

# Listing a house post-contract, what gives?

By Andrew Lieb

You are the buyer's attorney in a fully executed purchase contract for a property located in Sayville, New York. The original closing date was set for November 15, 2012. An extension of the closing date was requested for December 15, 2012 and granted. Thereafter, and due to a multitude of factors such as a boundary line issue requiring affidavits from neighbors, and then, a flood in the basement requiring a re-inspection, there was a further extension of the closing that was agreed to by the seller's attorney for January 15, 2013.

As, you are all aware, real estate agents get extremely aggressive at pushing everyone to close their deals. So, the seller's real estate agent has been calling everyone, the seller, buyer, attorneys and lender hourly to get "their" closing date scheduled. Now, the seller's real estate agent said that they are going to renew their listing on the multiple listing service and start showing the house again. This is in the face of the fact that we are in contract and the contract has not been terminated pursuant to its terms.

This deal does not involve a buyer's real estate agent. The agent is not a dual agent and there are no broker's agents involved.

## Rules

The Code of Ethics and Standards of Practice of the National Association of Realtors (Effective January 1, 2012) is as follows:

- Standard of Practice 1-7: When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/93)
- Standard of Practice 1-8: REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated.
- Standard of Practice 1-15: REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REAL-



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TORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. (Adopted 1/03, Amended 1/09)

• Standard of Practice 3-6: REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. (Adopted 5/86, Amended 1/04)

- Pre-Preamble: While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Regulations Affecting Brokers and Salespersons: §175.9 Inducing breach of contract of sale or lease: No real estate broker shall induce any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

## Application

So, there is a regulation expressly on point, which precludes the inducement of a breach of contract. Nonetheless, real estate agents, which pursuant to Real Property Law §443(1)(a) means "a person who is licensed as a real estate broker, associate real estate broker or real estate salesperson" often see themselves as realtors before they see themselves as real estate agents and mistakenly believe that the Code of Ethics trumps New York State Laws and

Regulations and further have not read their own Code of Ethics, but instead heard the Standards of Practice discussed at a training by a realtor organization. They are wrong in thinking that the Code of Ethics trumps the law as it merely has the control of a contract that cannot modify express laws and regulations and moreover, the Code of Ethics, if read expressly states to in the Pre-Preamble section that "in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence".

The property should not be shown until the contract is formally terminated. If the real estate agent shows the property, the buyer's attorney should place a call to the real estate agent's broker-of-record, the individual responsible for the agent's license pursuant to the Department of State, and request that such wrongful activities are stopped immediately. Should the conversation not be fruitful, a formal cease and desist letter would be appropriately directed to the broker-of-record followed by an application for a Temporary Restraining Order in our Courts and a complaint to both the local board of the National Association of Realtors and to the Department of State concerning the real estate agent's acts of untrustworthiness pursuant to the regulation. Do not be pressured, know your client's rights and protect them.

*Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb serves as Co-Chair to the Real Property Committee of the Suffolk Bar Association and served as this year's Special Section Editor for Real Property in The Suffolk Lawyer.*