

Real Estate Tip of the Week: Contract Races - A Reminder

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In a property sale, a contract race occurs when there is more than one prospective buyer and the seller wants to issue contracts to each of them. This may happen when selling freehold or leasehold interests or granting a lease. If you are a seller in these circumstances (and this includes landlord or tenant) it is likely that your solicitor will have obligations under its professional conduct rules, the SRA Code of Conduct 2011.

The Code specifically provides that where acting for a seller of land a solicitor has to “inform all buyers immediately of the seller’s intention to deal with more than one buyer”.

For sellers this means that:

- The point at which your solicitor must inform all buyers that there is more than one buyer may well be before the moment he or she is instructed by you to issue draft documents to those parties. The duty is to inform all buyers immediately once your solicitor becomes aware that you intend to deal with more than one buyer.
- The moment that a settled intention to deal arises could be a grey area and it may come about inadvertently as soon as your solicitor considers there is intent to deal. Clarity of instructions is important.
- It is worth considering, at the earliest opportunity, the extent to which an “intention to deal” might arise during the currency of the deal you are negotiating and discussing this with your legal advisor (preferably) before the duty inadvertently arises.

Dealing with more than one buyer may well produce the desired outcome (ie. a quick sale) but, in circumstances where an intention to deal arises unexpectedly and is not considered at the appropriate point, it may result in regulatory complications (and delay) that would otherwise have been unnecessary.

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