

REAL ESTATE CONTRACTS: LEGAL AND ETHICAL RESPONSIBILITIES C20200267

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Course Objectives

- Starting Point – Agency Disclosure Requirements
 - Consumer Information Statement
 - Consent to Dual Agency
- Establishing The Seller Business Relationship
 - Listing Agreement
- Establishing The Buyer Business Relationship
 - Buyer Agency Agreement
- Putting Seller and Buyer Together
 - Contract of Sale



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N.J.A.C. 11:5-6.9

Agency Disclosure Requirements – The CIS

- “Consumer Information Statement on NJ Real Estate Relationships”: Deliver and verbally explain to all Sellers & Buyers, Landlords and Tenants for sale of 1-4 family dwelling units, vacant one family lots, residential leases longer than 125 days
 - Acknowledgement of delivery is not required
- Must disclose the nature of your intended business relationship
- Written, informed Consent to Dual Agency required
- All brokerage agreements and contracts for sale and lease must contain a written statement that the CIS was received and explained



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REALTOR® Code of Ethics



Article 1:

- When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS pledge themselves to protect and promote the interests of their client.
- This obligation to the client is primary, but it does not relieve REALTORS of their obligation to treat all parties honestly.

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Legal and Ethical Responsibilities to the Seller



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Establishing The Seller Business Relationship

- Types of Agreements
 - Open Listing – FSBO
 - Unrepresented Seller Agreement
 - Exclusive Agency
 - Seller reserves right to sell themselves – exclusive agency addendum
 - Can be entered into MLS
 - Exclusive Right To Sell/Rent Listing Agreement
 - Provides maximum benefit to the Seller and the Broker
 - Net Listing – ILLEGAL!!
 - MLS Entry Only Agreements
 - Buyer agents typically negotiate directly with the Seller



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The Listing Agreement: N.J.A.C. 11:5-6.2 & 6.4

- Property address, list price and definite term included
- No pre-determined commission fee or rate - must be negotiable
- Commission split with selling brokers made known to seller
 - Variable rate commissions require disclosure to cooperating agents
- Broker Protection Clause
- Advise seller of company policy regarding cooperation
 - Waiver of Broker Cooperation
- Disclosure and consent to agency required.
 - Written informed consent to dual agency also required
- Attorney General's Memorandum on NJ Law Against Discrimination given
 - Code of Ethics, Article 10
- Authorization required to list address & display property on Internet



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Article 3 - Standard of Practice 3-1

- REALTORS®, as exclusive agents of sellers/ landlords, establish the terms and conditions of offers to cooperate.
- Cooperating brokers may not assume that the offer of cooperation includes an offer of compensation.
- Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation.

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Article 1 - Standard of Practice 1-15**Does the Listing Agent Have to Tell?**

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.

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Once Seller Business Relationship Is Created

- Deliver to seller a fully executed copy of the listing agreement immediately
- Verify all listing information
- Submit to MLS within 48 Hours
- Have seller review and approve listing info and all photos
- Explain to Seller, in advance, any company policy regarding multiple offers
- Price changes, amendments to agreement and term extensions in writing
- Confirm the buyer's financial qualifications (11:5-6.4) when an offer is presented



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Once Seller Business Relationship Is Created

- Advise seller of the obligation to disclose all material information about the property (11:5-6.4)
 - Must inquire to seller about any physical conditions that may affect the property
 - Must perform a visual inspection of the property for any readily observable physical conditions
 - Verify and disclose flood zone status
 - Property Condition Disclosure Form Recommended
 - Complete Lead Based Paint Disclosure (1978)



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Advertising

- Advertising must comply with NJREC 11:5-6.1 rules which are applicable to all media
- NAR Code Ethics, Article 12:
 - Be honest and truthful in real estate communications.
 - Present a "true picture" in advertising, marketing, and other representations.
 - Ensure that your status as real estate professional is readily apparent in advertising, marketing, and other representations.

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Legal and Ethical Responsibilities to the Buyer



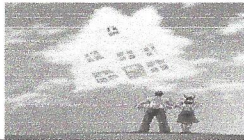
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Establishing The Buyer Business Relationship

- Buyer Counseling Session:
 - Discuss needs, wants
 - Confirm financial qualifications (11:5-6.4)
 - Provide sources for information
 - Preview the sales contract
 - Discuss Buyer Rebates (45:15-16a) if Broker authorizes
 - Buyer Rebate Agreement (NJAR Form 130-4/10)
- The Buyer Agency Agreement
 - Exclusive or Non-Exclusive
- Oral Agreement

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Establishing The Buyer Business Relationship The Buyer Agency Agreement



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Code of Ethics – Article 16



REALTORS shall not engage in any practice or take any action inconsistent with exclusive brokerage relationship agreements that other REALTORS have with their clients

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.

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The Buyer Agency Agreement



- Exclusive or Non-Exclusive
- Determine Area for Services
- Establish Agency
 - Explain Dual Agency and Obtain Informed Consent to Dual Agency
- Establish Term of Agreement and Broker Protection Period
- Explain Right of Cancellation
- Review Buyer's Agent's Duties and Buyer's Responsibilities
- Determine Compensation
- Obtain consent to show and/or sell same property to other buyers
- Discuss fair housing obligation

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Buyer Representation Fair Housing Statement

Real estate agents have an obligation to abide by all local, state and federal laws regarding discriminating against any individual or group of individuals for any reason whatsoever. The agent has no duty to disclose the racial, ethnic or religious composition of any neighborhood, community or building, nor whether persons with disabilities are housed in any home or facility, except that the agent may identify housing facilities meeting the needs of a disabled buyer.



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Article 1 - Standard of Practice 1-13

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

1. The REALTOR®'s company policies regarding cooperation
2. The amount of compensation to be paid by the client
3. The potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties
4. Any potential for the buyer/tenant representative to act as a disclosed dual agent
5. The possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. (Amended 1/06)



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Once The Buyer Business Relationship Is Created

- Exercise due diligence to find The "Right" property
- Once Decision Is Made:
 - Verify all MLS data and Tax information
 - Review Property Condition Disclosure
 - Obtain Lead Based Paint Disclosure if required
 - Prepare a CMA for the selected property
 - Question listing agent, when appropriate, for Seller price and motivation
- Strategize for the desired result based on price, terms, conditions and buyer motivation
- Review Contract with Buyer for accuracy & understanding
- Discuss negotiation strategies and outcomes with buyer



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Code of Ethics: Article 1 & Article 3



- REALTORS® are the listing agent have the right to 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.
- Listing brokers have an obligation to disclose the existence of dual or variable rate commission arrangements

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Presenting The Contract of Sale

- In Person
- COE SOP 1-6: Realtors® shall submit all offers and counter-offers objectively and as quickly as possible.
- COE SOP 1-7: Listing brokers shall continue to submit to the seller all offers and counter-offers until closing unless the seller has waived this obligation in writing.
- New to COE (2019): Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide a written affirmation to the cooperating broker stating that the offer has been submitted to the seller, or a written notification that the seller has waived the obligation to have the offer presented

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The Sales Contract: New Jersey REALTORS® Form 118 – Statewide



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Purchase Price and Financing

Notice To Buyer and Seller – Agents and Preparer Signatures Required

- ¶ Purchase Price Details
- ¶ Manner of Payment
 - Earnest Money Deposits and Date of Delivery
 - Escrow Deposit Requirements 11:5-5.1(e)
- ¶ Mortgage Contingency
 - Type and Terms of Mortgage
 - Commitment Date
 - Closing Date (Line 93)
 - FHA/VA Amendatory Clause - Addendum
- ¶ Date and Times For Performance
 - Time of The Essence Clause



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Zoning and Title

- ¶ Certificate of Occupancy and Zoning Compliance
 - Expense limitation for Seller
- ¶ Municipal Assessments
- ¶ Quality and Insurability of Title
- ¶ Possession, Occupancy (A) and Tenancies (B)



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Environmental and Home Inspections

- ¶ Lead Based Paint Hazard - Addendum if applicable
- ¶ Point of Entry Treatment
- ¶ Cesspool Requirements
- ¶ Inspection Contingency Clause
 - Responsibilities of Homeownership – Broker/Agent Indemnification
 - Radon Testing
 - Wood Boring Insects
 - Buyer's Rights to Inspection – Timeline
 - Responsibility to Cure
 - Flood Hazard Area
 - Qualifications of Inspectors
- ¶ Off-Site Conditions & Air Safety & Zoning Notice



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Additional Clauses

- ¶ Bulk Sales
 - When applicable
- ¶ Notice to Buyer Concerning Insurance
 - C.L.U.E. Report: History of loss claims which impacts premiums and coverage
- ¶ Initial and Final Walk-Throughs
 - Repair Inspections
- ¶ Adjustments At Closing
 - Seller fees
 - Prorated responsibilities
- ¶ Failure of Buyer Or Seller To Close
 - Legal remedies
 - Broker's Commission liability



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Legal Requirements For Licensees

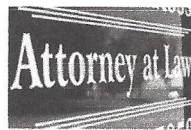
- ¶ CIS Acknowledgement
- ¶ Declaration of Business Relationships
- ¶ Broker's Information and Commission
 - License Information Required for CFPB compliance
- ¶ Equitable Lien
- ¶ Disclosure That Buyer or Seller is a Real Estate Licensee
- ¶ Brokers To Receive Closing Disclosure Documents
 - Permission required due to CFPB rule regarding confidentiality of financial information
- ¶ Professional Referrals
 - Hold Harmless Protection



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Attorney Review

- ¶ Attorney Review
 - Counting The Time
 - Contract Delivery to Buyer and Seller
 - Attorney Review
 - Disapproval
 - Conclusion Confirmation
 - Contract Revisions Post Attorney Review
- ¶ Electronic Signatures and Documents



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Available Addenda

- Buyer's Property Sale Contingency
- Condominium/Homeowners Assn.
- FHA/VA Loans Amendatory Clause
- Lead Based Paint Disclosure
- New Construction
- Private Sewage Disposal
- Private Well Testing
- Properties with 3 or More Units
- Seller Concession
- Short Sale
- Underground Fuel Tanks

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Monitoring The Transaction

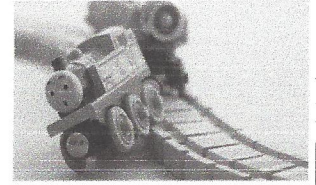
- Stay In Contact with all parties
- Use the NJR Timeline
 - Helps you to keep the contract on target with all contingencies
 - Responsibility disclaimer
- Initial & Final Walk-Throughs
 - Confirming repairs and property condition
 - Checklist recommended
- Closings handled by:
 - Attorney
 - Title company



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What Delays or Derails Closings?

- Appraised value too low
- Missing documentation
- Permits
- Repair issues
- Property insurance
- Mortgage denial
- Impending weather events
- TRID compliance



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CERTIFICATE OF COMPLETION

New Jersey Continuing Education Class

REAL ESTATE CONTRACTS: LEGAL AND ETHICAL RESPONSIBILITIES

C20200267 3 Credits Core

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