

“Dear Seller” Letters

Competitive Edge or Fair Housing Violation?

In a competitive market, a buyer may be looking for any advantage over other buyers to induce the seller to select that buyer's offer from a pool of interested and eager buyers. One strategy buyers are using to try to gain an edge is personalizing the buyer's offer by including a “Dear Seller” letter with the offer. The “Dear Seller” letter may include personal messages from the buyer and videos or photos of the buyer or buyer's family.

A letter admiring a home's historical significance or discussing the landscaping may seem innocuous but when the letter includes information about the buyer's marital status, race, religion or other information that allow the seller to determine or assume characteristics about the buyer and the buyer's membership in a protected class, these letters become sources of potential fair housing violations.

What do buyers need to know?

- Some sellers may refuse to review any “Dear Seller” letter or refuse to review offers that incorporate “Dear Seller” letters thereby eliminating that buyer as a contender for that property.
- It is the buyer's decision if they want to write a “Dear Seller” letter to be presented to the seller.
- Agents can discuss other ways with buyers to draft a competitive offer such as including earnest money, proof of funds and other contract provisions that can make a buyer's offer stand out in a crowd.

What do sellers need to know?

- A seemingly innocent letter referencing a buyer's future joy at seeing the buyer's children run down the stairs on Christmas morning conveys the buyer's family status and religion to a seller, both of which are protected classes under the Fair Housing Act.
- Using protected characteristics as a basis to accept or reject an offer, as opposed to price and terms, would violate the Fair Housing Act.
- Sellers can prohibit an agent from presenting “Dear Seller” letters by including instructions in the listing contract such “agent shall not present any offer accompanied by or incorporating a letter from a buyer.”

What is the role of a Wisconsin real estate agent?

- Agents can point out the problems that can occur when the letters include misrepresentations, inaccuracy, misleading statements, contractual obligations, and unrealistic promises and conditions.
- An agent may educate buyers about fair housing law and the pitfalls of “Dear Seller” letters a point out the non-discrimination provision in the buyer agency agreement if the buyer is a client.
- If the buyer decides to write a “Dear Seller” letter, agents are obligated to draft as instructed by the party they are working with or representing.
- An agent should not advise buyers on what should be in a “Dear Seller” letter and should not offer guidance as to what information would be considered “safe” and not a fair housing violation.