

## **THE STANDARDS OF PRACTICE CHANGES**

### **REGARDING MULTIPLE OFFERS AND CONFIDENTIALITY AGREEMENTS**

1. Please review the enclosures completely
2. Please note new seller options and buyer allowed inquiries
3. Buyers may require confidentiality and the proper forms are provided
4. There are special needs regarding Limited Agency situations

Our recommendation is to invite Fred Tucker or Bob Hulett to a sales meeting to fully discuss the new policies.

TO: All Sales Associates

FROM: Jim and Fred

RE: Policies Relating to Changes in Standards of Practice Concerning Confidentiality

As you know NAR has revised the Standards of Practice as it relates to confidentiality. With Bob Hulett's and Jodi Tuttle's assistance we have developed "Notices" to be shared with Sellers and Buyers. Our goal will be to incorporate these "Notices" into the Consumer Handbook at our next printing. However, we do not anticipate a new printing until July, 2006. Therefore, the attached "Notices" will have to be used and distributed to your customers in addition to the other documents used with each transaction. Summaries of when to use are as follows:

#### Sellers

If you are the Listing Agent and receive multiple offers on the listing, you should give your Seller the "MULTIPLE OFFER GUIDELINES AND NOTICE" before reviewing the offers with your Seller. If you and the seller make the decision to disclose offers to competing agents and buyers, then you can do so UNLESS you are acting as a limited agent. If you are acting as a limited agent, you may not disclose that the terms of that offer to any competing buyers and agents. Except for this limited agency situation, if you make the decision to share the terms of an offer with competing offers, we would encourage you to share all offers in an effort to treat all parties fairly.

#### Buyers

At the outset of your relationship, you and your buyer need to discuss the buyer's wishes with respect to confidentiality. Therefore, you should deliver a copy of the "Confidentiality - Notice to Buyer" at the time of your 1<sup>st</sup> meeting. If the Buyer requests confidentiality, you will need to address this with each offer submitted whether multiple offers exist or not.

• **Standard of Practice 1-4**

REALTORS<sup>®</sup>, 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<sup>®</sup>'s services. (Amended 1/93)

• **Standard of Practice 1-5**

REALTORS<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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. REALTORS<sup>®</sup> shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS<sup>®</sup> 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 1/93)

• **Standard of Practice 1-8**

REALTORS<sup>®</sup>, 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<sup>®</sup>, 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<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup>'s advantage or the advantage of third parties unless:
  - a) clients consent after full disclosure; or
  - b) REALTORS<sup>®</sup> 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<sup>®</sup> or the REALTOR<sup>®</sup>'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<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> must advise sellers/landlords of:

- 1) the REALTOR<sup>®</sup>'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<sup>®</sup> must advise potential clients of:

- 1) the REALTOR<sup>®</sup>'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<sup>®</sup>, 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<sup>®</sup> shall also disclose whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/06)

## Article 2

REALTORS<sup>®</sup> shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS<sup>®</sup> shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate licensure, or to

## SUMMARY OF KEY CHANGES FOR 2006

### Changes to the Code of Ethics and Standards of Practice

#### Revised Standard of Practice 1-13:

That Standard of Practice 1-13 be amended as follows (underscoring indicates additions, strikeouts indicate deletions):

*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; and*
- 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.*

#### Revised Standard of Practice 1-15:

That Standard of Practice 1-15 be amended as follows (underscoring indicates additions, strikeouts indicate deletions):

*REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval ~~divulge~~ disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose whether offers were obtained by the listing licensee, another licensee in the listing firm or by a cooperating broker.*

Dear Mr./Mrs./Ms. \_\_\_\_\_

in care of \_\_\_\_\_ (buyer's agent)

**MULTIPLE OFFER GUIDELINES AND NOTICE**

We are involved in a multiple offer situation on the property located at \_\_\_\_\_

\_\_\_\_\_. You should be

advised of the following:

1. Seller has the discretion to accept or reject any offer received;
2. Seller is not required to accept any particular offer, regardless of its terms, and has the right to reject all offers;
3. Seller has the right to deal with any offer to further negotiate the terms and conditions of that offer;
4. All offers are to be presented to seller and seller may respond in writing (accept, counter-offer or reject).
5. With permission of seller, in writing, the listing agent may disclose price and terms of an offer to competing agents and buyers. The seller should, in treating each buyer fairly, disclose such price and terms to each competing agent and buyer except in a limited agency situation where the seller and his/her agent may not.
6. Buyers and buyers' agents should know that their offer may be exposed to one or all competing offerors unless buyer has submitted a Request for Confidentiality prior to submitting their offer. You should also know that in the event you are the successful buyer and the transaction closes, Indiana law requires that the closing information become a matter of public record as to address, names of the parties, closing date and sales price, and thereby ending any confidentiality.
7. In multiple offer situations listing agents must respond if asked the source of the offers, i.e.: (a) limited agent; (b) co-op agent from another company; or (c) in house agent with the same company.

This notification presented by buyers' agent on \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Listing Agent

# **CONFIDENTIALITY**

## **NOTICE TO BUYER**

As your Buyer Agent this notice is to advise you that the price, terms and conditions of any offer we submit may not be kept confidential by the seller and the seller's agent unless we request the seller to keep this information confidential.

If you wish to keep this information confidential I will incorporate that request into the Purchase Agreement by inserting the following language into the Remarks Section of the Purchase Agreement:

“This Purchase Agreement becomes null and void if shared with anyone other than the Seller(s) and the Listing Broker.”

This confidentiality agreement will not be binding on the Seller or the Listing Broker if the Purchase Agreement is not accepted. Therefore, if you request complete confidentiality, we will have to submit a document to be signed by the Seller before I present your offer. (A copy of the Confidentiality Agreement is attached.)

You are advised that in the event you are the successful buyer and the transaction closes, Indiana law requires that the closing information become a matter of public record as to address, names of parties, closing date and sales price, thereby ending confidentiality.

Request for Confidentiality

Sellers: \_\_\_\_\_

Buyers: \_\_\_\_\_

Property: \_\_\_\_\_

Prior to submitting a Purchase Agreement on the Property, Buyer, Seller and their respective Brokers agree that all terms and conditions of the Offer (including the price) shall remain confidential even if a Purchase Agreement is not accepted.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Listing Broker

\_\_\_\_\_  
Selling Broker