After completing this session, members will understand the guidance found in the National Association of REALTORS® Code of Ethics in their day to day business practices as well our duty to put our client’s best interests first when cooperating with other REALTORS®.

NATIONAL ASSOCIATION OF REALTORS® and the Code of Ethics and 1913.

- The Code of Ethics was adopted in 1913 to establish a professional standard of conduct.

- Two concepts that remain in the Code of Ethics today that were part of the Code in 1913 are

1. Cooperation with other REALTORS®

   “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”

2. The duty to Arbitrate

   “Invoke friendly arbitrations by the Real Estate Association rather than through the courts of law, in settling difference with other agent”

The Structure of the Code of Ethics

- The three major sections establish objective, enforceable, ethical standards governing the professional conduct of REALTORS®

  1. Duties to Clients and Customers
  2. Duties to the Public
  3. Duties to REALTORS®

- Articles – broad statements of ethical principles.

- Standards of Practice – support, interpret, and amplify the Articles under which they are stated.
Pathways to Professionalism

- Professional courtesies for use by REALTORS® on a voluntary basis

  1. Respect for the Public
  2. Respect for Property
  3. Respect for Peers

Article 1, Protect and Promote the Interests of your Client

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)

Importance of the buyer and seller counseling session

- 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)

Cooperation with Other Brokers and Presenting Offers

• Standards 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 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 1/19)

- **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)

- **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 right to a copy of the purchaser’s or lessee’s written instructions. (Adopted 11/93)

- **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®, 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)
Multiple Offer Myths

- Seller must allow highest and best offers from all prospective buyers by a certain time
- 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
- What else?

NAR Resources

- Part 4, Appendix IX of the Code of Ethics and Arbitration Manual — Presenting and Negotiating Multiple Offers

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

A Buyers' and Sellers' Guide to Multiple Offer Negotiations (DOC: 38 KB)
A Buyers' and Sellers' Guide to Multiple Offer Negotiations (PDF: 48 KB)

Code of Ethics 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 3-4

✓ 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
THE THREE C’S – COOPERATION, COMPENSATION AND THE CODE OF ETHICS  
BY DIANE K. DISBROW, GRI, CRS, CRB, ABR, SRS, SRES, RSPS, SFR, E-PRO®, RENE, PSA

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 3-6**

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 3-8**

REALTORS® shall not misrepresent the availability of access to show or inspect a listed property.  
(Amended 11/87)

**Coming Soon and Off MLS Listings**

• Is this the answer to industry shortage of homes for sale?
• There are legitimate reasons for advertising a listing as “coming soon”
• Some states licensing authorities and/or REALTOR® Associations or MLS’s have defined the term “coming soon” and established rules. Some haven’t.
• Before advertising a listing as “coming soon” ask yourself, whose best interest is being served?
• Could you be in violation of the Code of Ethics by not working in the best interest of your client?
• Breach of fiduciary duties – who decides who gets to see the property?
• Earn both ends of the commission?
• Could there be an anti-trust or fair housing violation by limiting exposure?
Procuring Cause

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

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 16-13**

  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)*
A word about Mediation........

- Effective January 1, 2002, enforcement of the Code of Ethics also requires member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.

  ✓ voluntary process (unless board has adopted policy to mandate) in which disputing parties meet with a mediator appointed by the Association to create a mutually acceptable resolution of the dispute, rather than having a decision imposed by an arbitration hearing panel.
  ✓ Mediation is offered upon receipt of an Arbitration Request
  ✓ Either party can request that it be reviewed by Grievance committee first to determine arbitrability
  ✓ If a dispute is resolved in mediation, the parties sign an agreement spelling out the terms of the settlement, and no arbitration hearing is held.

So what is an ombudsman program?

- Effective January 1, 2016, every local and state association of REALTORS® was required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers.

  - An ombudsman is an individual appointed to receive and resolve disputes through constructive communication and advocating for consensus and understanding.

  - The ombudsman process usually involves parties who have not filed an ethics complaint or arbitration request, but have experienced a breakdown in communication requiring informal resolution (although an ombudsman may also be used where a complaint has been filed). Often the ombudsman functions as an intermediary who communicates the concerns of one party to the other over the phone, so a positive relationship can be restored.
THE THREE C’S – COOPERATION, COMPENSATION AND THE CODE OF ETHICS
BY DIANE K. DISBROW, GRI, CRS, CRB, ABR, SRS, SRES, RSPS, SFR, E-PRO®, RENE, PSA

DISCLAIMER: Diane K. Disbrow is not a licensed attorney and the subject matter of the training may involve complex legal issues set forth in Federal and State Statutes. Any information in these Materials as well as statements, comments and oral information given in this class/seminar, whether during the formal class time, before or after the class or during any break, is not legal advice to the recipient and does not create any attorney-client relationship with any person in the class/seminar. User/student/recipient is advised to seek their own legal advice and counsel as to any topic covered by these materials.

Per Policy 22 of the Code of Ethics and Arbitration Manual of the National Association of REALTORS®, the contents of this document and any statements, comments and oral information given by Diane K. Disbrow related to the REALTOR® Code of Ethics reflect the understanding and opinions of Diane K. Disbrow and do not represent an official expression of policy by the National Association of REALTORS® or any association of REALTORS® that distributes this document.

Some of the materials used in this seminar are copyrighted by the National Association of REALTORS® and used with permission from the National Association of REALTORS®.

Diane K. Disbrow
GRI, CRS, CRB, ABR, SRS, RSPS, SRES, e-Pro®, SFR, RENE, PSA
(Ocean County, New Jersey)

Diane Disbrow has been an active REALTOR® in New Jersey for over 38 years and was involved in the management of her and her husband's independent real estate company for 33 years. Diane has been active on the Professional Standards Committees at the local, state and national level for many years and served as chair of NAR's Professional Standards Committee twice. Due to her extensive knowledge, she has launched a successful career as a real estate instructor and lecturer and has presented numerous educational programs for the National Association of REALTORS® and various local and state associations across the country.

Contact Information: 609-335-1734 Mobile
Diane@DisbrowFamily.com