



# Code of Ethics *and* Professional Practices

REAL ESTATE BOARD OF NEW YORK

## I. DEFINITIONS.

A. The term "Member" includes all persons duly admitted to membership as provided in the Article II of the Constitution of The Real Estate Board of New York, Inc.

B. The term "Board" shall mean The Real Estate Board of New York, Inc.

C. The term "Consultant" shall mean a Member who spends a substantial part of his/her time acting as an advisor on real estate and who has been active in leasing, appraising, buying, selling, financing or managing real property for a period of at least ten (10) years.

## II. STANDARDS OF CONDUCT.

### A. Members shall:

(1) abide by the provisions of the Constitution of the Board, and all applicable federal, state and municipal laws and regulations;

(2) follow the highest moral and ethical standards of courtesy, integrity, proficiency, professionalism and honesty;

(3) recognize that, in all transactions in which a Member participates, the Board's established reputation and high standing in the community will be maintained only if each Member's conduct reflects courtesy and proper regard for all other persons participating in such transaction;

(4) in the performance of their duties, be mindful of the environmental concerns of the communities in which real property is located;

(5) in the best interest of society, of their associates and their own businesses, willingly share with other Members the lessons of their experience and study for the benefit of the public, and be loyal to the Board and active in its work;

(6) when representing a buyer, seller, landlord, tenant or other client as an agent, protect and promote the interest of their client. This obligation of fidelity to the client's interests is primary, but it does not relieve Members of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, Members remain obligated to treat all parties honestly and fairly;

(7) keep in a special account in an appropriate financial institution, separated from their own funds, monies received in trust for other

persons, such as escrow funds, clients' monies and other like items;

(8) seek no unfair advantage over other Members and conduct their business so as to avoid controversies with other Members;

(9) in the event of a dispute between Members associated with different firms arising out of their professional activities, submit the dispute to arbitration in accordance with the provisions of Article XIII of the Constitution rather than litigate the matter;

(10) provide a level of competent service in keeping with the standards of practice in those fields in which the Member customarily engages.

### B. Members shall not:

(1) knowingly or recklessly make false or misleading statements about competitors, their businesses or their business practices;

(2) willfully or knowingly make, circulate or transmit, or cause to be made, circulated or transmitted, either orally, in writing or by any electronic means, any statement or allegation which is untrue or which is intended or calculated to cause a false or misleading value to be placed upon any property;

(3) without the client's informed consent, disclose confidential information of a client to any third party or use such confidential information to further the Member's personal interests;

(4) in a transaction, accept compensation from more than one party, without disclosure to all parties and the informed consent of the Member's client;

(5) discriminate or be parties to any plan to discriminate or deny equal professional services to any person for reasons of race, color, religion, sex, sexual orientation, handicap, familial status or national origin;

(6) undertake to provide professional services concerning a property where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties;

(7) engage in any transaction related to their real estate brokerage activities for themselves, any member of their immediate families, their firms or any member thereof or any entities in which they have any ownership interest, without making their true position known in writing to any party to the transaction;

(8) when acting as agents, accept any commission, rebate or profit

on expenditures made for their principal, without the principal's knowledge and consent;

(9) engage in activities that constitute the unauthorized practice of law. Members shall recommend that legal counsel be obtained when the interest of any party to the transaction indicates the need for counsel;

(10) when acting as co-brokers, subagents or as buyer/tenant agents, attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker.

### **III. STANDARDS OF CONDUCT FOR PROPERTY MANAGERS.**

A. Member property management firms shall have the following:

(1) a code of ethics which addresses receipt of gifts by employees from persons or firms, other than clients, with whom they do business, which shall include the provisions found in IV B. of this Code; and

(2) a written statement of purchasing procedures which is available to clients.

The management firm's code of ethics shall be circulated periodically to clients, employees, vendors and other people with whom the firm does over \$500 a year worth of business.

B. Member property management firms shall keep and maintain accurate financial and business records concerning each property managed and shall make such records available for inspection by the client and the client's representatives, subject to the terms of the management agreement.

C. Managers shall exercise due diligence in the maintenance and management of the client's property and shall make all reasonable efforts to protect it against all reasonably foreseeable contingencies and losses, subject to the terms of the management agreement.

D. All purchases and contracts entered into or negotiated for property or assets managed for a client will be decided on the basis of price, quality, service and ability to meet the needs of the property owner, subject to the terms of the management agreement.

### **IV. COMPENSATION OR OTHER CONSIDERATION FROM SUPPLIERS OF GOODS AND SERVICES.**

A. No member shall, under any condition, claim or receive any commission or rebate for repairs made to, or supplies purchased or services rendered in the operation and maintenance of any property in such Member's charge and, in any brokerage transaction, without the prior written consent of the owner of such property and the written consent from any tenant receiving services.

B. A firm's code of ethics should include the following provisions:

(1) Prohibiting receipt of gifts of cash or gift certificates.

(2) Addressing acceptance of gifts of goods or entertainment. Firms shall set an annual limit on the dollar value of holiday or other gifts.

(3) Requiring that any business transaction with a firm in which an immediate family member has an ownership interest or is employed shall be disclosed in writing to the client.

(4) Specifying that any charge to a client for goods or services shall be the net amount payable to the vendor by the management firm.

(5) No member of the Commercial or Residential Division of the Real Estate Board of New York shall, in connection with a transaction for the sale or lease of commercial and/or residential property, accept or agree to accept any benefit other than his/her/its commission, without the prior knowledge and consent of all parties to the transaction. Such consent shall be obtained at the time the said member first brings the property to the attention of the proposed purchaser/lessor.

### **V. PUBLICATION AND ADVERTISING FOR COMMERCIAL AND RESIDENTIAL BROKERAGE.**

#### **A. Definitions**

(1) The term "publish" shall mean to offer or cause to be offered information to one or more third parties by all oral, written, electronic or other media.

(2) The term "advertise" shall mean to publish with respect to any pending or prospective transaction in an effort to induce one or more third parties to participate in such transaction.

(3) The term "advertising" shall include offerings in newspapers, periodicals, brochures, listings, rental schedules, hand distributed circular and circularized mail matter, window displays, and all electronic media.

#### **B. Guidelines and Restrictions**

(1) No Member shall:

(a) publish or authorize another to publish the Member's name in connection with a pending or contemplated transaction, unless the Member has acted in such transaction as the agent or Consultant of one of the principal parties or is entitled to receive a part of any commission payable by one of the principal parties in connection with such transaction;

(b) publish or advertise in an inaccurate or misleading fashion or permit the use of any inaccurate or misleading advertisements.

(2) The following specific regulations apply to commercial, i.e. nonresidential advertising:

(a) Exaggerated, misleading claims or untrue statements, whether with respect to rentals, space, location or services, or unfair comparisons with other buildings shall not be used.

(b) No member shall advertise or authorize another to advertise with respect to property owned, controlled, i.e., leased or managed by another person or entity without endeavoring to obtain the written permission of such other person or entity.

(c) When reference is made to a lease, it shall be stated whether such lease is a new lease or a renewal lease.

(d) The practice of advertising space at "price or rate per square foot" in newspapers, periodicals, and other forms of public media is prohibited.

(e) In written communications exclusively to the trade in brochures, fliers, listings rental schedules, hand distributed circulars and circularized mail matter, it is recommended that, unless specifically prohibited by contract or by your principal, the rate per square foot be included in the text along with the word "rentable," "usable" or "gross" and also that such advertising contain the full particulars of the subject space.

(f) Office, store and basement rental space may be advertised by combining area and rental, or dimensions and rental, only where such space is measured in accordance with the "Recommended Method of Floor Measurement approved by The Real Estate Board of New York, Inc.,"\* and provided that the advertisement specifically states "measurements and rentable area according to Recommended Method of Floor Measurement approved by The Real Estate Board of New York, Inc."

(g) Rental space in loft, showroom, manufacturing and industrial buildings may be advertised by combining area and rental, or dimensions and rental, without the restrictions in (f) above.

(h) The term "office" or "suitable for offices" shall be used to refer only to rental space measured in accordance with the "Recommended Method of Floor Measurement for Office Buildings" and for which the "Standard Form of Office Lease" published by The Real Estate Board of New York, Inc., or other established form of office lease, is used.

(i) Where plans or illustrations are used they shall not depict an effect contrary to the facts.

(j) In advertising retail space, the term "stores" shall designate only space at ground floor level suitable for retail use. Retail space not on ground floor level shall be so specifically described and measured separately, i.e., "arcade", "plaza", "concourse", "mezzanine" or "basement".

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(k) Advertising copy which contains statements directly or indirectly reflecting adversely upon the services, rentals, location, character and characteristics of competitive buildings is prohibited.

(l) Excessive superlatives and puffing statements incapable or impracticable of proof should be avoided.

(m) Advertisements offering space for sublease shall state that the space is "for sublease" and shall follow the same standard practice outlined herein.

(n) Phrases such as "Name Your Own Rentals" and "Submit Your Offers" are prohibited.

(3) The following regulations apply to residential advertisement:

(a) The use of the word "exclusive" must refer only to a written exclusive or coexclusive right to sell or lease or a written exclusive or coexclusive agency agreement held by the listing broker.

(b) Oral exclusives of any type must be labeled "OURS ALONE" when transmitted between brokers in any communication with other REBNY firms.

(c) The specific details of a transaction may not be published without the consent of all parties to that transaction.

(d) When advertising multiple units in an apartment building, quoting an absurdly low rental or sales price as a loss leader is prohibited.

(e) The use of the phrases "Principals Only", "No Brokers Please" or the like, is prohibited.

## VI. AGENCY CONSIDERATIONS.

### A. General

(1) Without the prior knowledge and consent of the property owner, no Member shall:

(a) offer, or caused to be offered, such property for sale or lease.

(b) submit, or cause to be submitted, any application for a loan with respect to such property.

### B. Exclusive Agency

(1) No Member shall claim to be an exclusive agent unless the Member was authorized in such capacity.

(2) Where property, space, a tenant, a prospective tenant, or a prospective customer is subject to an exclusive agreement, no Member shall:

- (a) knowingly offer said space or property for sale or lease without making such offer through the exclusive agent;
- (b) post said space or property on a public website identifying such space or property as available for sale or lease; or
- (c) negotiate with the exclusive customer, client, tenant, prospective tenant and/or owner of another broker or salesperson without the prior written consent of the exclusive broker or salesperson, and then only in accordance with the terms of the permission granted.

### **C. Residential Exclusives**

- (1) It is the responsibility of an agent to show his/her exclusive listing to any REBNY residential broker member with a ready, willing and able customer at any time during the term of the exclusive. An appointment under these circumstances can only be denied upon instruction of the seller or if previous appointment with the same customer already exists.
- (2) Where a residential member of the Real Estate Board of New York (REBNY), which is defined as a member of the Residential Brokerage Division who receives revenues from brokering the sale or rental of residential property (herein after "Residential Member") in authorized jurisdictions determined by the Residential Board of Directors, has been engaged as an exclusive sales or rental agent ("Exclusive Agent") by a residential property owner or owner of stock in a cooperative corporation, that Residential Member is required, with the prior knowledge and consent of the property owner, to initiate an offer of co-brokerage of the property or properties. More particularly, within 24 hours after execution of the exclusive listing agreement, the Exclusive Agent must make such offer of co-brokerage to all Residential Members who have expressed, in writing, an interest in receipt of such offers. Information regarding the Exclusive Listing (the "Listing Information") must be sent out via the REBNY Listing Service ("RLS") simultaneously with any public dissemination of the listing information. If the Listing Information is not disseminated to the public, the Listing Information will be sent out via RLS within 24 hours of obtaining the signed Exclusive Listing. These obligations are mandatory unless the Owner has specified in writing that an offer of co-brokerage is not to be initiated with respect to the Exclusive Listing. REBNY shall establish in writing the procedures, rules and requirements for the implementation and continued operation of this provision, which will have the same force and effect as a provision of the Code of Ethics. A five member subcommittee of the Residential Board of Directors and Ethics Committee shall have jurisdiction to determine any complaint or grievance brought under this section.
- (3) It is the fiduciary responsibility of an exclusive agent to advise a seller about the proper pricing level for a property.
- (4) An agreement for the co-brokerage of an exclusive listing must be signed by an officer or other authorized person in each company.
- (5) An exclusive broker is required to disclose to a scheduling cobroker that an exclusive agency has terminated or will terminate by the showing date.

(6) An exclusive broker may not solicit a customer introduced by a cooperating co-broker through the showing of his/her exclusive listing.

(7) Any negotiation of brokerage commissions must be done with each co-brokerage firm's approval of the commission reduction. If a cobroker negotiates a reduced commission without the approval of a cooperating broker, the negotiating broker must absorb the full amount of the commission reduction.

(8) Any broker obtaining an exclusive should ask the owner or landlord if there is any other agency or exclusive outstanding on the premises.

## **VII. MARKET EVALUATIONS**

### **Definition**

The terms "market evaluation" or "broker opinion letter" mean an opinion of the value of a specific parcel of real property or any interest therein, or a condominium or co-operative apartment, rendered by a Member for a fee. The term "appraisal" shall refer only to an opinion rendered by a licensed appraiser.

## **VIII. MISCELLANEOUS.**

### **A. Bonding of Employees**

Members shall use best efforts to cause each of their employees who handles or is responsible for monies of the Member's principals to be covered by an adequate fidelity bond in an amount at least equal to the value of all such monies.

### **B. Client Referral**

When a Member accepts a client or customer referred to him by another Member, the first transaction closed with such client or customers shall relieve both Members from further obligation to each other in connection with any subsequent business conducted with such client or customer, unless both Members had entered into a prior written agreement setting forth any such respective further obligations to each other.

### **C. Signs**

No member shall put a sign on property without having received the prior permission of the owner of such property or his duly authorized agent.

### **D. Rebates on Supplies**

No Member shall, under any condition, claim or receive any commission or rebate for repairs made to, or supplies purchased or services rendered in the operation and maintenance of any property in such Member's charge and, in any brokerage transaction, without the prior written consent of the owner of such property and the written consent from any tenant receiving services.

## **IX. COMPLAINT PROCEDURE.**

The procedure governing breaches of this Code shall be as provided in Article XII (Discipline), Section 3.(a) of the Constitution.