

Highlights from the Florida Realtors® 2023 Mid-Winter Meetings

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The Mid-Winter meetings at the Renaissance SeaWorld-Orlando included informative presentations and fostered discussions about important legal issues that can impact your business. Below are issues to watch this year:

Legal and Professional Standards Update

- **Issue: Copyright and Generative AI.** The owner of a copyrighted work has the right to reproduce, publicly display/perform, distribute, or prepare derivative works. Websites such as DALL E2, NightCafe, DeepAI, StarryAI, and Fotor can be used to create or generate art or photos for marketing purposes. Real Estate Agents should take care to ensure that they have a license to use photographs for their listings. If using generative AI tools, Real Estate Agents should make sure they have a license to use the photos and disclose any time the listing photos are altered or include generated art.
- **Issue: Fake Sellers, Fake Landlords – Don’t Get Fooled!** Foreign Sellers and Buyers of vacant land are victimized by scammers who either list the property online or forge deeds to convey ownership to an unsuspecting Buyer. Other instances of fraud involve fake landlords or when a scammer illegally changes the corporate documents of an entity owning real property and then conveys the property. Practice Tip: Make sure you verify the identity of the Seller or Landlord; if they only communicate through email and not phone or video conference, this is a red flag. You can independently verify the identity of the Seller/Landlord by finding their phone number online and/or sending a letter to the address where the property tax bills are sent. When taking a listing, make sure the Seller’s photo ID is legitimate, and require that any notary the Seller works with give you their contact information, or require the use Remote Online Notarization to video record the execution of the Seller’s documents.
- **Issue: Co-Listings.** When more than one brokerage is handling a listing, rather than merely listing a second company in the Broker line of the Listing Agreement forms, a comprehensive Co-Listing Agreement should be prepared by competent counsel. The Co-Listing Agreement should outline who is responsible for the broker’s tasks, clearly define the terms under which each brokerage will get paid, and set forth a plan to resolve disagreements between the Seller and both brokerages. Careful consideration should be made to ensure the Co-Listing Agreement complies with FREC and local MLS/board rules.
- **Issue: Key Professional Standards Changes for 2023.**
 - Terminology changed from “handicap” to “disability” in Article 10.
 - Standard of Practice 3-9 changes: REALTORS® shall not provide access to listed property on terms other than those established by the owner or the seller.
 - Article 15 states: REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Real estate professionals are defined as those engaging in the following disciplines: residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

Florida Realtors/Florida Bar Joint Realtor/Attorney Committee Meeting

The Joint Committee highlighted topics frequently addressed by the Legal Hotline.

- **Offer/Acceptance** – For both NABOR and FR/Bar, if the Seller executes the contract after the offer expired, then the Seller's signed document constitutes a new offer, which will only become effective after the Buyer thereafter countersigns.
- **Addenda** – Make sure the addenda are signed at the time of contract execution and the correct box is checked for each addendum. If a Buyer submits an offer with addenda, but the Seller signs the contract without the addenda, the Seller submitted a counter-offer.
- **Calculating Time** – For both NABOR and FR/Bar, the Effective Date is day “0” and the deadlines are calculated based on calendar days. If a deadline falls on a weekend or Federal legal holiday, then the deadline moves to the next business day.
- **Financing Contingency** – Make sure the loan amount is listed on page 1 of the Contract, that the financial terms are described in Paragraph 8 (FR/Bar) or Paragraph 4.B.(NABOR), and that the Buyer applies for financing in a timely manner.
- **Notice** – Text messages are *not* effective for providing proper written notice, disclosure, or acknowledgment to the other party under either contract (FR/Bar Standard O and NABOR Standard Q). A best practice would be to have the Buyer or Seller sign their written notices and the signed notice delivered to the other broker/party.

The Joint Committee also shared the updated language in the FR/Bar Condo Rider. Just as the NABOR Legal Resource Committee created the Condominium and Cooperative Safety Disclosure in response to the legislation implemented in 2022, the Florida Realtors CRSP Addendum F and FR/Bar Rider A have been updated to include language regarding the delivery from the Seller to the Buyer of the milestone inspection report summary described under Ch. 718.503(2)(a)(5) and the structural integrity reserve study described under Ch. 718.503(2)(a)(6), when applicable. The updated Addendum and Rider will be released on March 20, 2023.