

Legal Potpourri



Broker Meeting Sizzle Packet

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Sizzle Potpourri

Q # 1. Restrictive Covenants are now required to be placed on the Seller Disclosure of Property Condition report. This means:

- a. A buyer is entitled to a copy of the restrictive covenants or they may void their offer
- b. The seller should provide a copy of the restrictive covenants if they are able
- c. The seller should describe where a copy of the covenants may be found
- d. The restrictive covenants must be filed with the county recorder
- e. None of the above

Q #2. Which is NOT a paraphrase of an article of the NAR Code of Ethics: Realtors...

- a. Shall not make false or reckless statements about a competitors business practice
- b. Shall, in response to a charge of unethical practice, place all pertinent facts before the proper REALTOR® tribunal
- c. Shall make their true position known as potential purchaser to owner or owners agent
- d. Shall cooperate with other brokers except when cooperation is not in the clients interest.
- e. None of the above. They are all articles of the Code
- f. All the above. They are all license laws within Iowa Administrative Rules.

Q #3. Label the following: Unprofessional, Unethical or Unlawful:

1. Calling the client of another
2. Not disclosing a murder on a property two doors down from the listed property
3. Not calling a buyers agent about another offer received on your listing
4. Failing to check the Do Not Call list prior to calling a person
5. Contacting the relatives (names taken from an obituary) to sell the deceased persons home
6. Presenting unflattering portrait of a neighborhood
7. Not doing your best good faith effort to sell a property
8. Failing to advertise a property each week

Q #4. A transaction has failed and the broker has good reason to give the earnest money to the seller. If they broker does not have written consent by both parties, can the broker ever release the money to the SELLER?

- a. No
- b. Yes, but only if the buyer is not findable
- c. Yes, if broker provides the buyer a certified letter with the reasons for distribution thirty days after the date the transaction failed, then allow thirty days for buyer to sue
- d. Yes, if broker provides the seller a certified letter with the reasons six months after the date of the dispute, then allow thirty days to respond.
- e. Yes, only after 180 days after which the brokerage claims and deposits the earnest money and interest into the brokerages general fund, then writes a check to the seller for the deposit amount.

Q #5. Which of the following are exempt from the property condition disclosure requirement:

- a. Transfers to the Department of Natural Resources
- b. A power of attorney transferring property to a business L.L.C.
- c. A dwelling which has not been lived and is not intended to be lived in
- d. Transfer by a conservator on behalf of someone still living
- e. A fiduciary in the administration of a decedents estate
- f. A home which has been certified lead free
- g. An 8 unit apartment building
- h. A home being foreclosed on by a lender

Q #6. Who is responsible for closing:

- a. the seller is responsible
- b. the seller's lender is responsible for keeping accurate records
- c. the listing company
- d. the listing company, although they may delegate this to another entity
- e. the selling company
- f. the selling company as long as mutually approved

Q #7. How quickly may you switch real estate brokerages:

- a. After completion of the Transfer Application Form, the change will be effective immediately
- b. Once you terminate your association with a brokerage, the real estate commission may issue a license within five business days
- c. Within 48 hours the current brokerage must send the license to the Real Estate Commission
- d. Within 72 hours the current brokerage must send the license to the commission
- e. Once reissued, the applicant may conduct real estate activities immediately

Q #8. Advertising within the newspaper:

- a. Must include agents phone number
- b. Must include the regular business name of brokerage
- c. Must include the fair housing logo
- d. Must include the address of the property
- e. Must include the address of the brokerage
- f. All the above

Q #9. Which of the following must only a real estate licensee do?

- a. Answer questions on title, financing, or closings
- b. Show property independently
- c. Make cold calls by telephone for brokerage services
- d. Type contract forms for the brokerage
- e. Write advertisements and promotional materials
- f. Submit data on listings to a multiple listing service

- Q # 10. An unlicensed real property auctioneers must:
- a. limit themselves to establishing the time, place, and method of auction
 - b. limit themselves to advertising the auction
 - c. limit themselves to crying the auction
 - d. advertise the name of the brokerage firm providing brokerage services
 - e. advertise the name of the brokerage responsible for closing the sale
 - f. All the above
 - g. Only d and e

ANSWERS

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Q # 1. Restrictive Covenants are now required to be placed on the Seller Disclosure of Property Condition report. This means:

- a. A buyer is entitled to a copy of the restrictive covenants or they may void their offer
- b. The seller should provide a copy of the restrictive covenants if they are able
- c. The seller should describe where a copy of the covenants may be found
- d. The restrictive covenants must be filed with the county recorder
- e. None of the above

A #1 = b and c are both correct answers. The law does not absolutely require the covenants be provided to the buyer, but if covenants are relevant to the buyers, they should inquire and investigate any covenants they believe would be relevant to their enjoyment and use of the property. Real estate licensees, particularly on properties which are just being developed should make a good faith effort to provide the covenants.

Q #2. Which is NOT a paraphrase of an article of the NAR Code of Ethics: Realtors...

- a. Shall not make false or reckless statements about a competitors business practice
- b. Shall, in response to a charge of unethical practice, place all pertinent facts before the proper REALTOR® tribunal
- c. Shall make their true position known as potential purchaser to owner or owners agent
- d. Shall cooperate with other brokers except when cooperation is not in the client's interest.
- e. None of the above. They are all articles of the Code
- f. All the above. They are all license laws within Iowa Administrative Rules.

Answer #2 = e. All the above are tenants of the Code of ethics. To find the complete articles go to realtor.org and type in Code of Ethics in the search function.

Q #3. Label the following: Unprofessional, Unethical or Unlawful:

- a. Calling the client of another
- b. Not disclosing a murder on a property two doors down from the listed property
- c. Not calling a buyers agent about another offer received on your listing
- d. Failing to check the Do Not Call list prior to calling a person
- e. Contacting the relatives (names taken from an obituary) to sell the deceased persons home
- f. Presenting an unflattering portrait of a neighborhood
- g. Not doing your best good faith effort to sell a property
- h. Failing to advertise a property each week

Answer #3

- a. ALL three. Soliciting the client of another is a violation of Chapter 11 of the Iowa Administrative rules regarding salesperson and brokers, Article 16 of the Code of Ethics and unprofessional. – See the Golden Rule.
- b. Possibly unprofessional only. There is no legal requirement to disclose a newsworthy event nearby, unless you as a real estate licensee feels it falls within a definition of a Material Adverse Fact as defined in Iowa Code 543B.5. The National Association of REALTORS® encourages members to be a forthright as possible with psychologically impacted property.
- c. Possibly unprofessional only. There is no legal duty to inform any and all parties of all offers. The Code of Ethics has been amended to provide in response to inquiries from buyers, or cooperating brokers shall, WITH SELLER'S APPROVAL, disclose the existence of offers on the property. As a professional courtesy, it would be nice to inform fellow members the exact status of a property.
- d. Failing to check the Do Not Call list is a violation of federal law. Due to the fact the Code of Ethics is limited to 17 narrow activities, it is not ethical per se. It would be unprofessional to knowingly break the law.
- e. Exploiting a family's private life for professional gain is unprofessional.
- f. Any information about an area should be fact based. Any opinion based upon subjective thoughts of an area should be presented as such, and should be tempered with an awareness of possible discriminatory connotations. Any statement would not be unprofessional per se, but may be offensive to some.
- g. Not to do your best effort is unprofessional, and may border on professional negligence and incompetence.
- h. Be aware of your duties promised to your clients (i.e. double check your listing agreements). The promises contained within your "employment contract" with clients are enforceable and failure to provide agreed service may be any of the three.

Q #4. A transaction has failed and the broker has good reason to give the earnest money to the seller. If the broker does not have written consent by both parties, can the broker ever release the money to the SELLER?

- a. No
- b. Yes, but only if the buyer is not findable
- c. Yes, if broker provides the buyer a certified letter with the reasons for distribution thirty days after the date the transaction failed, then allow thirty days for buyer to sue
- d. Yes, if broker provides the seller a certified letter with the reasons six months after the date of the dispute, then allow thirty days to respond.

e. Yes, only after 180 days after which the brokerage claims and deposits the earnest money and interest into the brokerages general fund, then writes a check to the seller for the deposit amount.

Answer #4 = D. A brokerage has the option of distributing earnest money to either the seller or buyer if they believe in good faith and with justifiable, reasonable reasons either the seller or buyer is justified in receiving the money. Several methods are available and are contained in the trust account manual and administrative rules (Chapter 13), but the most common is to wait the proper time after the date of the dispute, (6 months if given to the seller, 30 day if to buyer) then a certified letter to each party, then an additional 30 day waiting period after this. The notice gives the party not receiving the money a chance to commence a court proceeding.

Q #5. Which of the following are exempt from the property condition disclosure requirement:

- a. Transfers to the Department of Natural Resources
- b. A power of attorney transferring property to a business L.L.C.
- c. A dwelling which has not been lived and is not intended to be lived in
- d. Transfer by a conservator on behalf of someone still living
- e. A fiduciary in the administration of a decedents estate
- f. A home which has been certified lead free
- g. An 8 unit apartment building
- h. A home being foreclosed on by a lender

Answer #5 = a, c, e, g, h. These are all exempt from the disclosure requirement. All exemptions are contained in Iowa Code 558A.1(4) - Under the definition of a transfer.

Q #6. Who is responsible for closing:

- a. the seller is responsible
- b. the seller's lender is responsible for keeping accurate records
- c. the listing company
- d. the listing company, although they may delegate this to another entity
- e. the selling company
- f. the selling company as long as mutually approved

Answer #6 = d. Under Iowa administrative rule 13.2(3) the listing broker "shall" be responsible for the closing even though the closing may be completed by another licensee. A brokerage should be careful to select a company which is competent as the brokerage shall ensure all funds are accounted for. The selling company may close the transaction if agreed to by all parties, however, technically, the listing company is responsible ensuring the transaction is closed properly.

Q #7. How quickly may you switch real estate brokerages:

- a. After completion of the Transfer Application Form, the change will be effective immediately
- b. Once you terminate your association with a brokerage, the real estate commission may issue a license within five business days
- c. Within 48 hours the current brokerage must send the license to the Real Estate Commission
- d. Within 72 hours the current brokerage must send the license to the commission
- e. Once reissued, the applicant may conduct real estate activities immediately

Answer #7 A and D. There are two processes you may switch firms. One: you terminate your employment and once you provide or receive written notice, the brokerage has up to 72 hour for the commission to receive the license. Once the licensee and new brokerage request the license, the commission shall forward. Transferring between brokerages is effective immediately. It is a three step process whereby the new brokerage signs the form first, releasing broker second, and licensee third. The transfer form may be downloaded from the commission's website. www.state.ia.us/irec

Q #8. Advertising within the newspaper:

- a. Must include agents phone number
- b. Must include the regular business name of brokerage
- c. Must include the fair housing logo
- d. Must include the address of the property
- e. Must include the address of the brokerage
- f. All the above

Answer Q #8 = b. Chapter 10 of the Iowa Administrative rules have the advertising regulations and the only requirement for print is that, "...when advertising real estate, the brokerage shall use the regular business name or the name under which the broker is licensed, and shall affirmatively and unmistakably indicated that the party is a real estate brokerage and not a private party." Differing rules apply to web pages and e-mail communication which both require licensee name, firm names as registered with the commission, city and state in which the licensee's office is located, and the states in which the licensee holds a real estate license.

Q #9. Which of the following must only a real estate licensee do?

- a. Answer questions on title, financing, or closings
- b. Show property independently
- c. Make cold calls by telephone for brokerage services

- d. Type contract forms for the brokerage
- e. Write advertisements and promotional materials
- f. Submit data on listings to a multiple listing service
- g. All the above
- h. None of the above – an unlicensed assistant may perform all these activities.

Answer #9 = a, b, and c. Iowa Code 543B.3 lists specific “activities” which if a person does for another and who is expecting any type of compensation, must have a real estate license. The Iowa Administrative Rules 193—E Chapter 7 rule 7.13(4) have further refined “specific activities” which unlicensed support personnel may conduct. A, b and c above are those activities which by rule only a licensed person may conduct. For a complete listing of the administrative rules see www.iowarealtors.com legal section.

Q # 10. An auctioneer who is does not have a real estate license must:

- a. limit themselves to establishing the time, place, and method of auction
- b. limit themselves to advertising the auction
- c. limit themselves to crying the auction
- d. advertise the name of the brokerage firm providing brokerage services
- e. advertise the name of the brokerage responsible for closing the sale
- f. All the above
- g. Only d and e

Answer Q #10 = f . All the above. If the auctioneer attempts to do anything beyond these actions or fails to properly advertise, the real estate commission may first warn, then they have the power to discipline with penalties of up to \$10,000 or 10% of the sale value. An affected person or association or real estate licensees (i.e your local board or state association) also has the power to take a violating auctioneer to court to seek and cease and desist order, with the ability to recover attorney fees and expenses.