



Handling Multiple Offers

Ethically and Effectively

4CE Education
Ethics Elective

Perhaps no situation presents professional and ethical challenges to real estate licensees than the multiple offer situation. In this class, we'll examine the National Association of Realtors Code of Ethics and the New Mexico Real Estate Commission's broker duties and apply the principles to the presentation and negotiation of multiple offers. Procedures and best practices will also be discussed including effective communication strategies, escalation clauses, Love Letters and How to Win at Multiple Offers.

Instructor: Rich Cederberg

(505) 348-3381

In addition to the 2021, 2022 and 2023 core courses, MESA REI offers the following:

Core Electives:

A Look at Real World Issues - Claim Studies 4 CE
Anatomy of a Listing Contract 4 CE
Anatomy of a Purchase Contract 4 CE
Broker Beware: Getting from Contract to Closing 4 CE
Clear the Confusion: Offers (Counters, Multiples, Contingencies, etc.) 4 CE
Disclose, Disclose, Disclose (*Unless you're **NOT** supposed to!*) 4 CE
E & O Insurance: Know What You Are Buying and Why 4 CE
Inspections, ORW's and Repairs, Oh My! 2 CE
Intro to Seller Financing 4 CE
NMAR Forms Update 4 CE
NMAR's Many Miscellaneous Forms 4 CE
One Thing Leads to Another – The PA Contingencies Explained 2 CE
Property Management and the 3 Way Reconciliation 2 CE – Prop Mgmt
QB Refresher Course 6 CE
Taxes and Your Real Estate Business 4 CE
TOM Fee Class (And Other NMAR Form Updates) 4 CE
Trust Accounts 4 CE - Prop Mgmt
Yes, Your Honor, I Did Disclose! 4 CE
Understanding and Using NMAR Forms 8 CE
UORRA 6 CE – Prop Mgmt
Wells and Septics 4 CE

Ethics Electives:

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

Other:

NMREC Meeting Replay CE tbd

Electives:

Bump in the Pipe 2 CE
Case Studies – Residential Property Management 3 CE
Brokerage Operations – Residential Property Management 4 CE
Going to Court – Residential Property Management 3 CE
Leasing and Management – Residential Property Management 6 CE

On Demand Classes:

Handling Multiple Offers 4 CE Ethics
QB Refresher Course 6 CE Core Elective





**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET - OPTIONS FOR MULTIPLE OFFERS**

OPTION #1 - ACCEPT ONE OFFER

If Seller is satisfied with ALL of the stated terms in one of the offers submitted, Seller may accept as presented (anytime up until the Expiration Date or the revocation of the offer) by initialing all pages of the Purchase Agreement, selecting and signing in the **Acceptance Section** on Page 18 of the Purchase Agreement and delivering the fully-executed Purchase Agreement to the buyer whose offer was accepted. Once fully executed and delivered, the Purchase Agreement is a legal binding contract. (SEE EXAMPLE BELOW)

ACCEPTANCE

SELLER ACCEPTS this Offer and **AGREES** to sell the Property for the price and on the terms and conditions specified in this Agreement. **IF SELLER IS ACCEPTING THIS OFFER, SELLER SHOULD INITIAL ALL PAGES AND SIGN BELOW.**

SELLER(S)

Seller Signature

Date and Time

SELLER SIGNATURE

PRINTED NAME

DATE

TIME

SELLER SIGNATURE

PRINTED NAME

DATE

TIME

Seller should notify the remaining buyers that their offers have been rejected by selecting and initialing the **Rejection Section** on Page 18 of the Purchase Agreement (it is not necessary for the Seller to initial each page of the offer(s)) and delivering to each buyer their respective rejected offer. (SEE EXAMPLE BELOW)

REJECTION

SELLER REJECTS THIS OFFER.

IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES BUT SHOULD INITIAL BELOW.

SELLER(S) Seller's Initials

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NMAR FORM 2317 (2023 APR) ©2022 NEW MEXICO ASSOCIATION OF REALTORS® REC'D BY BUYER(S) OR SELLER(S) _____

INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS
INFORMATION SHEET.

Phone:

Fax:



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET - OPTIONS FOR MULTIPLE OFFERS**



OPTION #2 – SUBMIT COUNTEROFFER (NMAR FORM 5102)

If Seller chooses to respond to only one of the offers, Seller will do so by initialing each page of the Purchase Agreement,

⚠ IMPORTANT ⚠

- **WHEN CHOOSING THIS OPTION, SELLER MAY ONLY RESPOND TO ONE OFFER OR RUN THE RISK OF CONTRACTING WITH TWO OR MORE PARTIES!**
- **SUBMISSION OF A COUNTEROFFER IS A REJECTION OF THE OFFER; SELLER MAY NOT BE ABLE TO ACCEPT THE ORIGINAL OFFER ONCE A COUNTEROFFER HAS BEEN SUBMITTED, UNLESS AGREED TO BY THE BUYER.**
- **IF SELLER CHOOSES TO REVOKE/WITHDRAW A COUNTEROFFER, THIS MUST BE DONE BEFORE THE BUYER ACCEPTS THE COUNTEROFFER. NMAR FORM 5106 SHOULD BE USED, (BUT IS NOT REQUIRED) FOR THIS PURPOSE.**

selecting and initialing the **Counteroffer Section** on Page 18 of the Purchase Agreement and delivering Counter Offer #1 to the buyer whose offer is being countered. (SEE EXAMPLE BELOW)

In the Counteroffer, Seller must reject or change all portions of the original offer with which the Seller disagrees. Any and all portions of the original offer that are not rejected or changed by a Counteroffer become a term of the final Purchase Agreement (if the buyer accepts the Counteroffer). Seller may include terms and conditions in the Counteroffer that are not addressed in the original offer to purchase.

COUNTEROFFER

SELLER REJECTS and submits a **Counteroffer**. NMAR 5102 or NMAR 2111B

IF SELLER IS REJECTING THIS OFFER AND SUBMITTING A COUNTEROFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT, BUT SHOULD INITIAL ALL PAGES AND INITIAL BELOW.

SELLER(S) Seller's Initials

If Seller chooses to counter one of the offers, then once the Seller and Buyer have fully executed the Purchase Agreement (as indicated by a fully executed Counteroffer), Seller should notify each of the buyers whose offers were not accepted by selecting and initialing the **Rejection Section** on Page 18 of each of those offers (it is not necessary for the Seller to initial each page of the offer) and delivering to each buyer their respective rejected offer. (SEE EXAMPLE BELOW)

Seller should *not* deliver notice of rejection to a buyer whose offer is being rejected until either 1) Seller has a fully executed Purchase Agreement with another buyer; or 2) Seller is certain that he has no intention: a) of accepting the offer of the buyer to whom the Seller is delivering the rejection either now or at ANYTIME prior to the offer's expiration date/time; or b) of countering the offer (of the buyer to whom the Seller is delivering the rejection).

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INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS INFORMATION SHEET.



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
INFORMATION SHEET - OPTIONS FOR MULTIPLE OFFERS**



REJECTION

SELLER REJECTS THIS OFFER.

IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES BUT SHOULD INITIAL BELOW.

SELLER(S) Seller's Initials

OPTION #3 – NOTICE OF MULTIPLE OFFERS (NMAR FORM 5103)

NOTIFICATION OF MULTIPLE OFFERS

SELLER REJECTS and submits a **Notification of Multiple Offers**. NMAR 5103 – Notification of Multiple Offers

IF SELLER IS REJECTING THIS OFFER AND SUBMITTING A NOTIFICATION OF MULTIPLE OFFERS, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY /ALL PAGES BUT SHOULD INITIAL BELOW.

SELLER(S) Seller's Initials

If Seller does not wish to accept or counter any of the offers received, but instead wishes to give each buyer the opportunity to submit a new offer with their highest and best terms or with specific terms that are important to the Seller, then the Seller will notify the buyers by selecting and initialing the **Notification of Multiple Offers** Section on Page 18 of each of the Purchase Agreements (it is not necessary for the Seller to initial each page of the offers) and delivering to each buyer their respective original offer, along with “**NMAR Form 5103 - Notification of Multiple Offers**”. (SEE EXAMPLE BELOW)
NOTE: In the Notification, Seller will provide a specific date and time after which offers will no longer be considered. *However, this does not prevent the Seller from accepting any new or existing offer prior to this deadline.*

OPTION #4 – REJECT ALL OFFERS

If none of the offers are acceptable to the Seller, Seller should notify **ALL** Buyers that their offers have been rejected by selecting and initialing the **Rejection Section** on Page 18 of the Purchase Agreement (it is not necessary for the Seller to initial each page of the offer) and delivering to each Buyer their respective rejected offer. (SEE EXAMPLE BELOW)

REJECTION

SELLER REJECTS THIS OFFER.

IF SELLER IS REJECTING THIS OFFER, SELLER SHOULD NOT SIGN THIS AGREEMENT AND DOES NOT NEED TO INITIAL ANY/ALL PAGES BUT SHOULD INITIAL BELOW.

SELLER(S) Seller's Initials

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INITIALS SIGNIFY THAT THE BUYER(S) AND/OR SELLER(S) HAS RECEIVED AND REVIEWED THIS INFORMATION SHEET.



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
ESCALATION CLAUSE ADDENDUM**

The following terms and conditions are hereby incorporated into and made part of the Purchase Agreement dated: _____ between _____ (“Buyer”) and _____ (“Seller”) and relating to the following Property:

Address (Street, City, State, Zip Code) _____

Legal Description

Or see metes and bounds description attached as Exhibit _____, _____ Count(ies), New Mexico (hereinafter the “Purchase Offer”).

1. **DEFINITIONS:** For purposes of this Addendum, the following terms have the following meanings:
 - A. **“Net Proceeds”** means the Purchase Price *minus the following if paid by the Seller:* 1) payoffs on mortgages, loans and liens and associated fees; 2) real estate commissions; 3) closing costs; and 4) other transaction-related expenses, including, ***but not limited to*** fees set forth in the following paragraphs of this Purchase Agreement: Assessments, Costs to be Paid, Inspections, and Home Warranty.
 - B. **“Other Offer(s)”** means one or more bona fide offers to purchase the Property with terms acceptable to Seller, which result in net proceeds of sale payable to Seller equal to or greater than the Net Proceeds of sale payable to Seller under this Purchase Offer.
2. **ESCALATION TERMS:** The following terms will apply to increase the Purchase Price in this Purchase Offer (“Purchase Price”):
 - A. **Escalating Factor:** In the event that Seller receives one or more Other Offer(s), then the Purchase Price (Para. 2 of this Purchase Agreement) shall automatically increase to an amount which generates net proceeds of Purchase to Seller equal to \$ _____ (“Escalating Factor”) in excess of the highest net proceeds of sale generated in such Other Offer(s).
 - B. **CAP:** Notwithstanding Para. 2(A) of this Addendum, the Purchase Price shall not exceed \$ _____ (“Cap”).
 - C. **Documentation:** In the event that Other Offers cause an increase in the Purchase Price, Seller shall provide Buyer at time of Seller’s submission of a Counteroffer (See. Para. 4 below) sufficient documentation to justify the Purchase Price increase. Unless otherwise noted here, “Sufficient Documentation” means a copy of the Other Offer(s) submitted with the last names(s) of the buyer(s) on the Other Offer(s) redacted. In addition to Sufficient Documentation, Seller shall submit the following:

 - D. **Multiple Escalations:** Buyer acknowledges that the Escalating Factor of the Purchase Offer and the Escalating Factors of Other Offers may result in multiple escalation and, in some cases, escalations to the Cap.
3. **TERMINATION:** The terms contained herein are for the use and purpose of obtaining a mutually agreeable Purchase Price and shall be deemed satisfied and will terminate upon ratification of a Purchase Agreement for the Property.
4. **DISCLAIMER/ACKNOWLEDGMENT:** Buyer acknowledges and affirms that the Purchase Offer and Escalation Clause have been made of his/her own volition and discretion and notwithstanding Para. 4, Buyer agrees to forever hold harmless the Brokerage(s) and Broker(s) with regard to negotiation of the Purchase Price. In the event Other Offers are presented on the Property, Buyer acknowledges that a copy of the documents constituting the Purchase Offer may be provided to the parties making such Other Offers.

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
ESCALATION CLAUSE ADDENDUM**



BUYER(S)

Buyers Signature	Printed Name	Offer Date	Time
Buyers Signature	Printed Name	Offer Date	Time
Buyers Signature	Printed Name	Offer Date	Time
Buyers Signature	Printed Name	Offer Date	Time

⚠ ATTENTION SELLER(S) ⚠

EXECUTION AND ACCEPTANCE OF COUNTEROFFER: In the event that Seller agrees to accept a Purchase Price within the terms of the Purchase Offer and pursuant to this Escalation Clause Addendum, Seller shall submit to Buyer a Counteroffer, (NMAR Form 2111B – Escalation Clause Counteroffer) fully executed by the Seller which shall reflect the Purchase Price adjusted according to the escalation provisions contained herein and include any waiver of the appraisal contingency as contained herein (Para. 3(A) or 3(B)), along with Sufficient Documentation (as defined in Para. 2(C)). Acceptance of the Counteroffer will occur upon counter signature by Buyer, and delivery to Seller of the fully ratified Purchase Agreement. Nothing herein prohibits the Seller from making a counteroffer based on terms different from those offered in Buyer's Purchase Offer and this Escalation Clause Addendum.

SELLER(S) INITIALS _____



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
COUNTEROFFER TO ESCALATION CLAUSE OFFER
COUNTEROFFER NO. _____**

This Counteroffer is made a part of the Residential Commercial Vacant Land Farm and Ranch Purchase Offer dated _____ between _____ ("Buyer") and _____ ("Seller") and relating to the purchase of the following Property:

Address (Street, City, State, Zip Code) _____

Legal Description or see metes and bounds description attached as Exhibit _____, _____ County, New Mexico.

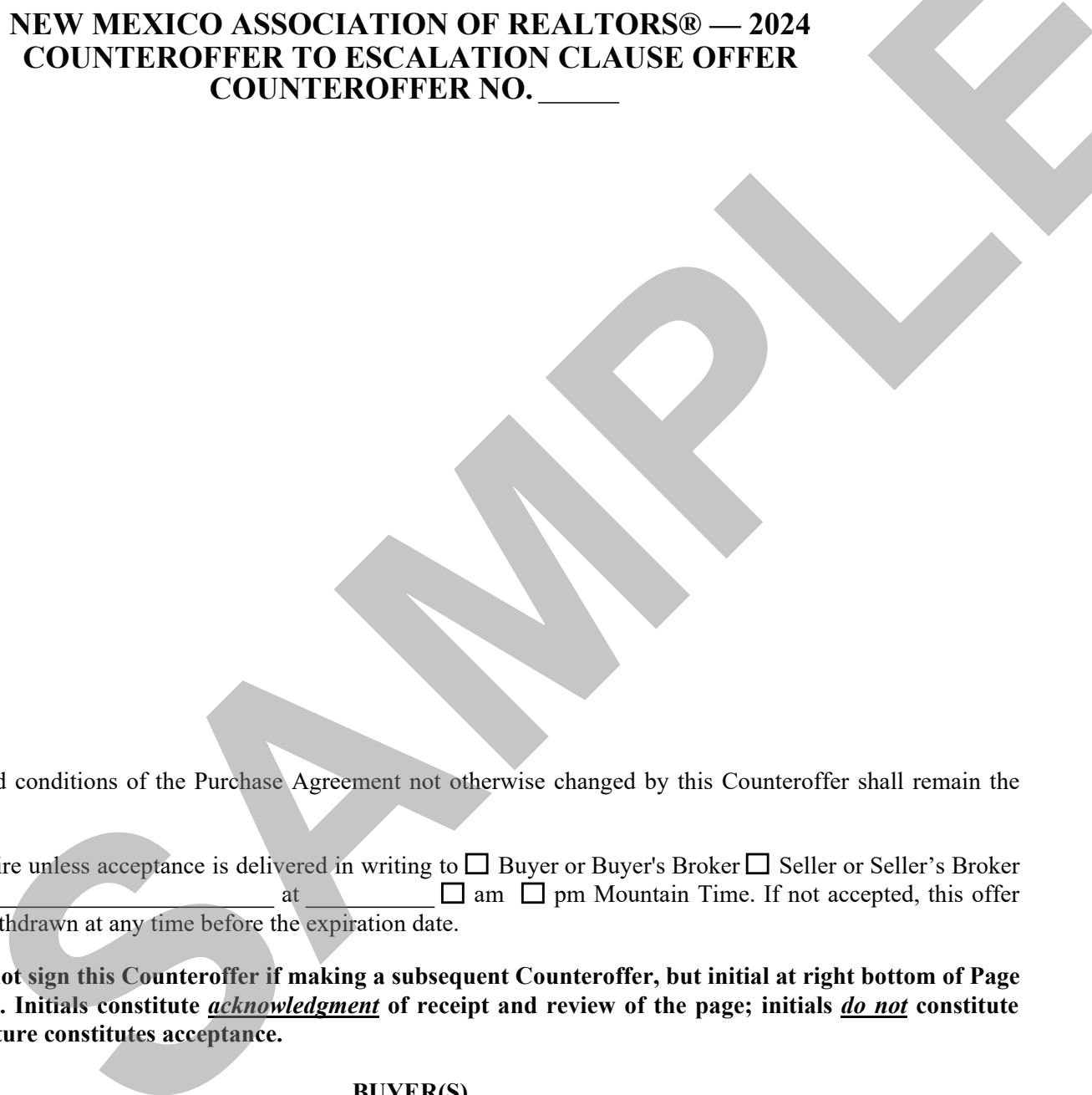
INCORPORATED COUNTEROFFERS. Counteroffers that are NOT expressly referenced below are NOT incorporated into the Purchase Agreement. **Counteroffers _____ are incorporated by reference into the Purchase Agreement, except as expressly modified by this Counteroffer.**

Buyer and Seller accept the Purchase Agreement, subject to the following changes:

1. **PURCHASE PRICE** The Purchase Price shall be: \$ _____. Seller submits herewith a copy of the Other Offer, as such term is defined in the Escalation Clause Addendum, and any additional documentation required by Buyer in the Escalation Clause Addendum, the sufficiency of which Buyer acknowledges by Buyer's signature hereto.
2. **OTHER**



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
 COUNTEROFFER TO ESCALATION CLAUSE OFFER
 COUNTEROFFER NO. _____**



All other terms and conditions of the Purchase Agreement not otherwise changed by this Counteroffer shall remain the same.

This offer will expire unless acceptance is delivered in writing to Buyer or Buyer's Broker Seller or Seller's Broker on or before _____ at _____ am pm Mountain Time. If not accepted, this offer this offer can be withdrawn at any time before the expiration date.

TO BUYER: Do not sign this Counteroffer if making a subsequent Counteroffer, but initial at right bottom of Page 1 where indicated. Initials constitute acknowledgment of receipt and review of the page; initials do not constitute acceptance. Signature constitutes acceptance.

BUYER(S)

 Buyer Signature Printed Name Date Time

 Buyer Signature Printed Name Date Time

SELLER(S)

 Seller Signature Printed Name Date Time

 Seller Signature Printed Name Date Time



IMPORTANT - READ ENTIRE ADDENDUM CAREFULLY



THIS ADDENDUM REPLACES THE APPRAISAL CONTINGENCY PROVISIONS OF THE PURCHASE AGREEMENT. IF USING THE NMAR 2104 - PURCHASE AGREEMENT - RESIDENTIAL RESALE AGREEMENT, THIS ADDENDUM REPLACES PARA. 9(D) IN ITS ENTIRETY.

IF BUYER IS OBTAINING AN FHA OR VA LOAN, THE LENDER WILL REQUIRE THE PARTIES TO SIGN AN AMENDATORY/ESCAPE CLAUSE ADDENDUM THAT STATES THAT REGARDLESS OF THE PARTIES AGREEMENT IN THIS ADDENDUM, THE BUYER SHALL HAVE THE RIGHT (THOUGH NOT THE OBLIGATION) TO TERMINATE THE AGREEMENT WITHOUT PENALTY IF THE APPRAISED VALUE IS LESS THAN THE PURCHASE PRICE. THE FHA/VA ADDENDUM WILL SUPERCEDE THIS ADDENDUM.

This Addendum is hereby incorporated into and made part of the Purchase Agreement dated: _____, 20____
between _____ (“Buyer”)
and _____ (“Seller”)
and relating to the following Property:

Address (Street, City, State, Zip Code) _____

Legal Description _____

or see metes and bounds legal description attached as Exhibit _____, _____ Count(ies), New Mexico (hereinafter the “Purchase Agreement”).

THE PARTIES AGREE THAT THE APPRAISAL CONTINGENCY IN THE PURCHASE AGREEMENT IS REPLACED IN ITS ENTIRETY AS FOLLOWS:

1. MODIFICATION OF APPRAISAL CONTINGENCY. CHECK ONLY ONE OPTION BELOW.

Option A to be used if Buyer is obtaining a loan. Buyer’s lender will require an appraisal even if Buyer waives the Appraisal Contingency. Seller agrees to allow access to the Property for the appraisal.

OPTION A: BUYER FULLY WAIVES THE APPRAISAL CONTINGENCY



IMPORTANT NOTE: THIS MEANS THAT BUYER AGREES TO PURCHASE THE PROPERTY AT THE PURCHASE PRICE REGARDLESS OF THE AMOUNT FOR WHICH THE PROPERTY APPRAISES.

CASH FUNDS AT CLOSING. If Buyer is obtaining a loan and the appraisal is less than the Purchase Price, then Buyer agrees to pay by the Funding Date in readily available funds any difference between the amount of the loan and the Purchase Price (“Difference”).

if checked, then within two (2) days of Buyer’s receipt of the appraisal, Buyer shall deliver to Seller a copy of the appraisal and proof of funds for the Difference.

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
APPRAISAL CONTINGENCY WAIVER ADDENDUM**



Options B through E to be used if Buyer is obtaining a loan or paying cash or the purchase of the Property will be seller-financed. If this is a cash or seller-financed transaction, one of the following options would be selected IF the Buyer is requiring an appraisal and IF the Buyer will be partially waiving the Appraisal Contingency in the Purchase Agreement (Para. 9(D) of the NMAR Form 2104 - Purchase Agreement – Residential Resale). In this event, the Buyer shall select the appraiser.

OPTION B: LIMITED WAIVER OF APPRAISAL CONTINGENCY.

- Buyer shall pay a certain amount over the appraisal up to a “Buyer’s Cap.”
- The “Buyer’s Cap” is the highest Purchase Price that Buyer is willing to pay.
- The “Appraisal Gap” is the amount over the appraisal amount that Buyer is willing to pay.
- The “Ratified Purchase Price” is the new Purchase Price adjusted after the appraisal per this Option B.
- The numbers to be inserted in the blank spaces are indicated under the spaces. **ALL SPACES TO BE COMPLETED.**

BUYER SHALL PAY THE LESSER OF \$ _____ OVER THE APPRAISED VALUE OR
Appraisal Gap
 \$ _____ **WHICHEVER IS LESS.**
Buyer’s Cap

PRICE MODIFICATION ADDENDUM. Within two (2) days of Buyer’s receipt of the appraisal, Buyer shall deliver to Seller:

- A Price Modification Addendum reflecting the Ratified Purchase Price (NMAR Form 2101);
- If the Ratified Purchase Price is less than the Buyer’s Cap, a Copy of the Appraisal; and
- If applicable, Proof of Funds per Paragraph 2(B) below.

Notwithstanding the foregoing, if Buyer delivers the above required documents, this Addendum remains in full force and effect even if the parties fail to execute a Price Modification Addendum as required by this Addendum.

BUYER(S) OR SELLER(S) SUBMITTING _____



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
APPRAISAL CONTINGENCY WAIVER ADDENDUM**



OPTION C: LIMITED WAIVER OF APPRAISAL CONTINGENCY.

- Buyer shall pay the Purchase Price or a certain amount over the appraisal whichever is greater.
- The “Appraisal Gap” is the amount over the appraisal amount that Buyer is willing to pay.
- The “Ratified Purchase Price” is the new Purchase Price adjusted after the appraisal per this Option C.
- The numbers to be inserted in the blank spaces are indicated under the spaces. **ALL SPACES TO BE COMPLETED.**

**BUYER SHALL PAY THE PURCHASE PRICE IN THE PURCHASE AGREEMENT OR
\$ _____ ABOVE THE APPRAISAL AMOUNT, WHICHEVER SHALL BE GREATER.**
Appraisal Gap

Within two (2) days of Buyer’s receipt of the appraisal, Buyer shall deliver to Seller:

- A Copy of the Appraisal;
- A Price Modification Addendum reflecting the Ratified Purchase Price (NMAR Form 2101); and
- If applicable, Proof of Funds per Paragraph 2(B) below.

Notwithstanding the foregoing, if Buyer delivers the above required documents, this Addendum remains in full force and effect even if the parties fail to execute a Price Modification Addendum as required by this Addendum.

BUYER(S) OR SELLER(S) SUBMITTING _____



NEW MEXICO ASSOCIATION OF REALTORS® — 2024
 ADDENDUM NO. _____
 APPRAISAL CONTINGENCY WAIVER ADDENDUM



OPTION D: LIMITED WAIVER OF THE APPRAISAL CONTINGENCY

- This Option allows Buyer to set forth the highest Purchase Price they are willing to pay, provided the Property appraises at or above the indicated amount and provides that Seller is guaranteed to receive no less than the Purchase Price if the appraisal comes in below the indicated amount.
- The “Buyer’s Cap” is the highest Purchase Price that Buyer is willing to pay.
- The “Seller’s Guarantee” is the amount that Seller is guaranteed to receive, even if the appraisal comes in below the Purchase Price.
- The “Appraisal Gap” is the amount over the appraisal amount that Buyer is willing to pay.
- The “Ratified Purchase Price” is the new Purchase Price adjusted after the appraisal per this Option D.
- The numbers to be inserted in the blank spaces are indicated under the spaces. ALL SPACES TO BE COMPLETED.

PURCHASE PRICE: \$ _____

APPRAISAL GAP: \$ _____

(1) IF THE PROPERTY APPRAISES FOR MORE THAN \$ _____
 PURCHASE PRICE MINUS THE APPRAISAL GAP

THEN BUYER SHALL PAY THE LESSER OF:

\$ _____ OVER THE APPRAISED VALUE
 APPRAISAL GAP

- OR -

\$ _____
 BUYER’S CAP

(2) IF PROPERTY APPRAISES FOR LESS THAN \$ _____
 PURCHASE PRICE MINUS THE APPRAISAL GAP

THEN BUYER SHALL PAY THE GREATER OF:

\$ _____ OVER THE APPRAISED VALUE
 APPRAISAL GAP

- OR -

\$ _____
 SELLER’S GUARANTEE



IMPORTANT NOTE: UNDER THIS OPTION D, BUYER WILL BE REQUIRED TO BRING TO CLOSING THE DIFFERENCE IN CASH BETWEEN THE APPRAISED AMOUNT AND SELLER’S GUARANTEE. DEPENDING ON THE APPRAISAL AMOUNT, THIS COULD BE A SIGNIFICANT AMOUNT OF MONEY.

PRICE MODIFICATION ADDENDUM. Within two (2) days of Buyer’s receipt of the appraisal, Buyer shall deliver to Seller:

- A Price Modification Addendum reflecting the Ratified Purchase Price (NMAR Form 2101);
- If the Ratified Purchase Price is less than the Buyer’s Cap, a Copy of the Appraisal;
- If applicable, Proof of Funds per Paragraph 2(B) below.

Notwithstanding the foregoing, if Buyer delivers the above required documents, this Addendum remains in full force and effect even if the parties fail to execute a Price Modification Addendum as required by this Addendum.



ADDENDUM NO. _____
APPRAISAL CONTINGENCY WAIVER ADDENDUM

OPTION E: LIMITED WAIVER WITH OPTION TO RE-NEGOTIATE PURCHASE PRICE

- This Option allows Buyer to set forth the highest Purchase Price they are willing to pay, provided the Property appraises above the indicated amount and allows the parties to re-negotiate a Purchase Price if the Property appraises below the indicated amount.
- The “Buyer’s Cap” is the highest Purchase Price that Buyer is willing to pay.
- The “Appraisal Gap” is the amount over the appraisal amount that Buyer is willing to pay.
- The “Ratified Purchase Price” is the new Purchase Price adjusted after the appraisal per this Option E.
- The numbers to be inserted in the blank spaces are indicated under the spaces. **ALL SPACES TO BE COMPLETED.**

PURCHASE PRICE: \$ _____

APPRAISAL GAP: \$ _____

(1) IF THE PROPERTY APPRAISES FOR **MORE** THAN \$ _____
PURCHASE PRICE MINUS THE APPRAISAL GAP
 THEN BUYER SHALL PAY THE **LESSER** OF \$ _____ **OVER THE APPRAISED VALUE OR**
APPRAISAL GAP
 \$ _____.
BUYER’S CAP

Within two (2) days of Buyer’s receipt of the appraisal, Buyer shall deliver to Seller:

- A Price Modification Addendum reflecting the Ratified Purchase Price (NMAR Form 2101);
- If the Ratified Purchase Price is less than the Buyer’s Cap, a Copy of the appraisal; and;
- If applicable, Proof of Funds per Paragraph 2(B) below.

Notwithstanding the foregoing, if Buyer delivers the foregoing, this Addendum remains in full force and effect even if the parties fail to execute a Price Modification Addendum as required by this Addendum.

(2) IF THE PROPERTY APPRAISES FOR **LESS** THAN \$ _____
PURCHASE PRICE MINUS THE APPRAISAL GAP

BUYER SHALL DELIVER A COPY OF THE APPRAISAL TO SELLER WITHIN TWO (2) DAYS OF BUYER’S RECEIPT OF THE APPRAISAL AND ONE OF THE FOLLOWING SHALL OCCUR WITHIN FIVE (5) DAYS OF SELLER’S RECEIPT OF THE APPRAISAL.

BUYER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO PURCHASE THE PROPERTY FOR THE PURCHASE PRICE.

-----OR-----

THE PARTIES MAY RE-NEGOTIATE A PURCHASE PRICE.

If the Buyer elects to purchase the Property for the Purchase Price or the parties renegotiate a Purchase Price, the parties shall fully execute a Price Modification Addendum reflecting the **RATIFIED PURCHASE PRICE** (NMAR FORM 2101) and if applicable, Proof of Funds per Paragraph 2(B) below. **Notwithstanding the foregoing, if Buyer exercises their right to purchase for the Purchase Price and delivers the above required documents, this Addendum remains in full force and effect even if Seller fails to execute a Price Modification Addendum as required by this Addendum.**

If Buyer does not exercise their option to purchase for the Purchase Price AND the parties fail to execute a Price Modification Addendum within FIVE (5) days of Seller’s receipt of the appraisal, then this Agreement SHALL AUTOMATICALLY TERMINATE and Earnest Money, if delivered, shall be refunded to Buyer.

BUYER(S) OR SELLER(S) SUBMITTING _____



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
ADDENDUM FOR BACK—UP PURCHASE AGREEMENT**



⚠ ATTENTION BUYER AND SELLER ⚠

This “Back-Up” Purchase Agreement obligates Seller to sell and Buyer to buy *IF* Seller notifies Buyer that ALL Purchase Agreement(s) previously accepted by Seller have terminated by the date set forth in Paragraph 2.

This Addendum is part of the Residential Commercial Vacant Land Farm and Ranch Purchase Agreement dated _____, 20____ between _____ ("Buyer") and _____ ("Seller") and relating to the following Property:

Address (Street, City, State, Zip Code) _____

Legal Description or see metes and bounds description attached as Exhibit _____, _____ Count(ies), New Mexico and is hereinafter referred to as “Back-Up Purchase Agreement”.

- 1. CONTINGENCY. Performance under this Back-Up Purchase Agreement is contingent on termination of the Primary Purchase Agreement and ALL Prior Back-Up Purchase Agreements.** Seller, in his sole discretion, shall determine if the Primary Purchase Agreement and ALL Prior Back-Up Purchase Agreements have terminated. Buyer acknowledges and Seller affirms that Seller has entered into the following: (Check “B” if applicable)
 - A.** A purchase agreement with another buyer to sell the Property (“Primary Purchase Agreement”);
 - B.** In addition to the Primary Purchase Agreement, Seller has entered into one or more Back-Up Purchase Agreements with other buyer(s).
- 2. NOTICE.** Seller shall notify Buyer immediately of the termination of the Primary Purchase Agreement and any Prior Back-Up Purchase Agreements (See Notification on Page 2). This Back-Up Purchase Agreement does not become the Primary Purchase Agreement until and unless Seller has notified Buyer that the Primary Purchase Agreement and ALL Prior Back-Up Purchase Agreement(s) have terminated. Notwithstanding any other provision of this Back-Up Purchase Agreement, including this Addendum, if Seller does not provide written notification to Buyer on or before _____, 20____ that the Primary Purchase Agreement and ALL Prior Back-Up Purchase Agreements have terminated, then this Back-Up Purchase Agreement shall automatically terminate. **SELLER SHALL MOVE BACK-UP PURCHASE AGREEMENTS INTO PRIMARY POSITION IN THE ORDER IN WHICH THEY WERE ACCEPTED BY SELLER.**
- 3. DATE OF ACCEPTANCE/DATE OF “UNDER CONTRACT”.** Date of Acceptance is the date on which this Back-Up Purchase Agreement is fully executed and delivered, which means the parties are “Under Contract” as of the Date of Acceptance; HOWEVER, the parties are NOT obligated to perform on this Back-Up Purchase Agreement until the time frame set-forth in Paragraph 4.
- 4. TIMEFRAME FOR PERFORMANCE.** Neither party is obligated to perform on this Back-Up Purchase Agreement until and unless Buyer receives written notice from Seller that the Primary Purchase Agreement and ALL Prior Back-Up Purchase Agreements have terminated. This means that where a date for performances in this Back-Up Purchase Agreement states “X No. of Days from Date of Acceptance”, the date for performance shall now be “X No. of Days from the Date that Seller Notifies Buyer that Buyer’s Back-Up Purchase Agreement is now the Primary Purchase Agreement.” NOTE: Because of this, there CANNOT be any specific calendar date deadlines (e.g. March 1st) in this Back-Up Purchase Agreement; all dates in this Back-Up Purchase Agreement **MUST BE** expressed in number of days (e.g. four (4) days).

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
ADDENDUM NO. _____
ADDENDUM FOR BACK—UP PURCHASE AGREEMENT**



5. NOTIFICATION TO BUYER.

- A. Prior Back-Up Purchase Agreements.** Seller shall notify Buyer that Prior Back-Up Purchase Agreements have terminated by (check all that apply) Email Text Hand-Delivery Other _____.
- B. Primary Purchase Agreement.** Seller shall notify Buyer that Buyer’s Purchase Agreement is the Primary Purchase Agreement by sending Buyer the Notification below.

⚠ ATTENTION BUYER AND SELLER ⚠

BY SIGNATURE HERETO, SELLER AFFIRMS

THIS BACK-UP PURCHASE AGREEMENT IS BACK-UP PURCHASE AGREEMENT ADDENDUM NO. _____

- This section to be completed by BUYER, but Seller MUST review for accuracy before signing this Addendum. If number is incorrect, Seller should NOT sign this Addendum. Seller may submit a counteroffer with the correct number and/or notify Buyer of the correct number, so that Buyer may submit a corrected Back-Up Purchase Agreement Addendum.
- For purposes of determining this number, only count the number of Prior Back-Up Purchase Agreements the Seller has accepted; do NOT count the Primary Purchase Agreement. For example, if Buyer is the first Back-Up Purchase Agreement behind the Primary Purchase Agreement, then this is Back-Up Purchase Agreement Addendum No. (1); if Seller has already entered into one Back-Up Purchase Agreement before this one, then this is Back-Up Purchase Agreement Addendum No. (2).

BUYER(S)

Buyer Signature	Printed Name	Date	Time
Buyer Signature	Printed Name	Date	Time

SELLER(S)

Seller Signature	Printed Name	Date	Time
Seller Signature	Printed Name	Date	Time

**SELLER’S NOTIFICATION TO BUYER THAT BUYER’S
PURCHASE AGREEMENT IS NOW THE PRIMARY PURCHASE AGREEMENT**

Seller Signature	Printed Name	Date	Time
Seller Signature	Printed Name	Date	Time
Buyer Signature	Printed Name	Date	Time
Buyer Signature	Printed Name	Date	Time



**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
NOTIFICATION OF MULTIPLE OFFERS**

1. BUYER'S OFFER TO PURCHASE. _____
 _____ ("Buyer") has submitted an Offer to Purchase to
 _____ ("Seller")
 dated _____, _____ with respect to the Property described in paragraph 2 ("Original Offer").

2. PROPERTY.

 Address (Street, City, State, Zip Code)

 Legal Description
 or see metes & bounds description attached as Exhibit _____, _____ County, New Mexico.

3. MULTIPLE OFFERS. Seller has received multiple offers on the Property and before determining to accept or reject any one of those offers, Seller gives Buyer the opportunity to submit the following:

- A. An offer setting forth Buyer's Highest and Best terms; and/or
- B. An offer based on the following terms:

⚠ WARNING ⚠

THIS NOTIFICATION OF MULTIPLE OFFERS DOES NOT CONSTITUTE AN OFFER BY SELLER TO SELL ON THE TERMS SET FORTH ABOVE. IF BUYER WISHES TO MAKE ANY CHANGES TO BUYER'S ORIGINAL OFFER (OTHER THAN A CHANGE TO THE EXPIRATION DATE, AS EXPLAINED BELOW) BUYER *MUST* SUBMIT A NEW OFFER.

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**NEW MEXICO ASSOCIATION OF REALTORS® — 2024
NOTIFICATION OF MULTIPLE OFFERS**



4. SELLER'S OPTIONS IN RESPONSE TO BUYER.

A. If New Offer Submitted.

- i. Accept.** Seller may accept Buyer's New Offer if the Expiration Date has not passed and Buyer has not revoked his/her New Offer; or
- ii. Reject.** Seller may reject Buyer's New Offer. If Seller rejects Buyer's New Offer, Seller should mark the "Rejects" Box on the Purchase Agreement. Failure of Seller to accept Buyer's New Offer by the Expiration Date, constitutes a rejection of the New Offer; or
- iii. Counter.** Seller may counter Buyer's New Offer (Counteroffer - NMAR Form 5102). **IF COUNTERING, SELLER SHOULD COUNTER ONLY ONE OFFER.**

B. If Original Offer Retained (No New Offer Submitted).

- i. Accept.** Seller may accept Buyer's Original Offer, if the Expiration Date has not passed and Buyer has not revoked his/her Original Offer. If the Expiration Date in the Original Offer has passed, and Seller wishes to accept Buyer's Original Offer, Buyer must agree to execute an Amendment/Addendum extending the Expiration Date of the Original Offer. BOTH the Original Offer and the Amendment/Addendum must be fully executed.
- ii. Reject.** Seller may reject Buyer's Original Offer. If Seller rejects Buyer's Original Offer, Seller should mark the "Rejects" Box on the Purchase Agreement. Failure of Seller to accept Buyer's Original Offer by the Expiration Date, constitutes a rejection of the Original Offer; or
- iii. Counter.** Seller may counter Buyer's Original Offer (Counteroffer - NMAR Form 5102). If Seller submits a Counteroffer, Seller should mark the "Rejects and Submits a Counteroffer" Box on the Purchase Agreement and sign **ONLY** the Counteroffer. Seller should **NOT** sign the Amendment/Addendum. **IF COUNTERING, SELLER SHOULD COUNTER ONLY ONE OFFER.**

5. TIME IS OF THE ESSENCE. Seller will not consider any new offers made later than _____ ,
at _____ AM PM Mountain Time.

SELLER

Seller Signature	Print Name	Date	Time
Seller Signature	Print Name	Date	Time

Appendix IX to Part Four

Presenting and Negotiating Multiple Offers

“When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their clients. This obligation to the client’s interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly.” (from Article 1 of the Code of Ethics)

“REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.” (Standard of Practice 1-6)

Perhaps no situation routinely faced by REALTORS® can be more frustrating, fraught with potential for misunderstanding and missed opportunity, and elusive of a formulaic solution than presenting and negotiating multiple purchase or lease offers and/or counter-offers on the same property. Consider the competing dynamics. Listing brokers are charged with helping sellers get the highest price and the most favorable terms for their property. Buyers’ brokers help their clients purchase property at the lowest price and on favorable terms. Balanced against the Code’s mandate of honesty is the imperative to refrain from making disclosures that may not, in the final analysis, be in a client’s interests. *(Revised 11/01)*

Will disclosing the existence of one offer make a second potential purchaser more likely to sign a full price purchase offer—or to pursue a different opportunity? Will telling several potential purchasers that each will be given a final opportunity to make their best offer result in spirited competition for the seller’s property—or in a table devoid of offers?

What is fair? What is honest? What is to be done? Who decides? And why is there not a simple way to deal with these situations?

As REALTORS® know, there are almost never simple answers to complex situations. And multiple offer presentations and negotiations are nothing if not complex. But, although there is not a single, standard approach to dealing with multiple offers, there are fundamental principles to guide REALTORS®. While these guidelines focus on negotiation of purchase offers, the following general principles are equally applicable to negotiation of lease agreements. *(Revised 11/01)*

- Be aware of your duties to your client—seller or buyer—both as established in the Code of Ethics and in state law and regulations. *(Revised 5/01)*

The Code requires you to protect and promote your client’s interests. State law or regulations will likely also spell out duties you owe to your client.

- The Code requires that you be honest with all parties. State law or regulations will likely spell out duties you owe to other parties and to other real estate professionals. Those duties may vary from the general guidance offered here. REALTORS® need to be familiar with applicable laws and regulations.

Be aware of your duties to other parties—both as established in the Code of Ethics and in state law and regulation.

- Remember that the decisions about how offers will be presented, how offers will be negotiated, whether counter-offers will be made and ultimately which offer, if any, will be accepted, are made by the seller—not by the listing broker. *(Revised 5/01)*

- Remember that decisions about how counter-offers will be presented, how counter-offers will be negotiated, and whether a counter-offer will be accepted, are made by the buyer—not by the buyer’s broker. *(Adopted 5/01)*
- When taking listings, explain to sellers that receiving multiple, competing offers is a possibility. Explain the various ways they may be dealt with (e.g., acceptance of the “best” offer; informing all potential purchasers that other offers are on the table and inviting them to make their best offer; countering one offer while putting the others to the side; countering one offer while rejecting the other offers, etc.).

Explain the pluses and minuses of each approach (patience may result in an even better offer; inviting each offeror to make their “best” offer may produce a better offer[s] than what is currently on the table—or may discourage offerors and result in their pursuing other properties).

Explain that your advice is just that and that your past experience cannot guarantee what a particular buyer may do.

Remember—and remind the seller—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions.

- When entering into buyer representation agreements, explain to buyers that you or your firm may represent more than one buyer-client, that more than one of your clients or your firm’s clients may be interested in purchasing the same property, and how offers and counter-offers will be negotiated if that happens. *(Adopted 5/01)*

Explain the pluses and minuses of various negotiating strategies (that a “low” initial offer may result in the buyer purchasing the desired property at less than the listed price—or in another, higher offer from another buyer being accepted; that a full price offer may result in the buyer purchasing the desired property while paying more than the seller might have taken for the property, etc.). *(Adopted 05/01)*

Explain to the buyer that sellers are not bound by the Code of Ethics. Sellers, in multiple offer situations, are not prohibited from “shopping” offers. Real estate brokers may, unless prohibited by law or regulation, “shop” offers. Therefore, REALTORS® assisting purchasers in formulating purchase offers should advise those purchasers it is possible that the existence, terms, and conditions of any offer they make may be disclosed to other purchasers by sellers or by sellers’ representatives except where such disclosure is prohibited by law or regulation. *(Adopted 5/05)*

Remember—and remind the buyer—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions. *(Adopted 5/01)*

- If the possibility of multiple offers—and the various ways they might be dealt with—were not discussed with the seller when their property was listed and it becomes apparent that multiple offers may be (or have been) made, immediately explain the options and alternatives available to the sellers—and get direction from them.
- When representing sellers or buyers, be mindful of Standard of Practice 1-6’s charge to “. . . submit offers and counter-offers objectively and as quickly as possible.” *(Revised 5/01)*
- With the sellers’ approval “. . . divulge the existence of offers on the property” consistent with Standard of Practice 1-15. *(Adopted 11/02)*
- While the Code of Ethics does not expressly mandate “fairness” (given its inherent subjectivity), remember that the Preamble has long noted that “. . . REALTOR® has come to connote competency, fairness, and high integrity. . . .” If a seller directs you to advise offerors about the existence of other purchase offers, fairness dictates that all offerors or their representatives be so informed.

- Article 3 calls on REALTORS® to “. . . cooperate with other brokers except when cooperation is not in the client’s best interest.” Implicit in cooperation is forthright sharing of information related to cooperative transactions and potential cooperative transactions. Much of the frustration that occurs in multiple offer situations results from cooperating brokers being unaware of the status of offers they have procured. Listing brokers should make reasonable efforts to keep cooperating brokers informed. Similarly, buyer brokers should make reasonable efforts to keep listing brokers informed about the status of counter-offers their seller-clients have made. *(Revised 5/01)*
- Realize that in multiple offer situations only one offer will result in a sale and one (or more) potential purchasers will be disappointed that their offer was not accepted. While little can be done to assuage their disappointment, fair and honest treatment throughout the process; coupled with prompt, ongoing and open communication, will enhance the likelihood they will feel they were treated fairly and honestly. In this regard, “. . . 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.’ ” (from the Preamble to the Code of Ethics). *(Revised 5/05)*

Appendix X to Part Four

Before You File an Ethics Complaint

Background

Boards and Associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply only to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local Board or Association of REALTORS®. In addition to processing formal ethics complaints against its REALTOR® members, many boards and associations offer informal dispute resolving processes (e.g., ombudsman, mediation, etc.). Often parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships. *(Revised 11/15)*

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR ASSOCIATE®s are subject to the Code of Ethics of the National Association of REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Boards and Associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a letter of reprimand and appropriate fines. For serious or repeated violations, a REALTOR®'s membership can be suspended or terminated. Boards and Associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license. *(Revised 11/15)*
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an Ethics Complaint

The local Board or Association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.