. Only two of the unsuccessful offers included summary documents. What should I do?

A: For the unsuccessful offer that did not include a summary document, you have to retain the offer. For the two unsuccessful offers that included the summary, you could choose to retain the offer or the summary document. The successful offer must always be retained in its entirety (Agreement of Purchase and Sale) for at least six years.

Q2: What about counter offers that amend the original offer?

A: Every written offer to a seller, including changes in the course of negotiating, is considered a separate offer. The brokerage must retain a record for every offer, including those made in any negotiations. So, if a buyer puts in an offer, and later makes two more offers in negotiations, the seller's brokerage will need to retain a record for all three of the offers. You could retain summary documents, or the offers in their entirety.

Q3: Can one summary document be used to cover all counter offers from one buyer?

A: The summary document could be designed to accommodate several offers. OREA expects to have a form available by July 1, 2015. Alternately, your brokerage may create a form for you to use.

Q4: What about offers that come directly from a buyer, and not through a brokerage?

A: The summary document can only be used when the buyer is making an offer through a brokerage. For offers coming from a buyer directly, you must retain the offer in its entirety. Keeping the full offer is necessary in case RECO needs to contact the buyer that made the offer, since the summary document does not contain contact information.

Q5: If RECO asks for documentation for the offers on a property, how much time will I have to provide it?

A: Generally RECO will expect to receive the documentation upon request, but no later than two weeks, unless otherwise directed.

Q6: How long will it take for RECO to determine the number of written offers that a brokerage received?

A: RECO will aim to determine the number of written offers as quickly as possible. Each situation is unique, so it is not possible to offer a typical timeline. The volume of requests we receive will also be a factor.

Q7: If a buyer or seller is delivering or receiving offers directly, or through a lawyer, do I still have to retain records for the offers?

A: Your brokerage has to retain the offers it receives on the seller's behalf. If the seller or some other party receives offers directly, you do not have to retain the offers.

Q8: How long do I have to retain the record of each offer?

A: For unsuccessful offers, you must retain either the offer in its entirety, or a suitable summary document, for at least one year from the day the offer is signed by the buyer. You must retain the successful offer in its entirety for six years.

Q9: Can I retain records for offers beyond one year?

A: You may retain records beyond the minimum one year. It is imperative that you ensure the confidentiality of those documents for as long as you retain them.

Q10: What happens to a failed offer presentation (no transaction occurs)?

A: All offers that a listing brokerage receives must be retained, whether the property in question was sold or not. If no transaction occurred, the brokerage may retain the summary document instead of the actual offer, if it was submitted through a brokerage.

Q11: What happens to collected paperwork/information when the transaction completes?

A: The offer that resulted in a successful transaction must be retained in its entirety for the required six years, a summary document cannot be used. The summary may be used only for unsuccessful offers.

Q12: When can I retain a summary document instead of a full offer?

A: The seller's brokerage may retain a summary document if:

- The seller's brokerage receives the offer on behalf of the seller;
- The offer is made through a brokerage on behalf of the buyer;
- The offer did not result in a transaction; and
- The summary contains all the required information.

Q13: What information must be included in the summary document?

A: The summary document must include:

- The name and signature of the buyer.
- The name and contact information of the seller.
- The name of the buyer's brokerage and their representative.
- The name of the seller's brokerage and their representative.
- The address, legal description or other identifier of the property.
- The date and time the offer was made.
- The date and time the offer was received by the brokerage, and how the offer was received, such as in person or by fax.
- The date of presentation, if the brokerage presented the offer to the seller.
- The date and time, if any, until which the offer was irrevocable.

Q14: Will RECO return the written offers that it obtains from the brokerage?

A: When RECO requests that a brokerage provide offers, it will identify whether the brokerage should provide originals or copies, and upon request return any original documents after the process is complete.

Q15: Does this only apply to competing offer situations?

A: No, the regulations apply to *all* offers received through a brokerage.

Q16: If I have a letter of intent from a buyer, can I indicate that I have received an offer?

A: If the letter is binding on the part of the buyer, you would then indicate that you have received an offer.

Q17: Does this apply to offers to lease?

A: No, the regulations only apply to offers to purchase real estate.

Q18: Can my brokerage start retaining records of offers any time, or do we have to wait for July 1?

A: You can begin retaining records at any time, but you must retain records as of July 1. However, RECO will only be able to determine the number of offers on a property for transactions that occurred as of July 1.