# Tender, Negotiation and Deadline

## Tender

Listing a property for sale by tender is a process where buyers submit written offers to the agency before the specified deadline. The tender process is not defined in legislation – the process is set out in the tender document.

## Selling a property by tender

The listing agent and selling agent(s) may work with numerous prospective buyers to help them submit tenders. If the listing or selling agent is working with more than one prospective buyer, they shouldn't share tender details with anyone other than the vendor.

The branch manager or supervisor will usually present all tenders to the vendor after the deadline. The tender deadline will set out how the offer is made and considered – it is usually delivered by email or submitted in a sealed envelope and is not opened until after the tender deadline. The listing agent may be present for this as well as the vendor's lawyer or any support person the vendor chooses.

Listing by tender may be useful when:

- The property has unique features that make it difficult to price
- The vendor has time constraints or a deadline
- The vendor doesn't want to share their price expectations with buyers

## Important things to know about tenders

These are some key points about the tender process.

- Tender offers are usually opened after the tender deadline, although the tender document can set out a different process, for example, that the property can be sold before the deadline. The advertising should make this clear and include a phrase like "unless sold prior".
- The vendor may also be able to change the deadline. You should discuss any benefits and drawbacks of changing the deadline with the vendor and notify interested buyers if the deadline changes.
- Prospective buyers will be asked to fill in a legally binding tender agreement, which includes the tendered price and conditions of sale.
- Prospective buyers provide a deposit if the tender is accepted and then, only when the offer is unconditional.
- You must keep copies of all tendered offers for 12 months (Code of conduct rule 10.12)
- When the tender offers have been opened the vendor may choose to negotiate further with one or more tenderers or reject all offers.

## Dealing with tender offers

Tenders can be submitted any time up to the deadline. It is a good idea to let prospective buyers know to put their best offer forward because they are unlikely to have an opportunity to change their offer once it is submitted.

When tenders are submitted, they should be kept in a safe place where they will not usually be opened until after the tender deadline, although the tender document can set out changes to this process, for example:

- that offers can be considered before the deadline
- that the deadline can be extended
- that tenders can be opened before the deadline to check that the tender document has the correct and necessary information.

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You should discuss the benefits and drawbacks of accepting offers early or extending the deadline with the vendor.

Buyers who submit a tender offer should be made aware that they cannot usually withdraw their offer until 5 working days after the tender closing date. Opening and accepting a tender
When the tender has closed, the offers can be opened with the vendor and your branch manager or supervisor. Once opened, check that the tenders submitted meet the vendor's requirements and are completed correctly, with the necessary signatures and deposit.

The vendor can accept a tender, reject all of them or negotiate further. The 5-day withdrawal time frame helps to provide the vendor with time to consider the offers, make enquiries and negotiate if necessary.

When the vendor accepts an offer, they will need to sign the sale and purchase agreement and you will notify the successful party. You will also need to contact the unsuccessful parties and return their deposits and documents.

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## Negotiation

In this sale method, there is no end date for offers, and potential purchasers make offers based on what they think the property is worth in the current market.

## Listing a property by negotiation

A vendor may want to list their property for sale by negotiation when it's difficult to estimate the market price of their property.
There are different ways of selling a property by negotiation. One is to market it as buyer enquiry over (BEO) or buyer budget over (BBO) a set price or by providing a pricing guide.

The BEO needs to be realistic, and if the vendor rejects offers over the BEO, you may need to re-evaluate the BEO.

## Managing the offer process

If a potential buyer makes a written offer, you need to present it to the vendor. You may want to ask any other interested buyers if they would like to make an offer, although the first offer needs to be presented within a reasonable time-frame. It's important you check the first offer for a sunset clause to avoid placing your vendor or customers under undue pressure.

If there is more than one written offer, it becomes a multi-offer process.

More information about selling a property by multi-offer

If there is just one written offer, the vendor can consider the offer and decide what to do:

- Consult their lawyer or conveyancer, sign the sale and purchase agreement and accept the offer.
- Reject the offer. In this case, the buyer may decide to put in another offer. You don't have to tell the buyer why the vendor rejected the offer, but it may be helpful for them to know so they can make a better offer next time.
- Negotiate the offer. The vendor may decide to make changes to the sale and purchase agreement, which you will need to point out to the buyer. The buyer will need to review the agreement and only sign it if they are happy with it. The vendor and the buyer may go back and forth a few times before they agree on terms they are both happy with.
- The buyer can withdraw their offer at any time before it has been agreed and signed by both parties. A verbal acceptance from a vendor is not binding, and they can still choose to accept an offer from another buyer.

## Completing the sale

If the vendor accepts an offer, the buyer and vendor will need to work to meet any conditions included in the sale and purchase agreement. You may need to provide access to the property to help the buyer satisfy their conditions, for example, if the property needs to be inspected by a property inspector.

If the buyer needs more time to satisfy their conditions, the buyer's lawyer may work with you to arrange this with the vendor. Any changes will need to be signed off on the sale and purchase agreement by both the buyer and vendor.

When all conditions have been met, the lawyer or conveyancer can confirm the sale is unconditional.

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## Deadline Sale

Deadline sale is a sales method where a property is marketed for a set period with an advertised end date.

## Listing a property by deadline

Offers can be made at any point up to the end date and because vendors can choose to accept an offer at any time, buyers need to be proactive in registering their interest with you.

The marketing should make this clear for interested buyers by stating something like 'unless sold prior.' Offers are made on a standard sale and purchase agreement.

## How is it different from a tender process?

A deadline sale offers vendors more flexibility than sale by tender. The vendor can accept an offer at the time that suits them.

They may also choose not to accept any offer until the end date. Offers are made on standard sale and purchase agreements and prospective buyers can include terms in their offer.

## Consideration of offers

The vendor can wait until the end date has been reached, and consider all the offers together, or they can accept an offer at any point during the listing period.

Under rule 10.10 you are obligated to submit all written offers you receive to the vendor.

Rule 10.10 — A licensee must submit to the client all offers concerning the grant, sale, or another disposal of any land or business, provided that such offers are in writing.

You must advise your client about all written offers so the vendor can decide whether to view the offer at the time or wait until the deadline date. You may also want to inform potential buyers about the vendor's time frames to better manage their expectations.

You cannot withhold an offer from your client.

## Is the vendor bound to accept the highest offer?

The vendor is not bound to accept the highest offer.

The vendor drives the process and chooses when they'll look at the offers, whether they'll accept any offers, and who they will negotiate with.

AGENTS CAN REFER TO REINZ FOR COMPLETION OF THE TENDER CONTRACTUAL DOCUMENT

(PARTICULARS AND CONDITIONS OF SALE OF REAL ESTATE BY TENDER)