

*Resolutions Of The
Residential Brokerage Division*

Unless otherwise noted, these Resolutions support one or more provisions of the Real Estate Board of New York, Inc., Code of Ethics.

1. THE USE OF THE TERMS EXCLUSIVE AND CO-EXCLUSIVE*

The terms “exclusive” and “co-exclusive” shall refer only to written exclusive or co-exclusive agencies or rights-to-sell. When advertising such listings, they should be clearly labeled as such, or advertised within a clearly labeled section. Verbal exclusives should be labeled “ours alone” in both advertising and co-brokering to differentiate them from exclusive with signed agreements.

2. DISSEMINATION OF CO-BROKERAGE INFORMATION

A. Sales

Within 72-hours of the execution of an exclusive agreement, co-brokerage information must be sent out to cooperating firms. In the event that co-brokerage information is incomplete, it should be put in a complete format as soon as possible. This information includes price, maintenance/carrying charges & taxes, number of shares, tax deduction, a complete description of the property including condition, exposures and improvements, flip tax, special showing guidelines and times, special board requirements, commission percentage established with the seller, and all other relevant information. In the co-brokerage of exclusive listings in buildings of 1 to 4 units, i.e. townhouses, the disclosure form which the seller has signed must be included in this information.

B. Rentals

Within 72-hours of the execution of an exclusive agreement, co-brokerage information must be sent out to cooperating firms. In the event that co-brokerage information is incomplete, it should be put in a complete format as soon as possible. This information shall include rent, length of lease, type of lease, occupancy date, special conditions, whether board approval is necessary, additional fees (i.e. move-in/move-out), processing fees or other information deemed relevant.

3. SHOWING YOUR EXCLUSIVES

- Exclusive agents must respond to requests for appointments promptly.
- The exclusive agent should record the names of customers at the time of scheduling. The correctly spelled names of the buyer/tenant should be furnished to the exclusive broker at that time to protect both the exclusive broker and the co-broker.
- The exclusive agent may not deny an appointment to a co-broker for any reason whatsoever, with the exception of a previously scheduled appointment or on the specific instruction of the seller/landlord.
- In the event that a customer has already visited the property the exclusive agent should advise a scheduling cooperating co-broker of that fact. This resolution is not intended to encourage buyers/tenants to willfully abandon one agent for another. Co-brokers must not attempt to persuade a customer to revisit a property with them rather than with the original showing exclusive agent or showing co-broker; a reshow with a different agent should only take place under circumstances in which a buyer/tenant has reason to feel abandoned or inadequately represented by the original showing agent. In the event that this situation does arise, the second co-

over.....

broker should obtain a letter from the buyer/tenant indicating that the buyer/tenant has viewed the property with one broker but wishes to return with (name of new broker). This letter should be directed by the second co-broker to the exclusive agent and the exclusive agent's manager. The exclusive agent, as the fiduciary of the seller/landlord, should do nothing to discourage or create awkwardness for the buyer/tenant.

- Agents shall not induce a customer to break a previously scheduled appointment based upon the payment schedule or amount of commission payment.
- In rentals, when the tenant has agreed to pay the commission, the co-broker shall inform the tenant of the risk of being obligated to pay more than one commission if the tenant is shown the property through more than one co-broker.

4. BACK-UP BROKERS

Exclusive brokers must arrange for at least one back-up broker to handle their exclusive properties if they are unavailable or on vacation.

5. ON-SITE BROKER ETIQUETTE

An exclusive broker's job is to show their exclusive property, provide the customer with a floor plan and answer questions the customer and co-broker may have pertaining to the property. The business card of the exclusive broker should never be handed to a customer of the co-broker.

6. WAITING TIME

The minimum time an exclusive broker should wait for a co-broker and his/her customer is 20 minutes.

7. NEGOTIATIONS WITH A SELLER/LANDLORD

A co-broker may only negotiate directly with the seller/landlord with the full knowledge and permission of the exclusive listing agent. Negotiations by a co-broker directly with a seller/landlord are acceptable as long as the exclusive agent is fully aware of and gives permission for this activity and it is in the best interest of the seller/landlord.

8. COMMISSION CHECKS AND RENT DEPOSIT CHECKS

A. Sales

Whenever it is possible, the exclusive broker should endeavor to have the seller's attorney cut separate commission checks for each brokerage firm involved in the sale. When only one check is cut to the exclusive brokerage firm, the company should release the co-broker's check expeditiously.

B. Rentals

In the case of an exclusive listing, the broker representing the tenant shall hold the full brokerage commission and rent deposit checks until such time as leases have been signed by both parties unless landlord requires checks for rent and security deposit to accompany applications or leases. In the case of a coop or condominium rental the broker representing the tenant shall hold the full brokerage commission and security rent deposit checks until consent or waiver is received. In the situations described above, copies of checks being held shall be given to the exclusive broker.

Such checks shall be in the form of negotiable funds, i.e. certified checks, money orders, cashier's checks, traveler's checks or cash. The broker representing the tenant shall not accept personal or corporate checks without the consent of the exclusive broker.

9. RESPONSIBILITIES OF A CO-BROKER IN CONNECTION WITH THE SUBMISSION OF BOARD PACKAGES.

It is the exclusive broker's responsibility to supply the board package requirements and building financials to the co-broker and to assist in obtaining other requested documents. It is the co-broker's responsibility to produce a completed board package and to deliver it to the exclusive broker for review sufficiently prior to its submission to the condo or cooperative's board. The name, firm and phone number of both the exclusive selling broker and the co-broker representing the purchaser must appear on the cover sheet to the managing agent. No broker or firm "ID" should appear anywhere else in the submission for advertising purposes.

10. GIFT GIVING

The giving of flowers or other gifts by a sales manager or owner of a firm to a competitor's sales associate is prohibited. Gifts to a co-broker's customer or client are also prohibited.

11. SOLICITATION OF EXCLUSIVES

If a property (the "Property") is subject to an exclusive agreement (the "Exclusive") then, during the term of the Exclusive, a broker who is not a party thereto or whose firm is not a party thereto ("Broker B"):

(a) may not solicit the seller/landlord of the Property with respect to the Property; but

(b) may enter into an agreement with the seller/landlord concerning the Property where (i) that agreement (the "Second Agreement") covers matters which are not covered by the Exclusive and (ii) Broker B or his or her firm is specifically requested to do so by the seller/landlord. Before entering into the Second Agreement Broker B should inform the Seller/Landlord that by entering into the Second Agreement the Seller/Landlord could be liable for a commission under both the Exclusive Agreement and the Second Agreement.

The term solicit as used in this provision does not include mailings, or other multiple solicitations, where it is impractical to distinguish properties that are already subject to an exclusive agreement or instances where the owner initiates contact with the non-exclusive broker. If solicited by an owner who is subject to an exclusive agreement, the non-exclusive broker may respond to the owner's inquiry. The response may not effect the original exclusive agreement.

12. LANGUAGE FOR TERMINATION OF AN EXCLUSIVE

Within Three (3) business days after the expiration of the listing term, we shall deliver to you in writing a list of no more than Six (6) names of persons who inspected the premises during the listing term. If within Ninety (90) days after the expiration of the listing term a contract is signed to sell the premises to a person on said list, we shall be entitled to the commission provided for

over.....

in paragraph () of this Agreement.

13. REFERRAL FEES

Unless the broker(s) and the co-broker(s) agree in writing to the contrary, any and all referral fees owed on account of a transaction will be paid by the individual or entity that incurred the liability.

14. CLOSED RESIDENTIAL TRANSACTION AND THE RLS

A closed residential transaction must be transmitted as CLOSED through the RLS and removed or clearly marked as CLOSED on the website of the exclusive firm and any other websites on which the property has appeared within 72-hours after the closing.

15. DISCLOSURE PROCEDURES AMONG BROKERS WHEN THERE ARE MULTIPLE BIDS

- A. The exclusive agent has a fiduciary responsibility to the seller but it does not relieve an agent of his/her obligation to treat all parties honestly.
- B. The exclusive agent is responsible to obtain the best price and terms suitable to achieve a closing consistent with the seller's priorities.
- C. The negotiation process shall be handled in a direct, timely and considerate manner to all co-brokers.
- D. In the event of multiple offers, the exclusive agent shall disclose them all to the seller and recommend to the seller the disclosure of the fact of such offers in a timely manner to all co-brokers involved. The dollar amount of competing bids need not be disclosed to the co-brokers.
- E. The exclusive agent shall disseminate such information according to the seller's instructions in a manner consistent with the legal requirement that a broker treat all parties in a fair and trustworthy manner.
- F. If the seller is unwilling to honor a verbally accepted offer when a higher offer is made, the broker should encourage the seller to allow the first buyer another bid.
- G. The agent should inform the buyer that it is standard practice to show a property up to the point a contract is fully executed and, until then, a binding commitment does not exist.
- H. If a co-broker feels that his/her offer is not being communicated to the seller, he/she should refer the matter to his/her sales manager to communicate directly with the sales manager of the exclusive firm.

16. A PUBLIC OPEN HOUSE

When an exclusive agent conducts a public open house, the exclusive agent has the right to actively solicit as a potential purchaser, for both the open house property and any other available property, anyone who attends the open house unless the attendee is accompanied by his/her agent to that open house, or acknowledges in writing at the open house on a sign-in-sheet to be provided by the exclusive agent, that he/she is being represented by another broker. No REBNY member may deny access to any other REBNY member, with or without a customer, at a public open house. In addition, no REBNY member may solicit customers at the open house of another REBNY member, whether in the apartment itself, in the elevator, or in the lobby.

17. COOPERATIVE CO-EXCLUSIVE AGREEMENT

- A. The names of the co-exclusive firms and agents must be included on the co-broke listing that is sent out to the brokerage community during the term of the co-exclusive agreement.
- B. Any advertising of a co-exclusive must include the information that it is a co-exclusive.
- C. Unless otherwise directed by the seller, co-exclusive agents should promptly notify each other of any serious discussion with the seller concerning a price reduction of the property.
- D. Co-exclusive brokers should share with each other on a regular basis specific names of co-brokers and their customers who have visited or will be visiting the property. The co-exclusive agents should communicate on a regular basis so as not to duplicate appointments, and should discuss any offers that have been received.
- E. Provide the seller consents:
 - 1. Each of the co-exclusive agents is entitled at the termination of the co-exclusive agreement to submit a list of names within 3 business days to the seller to be protected for 90-days, such lists not to exceed 6 names in the aggregate.
 - 2. Upon termination of the co-exclusive agreement, each co-exclusive firm ought to provide the other with its list of protected names, if any.
 - 3. Upon the termination of the co-exclusive agreement, notwithstanding that the seller has granted a new exclusive to a new broker, each co-exclusive agent may reshow the property to the names on its submitted list and/or negotiate directly with the seller with respect to the names on said list during the 90-day protected period.
 - 4. Upon termination of the co-exclusive agreement, each co-exclusive agent ought to notify the outside co-brokers whose customers' names have been placed on its submitted list.
- F. Upon the termination of the co-exclusive agency, each co-exclusive agent should update the brokerage community as to the status of the property.
- G. In a co-exclusive agency, both agents should be given a copy of the board package for review prior to submission to the board.

These Resolutions were reviewed and necessary changes made as of September 2005.