



2018 IDEA EXCHANGE  
COUNCIL FOR BROKERS  
November 2, 2018

# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Discussion Topics:

Professional Standards and Legal Issues

The Code of Ethics as a Guide

Cooperation Between REALTORS®

Multiple Offers

“Coming Soon”

Procuring Cause



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Two concepts have stayed with the Code since 1913

1. Arbitrating monetary disputes:  
“Invoke friendly arbitrations by the Real Estate Association rather than through the courts of law, in settling differences with other agents.”
2. The duty to cooperate with others:  
“An agent should respect the listings of his brother agent, and co-operate with him to sell, - provided the other agent has the most suitable place.”



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Article 1 – Protect and promote the interests of your client

Importance of the Buyer and Seller counseling session

Standard of Practice 1-12 when entering into listing contracts

Standard of Practice 1-13 when entering into buyer representation agreements



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics 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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics 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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics Standard of Practice 1-6

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible.

(Adopted 1/93, Amended 1/95)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Change to Standard of Practice 1-7 effective 1/1/19

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 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.





# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## SOP 1-7 continued

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.



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Multiple Offer Myths

- ✓ Always have to do highest and best
- ✓ Seller can't counter one offer at a time
- ✓ Seller must respond to each offer
- ✓ First in – first response
- ✓ The buyer's offer is confidential
- ✓ Buyer should write a letter to seller



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Code of Ethics and Arbitration Manual

Part 4 , Appendix IX — Presenting and Negotiating Multiple Offers

<https://www.nar.realtor/code-of-ethics-and-arbitration-manual/part-4-appendix-ix-presenting-and-negotiating-multiple-offers>



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

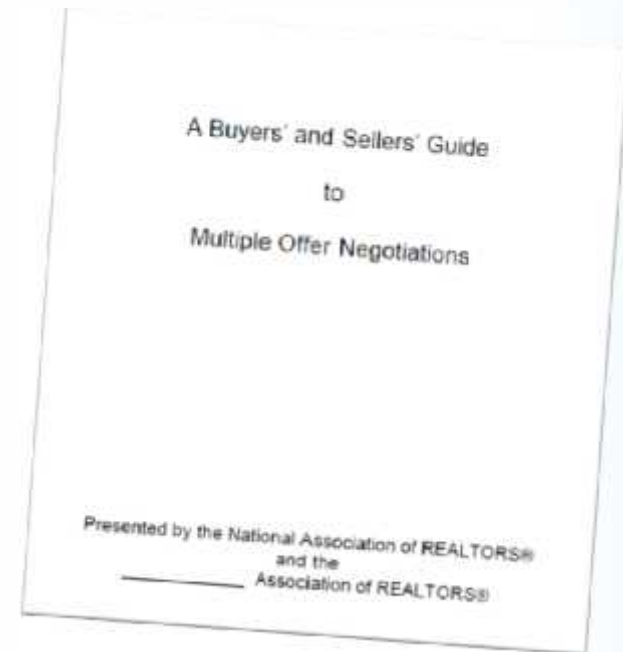
Please Don't Sue Me! – The Code is Good Business

## Another Great Resource at NAR.realtor

This consumer-focused brochure is designed for use by REALTORS® to inform buyers and sellers of the potential consequences of multiple offer situations.

It was approved by the Professional Standards Committee at the 2005 Annual Convention in San Francisco and is excerpted from the *Presenting and Negotiating Multiple Offers* white paper found in NAR's Code of Ethics and Arbitration Manual.

For your convenience, you can also download this brochure: *A Buyers' and Sellers' Guide to Multiple Offer Negotiations* (DOC: 38 KB)  
*A Buyers' and Sellers' Guide to Multiple Offer Negotiations* (PDF: 48 KB)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## MLS Rule Section 2.3

### Right of Cooperating Broker in Presentation of Offer

The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's or lessor's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

(Amended 4/92)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## MLS Rule Section 2.4

### Right of Listing Broker in Presentation of Counter-Offer

The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

(Adopted 11/93)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Do you have your seller client's approval to disclose or not disclose the existence of offers on the property?

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, 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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Important discussion with the seller!

- ✓ Addendum to listing agreement
- ✓ Part of listing agreement itself
- ✓ The decision is in writing



ADDENDUM ATTACHED TO LISTING AGREEMENT A PART OF THE REALTOR/BUYER LISTING AGREEMENT

**BayShore REALTY** ADDENDUM TO LISTING AGREEMENT

SELLER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Date: \_\_\_\_\_

FOR PROPERTY (BOOK NO.): \_\_\_\_\_

It is possible that you may be faced with multiple competing offers to purchase your property. We can explain various negotiating strategies, offers and alternatives for you to consider. The decision however is yours to make. Please appreciate that our advice is based on past experience and is no guarantee about how any particular buyer will act or react in a specific situation.

We need your direction on how you want us to respond to inquiries from buyers or preparing offers when you are in possession of one or more offers on your property.

The Seller and Broker agree that Broker, in response to requests from Buyers or cooperating brokers shall disclose, with the Seller's approval, the existence of offers or the persons. When Seller is not authorized, Brokers shall also disclose whether offers were obtained by the listing broker, another broker in the listing firm, or by a cooperating broker.

As of this date, Seller (check one):

does allow the Broker to disclose the existence of offers on the property.

does not authorize Broker to disclose the existence of offers on the property.

wishes to reserve making that decision until an offer is received on the property.

SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

LISTING AGENT: \_\_\_\_\_ DATE: \_\_\_\_\_





# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Article 3 – The Cooperation Article

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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics 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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics 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)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics Standard of Practice 3-8

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property.

(Amended 11/87)



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## “Coming Soon” and the “Off-MLS” Listing

- ✓ Is this the answer to industry shortage of homes for sale?
- ✓ There are legitimate reasons for advertising a listing as “coming soon”
- ✓ Whose best interest is being served?
- ✓ Could you be in violation of the Code of Ethics?
- ✓ Breach of fiduciary duties – who gets to see the property?
- ✓ Earning both ends of the commission?
- ✓ Could there be an anti trust or fair housing violation by limiting exposure?



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Procuring Cause



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTORS® Want More Rules!

Contract-in-hand!



Agency Relationship  
Rule!

Threshold Rule!



# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## Factors to Consider

- ✓ No Predetermined Rules
- ✓ Arbitrability and Appropriate Parties
- ✓ Relevance and Admissibility
- ✓ Communication and Contact
- ✓ Conformity with State Law
- ✓ Entire Course of Events





# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

Arbitration  
Worksheet



Arbitration

## Arbitration Worksheet

NOTE: Transmit to all parties. This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement -- and not replace -- the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to					



✓ Not a Score Card!

# 2018 IDEA EXCHANGE COUNCIL FOR BROKERS

Please Don't Sue Me! – The Code is Good Business

## REALTOR® Code of Ethics 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)

