

## Offer Presentation

### Is a real estate licensee obligated to present all offers to a seller?

Yes, unless the seller has waived this right in writing.

### What are the specific laws and ethics regarding the obligation to present all offers?

NAR Code of Ethics: Article 1, Standards of Practice 1-6 and 1-7 require REALTORS® to submit offers objectively and *as quickly as possible*. This obligation continues even after another offer has been accepted until closing, unless the seller has waived this obligation in writing.

Effective 2019, NAR Code of Ethics: Article 1, Standard of practice 1-7 requires that upon written request by the cooperating broker, the listing broker must affirm in writing that the offer was presented or that the seller waived this right.

Model MLS Rule 9.5 requires listing broker members of the MLS to submit to the seller all offers until closing, unless instructed otherwise by the seller.

Model MLS Rule 9.4 requires a listing broker to present the offer *as soon as possible* or provide the cooperating broker a satisfactory reason for not doing so.

Model MLS Rule 9.6 gives the cooperating broker the right to participate in the presentation of the offer, unless the seller gives contrary written instructions.

Business and Professions Code, Sections 10176 and 10177 provide for disciplinary action against a real estate licensee who makes a substantial misrepresentation or engaged in dishonest dealing or was negligent or incompetent. The failure to transmit an offer is equivalent to an affirmative representation by the licensee that no offers exist. (*Simone v. McKee* (1956)).

Common law fiduciary duty obligates a real estate licensee to disclose to the principal all offers to buy the property, even oral offers. (*Smith v. Zak* (1971)).

### What can a REALTOR® do who suspects their offer is not being presented?

- Document the date, time and method used to deliver the offer to the listing agent and any follow up efforts on the status of the offer
- Consider contacting the broker of the listing agent
- Consider sending to the listing agent one of the C.A.R. Sample Letters: "Demand that Offer be Presented to Seller," "Request to Participate in the Presentation of Offer," or "Request for Listing Broker's Written Confirmation that Offer has been Presented." The Sample Letters may be found on zipForm.

### Can a buyer's agent deliver the offer directly the seller?

The N.A.R. Code of Ethics, Standard of Practice 16-13, states that dealings with a seller who is subject to an exclusive agreement must be carried on with the seller's agent or broker, except with consent of the agent or when initiated by the seller. However, Model MLS Rules 9.1 allows for direct negotiations if after reasonable effort and no less than 1 day, the buyer's broker cannot contact the listing broker. But the listing broker may preclude such direct negotiations by giving notice through the MLS. Contact your own MLS for details regarding Rule 9.1.