



Repossessions. Christopher Hamer, The Property Ombudsman says agents should keep possession of the facts.

There has been a dramatic increase in the number of property repossessions as a result of the country's current economic difficulties. It has led to a number of disputes being referred to me from potential buyers believing that they have been denied the opportunity to purchase a repossessed property.

In any dispute that I consider, I ensure that the Complainant is aware that the mortgagee in possession does have a duty to act in good faith and to take reasonable care to realise the true market value of the property at the time they, as lender, choose to sell the property. I make it clear that the best price as far as the lender is concerned may not always be the highest price, as a lender will also take into account how quickly a potential buyer can proceed to exchange of contracts. In reality, this means that a lender is likely to prefer a cash buyer to someone dependent on obtaining mortgage finance.

Once the seller has accepted an offer, and as the lender on the property is legally bound to get the best price for it, a procedure known as "the notice of offer" sometimes follows to invite better offers by a certain date, normally seven days from the posting of the notice. If one of these offers is accepted, the whole process may start again until the highest possible price has been reached.

A typical scenario is where the complainant as potential buyer perceives that he has been disadvantaged by an agent, believing that his offer has not been put to the seller (ie, the lender), and refusing to accept that the seller may have chosen to accept another, sometimes lower, offer.

'The best price for a lender is not necessarily the highest price.'

In such cases, I expect to see progress notes detailing all verbal conversations that the agent had with the seller and the potential buyers, with copies of all letters to the seller informing them of the offers received. It is the seller who decides to accept or reject an offer and an agent is obliged to act on that decision. However, an agent should demonstrate that this practice was followed and that they informed the complainant, if their offer was accepted, that the property will remain marketed until contracts are exchanged.

If the branch file showed that all offers were put to the seller and it was the seller, not the agent, who made the decision to sell, a complaint from a buyer aggrieved that they lost the opportunity to purchase will not be supported. Regardless of what a complainant may think, that there is no obligation upon an agent to ensure that the seller agreed a sale to that applicant.

I have also seen cases where an unsuccessful buyer seeks the loss of profit that they consider that they could have made if they had purchased the property because they see that the actual buyer quickly resold it at a higher price than that at which they purchased it. The fact that the buyer placed the property on the market intending to make a profit is not relevant to my consideration of whether the agent acted in accordance with their

obligations when the complainant attempted to purchase the property. These are two entirely separate issues. I will make no award in respect of this alleged putative loss. Put simply, the seller did not accept the complainant's offer and hence they were unable to purchase the property; they were, therefore, never in a position to make a profit on that property.

I have also seen a complaint where a potential buyer was advised of the process, in particular the practice of placing the public notice. As a result of such notice, a higher offer was received and the sale to the complainant aborted. The complainant subsequently complained that she should have been advised by the agent of the implications of the public notice and not been encouraged by the agent to incur costs of a solicitor or surveyor. I advised that the complainant had been made aware that a public notice was to be issued and if she had not understood the implications then she should have enquired as to its full meaning. Furthermore, it is always the case that a seller is free to withdraw from a sale, or renegotiate terms, until exchange of contracts and it was no different in this case. The complaint was not supported.

The TPO Code of Practice places an obligation upon member agents to act in accordance with best practice. I consider that this encompasses a requirement for agents to ensure that all parties are fully advised and informed about the specific issues that can arise in relation to the sale of repossessed properties. Clear and effective communication should prevent some issues being referred to me. ☰

 Do you have any views or experiences to share?
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