

COLDWELL BANKER PREMIER REALTY
BLUNIVERSITY
A *PREMIER* TRAINING & EDUCATION SERIES

ETIQUETTE IN AGENCY
CE.6728000-RE



COLDWELL BANKER
PREMIER REALTY

COURSE OBJECTIVES

As a result of this course, the student will be able to:

- Explain how agency is created and agency how relationships are disclosed.
- Explain when a Duties owed form and a Consent to Act form is needed.
- Explain the recognized forms of agency and what makes it exclusive.
- Ensure that their activities or lawful and does not interfere with another agent's exclusive agency agreement.

Definition of Agency

Under general agency law, agency occurs when one person (the agent), with the consent of another person (the principal), undertakes to represent and act on the principal's account with third-persons and usually in business matters. It is voluntary, consensual and as a rule - when dealing with real property - is founded upon an express or implied contract.

Nevada recognizes two types of agency concerning real property:

General Agency

In which the agent is authorized under a general power-of-attorney to perform all duties for the principal that the principal could perform to convey real property (general agency requires a written power-of-attorney with its special recording requirements);

Special Agency

In which the agent is given limited authority to act for the client within certain restrictions and for specific transactions.

Real estate brokerage agreements create a special agency wherein the broker's authority is limited to facilitating a real estate transaction for his or her principal.

Nevada's real estate brokerage statutes (NRS 645) define "agency" as the relationship between a principal (client) and an agent (broker) arising out of a brokerage agreement in which the agent agrees to do certain acts on behalf of the principal in dealings with a third party.

An agency relationship cannot be established solely from a licensee's negotiations or communications with a client of another broker if the licensee has received written permission from that party's broker.

Nevada does not recognize "transactional" agency, or limited agency representation. Transactional agency is where the broker agrees that he or she is not representing either party but only is hired to facilitate the transaction.

By law, a licensee cannot "contract away" or a client "waive" the statutory duties of NRS 645.252 or NRS 645.254. The public has the right to expect the licensee will adhere to the law and abide by all of the licensee's legal duties. A broker can be held responsible for not performing all of the stated duties whether or not the client and broker have agreed otherwise.

(REVIEW DUTIES OWED FORM)

Who must we provide a Duties Owed form to?

Unrepresented parties

NAC 645.637 Disclosure of relationship as agent or status as principal. (NRS 645.050, 645.190, 645.252) In each real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose, in writing, to his or her client and to any party not represented by a licensee, the relationship of the licensee as the agent of his or her client or the status of the licensee as a principal. The disclosure must be made as soon as practicable, but not later than the date and time on which any written document is signed by the client or any party not represented by a licensee, or both. The prior disclosure must then be confirmed in a separate provision incorporated in or attached to that document and must be maintained by the real estate broker in his or her files relating to that transaction.

Referring Agent (SEE POSITIONS STATEMENT)

Creation of Agency

Historically, an agency relationship could have been created in several ways: Based on the 2007 definition, to create an agency relationship, there must first be a brokerage agreement. However; as brokerage agreements may be oral, there is the possibility that a licensee's conduct may lead a party to the reasonable expectation that an oral brokerage agreement exists and therefore, the licensee is that party's agent.

Implied agency

Where the licensee acts as the agent of the client with the intention of representation and the client tacitly accepts those services even though there is no expressed (oral or written) brokerage agreement.

Expressed

Where both the client and the broker agreed to the agency.

Brokerage Agreements

NRS 645.005 Brokerage Agreement Defined

An oral or written contract between a client and a broker in which the broker agrees to provide real estate related services in exchange for valuable consideration.

Open Brokerage Agreement

An open brokerage agreement is where the broker has no exclusive representation of the client – the client may hire any number of other brokers. An open brokerage agreement allows the seller to sell the property without owing a commission.

Open brokerage agreements may be oral or written. All oral brokerage contracts are considered “open.” All written brokerage agreements are also presumed to be open unless the contract’s terms or title state it is exclusive.

Exclusive Brokerage Agreements

Exclusive representation protects the broker from interference by other licensees with the client-broker relationship. A licensee, property manager or owner-developer may not negotiate the sale, exchange or lease of real estate with a principal if the client has an exclusive agency agreement in force with another broker. An exception is made if the broker has given written permission to a requesting licensee to negotiate directly with the client. Nevada has a state mandated authorization form. A broker who holds an exclusive agency agreement must cooperate with other brokers whenever it is in the client’s best interest.

The law identifies only four provisions that must be included in an enforceable exclusive brokerage agreement. These are:

1. The agreement must be in writing;
2. It must be signed by both the broker and the client or their authorized representatives;
3. The contract must have a definite termination date; and
4. The agreement may not require the client to notify the broker of the client’s intention to cancel the exclusive features of the brokerage agreement once the agreement is terminated.

Exclusive Right to Sell

Exclusive Buyer Brokerage

For the most part, all other terms in these agreements are negotiable. Although, the Real Estate Division has identified various elements that, at a minimum, should be in a buyer's brokerage agreement including, specified terms, duration, compensation, services agreed upon, and the ability of a client to cancel for non-performance.

REVIEW WAIVER

Authorization to Negotiate (SEE HANDOUT)

To forestall implied agency, a licensee is prohibited from negotiating a sale, exchange or lease of real estate with another broker's client unless that licensee has received written authorization from the other broker for such direct communication. By law, such direct communication does not create an agency relationship between the authorized broker and the other broker's client.

The Real Estate Division has created a form authorizing a buyer's broker to negotiate directly with a seller. The type of communication authorized by the RED form is limited to the delivery, communication, or facilitation of an offer, counteroffer, or proposal; discussion and review of the terms of an offer, counteroffer, or proposal; and the preparation of any responses as directed.

Recognized forms of Agency:

Single or sole agency

Single agency is the most common form of agency and the one least likely to create liability for a broker. Single agency is where the broker represents only one party in a given transaction. The broker's duty, loyalty and responsibilities are focused on promoting the interests of that client.

Multiple Agency

Acting for More Than One Party to the Transaction – Nevada law provides that a broker may represent more than one party in a real estate transaction. The same person or entity may act as the agent for two parties interested in the same transaction when their interests do not conflict and where loyalty to one does not necessarily constitute breach of duty to the other.

When representing more than one party in a transaction, the broker must disclose this representation and obtain the written consent of each party before proceeding.

3 Options

- Find their own representation
- Represent themselves
- Assigned Agency

Assigned Agency

To lessen the conflict of interest impact created when a broker represents more than one party in a transaction, the law provides an "Ethical Wall" wherein the broker is allowed to assign a separate agent to each client. Upon this assignment the broker does not need to use the "Consent to Act" disclosure form nor receive the approval of the clients.

Historically

- Edina – Conflict of interest
- Sub-agency

(SEE CONSENT TO ACT)

Abrogation of Common Law (SEE POSITION STATEMENT)

NRS 645.251 Licensee not required to comply with certain principles of common law. A licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of the licensee as set forth in NRS 645.252, 645.253 and 645.254 and the regulations adopted to carry out those sections.

Fiduciary vs Fidelity

A licensee has the duty of absolute fidelity to the client's interests. Absolute fidelity means a licensee must put the client's interests ahead of the licensee's interest. A licensee "will not be permitted to pervert his authority to his own personal gain in severe hostility to the interest of his principal.

NO DECEIT, FRAUD OR DISHONESTY

Whether acting as a principal or an agent, a licensee has a duty to all parties not to be deceitful, fraudulent or dishonest.

Deceit is the act of intentionally or recklessly giving a false impression or statement, so that another person will rely on it. It includes any conviction involving bad faith, dishonesty, a lack of integrity, or moral turpitude.

Dishonesty is the act of not telling the truth. In other words, the licensee must at all times be honest.

Dishonest Activities: Activities that constitute deceitful, fraudulent or dishonest behavior include, but are not limited to, any material misrepresentation or false promises of a character likely to influence, persuade or induce the listener's reliance on the misrepresentation; guaranteeing future profits on the resale of property; submitting any false or fraudulent appraisal to a financial institution or other interested person; naming false consideration in a document; filing with the Division any false documents with willful, material misstatements of fact, and misrepresentation in the sale of home protection insurance.

The licensee's duty of honesty includes the duty to deal fairly with all parties to a transaction, not just the client.

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is _____ whose license number is _____.

The licensee is acting for [client’s name(s)]: _____,

who is/are the Seller/Landlord Buyer/Tenant.

Broker: The Broker is _____,

whose company is _____.

Are there additional licensees involved in this transaction? Yes No **If yes, Supplemental form 525A is required.**

Licensee’s Duties Owed to All Parties:

A Nevada real estate licensee shall:

- 1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
- 2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
- 3. Disclose to each party to the real estate transaction as soon as practicable:
 - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b. Each source from which licensee will receive compensation.
- 4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee’s Duties Owed to the Client:

A Nevada real estate licensee shall:

- 1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee’s duties in the brokerage agreement;
- 2. Not disclose, except to the licensee’s broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
- 3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
- 4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
- 5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
- 6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
- 7. Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties:

The Licensee

MAY [_____/_____] **OR** **MAY NOT** [_____/_____]

in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a “Consent to Act” form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.

Seller/Landlord: _____ *Date:* _____ *Time:* _____

Seller/Landlord: _____ *Date:* _____ *Time:* _____

OR

Buyer/Tenant: _____ *Date:* _____ *Time:* _____

Buyer/Tenant: _____ *Date:* _____ *Time:* _____



DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

ADVISORY OPINION 15-01

Replaces: N/A

April 29, 2015

Duties-Owed Forms for Referring Licensees

QUESTION:

Is a licensee who is solely a referring agent required to complete a Duties Owed Form?

SHORT ANSWER:

No.

ANALYSIS OF THE ISSUE:

A Duties Owed form is required to be provided to each party for whom a licensee is acting as an agent in a real estate transaction, and for each unrepresented party to that real estate transaction, pursuant to NRS 645.252(3).

The purpose of Duties Owed form is to set forth the numerous duties that a licensee owes to his or her own client and those owed to all parties to a specific transaction. The Duties Owed form is only to be used when the licensee represents a party to a specific transaction.

A licensee who merely refers a party to another licensee is not acting as an agent for the party in a specific transaction. Therefore, no Duties Owed form should be provided by the referring licensee. It would be improper for a "referring" licensee to provide a Duties Owed form because none of the listed duties are actually owed to that individual, nor is it required by statute, regulation or Division policy. It would also be improper for the listing agent to demand a Duties Owed form from the referring licensee for the same reasons.

ADVISORY CONCLUSION:

The Duties Owed form is a state form and an individual may not require a licensee to execute this form where the licensee is simply referring an individual. Otherwise, it would give the false impression that the referring agent represents the individual in the transaction.



JOSEPH DECKER
Administrator
Real Estate Division

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION**

3300 W. Sahara Ave., Suite 350, Las Vegas, Nevada 89102 * (702) 486-4033
e-mail: realest@red.nv.gov * <http://red.nv.gov/>

WAIVER FORM

In representing any client in an agency relationship, a real estate licensee has specific statutory duties to that client. Under Nevada law only one of these duties can be waived. NRS 645.254 requires a licensee to "present all offers made to or by the client as soon as practicable." This duty may be waived by the client.

"Presenting all offers" includes without limitation: accepting delivery of and conveying offers and counteroffers; answering a client's questions regarding offers and counteroffers; and assisting a client in preparing, communicating and negotiating offers and counteroffers.

In order to waive the duty, the client must enter into a written agreement waiving the licensee's obligation to perform the duty to present all offers. **By signing below you are agreeing that the licensee who is representing you will not perform the duty of presenting all offers made to or by you with regard to the property located at:**

Property Address _____ City _____

AGREEMENT TO WAIVER

By signing below I agree that the licensee who represents me shall not present any offers made to or by me, as defined above. I understand that a real estate transaction has significant legal and financial consequences. I further understand that in any proposed transaction, the other licensee(s) involved represents the interests of the other party, does not represent me and cannot perform the waived duty on my behalf. I further understand that I should seek the assistance of other professionals such as an attorney. I further understand that it is my responsibility to inform myself of the steps necessary to fulfill the terms of any purchase agreement that I may execute. I further understand that this waiver may be revoked in writing by mutual agreement between client and broker.

WAIVER NOT VALID UNTIL SIGNED BY BROKER.

_____	_____	_____	_____
Client	Date	Licensee	Date

_____	_____	_____	_____
Client	Date	Broker	Date

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION**

3300 W. Sahara Ave., Suite 350, Las Vegas, Nevada 89102 * (702) 486-4033
e-mail: realest@red.nv.gov * <http://red.nv.gov/>

**AUTHORIZATION TO NEGOTIATE
DIRECTLY WITH SELLER**

Nevada law permits a real estate licensee to negotiate a sale or lease directly with the seller or lessor with written permission from the listing broker. This form grants that permission with respect to the below-named Seller(s) and the listed property.

- Seller agrees, and the Seller's broker authorizes, that a Buyer's agent or broker may present offers (including subsequent counteroffers) and negotiate directly with the Seller.

- "Negotiate" means (a) delivering or communicating an offer, counteroffer, or proposal; (b) discussing or reviewing the terms of any offer, counteroffer, or proposal; and/or (c) facilitating communication regarding an offer, counteroffer, or proposal and preparing any response as directed.

- Seller understands and agrees that, after accepting an offer, additional contact from the Buyer's agent may be required to obtain disclosures and other documents related to the transaction.

- Seller acknowledges and agrees that Buyer's agent does not represent the Seller, and negotiations pursuant to this authorization do not create or imply an agency relationship between the Buyer's agent and the Seller. Seller understands that he/she should seek advice from Seller's broker and/or financial advisers or legal counsel.

- Seller acknowledges that Seller's broker will provide a copy of this authorization to the Buyer's agent or broker upon request, prior to presenting an offer.

Seller's Name(s): _____

Seller's Signature(s): _____
Date / Time

Property Address: _____

City: _____ Zip: _____ Contract Listing Date: _____

Company Name: _____

Seller's Agent Name: _____ Signature: _____

Date / Time

Seller's Broker Name: _____ Signature: _____

Date / Time

JIM GIBBONS
Governor

STATE OF NEVADA



MENDY K. ELLIOTT
Director

ANN M. McDERMOTT
Administrator

**DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION**

www.red.state.nv.us

MULTIPLE REPRESENTATION IN REAL ESTATE TRANSACTIONS IN NEVADA

This statement concerns any and all reference to dual agency in courses approved for continuing education credits by the Nevada Real Estate Commission or the Education Sub-Committee of the Nevada Real Estate Commission.

Dual agency is a common law term. In 1995 NRS 645.251 abrogated the common law setting forth that "a licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of a licensee as set forth in NRS 645.252, 645.253, and 645.254 and the regulations adopted to carry out those sections."

Thus, the prevailing law in Nevada regarding agency duties of a licensee is STATUTORY. The term "dual agency" is not used anywhere in NRS 645.

NRS 645.252.1.(d) requires that the representation of more than one party in a real estate transaction may only be undertaken upon licensee's full disclosure to each party that he/she is acting for more than one party in that transaction and with each party's subsequent consent to the multiple representation in writing.

Education Section
Real Estate Division

CONSENT TO ACT

This form does not constitute a contract for services nor an agreement to pay compensation.

DESCRIPTION OF TRANSACTION: The real estate transaction is the sale and purchase; or lease; of

Property Address: _____

In Nevada, a real estate licensee may act for more than one party in a real estate transaction however, before the licensee does so, he or she must obtain the written consent of each party. This form is that consent. Before you consent to having a licensee represent both yourself and the other party, you should read this form and understand it.

Licensee: The licensee in this real estate transaction is _____ (“Licensee”) whose license number is _____ and who is affiliated with _____ (“Brokerage”).

Seller/Landlord _____
Print Name

Buyer/Tenant _____
Print Name

CONFLICT OF INTEREST: A licensee in a real estate transaction may legally act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest.

DISCLOSURE OF CONFIDENTIAL INFORMATION: Licensee will not disclose any confidential information for 1 year after the revocation or termination of any brokerage agreement entered into with a party to this transaction, unless Licensee is required to do so by a court of competent jurisdiction or is given written permission to do so by that party. Confidential information includes, but is not limited to, the client’s motivation to purchase, trade or sell, which if disclosed, could harm one party’s bargaining position or benefit the other.

DUTIES OF LICENSEE: Licensee shall provide you with a “Duties Owed by a Nevada Real Estate Licensee” disclosure form which lists the duties a licensee owes to all parties of a real estate transaction, and those owed to the licensee’s client. When representing both parties, the licensee owes the same duties to both seller and buyer. Licensee shall disclose to both Seller and Buyer all known defects in the property, any matter that must be disclosed by law, and any information the licensee believes may be material or might affect Seller’s/Landlord’s or Buyer’s/Tenant’s decisions with respect to this transaction.

NO REQUIREMENT TO CONSENT: You are not required to consent to this licensee acting on your behalf. You may

- Reject this consent and obtain your own agent,
- Represent yourself,
- Request that the licensee’s broker assign you your own licensee.

CONFIRMATION OF DISCLOSURE AND INFORMATION CONSENT

BY MY SIGNATURE BELOW, I UNDERSTAND AND CONSENT: I am giving my consent to have the above identified licensee act for both the other party and me. By signing below, I acknowledge that I understand the ramifications of this consent, and that I acknowledge that I am giving this consent without coercion.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
_____	_____	_____	_____	_____	_____
<i>Seller/Landlord</i>	<i>Date</i>	<i>Time</i>	<i>Buyer/Tenant</i>	<i>Date</i>	<i>Time</i>
_____	_____	_____	_____	_____	_____
<i>Seller/Landlord</i>	<i>Date</i>	<i>Time</i>	<i>Buyer/Tenant</i>	<i>Date</i>	<i>Time</i>

NATIONAL ASSOCIATION OF REALTORS®

Code of Ethics Video Series

Article 16 of the Code of Ethics

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. *(Amended 1/04)*

• Standard of Practice 16-1

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

• Standard of Practice 16-2

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed “general” for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

• Standard of Practice 16-3

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers’ exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

• Standard of Practice 16-4

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration

date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR[®] may contact the owner to secure such information and may discuss the terms upon which the REALTOR[®] might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

• **Standard of Practice 16-5**

REALTORS[®] shall not solicit buyer/tenant agreements from buyers/ tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR[®], the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR[®] may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR[®] might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

• **Standard of Practice 16-6**

When REALTORS[®] are contacted by the client of another REALTOR[®] regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS[®] have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

• **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR[®] as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS[®] from seeking such prospect's future business. *(Amended 1/04)*

• **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR[®] shall not preclude or inhibit any other REALTOR[®] from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

• **Standard of Practice 16-9**

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. *(Amended 1/04)*

• **Standard of Practice 16-10**

REALTORS[®], acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

• **Standard of Practice 16-11**

On unlisted property, REALTORS[®] acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall

provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

• **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/ landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

• **Standard of Practice 16-13**

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.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

• **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

• **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

• **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

- **Standard of Practice 16-17**

REALTORS[®], acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**

REALTORS[®] shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

- **Standard of Practice 16-19**

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**

REALTORS[®], prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS[®] (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Pathways to Professionalism

While the Code of Ethics and Standards of Practice of the National Association establishes objective, enforceable ethical standards governing the professional conduct of REALTORS, it does not address issues of courtesy or etiquette. Based on input from many sources, the Professional Conduct Working Group of the Professional Standards Committee developed the following list of professional courtesies for use by REALTORS on a voluntary basis. This list is not all-inclusive, and may be supplemented by local custom and practice.

I. Respect for the Public

1. Follow the "Golden Rule" – Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. When showing an occupied home, always ring the doorbell or knock – and announce yourself loudly – before entering. Knock and announce yourself loudly before entering any closed room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don't use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of – and meet – all deadlines.
19. Promise only what you can deliver – and keep your promises.
20. Identify your REALTOR® and your professional status in contacts with the public.
21. Do not tell people what you think – tell them what you know.

II. Respect for Property

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.

5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc). If you think something is amiss (e.g. vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off shoes and boots inside property.

III. Respect for Peers

1. Identify your REALTOR and professional status in all contacts with other REALTORS.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets; security systems; and whether sellers will be present during the showing.
6. Show courtesy, trust and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS®' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may affect your reputation – and business – for years to come.

(Updated 11/04)



Copyright© 2021 National Association of REALTORS®

Case Studies

Case Study #1

Client A listed a small house with REALTOR® B who received an offer to buy it and a deposit in the form of a check for \$2,000 from REALTOR C. Client A accepted the offer, then heard nothing from REALTOR® B, the listing broker, for three weeks. At that time REALTOR® B called him to say that the sale had fallen through and that the buyer's check had never been deposited. Client A complained to the local Association against REALTOR® B charging him with unprofessional conduct.

Case Study #2

At the time Client A signed an exclusive listing agreement with REALTOR® B, they discussed market conditions and prevailing prices, and agreed on listing at \$500,000. After six weeks with no apparent interest in the house, Client A called REALTOR® B to learn why his property was receiving scant attention from prospective buyers. REALTOR® B said, "It's not hard to diagnose the trouble. Your property is overpriced. That was clear to me at the time we listed it. In this market, it would take a really interested buyer to go that high." "When you reached that conclusion, why didn't you tell me?" asked Client A. "Because," said REALTOR® B, "it wouldn't have done any good. I know from experience that sellers can't be convinced that they are overpricing their property until they get tired of waiting for an offer that will never come. Now that the market has taught you something that you would not take as advice, let's reduce the price to \$425,000.

Client A complained about REALTOR® B to the REALTORS® Association, detailing these circumstances, strongly insisting that REALTOR® B had fully agreed with him on the price at which the property was originally listed.

Case Study #3

Owner A listed his home with REALTOR® B on an exclusive listing. Mr. C, a recent transferee to the city, was represented by REALTOR® D, who showed Mr. and Mrs. C a number of properties. Of the properties they had seen, Mr. and Mrs. C decided that Owner A's home was the only one that suited their needs. They told REALTOR® D they were prepared to make a full price offer to maximize their chances of purchasing the home.

REALTOR® D agreed to write the offer, but first produced a prelisting agreement which, if signed, would obligate Mr. and Mrs. C to give REALTOR® D the exclusive right to sell the property for 90 days should they ever decide to list the property for sale.

Mr. and Mrs. C objected to committing to a future listing, but REALTOR® D insisted he would not prepare or submit their offer to REALTOR® B and Owner A unless the C's signed the prelisting agreement. Mr. and Mrs. C left without making an offer or signing the prelisting agreement. The next morning they called REALTOR® D stating that if the property was still available they would enter into the prelisting agreement since they still wanted to purchase the house. The prelisting agreement and the purchase offer were signed, their offer was accepted by Owner A, and the sale subsequently closed. After the closing, Mr. and Mrs. C filed an ethics complaint against REALTOR® D.

Case Study #4

REALTOR® A had listed Seller S's vintage home. Buyer B made an offer that was contingent on a home inspection. The home inspection disclosed that the gas furnace was in need of replacement because unacceptable levels of carbon monoxide were being emitted.

Based on the home inspector's report, Buyer B chose not to proceed with the purchase.

REALTOR® A told Seller S that the condition of the furnace and the risk that it posed to the home's inhabitants would need to be disclosed to other potential purchasers. Seller S disagreed and instructed REALTOR® A not to say anything about the furnace to other potential purchasers. REALTOR® A replied that was an instruction he could not follow so REALTOR® A and Seller S terminated the listing agreement.

Three months later, REALTOR® A noticed that Seller S's home was back on the market, this time listed with REALTOR® Z. His curiosity piqued, REALTOR® A phoned REALTOR® Z and asked whether there was a new furnace in the home. "Why no," said REALTOR® Z. "Why do you ask?" REALTOR® A told REALTOR® Z about the home inspector's earlier findings and suggested that REALTOR® Z check with the seller to see if repairs had been made.

When REALTOR® Z raised the question with Seller S, Seller S was irate. "That's none of his business," said Seller S who became even angrier when REALTOR® Z advised him that potential purchasers would have to be told about the condition of the furnace since it posed a serious potential health risk.

Seller S filed an ethics complaint against REALTOR® A alleging that the physical condition of his property was confidential.

Case Study #5

REALTOR® A listed Seller S's house. Within a matter of days, REALTOR® X submitted a full price offer from Buyer B. The offer specified that Buyer B's offer was contingent on the sale of Buyer B's current home. Seller S, anxious to sell, accepted Buyer B's offer but instructed REALTOR® A to continue marketing the property in hope that an offer that was not contingent on the sale of an existing home would be made.

A week later, REALTOR® Q and Buyer T sent a purchase offer for the full listed price to REALTOR® A waiving all contingencies. Seller S, preferring the second offer, signed it and instructed REALTOR A to cancel the first agreement.

Upon notifying both buyers and their agents, Buyer B removed his contingency in writing and informed REALTOR A that they were closing per the terms of the contract, which they did.

REALTOR® Q, believing that REALTOR® A's failure to disclose the existence of the accepted offer between Seller S and Buyer B at the time REALTOR® Q sent the offer was a violation and filed a complaint.

Case Study #6

REALTOR® A listed Client B's home and subsequently advised him to accept an offer from Buyer C at less than the listed price. Client B later filed a complaint against REALTOR® A with the Board stating that REALTOR® A had not disclosed that Buyer C was REALTOR® A's father-in-law; that REALTOR® A's strong urging had convinced Client B, the seller, to accept an offer below the listed price; and that REALTOR® A had acted more in the interests of the buyer than in the best interests of the seller.

Case Study #7

Client A gave a 180-day exclusive right to sell listing of a commercial property to REALTOR® B, specifying that no “for sale” sign was to be placed on the property. REALTOR® B and his sales associates started an intensive sales effort which, after three months, had produced no offer to buy, but it had called attention to the fact that Client A’s property was for sale. When REALTOR® C heard of it, he called on Client A, saying that he understood that his property was for sale, and that if Client A would list the property with him exclusively he felt confident that he could provide prompt action. Client A said the property was exclusively listed with REALTOR® B under a contract that still had about 90 days to run.

“In that case,” said REALTOR® C, “you are bound for the next 90 days to REALTOR® B. I have a really outstanding organization, constantly in touch with active buyers interested in this class of property. I am in a position to render you an exceptional service, and I will plan to call you again in 90 days or so.”

The property remained unsold during the term of REALTOR® B’s listing contract. REALTOR® C called again on Client A, and obtained his assurance that he would sign an exclusive listing of the property upon expiration of the listing contract.

When REALTOR® B called on Client A on the last day of the listing contract to seek its renewal, Client A told him of REALTOR® C’s two visits. “I was impressed by REALTOR® C’s assurance of superior service” Client A told REALTOR® B, “and in view of the fact that my listing with you produced no definite offer in the 180-day period, I have decided to give REALTOR® C a listing tomorrow.” REALTOR B filed a complaint.

Case Study #8

A property was exclusively listed with REALTOR® A. The property was not sold during the term of REALTOR® A's listing, although both REALTOR® A and REALTOR® B, a buyer representative, had shown the property to prospects.

Sometime after the expiration of REALTOR® A's listing, the listing appeared on REALTOR® B's website. Shortly thereafter, the property was sold by REALTOR® B.

REALTOR® A confirmed that it was listed with REALTOR® B and then charged REALTOR® B in having failed to respect his exclusive representation by soliciting the listing during the time REALTOR A had it listed and that the client told him that because of a family problem he intended to take the property off the market for a few months but would consider relisting at a later date.

Case Study #9

REALTOR® A entered a listing in the MLS. In the "Remarks" portion of the listing, it was noted that the seller was moving out of state. Shortly thereafter, REALTOR® A received a call from REALTOR® B, requesting permission to show the property to a prospective purchaser. REALTOR® B's request was granted and the property was shown to the prospect. During the showing, REALTOR® B started a conversation with Seller X regarding his proposed move to another state. REALTOR® B told the seller that he was acquainted with a number of real estate brokers in the city to which Seller X was relocating and suggested that he be allowed to refer Seller X to one of these brokers. Seller X responded that REALTOR® A, the listing broker, had previously mentioned the possibility of a referral and that Seller X felt obligated to be referred by REALTOR® A, if by anyone.

Several days later, Seller X received a phone call from REALTOR® B who again asked permission to refer the seller to a broker in the city to which the seller was moving. The seller indicated that he was not interested in REALTOR® B's offer and that if he wished to be referred to another broker, he would do so through REALTOR® A. The seller then called REALTOR® A and asked if there was anything REALTOR® A could do to stop REALTOR® B from requesting that he be allowed to refer the seller to another broker. Upon learning of REALTOR® B's attempts to create a referral, REALTOR® A filed a complaint with the Association.

Case Study #10

REALTOR® A, a residential broker, had recently listed a home. REALTOR® A's marketing campaign included open houses on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR® A introduced herself to Buyer B and asked whether Buyer B was working with another broker. Buyer B responded that he was, in fact, exclusively represented but went on to add that he was quite familiar with the property as it had been previously owned by a close personal friend. REALTOR® A told Buyer B that she would be happy to show Buyer B through the home but reminded Buyer B that she represented the seller and not Buyer B.

After viewing the home, Buyer B indicated that he had pressing business travel plans, was seriously interested in the property, and requested REALTOR® A's assistance in preparing a purchase offer. REALTOR® A assisted Buyer B in filling out a standard form purchase contract and later that day presented the offer to the seller who accepted it.

REALTOR® A was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

Case Study #11

After a decades-long career as a noted researcher and teacher, Professor Y decided to sell his home near the university campus in anticipation of his retirement. Having lived in the home for over thirty years and realizing that the proceeds from its sale would constitute a significant part of his retirement funds, Professor Y made appointments with several potential listing brokers, including REALTOR® P and REALTOR® Q. During each appointment, Professor Y asked extensive questions hoping to get a clear idea of his property's market value and each broker's proposed marketing strategies.

REALTOR® Q was familiar with Professor Y's home, having grown up on the same block and having gone to elementary and high school with Professor Y's children. Consequently, REALTOR® Q was not surprised when she received a call asking for a meeting to discuss a possible listing of Professor Y's home. The appointment had gone well and REALTOR® Q was confident she would get the listing. To her surprise, just three days later the property came onto the market listed with REALTOR® P. REALTOR® Q was taken aback and spent considerable time pondering what she had done or said – or failed to do or say – that had led Professor Y to choose to list with REALTOR® P. Several times she was tempted to call Professor Y and ask why she hadn't been chosen, but she never made that call.

Several weeks later Professor Y's son and daughter-in-law hosted a retirement party for Professor Y. Their friend REALTOR® Q was among the invited guests. At the party, Professor Y approached REALTOR® Q and, after exchanging pleasantries, commented, "You're probably wondering why I didn't list my home with you." "The thought crossed my mind," admitted REALTOR® Q, "but you made a good choice with REALTOR® P. I'm certain he'll do a fine job and get a fair price for you." Then, since Professor Y had raised the issue, REALTOR® Q asked, "Why didn't you give me the listing?" Professor Y explained that while he thought highly of REALTOR® Q, he had been very impressed with REALTOR® P's marketing strategies, and his choice was a business decision and not one influenced by friendships. REALTOR® Q accepted Professor Y's explanation and their conversation turned to other topics. A month later, REALTOR® Q was surprised to receive notice from the local association of REALTORS® advising she had been named in an ethics complaint alleging that her conversation with Professor Y, after Professor Y had listed his home with REALTOR® P, had violated Article 16 of the Code of Ethics.

Case Study #12

REALTOR® A was holding an open house for his client's home, which had been on the market for several months, so REALTOR® A was thrilled to see Buyer C approach the home after two hours with no visitors. REALTOR® A gave her a tour of the space, but Buyer C indicated she was looking for more of a "fixer upper", as she had almost singlehandedly completed some significant renovation projects in her previous homes and was looking for the perfect next project.

REALTOR® A had another listing that she knew was perfect for Buyer C, and hadn't been listed in the MLS yet as the client had just signed their agreement earlier that morning. REALTOR® A described the home to Buyer C, and offered to show it to her. Buyer C replied, "Oh, thank you, I am actually working with someone. I should probably ask them about it." REALTOR® A responded, "that's fine, but to be honest, I'm not sure if your agent will even get a chance to see it. At the price at which it's listed, I'm confident it will sell before I can even get it in the MLS." Somewhat reluctantly, Buyer C agreed to let REALTOR® A show her the second home. REALTOR® A drafted an offer, which was accepted, and the parties completed a quick close.

Proud of a job well done for her client, REALTOR® A was shocked when he received notice of an ethics complaint filed against him by REALTOR® B.