

focus on: Legal Affairs

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Code of Ethics Q & A

Here are some of the most common questions we have received which concern the Code of Ethics. Please remember that the Legal Hotline is available to assist principal or managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday.

Q: I have been working with a buyer with whom I have an Exclusive Agency Agreement. One Sunday the buyer went to a builder's open house which was hosted by a broker with another firm. My client loved the house and told the broker she will contact me to make an offer. However, the broker convinced the buyer that, if she writes the offer with him at the open house, she will get a better deal from the builder than if she writes the offer through me. Isn't there something wrong with that?

A: There are a few issues here. First, Article 16 says that "REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients." Second, Standard of Practice 16-10 states that "REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service." In the above scenario, the broker was specifically told by the buyer that she was already being represented by another broker and therefore, there was likely a violation of the Code of Ethics based on Article 16.

Finally, according to Article 2 of the Code of Ethics, "REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction." The representation made by the broker to the buyer that she could "get a better deal" by working with him would also likely constitute a violation of the Code.

Q: I wrote an offer on behalf of my buyer clients. When we were informed by the listing broker that it was a multiple offer situation, I asked the listing broker if he personally had written any of the other offers. He refused to tell me. Is he required to give me that information?

A: Article 1, Standard of Practice 1-15 states, "REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. "Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker." Therefore, the answer is yes, he is required under the Code of Ethics to give the buyer's agent that information provided he had seller's approval (which he must have had since the multiple offer situation was disclosed).

Q: I have received a counteroffer on a listing. I know the sellers will not agree to the terms presented in the counteroffer and I have just received a new offer from a different buyer. Do I have to present the counter offer to the sellers?

A: The rules of the Indiana Real Estate Commission require all licensees to communicate all written offers to their principals "immediately upon receipt of such offer" (876 IAC 1-1-23(a)). In addition, all REALTORS® are required by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® to present all offers "as quickly

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as possible” (Standard of Practice 1-6). Therefore, all offers must be presented immediately whether they are good, bad, or indifferent, even if another offer is pending, and for that matter, even if another offer has been accepted. The only exception to this rule is when the seller and the listing broker have agreed otherwise in writing. It is proper for the listing broker and the seller to agree in writing that no offers of less than a certain price, without a certain amount of earnest money, or no land contract, etc., be submitted.

Q: Given my past experience with a particular listing agent, I don't believe any offer I present is being submitted to the sellers. Because this is such an injustice to my buyers, can't I contact the sellers to make sure they saw the offer?

A: Article 16 of the Code of Ethics pertains generally to protecting the agency relationship an agent has with a client. In particular, Standard of Practice 16-13 states that that “all dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.” Therefore, the answer to the question would be no.

*Note: Pursuant to the Handbook on Multiple Listing Policy, Part Two, Policies, E. Participant's Rights, Section 9, a buyer/seller or their representatives have the right to participate in the presentation of any offer/counter-offer to the seller/buyer. However, this requirement may be waived with written instructions from the seller/buyer to their representative that cooperating brokers may not be present when offers are presented. If this is the case, the cooperating broker has the right to receive a copy of those instructions.

Q: My seller received an offer from a buyer represented by a buyer agent from another real estate firm. The purchase agreement included the statement “seller to pay buyer broker fee of 4% of the selling price.” Isn't it illegal for a broker to use a purchase agreement to change the listing broker's offer of compensation?

A: It is unethical for a REALTOR® who is representing a buyer to use a purchase agreement to attempt to modify a listing broker's offer of compensation through an MLS or other written offer. See Standard of Practice 16-16. However, a buyer who has an exclusive buyer agency contract with the buyer broker that requires the buyer to pay the buyer broker a fee, can negotiate with a seller to pay such fee, just as they can negotiate for the seller to pay any other costs of closing. In this situation the buyer is asking that the seller, not the listing broker, pay the buyer broker fee. This distinction is critical. See interpretation case #16-17 of the NATIONAL ASSOCIATION OF REALTORS® Standard of Practice 16-16, Code of Ethics and Arbitration Manual.

It is important to keep in mind that the goal for the listing agent and the cooperating broker is to sell the property and be fair to all parties in these situations. This may require renegotiation of commissions or splits if one is acting in the best interest of the parties involved.

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