

# NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

**July 2020**

**Q. Is a listing agent able to hold offers to present to the seller at a later date?**

**A.** Yes, but only if instructed by their seller to present all offers at a certain time. An agent may not unilaterally decide to hold all offers until a date certain or place any other limitations on the presentation of offers. If a seller has not instructed the agent to delay the presentation of offers, the agent must promptly present them as required by the Massachusetts Regulations and the REALTOR® Code of Ethics.

If an agent receives instructions from a seller modifying any REALTOR® obligations, they should memorialize the instructions in writing to assure clarity and reduce risk. It is important to remember that any decision to modify these obligations must be the seller's. Additionally, if the presentation of offers will be delayed, the agent should convey that information to prospective buyers, and must be followed.

If a buyer's agent has concerns that a listing agent failed to present an offer to the seller, REALTORS® can seek redress through a written request of the broker under authority of Article 1 of the REALTOR® Code of Ethics (See Standard of Practice 1-7). This request obligates the broker to provide written confirmation that the offer was submitted, or that the seller has waived that obligation. This does not obligate the seller to formally sign the "rejection" portion of an offer, but instead places the onus on the listing agent to confirm that they have complied with the law.

**Q. When is it permissible to contact another agent's client?**

**A.** REALTORS® learn early on in their careers that contacting another REALTOR'S® client may be a violation of the Code of Ethics, as well as state law governing contracts. Article 16 of the Code of Ethics prohibits REALTORS® from engaging in any practice or taking any action that is inconsistent with another REALTOR'S® exclusive relationship with a client. The Code requires REALTORS® to make a reasonable effort to determine whether an individual is subject to a current exclusive agreement prior to entering into an exclusive agreement of their own.

This, however, is not without exceptions. The Code contains several carve outs permitting a REALTOR® to contact a represented individual:

- General announcements, canvasses, or mailings to prospects describing available services and terms of availability.
- 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.
- Offering the same type of service for property not subject to other brokers' exclusive agreements.
- To inquire as to the terms of the existing exclusive agreement *if* the other agent refuses to disclose the expiration date and/or the nature of the existing agreement.
- The contact was initiated by the individual, the REALTOR® may discuss the terms of a future agreement or may enter into an agreement that becomes effective upon the expiration of the existing agreement.

Interfering with another agent's relationship with a client may also expose an agent to liability under a claim of interference with a business relationship. In order to obtain relief under this theory, the following elements must be satisfied:

- There was a valid contractual relationship or a valid business expectancy.
- There must be knowledge of the relationship or expectancy.
- There must be intentional interference with the relationship or expectancy.
- There must be damages.

If you find yourself in a situation where you are unable to successfully contact the REALTOR® on the other side of the transaction, and your situation does not fall within one of the enumerated exceptions, you should attempt to contact the broker. Unfortunately, even if contacting the broker does not yield the desired result, you risk an ethics complaint, and possibly a contract interference complaint, if you attempt to contact a represented individual directly.

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