

# NEW MEXICO REAL ESTATE COMMISSION

## 2021 NMREC Core Course



INSTRUCTOR -

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In addition to the 2021, 2022, 2023 & 2024 NMREC Core courses, MESA REI offers the following:

#### Core Electives:

- A Blunt Conversation About Marijuana 4CE
- A Look at Real World Issues - Claim Studies 4CE
- Anatomy of a Listing Contract 4CE
- Anatomy of a Purchase Contract 4CE
- Broker Beware: Getting from Contract to Closing 4CE
- Clear the Confusion: Offers (Counters, Multiples, Contingencies, etc.) 4CE
- Disclose, Disclose, Disclose (Unless You're NOT Supposed To) 4CE
- E & O Insurance: Know What You Are Buying & Why 4CE
- Highest & Best Offers: An Escalating Concern 2CE
- Inspections, ORR's & Repairs, OH MY! 2 CE
- Intro to Seller Financing 4CE
- NMAR Forms Update 4CE
- NMAR's Many Miscellaneous Forms 4CE
- One Thing Leads to Another- The PA Contingencies Explained 2CE
- QB Refresher Course 6CE
- Ready Set Go: Broker Duties & Other Required Disclosures 2CE
- Taxes and Your Real Estate Business 4CE
- Triple D: Deadlines, Defaults & Definitions 3CE
- Yes Your Honor, I Did Disclose! 4CE
- Understanding & Using NMAR Forms 8CE
- Wells & Septics 4CE

#### Ethics Electives:

- Handling Multiple Offers Ethically & Effectively 4CE
- NAR Code of Ethics & Enforcement 4CE

#### Property Management Electives:

- Property Management & The 3 Way Reconciliation 2CE Prop Mang
- Trust Accounts 4CE Prop Mang
- UORRA 6CE Prop Mang
- Case Studies- Residential Property Management 3CE
- Going to Court- Residential Property Management 3CE
- Brokerage Operations - Residential Property Management 4CE
- Leasing & Management Residential Property Management 6CE

#### Electives:

- Bump In the Pipe 2CE
- 7 Tech Tips To Level Up 2CE

#### On Demand Classes:

- Handling Multiple Offers 4CE Ethics
- QB Refresher Course 6CE Core Elective
- Business Ethics In Real Estate 4CE Ethics
- Closing On Time is Possible 3CE Elective

## So, Here's What Happened

A Broker goes on a listing appointment. At the listing appointment the Owner informs the Broker that they have replaced all the windows in the home. The Broker lists the property for sale on the MLS and writes "all new windows" in the property description.

Two weeks or so into the transaction, the Buyer and the home inspector notice that only some of the windows have been replaced.

The Buyer is upset, stating that when he saw "all new windows" on the listing, he got especially excited about this home and that it was a very important fact in determining that he made an offer.

Additionally, the Buyer states that if he knew that only some of the windows had been replaced, he would have offered considerably less.

Now the Buyer wants a \$10,000 price reduction. Discussion Points:

- 1) If you were the Buyer, how would you feel if only some of the windows had been replaced?
- 2) If you were the Seller, how would you feel if the Buyer asked you for a \$10,000 price reduction?
- 3) If the Buyer brought a complaint against the Listing Broker and you were an investigator with the New Mexico Real Estate Commission, which Broker Duty might you decide that the Listing Broker violated?
- 4) Which **THREE** of the "12 Easy Ways to Lose a Real Estate License" might you decide they violated?
- 5) If the Buyer brought an ethics complaint against the Listing Broker and you were on the Grievance Committee, which **THREE** article(s) of the Code of Ethics should the buyer have named in their complaint?

## **So Here's What Happened 2**

A home was on the market for only one day. Five offers were received by the Seller.

The Seller accepted one of the offers, and the Buyer ordered a home inspection, wood-destroying insect inspection, sewer line scope and radon test.

The radon levels in the home were within limits, but both the home inspector and termite inspector found many things wrong with the home. The Buyer's Broker wrote up the ORW and sent it, along with the entire home inspection report, to the Seller even though the Seller had not requested it.

The Buyer and the Seller were negotiating cures, but before they were able to reach an agreement, another offer was submitted to the Listing Broker. He presented it to the Seller who decided to accept It, since it contained an escalation clause.

Before he accepted it, of course, the Seller needed to terminate the purchase contract with the original Buyer.

On the termination agreement the Listing Broker wrote this language: "Buyer defaulted on the Purchase Contract by sending the entire Home Inspection Report to the Seller, even though the Seller never asked for it."

- 1) Can the Seller terminate the contract under these circumstances?
- 2) If neither deal works out and the Seller puts the house back on the market, could the Seller share the original Buyer's inspection report?
- 3) Should they share the inspection report?
- 4) If they don't share the report, how would they disclose?
- 5) Does the Seller have to disclose defects on the inspection report with new buyers in absolutely all cases?
- 6) If you were the Broker for the Seller, would you write the termination agreement for them under these circumstances?

## **PART19: BROKER DUTIES AND BROKERAGE RELATIONSHIPS**

### **16.61.19.8. Broker duties; disclosure**

Brokers owe specific broker duties to prospective buyers, sellers, landlords (owners), tenants as set forth herein, 16.61.19.8 NMAC. Brokers shall disclose the applicable set of broker duties owed to buyers, sellers, landlords (owners) of rental property and tenants as set forth herein, 16.61.19.8 NMAC, prior to the time the broker generates or presents any written document to that party that has the potential to become an express written agreement and obtain from that applicable party written acknowledgement that the broker has made such disclosures. Brokers shall perform all duties established for brokers by the commission. In the case of prospective buyers, sellers, landlord (owners) and tenants to whom the broker is not directly providing real estate services, such disclosure and acknowledgment of receipt shall be made through the broker who is directly providing real estate services to that buyer, seller, landlord (owner) or tenant.

A. Brokers owe the following duties to prospective buyers, sellers, landlords (owners) and tenants:

- (1) Honesty and reasonable care and ethical and professional conduct;
- (2) Compliance with local, state, and federal fair housing and antidiscrimination laws, the New Mexico real estate license law and the Real Estate Commission rules, the New Mexico Uniform Owner Resident Relations Act, and other applicable local, state, and federal laws and regulations;
- (3) Performance of any and all written agreements made with the prospective buyer, seller, landlord (owner) or tenant;
- (4) Written disclosure of any potential conflict of interest or any other written agreement that the broker has in the transaction including but not limited to:
  - (a) Any written brokerage relationship the broker has with any other parties to the transaction or;
  - (b) Any material interest or relationship of a business, personal, or family nature that the broker has in the transaction;
  - (c) Any written agreement the broker has with a licensed transaction coordinator who will be providing brokerage services related to the transaction.
- (5) Written disclosure of any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act.

B. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Section 16.61.19.8(A), Brokers owe the following Broker Duties to the buyers, sellers, landlord (owners) and tenants to whom the broker is directly providing real estate services, regardless of the scope and nature of those services; Brokers working as Property Managers for a landlord (owner) are directly providing real estate services to the landlord (owner), not to the tenant:

- (1) Assistance to the party in completing the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services, including:
  - (a) Timely presentation of and response to all written offers or counter-offers; and
  - (b) Active participation in assisting in complying with the terms and conditions of the contract and with the finalization of the transaction; If the broker in the transaction is not providing the service, advice or assistance described in Paragraphs (a) and (b) of this Subsection B of 16.61.19.8 NMAC, the party must agree in writing that the broker is not expected to provide such service, advice or assistance;
- (2) Acknowledgement by the broker that there may be matters related to the transaction that are outside the broker's knowledge or expertise and that the broker will suggest that the party seek expert advice on these matters;
- (3) Advice to consult with an attorney regarding the effectiveness, validity or consequences of any written document generated by the brokerage or presented to the party and that has the potential to become an express written agreement.

- (4) Prompt accounting for all money or property received by the broker;
- (5) Maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former principal's written consent or is required by law;
- (6) Written disclosure of brokerage relationship options available in New Mexico;
- (7) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a seller/owner shall not disclose the following to the buyer/tenant in a transaction:
  - (a) That the seller/owner has previously indicated they will accept a sales/lease price less than the asking or listed price of a property;
  - (b) That the seller/owner will agree to financing terms other than those offered;
  - (c) The seller/owner's motivations for selling/leasing; or) Any other information the seller/owner has requested in writing remain confidential, unless disclosure is required by law;
- (8) Unless otherwise authorized in writing, a broker who is directly providing real estate services to a buyer/tenant shall not disclose the following to the seller/owner in the transaction:
  - (a) That the buyer/tenant has previously indicated they will pay a price greater than the price submitted in a written offer;
  - (b) The buyer/tenant's motivation for buying/leasing; or
  - (c) Any other information the buyer has requested in writing remain confidential, unless disclosure is required by law.
- (9) In the event the broker is working for the landlord (owner) as a residential property manager, the broker additionally owes to the landlord (owner) all duties owed under the law of agency.

C. In addition to the broker duties owed to prospective buyers, sellers, landlords (owners) and tenants as set forth in this Subsection A of 16.61.19.8 NMAC, brokers working as Property Managers for a landlord (owner) owe the following duties to tenants:

- (1) Prompt accounting for all money or property received by the broker from the tenant, including issuance of a receipt for cash received;
- (2) If a residential property manager, written disclosure that the broker is the agent of the owner of the property and not of the tenant; in the commercial property management context, written disclosure of the broker's relationship with the landlord (owner).

D. Broker Obligations to Other Brokers. Brokers owe the following professional obligations to other brokers; however, brokers are not required to provide to one another a list of these broker obligations.

1. Honesty, reasonable care, and ethical and professional conduct.
2. Timely presentation of all written offers or counter-offers and responses thereto, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
3. Active participation in assisting the party to whom the broker is directly providing real estate services in complying with the terms and conditions of the contract and with the closing of the transaction, unless otherwise agreed to in writing by the party to whom the broker is directly providing real estate services;
4. Compliance with local, state, and federal fair housing and antidiscrimination laws, the New Mexico real estate license law and the Real Estate Commission rules; the New Mexico Uniform Owner-Resident Relations Act, and other applicable local, state, and federal laws and regulations;
5. Written disclosure of any adverse material facts actually known by the broker about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts requiring disclosure do not include any information covered by federal fair housing laws or the New Mexico Human Rights Act;
6. Written disclosure of any potential conflict of interest that the broker has in the transaction, including but not limited to, any material interest the broker has in the transaction or any relationship of a business, personal, or family nature that the broker has with a party to the transaction;
7. Non-interference with a purchase agreement or any express written agreement that another broker has with a buyer, seller, landlord (owner) or tenant.

## 12 EASY WAYS TO LOSE YOUR REAL ESTATE LICENSE

### 61-29-12 REFUSAL, SUSPENSION OR REVOCATION OF LICENSE FOR CAUSES ENUMERATED

- A. The commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:
- (1) Made a substantial misrepresentation;
  - (2) Pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;
  - (3) Paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;
  - (4) Represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;
  - (5) Failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;
  - (6) Been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;
  - (7) Employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978
  - (8) Failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until

the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing non-trust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

- (9) Failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;
- (10) Violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;
- (11) Committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or
- (12) Been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

**B.** An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation.



# CODE OF ETHICS AND STANDARDS OF PRACTICE OF THE NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2021



Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

## Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/21)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. (Amended 1/07)

## Duties to Clients and Customers

### 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. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. (Amended 1/01)

- **Standard of Practice 1-1**

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

- **Standard of Practice 1-2**

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/07)

- **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**  
REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)
  - **Standard of Practice 1-5**  
REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)
  - **Standard of Practice 1-6**  
REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)
  - **Standard of Practice 1-7**  
When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/20)
  - **Standard of Practice 1-8**  
REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/99)
  - **Standard of Practice 1-9**  
The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:
    - 1) reveal confidential information of clients; or
    - 2) use confidential information of clients to the disadvantage of clients; or
    - 3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
      - a) clients consent after full disclosure; or
      - b) REALTORS® are required by court order; or
      - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
      - d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)
  - **Standard of Practice 1-10**  
REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)
  - **Standard of Practice 1-11**  
REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)
  - **Standard of Practice 1-12**  
When entering into listing contracts, REALTORS® must advise sellers/landlords of:
    - 1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
    - 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
    - 3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/03)
  - **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, e.g., listing broker, subagent, landlord's agent, etc.; and
    - 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. (Adopted 1/93, Renumbered 1/98, Amended 1/06)
  - **Standard of Practice 1-14**  
Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. (Adopted 1/02)
  - **Standard of Practice 1-15**  
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. (Adopted 1/03, Amended 1/09)
  - **Standard of Practice 1-16**  
REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12)
- ## Article 2
- REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)
- **Standard of Practice 2-1**  
REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

- **Standard of Practice 2-2**  
(Renumbered as Standard of Practice 1-12 1/98)
- **Standard of Practice 2-3**  
(Renumbered as Standard of Practice 1-13 1/98)
- **Standard of Practice 2-4**  
REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.
- **Standard of Practice 2-5**  
Factors defined as “non-material” by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2. (Adopted 1/93)

## Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client’s best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. (Amended 1/95)

- **Standard of Practice 3-1**  
REALTORS®, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in 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. (Amended 1/99)
- **Standard of Practice 3-2**  
Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. (Amended 1/14)
- **Standard of Practice 3-3**  
Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. (Adopted 1/94)
- **Standard of Practice 3-4**  
REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker’s firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. (Amended 1/02)
- **Standard of Practice 3-5**  
It is the obligation of subagents to promptly disclose all pertinent facts to the principal’s agent prior to as well as after a purchase or lease agreement is executed. (Amended 1/93)
- **Standard of Practice 3-6**  
REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)
- **Standard of Practice 3-7**  
When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is

personal or on behalf of a client and, if on behalf of a client, their relationship with the client. (Amended 1/11)

- **Standard of Practice 3-8**  
REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. (Amended 11/87)
- **Standard of Practice 3-9**  
REALTORS® shall not provide access to listed property on terms other than those established by the owner or the listing broker. (Adopted 1/10)
- **Standard of Practice 3-10**  
The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. (Adopted 1/11)
- **Standard of Practice 3-11**  
REALTORS® may not refuse to cooperate on the basis of a broker’s race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/20)

## Article 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner’s agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser’s representative. (Amended 1/00)

- **Standard of Practice 4-1**  
For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. (Adopted 2/86)

## Article 5

REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

## Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.

When recommending real estate products or services (e.g., homeowner’s insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®’s firm may receive as a direct result of such recommendation. (Amended 1/99)

- **Standard of Practice 6-1**  
REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. (Amended 5/88)

## Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®’s client or clients. (Amended 1/93)

## Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients’ monies, and other like items.

## Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. (Amended 1/04)

- **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. (Amended 1/93)

- **Standard of Practice 9-2**

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. (Adopted 1/07)

## Duties to the Public

## Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Amended 1/14)

- **Standard of Practice 10-1**

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. (Adopted 1/94, Amended 1/06)

- **Standard of Practice 10-2**

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. (Adopted 1/05, Renumbered 1/06)

- **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14)

- **Standard of Practice 10-4**

As used in Article 10 "real estate employment practices" relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. (Adopted 1/00, Renumbered 1/05 and 1/06)

- **Standard of Practice 10-5**

REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. (Adopted and effective November 13, 2020)

## Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. (Amended 1/10)

- **Standard of Practice 11-1**

When REALTORS® prepare opinions of real property value or price they must:

- 1) be knowledgeable about the type of property being valued,
- 2) have access to the information and resources necessary to formulate an accurate opinion, and
- 3) be familiar with the area where the subject property is located

unless lack of any of these is disclosed to the party requesting the opinion in advance.

When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect
- 8) disclosure of whether and when a physical inspection of the property's exterior was conducted
- 9) disclosure of whether and when a physical inspection of the property's interior was conducted
- 10) disclosure of whether the REALTOR® has any conflicts of interest (Amended 1/14)

- **Standard of Practice 11-2**

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. (Adopted 1/95)

- **Standard of Practice 11-3**

When REALTORS® provide consultative services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If

brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. (Adopted 1/96)

• **Standard of Practice 11-4**

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. (Adopted 1/02)

## Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 1/08)

• **Standard of Practice 12-1**

Unless they are receiving no compensation from any source for their time and services, REALTORS® may use the term “free” and similar terms in their advertising and in other representations only if they clearly and conspicuously disclose:

- 1) by whom they are being, or expect to be, paid;
- 2) the amount of the payment or anticipated payment;
- 3) any conditions associated with the payment, offered product or service, and;
- 4) any other terms relating to their compensation. (Amended 1/20)

• **Standard of Practice 12-2**

(Deleted 1/20)

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. (Amended 1/95)

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. (Amended 1/93)

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. (Adopted 11/86, Amended 1/16)

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. (Amended 1/93)

• **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have

“sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. (Amended 1/96)

• **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®’ websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®’s website is no longer current or accurate, REALTORS® shall promptly take corrective action. (Adopted 1/07)

• **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm’s name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm’s name and that REALTOR®’s or non-member licensee’s state(s) of licensure in a reasonable and readily apparent manner. (Adopted 1/07)

• **Standard of Practice 12-10**

REALTORS®’ obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission; or
- 5) otherwise misleading consumers, including use of misleading images. (Adopted 1/07, Amended 1/18)

• **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. (Adopted 1/07)

• **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. (Adopted 1/08)

• **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. (Adopted 1/08)

## Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

## Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. (Amended 1/99)

• **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society,

or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. (Amended 1/95)

- **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. (Amended 1/92)

- **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. (Adopted 11/87, Amended 1/99)

- **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. (Adopted 11/88)

## Duties to REALTORS®

### Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. (Amended 1/12)

- **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. (Adopted 1/00)

- **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. (Adopted 1/07, Amended 1/12)

- **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. (Adopted 1/10, Amended 1/12)

### Article 16

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)

## Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

- **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. (Adopted 2/86)

- **Standard of Practice 17-2**

Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. (Amended 1/12)

- **Standard of Practice 17-3**

REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. (Adopted 1/96)

- **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

- 1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases

the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)

- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97, Amended 1/07)
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. (Adopted 1/97)

- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. (Adopted 1/97)
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. (Adopted 1/05)

- **Standard of Practice 17-5**

The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. (Adopted 1/07)

## Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.



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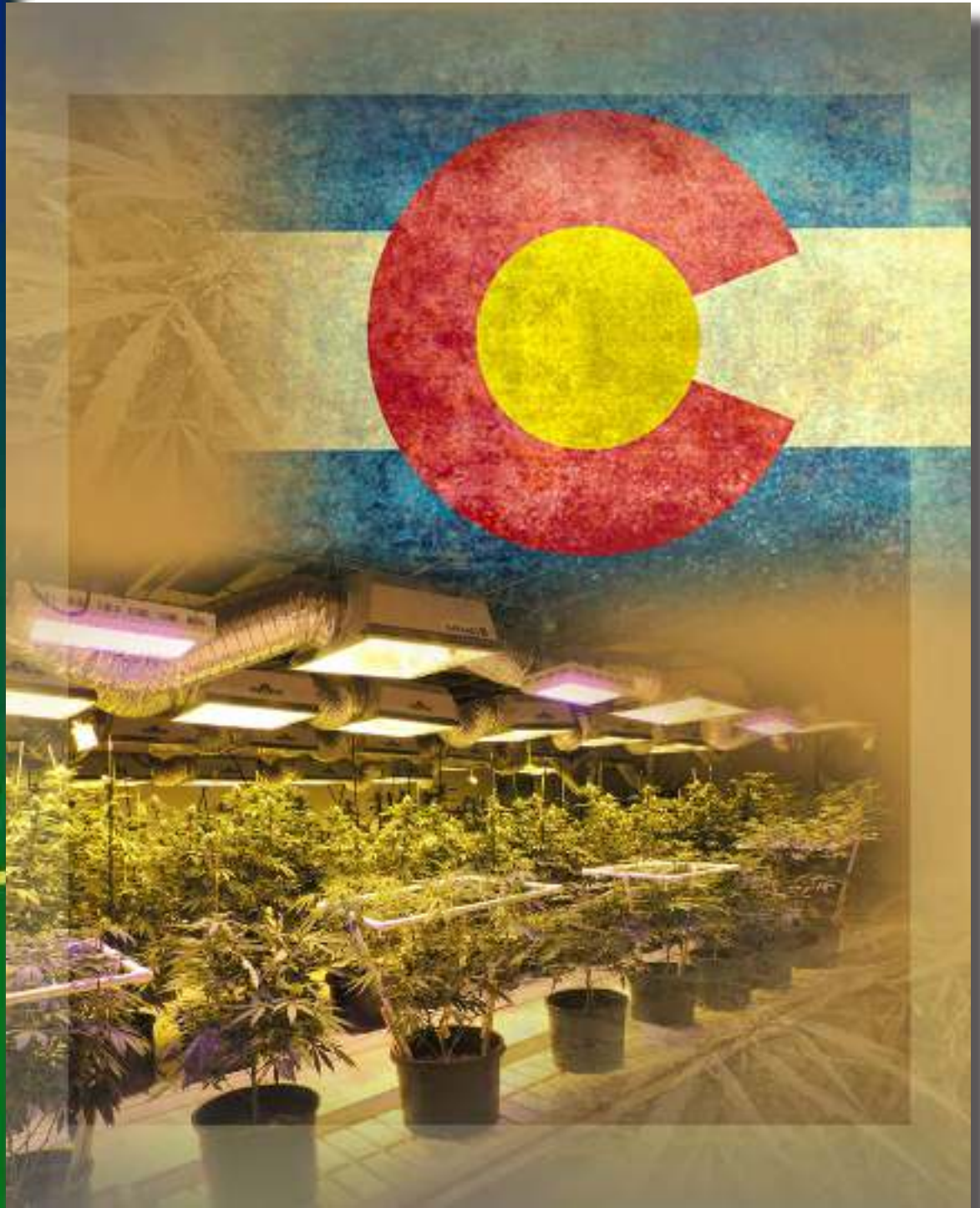
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# Residential Marijuana Grows in Colorado: The New Meth Houses?

DEA-DEN-DIR-041-16  
JUNE 2016



DEA  
INTELLIGENCE  
REPORT



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## Residential Marijuana Grows in Colorado: The New Meth Houses?

### Executive Summary

Colorado's state laws legalizing marijuana do not limit how much marijuana can be grown within a private residence. Further, there is no mechanism at the state-level to document or regulate home grows, even large ones. This has led to a proliferation of large-scale marijuana grow operations in hundreds of homes throughout the state. Much of the marijuana produced in large home grows is shipped out of Colorado and sold in markets where it commands a high price.

Although growing a large number of marijuana plants within private residences can fall within the parameters of state law, it presents potential risk to the occupants, homeowners, and neighbors of these residences, as well as to first responders who are called to them. Marijuana grows often cause extensive damage to the houses where they are maintained and are increasingly the causes of house fires, blown electrical transformers, and environmental damage. Much like the "meth houses" of the 1990s, many of these homes may ultimately be rendered uninhabitable.

### DETAILS

Colorado's legalization of medical marijuana and recreational marijuana by voter referendum set the stage for unfettered marijuana production in the state. Both Amendment 20 and Amendment 64 contain loopholes that allow for large marijuana grows within private residences. Although the State of Colorado created the Marijuana Enforcement Division (MED)—a regulatory body for licensed marijuana businesses—the MED does not have authority to regulate home grows.

*According to the Colorado Department of Public Health and Environment, in January 2016 there were 8,210 medical marijuana patients in Colorado with physician recommendations to grow 50 to 99 plants. If each patient grew 50 plants, that equals 410,000 marijuana plants.*

*From each plant, they would likely harvest 1 pound of finished marijuana every 90 days. That is 1.64 million pounds of harvested marijuana per year.*

Access to medical marijuana became every Coloradan's constitutional right in November 2000 when voters approved Amendment 20. Amendment 20 allows patients to possess six marijuana plants, unless a physician recommends more. As of 2016, physician recommendations for 75 to 99 plants are commonly used to justify large residential grows, many of which produce marijuana for sale outside the state. In January 2016, there were 107,798 medical marijuana registry patients. Of those, roughly 8 percent (8,210 patients) had physician recommendations for 50 to 99 plants.<sup>1</sup> Notably, in January 2014, when cultivation and possession of recreational marijuana became legal under state law, there were more overall medical marijuana patients (110,979), but fewer with elevated plant counts of 50 or more plants (5,308).<sup>2</sup>

As of March 2016, there is not a state-imposed limit on either the number of plants a physician may recommend for a medical marijuana patient or on the number of plants a patient may grow in a private residence. In

May 2015, state legislation was passed that limited medical marijuana patients to growing 99 plants on private property—it will take effect January 2017.<sup>3</sup>

Amendment 64 allows any adult 21 years old or older in Colorado to cultivate up to six plants. It further allows for the possession of all marijuana produced by those plants, provided the marijuana remains in the enclosed residence and is not sold.<sup>4</sup> Amendment 64 also allows any adult in Colorado to "assist" any other adult in Colorado in "possessing, growing, processing, or transporting" his/her marijuana.<sup>5</sup> Consequently, large grows and/or quantities of processed marijuana within a residence are often justified through the claim

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that the resident is assisting others by growing or storing their marijuana. As there is no mechanism at the state or local level to document or regulate recreational marijuana home grows, there is no practical means for local police to verify whose plants are grown or whose marijuana is stored in any given residence.

Some local governments have begun to place limits on the number of plants that can be grown in private residences. However, such local ordinances are widely varied and rarely effectively enforced.

As a result of the permissiveness of Colorado's medical and recreational marijuana laws, the system is extensively exploited by traffickers who operate large marijuana grows that supply out-of-state markets. Since 2014, there has been a noticeable increase in organized networks of sophisticated residential grows in Colorado that are orchestrated and operated by drug trafficking organizations. These organizations operate hundreds of large-scale home grows throughout Colorado. Harvested marijuana is shipped or transported from Colorado to markets in the Midwest and along the East Coast.<sup>6</sup>

Indoor marijuana plants can grow as tall as 6 feet or more and yield more than a pound of harvested marijuana every 90 days. Growing them requires specific conditions that consume high levels of electrical power and water and results in the drainage of chemical-laden waste water. Grow rooms must be maintained at temperatures between 71 and 80 degrees Fahrenheit. At certain times during the growing cycle, plants must remain under high-power grow lights for 24 hours a day. Fertilizers and pesticides—sometimes harsh ones—are required to grow robust and healthy plants. At times in the growing cycle, each plant can require 3 or more gallons of water per day.

Local police departments often receive numerous calls from neighbors about marijuana grow houses. Common complaints include strong odors, excessive noise from industrial air-conditioning units, blown electrical transformers, and heavy vehicle traffic.

Colorado homes where marijuana is grown often sustain extensive structural damage. Moisture, condensation, and molds spread throughout the residence. Growers often cut holes in floors and exterior walls in order to install ventilation tubes. Growers often tamper with electrical systems in order to supply multiple high-power grow lights and industrial air-conditioning units. These alterations are often done by tenant growers with little regard for fire risk or the home's structural integrity. This is an increasing concern for first responders.

FIGURE 1. A BASEMENT GROW IN A COLORADO HOME.



Source: DEA

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FIGURE 2. DO-IT-YOURSELF VENTILATION IN A COLORADO GROW HOUSE



Source: DEA

Altered electrical systems with loose and entangled wires, flammable fertilizers and chemicals, explosive materials such as propane and butane, or holes cut into sub-floors for venting all pose clear hazards to firefighters or police officers responding to the residence in an emergency situation.

### Outlook

Adding to the list of unintended consequences of marijuana legalization in Colorado, the proliferation of large residential grows is taxing local police and fire departments, consuming power and water resources, and potentially affecting home values in communities throughout the state. Further, the ability to establish large-scale marijuana grow operations within residential homes under the guise of state law will likely continue to attract drug traffickers and criminal organizations. Thus, Colorado will continue to be a source for much of the marijuana destined for markets in other states.

<sup>1</sup> Colorado Department of Public Health and Environment, January 2016.

<sup>2</sup> Ibid.

<sup>3</sup> Colorado Senate Bill 15-014, passed May 2015.

<sup>4</sup> Colorado Constitution. Article 18, Section 16, Subsection 3(b).

<sup>5</sup> Colorado Constitution. Article 18, Section 16, Subsection 3(e).

<sup>6</sup> DEA Denver Division Investigative Reporting. 2016; extracted information is: (U); overall document classification is: (U).



This product was prepared by the DEA Denver Division. Comments and questions may be addressed to the Chief, Analysis and Production Section at [dea.onsi@usdoj.gov](mailto:dea.onsi@usdoj.gov).



## Buyers' Brokers - Don't Get Caught Having to Write Earnest Money Checks (Coming Summer/Early Fall 2023)

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A new provision will be added to NMAR Form 2104 – the Residential Re-Sale Purchase Agreement (“Agreement” or “Form 2104”) **in the late summer/early fall** that will provide a stiff penalty should the buyer **or the buyer’s broker** send an inspection report to the seller when the seller has not specifically requested the report. We begin the multi-step notification process now, in hopes that buyers’ brokers are prepared and won’t find themselves having to write earnest money checks to their buyers.

Many years ago, Form 2104 provided that the buyer would send the inspection reports over if the buyer terminated the Agreement due to inspections or objected to inspections. As a result, inspection reports were being passed around quite liberally, not just from buyers to sellers, but from sellers to new buyers (when the deal with the original buyer fell apart and the seller was left with the original buyer’s inspection report). Inspectors took issue with this, some going as far as to threaten lawsuits based on copyright infringement against buyers, sellers, brokers and even an MLS. Simultaneous with this was a shift in the way some sellers viewed inspections of their property. Yes, the seller would allow the buyers to conduct inspections, but some sellers did not feel that together with that came the buyer’s “right” to tell the seller everything the buyer (or their inspector) believed to be “wrong” with the seller’s home.

As a result of all of this, several years ago, NMAR changed its approach to inspection reports – reports would never be provided upon a buyer’s termination

unless requested in writing by the seller and only the relevant sections of the report would be provided if the buyer was objecting, again unless the seller requested the entire report in writing. Despite this having been added several years ago, buyers’ brokers (not buyers) continue to send inspection reports to sellers even when the sellers have not request them. One could hypothesize that this is being done for one of two reasons: either because these buyers’ brokers are not familiar with the Agreement or because these buyers’ brokers have chosen to ignore the Agreement to gain some perceived advantage for their buyers. Either reason is problematic.

As currently written, if the buyer terminates based on inspections on or before the Objection Deadline or objects by the Objection Deadline, but the parties cannot resolve the buyer’s objections, the buyer is entitled to a full earnest money refund. **However, coming this summer/early fall, Form 2104 will be amended to provide that if the buyer or the buyer’s broker sends the report to the seller without the seller requesting the report, it will constitute a WAIVER of the buyer’s inspection contingency.** This means that if even if the buyer timely terminates or objects, if the buyer does not proceed to Closing due to inspections, the buyer will be in breach of contract and at a minimum, the seller will be entitled to the buyer’s earnest money. **In the event it was the buyer’s broker who sent the report or directed someone else to send the**

1 In this latest revision of 2104, an additional provision was added that says the buyer will NOT send the report or the section of the report if the buyer is only requesting monetary concessions (price reduction or seller concessions), again, unless the seller makes a written request for the report.

**report, then it will be the buyer's broker who will likely owe the buyer their lost earnest money.**

#### **Broker Duties – Duty to Disclose Adverse Material Facts**

One of the broker duties promulgated by the NMREC requires brokers to disclose Adverse Material Facts (“AMF”). If a seller was to file a complaint with the NMREC claiming the buyer's broker violated several broker duties in ignoring the purchase agreement and sending the entire report when the seller did not request it, the buyer's broker may argue that the seller's direction in Form 2104 was to the buyer and not the buyer's broker and/or that the AMF Broker Duty disclosure provision requires the buyer's broker to inform the seller of all the things wrong with his or her house. However, this logic is [arguably] flawed for several reasons.

First, to argue that the seller was only directing the *buyer* in the Agreement, not the *buyer's broker*, begs the question, “why would a seller wish to prohibit a buyer from providing the report and yet still wish to receive it from the buyer's broker?” From a seller's perspective, it is not likely who delivered the report that is of relevance, but rather, the fact *that it was delivered*. If, for one moment, a buyer's broker thought “The seller didn't direct **me** not to send the report; he only directed **the buyer**,” then given the language in the Agreement, the duty of

reasonable care and professionalism (duties owed to the seller by the buyer's broker) [arguably] demands that the buyer's broker ask the seller the following question BEFORE SENDING THE REPORT to the seller: “*Do you want me to send the report? I know you told the buyer not to send it, but did that pertain to me as well?*”

Second, as to the seller's right NOT to receive the report from the buyer's broker, courts have consistently held that the beneficiary of a statutory (or in this case, regulatory) benefit has the right to waive that benefit. In this case, the requirement that a broker act in compliance with Broker Duties is for the benefit of the consumers. As such, the consumers have the right to waive those benefits. The seller is made aware of their rights when the broker discloses Broker Duties, both before the seller signs the Listing Agreement AND again before the seller signs the Purchase Agreement. The seller then knowingly and voluntarily waives the right to learn of AMFs regarding his or her property by contracting with the buyer NOT to provide the report UNLESS the seller asks for the report in writing.

Third, the BUYER'S report is NOT the buyer BROKER'S report to share. The report belongs to the buyer and the only way the buyer's broker should be sharing the buyer's report with ANYONE is with the buyer's permission. Is the buyer's broker asking his/her buyer if the buyer wishes for the broker to send the report to the seller in conflict with the clear language in the Agreement? If the answer is NO, then that is a problem. The buyer's broker knows the buyer agreed NOT to send the report. The buyer's broker directly ignores

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<sup>2</sup> In *Moss Theatres, Inc. v. Turner* (94 NM 742 1980), the court held that “the doctrine of waiver is generally applicable to all the rights and privileges to which a person is legally entitled, including those conferred by statute unless otherwise prohibited by specific statutory provisions” and “that one may waive a right given by contract or advantage of law intended for his benefit.”

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the seller and buyer's written agreement and sends the buyer's report over to the seller without the buyer's authority. Is that not a breach of the broker's duties of reasonable care and professionalism?

Lastly, you cannot look at the duty to disclose AMFs in a vacuum. To say that the broker must disclose AMFs to a seller (ONE broker duty) in contradiction to the Agreement and without the buyer's authority gives more weight to ONE broker duty than to several other broker duties. Those other duties include the duty of reasonable care and professionalism as mentioned above, but more on point, the duty for the buyer's broker to actively participate in assisting their customer/client **"in complying with the terms and conditions of the contract and with the finalization of the transaction"**. When the buyer's broker takes it upon him/herself to send the report to the seller in direct conflict with the Agreement and WITHOUT the buyer's permission, [arguably], the buyer's broker is NOT assisting the buyer in complying with the "terms and conditions of the contract".

In conclusion, in order for a factfinder to determine that a broker is OBLIGATED to send the report because of the AMF disclosure requirement under Broker Duties, regardless of what the Agreement says about doing so, the factfinder must: 1) ignore the seller's right to waive the rule that benefits him/her, a right well-established in New Mexico law; 2) allow the buyer's broker to take ownership of a report that does not belong to the buyer's

broker and to sanction the buyer's broker's sharing of the report without the buyer's authority; and 3) give more importance to the AMF disclosure broker duty over other broker duties. Could this happen? Possibility, but do you really want to take that chance? Further, when the discussed revision is made to the Agreement in summer/early fall 2023, a buyer's broker who sends the report without the seller requesting it also exposes him or herself to having to pay damages to the buyer for the broker's actions.

This change will not take place until summer/ early fall, so don't panic. If you have not done so already, familiarize yourself with the inspection report provisions of the Agreement and follow the Agreement. It really is that simple. For those of you reading this article, this new provision when added will neither come as a shock, nor leave you writing earnest money checks to your buyers.

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