

## "Bidding Wars" In The Hamptons: What Should Sellers And Buyers Know?

John A. Viteritti | July 18, 2016

"Bidding wars" are quite common occurrences in the current Hamptons real estate market. I spoke to several real estate professionals to help better understand the process. To provide a legal context, I spoke with Christopher D. Kelley, Senior Partner with the prominent East End law firm, Twomey, Latham, Shea, Kelley, Dubin & Quartararo.

"Before putting the property on the market, the seller would be wise to speak with their attorney to clarify not only the terms of the sale, but also the circumstances that would obligate the seller to pay a broker's commission. If not properly structured, a seller could find themselves obligated to pay more than one broker's commission," Mr. Kelley explained. "In a 'closed bid' process, all of the terms have to be made clear to prospective buyers. It may not be just about price, but whether it has to be an all-cash deal or the date by which the buyer must be prepared to take the title. It's also important to include an upset date by which buyers have to submit an offer, for example, 48 hours would be considered reasonable. Another important consideration is for the broker to accept back-up offers in the event that the buyer is not able to move forward. This could happen if the purchase is contingent upon financing. One way to avoid a seller from being obligated to pay a broker's commission is to make the commission due only if title passes."



I spoke with Judi A. Desiderio, Chief Executive Officer of Town & Country Real Estate, who has eight offices throughout the South and North Forks of Eastern Long Island. She elaborated upon the process. "Bidding wars can begin with offers that are received simultaneously. At Town & Country the office manager takes over negotiations when there are multiple bids," she noted. "It's their job to establish what the seller's wishes are and guide them through this difficult process. It's a delicate situation which could result in losing both buyers, if you are not careful. Everyone must be dealt with fairly and the broker must act with total transparency as well as empathy and compassion. Someone is going to lose. As the seller's representative we need to do everything we can to make sure it's not our client."

I asked Ed Reale, attorney and Associate Broker who leads Sotheby's International Realty's Southampton and Bridgehampton offices, how many of their deals were a result of competitive bidding? "I would say about 2 percent, maybe 1.25 percent make it to closing," he answered. "That's why we keep the door open to all bidders, just in case the deal doesn't close. In order to avoid that, we give the buyer a reasonable amount of time to do their due diligence and the bids are all closed bids. I make it a practice to invite all interested buyers and real estate agents involved in the transaction to the bid openings."

Ernie Cervi, East End Regional Senior Vice President and Licensed Real Estate Broker with Corcoran Group, explained the typical bidding war transaction. "The key is to price the property at or just below market value. That's the best way to generate multiple offers," Cervi shared. "The buying public knows value and if they see a good deal they show interest. Of course, the highest price doesn't necessarily represent the best deal for the seller. The contingencies are also important. Nine out of ten times it's the seller's attorney who will orchestrate the sealed bid process, but it could be the agent who listed the property for sale." I asked if they used a typical time frame for the bids to be submitted and what percentage of their transactions resulted from the bid process. "We usually allow the next business day for competitive bids. As far as the percentage of our transactions that are a result of the bid process, I would say about 1 percent to 9 percent of those are cash deals," he responded.

Finally, I spoke with Robert Nelson, Senior Managing Director with Brown Harris Stevens in the Hamptons. He covered advice to the buyer, handling bidders, and more. "I always tell the buyer, don't think in terms of what others may be willing to offer for the property. Approach it as if you were the only bidder. That way, regardless of the outcome, you will know that you did what was best for you. That's one way to avoid buyer's regret," said Nelson. "It's very important that we handle all bidders the same, we show no preference to our broker's over broker's from other agencies. All bidders are given a reasonable amount of time to submit an offer. The final choice is made by the seller." I also inquired about the percentage of their transactions that were a result of the competitive bid process. "I would estimate between 5 and 10 percent," said Nelson.