

“Maryland Code of Ethics, Flipping & Predatory Lending”

(MD Course # 2634-D)

(DC Course #)



Dias Real Estate Academy

8222 Schultz Road, Suite #206

Clinton, Maryland 20735

contact@diatraining.net

www.diastraining.net

(240) 429-9842

TITLE 09 DEPARTMENT OF LABOR, LICENSING AND REGULATION
Subtitle 11 REAL ESTATE COMMISSION
Chapter 02 Code of Ethics

09.11.02.01

.01 Relations to the Public.

- A. The licensee shall remain informed of matters affecting real estate in the community, the State, and the nation.
- B. The licensee shall be informed on current market conditions in order to be in a position to advise clients as to the fair market price.
- C. The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission charged with regulating the practices of brokers, associate brokers, and salespersons in this State.
- D. The licensee shall make a reasonable effort to ascertain all material facts concerning every property for which the licensee accepts the agency, in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts.
- E. The licensee, acting as agent, may not discriminate in the sale, rental, leasing, trading, or transferring of property to any person or group of persons in violation of State Government Article, §20-402, Annotated Code of Maryland.
- F. The licensee may not be a party to the naming of a false consideration in any document.
- G. Advertisement.
- (1) The licensee in advertising shall be especially careful to present a true picture. A broker may not advertise without disclosing the broker's name or the company name as it appears on the license. A broker may not permit associate brokers or salespersons to use individual names unless the connection with the broker is obvious in the advertisement.
- (2) Effective October 1, 2004, an associate broker or salesperson may not use an individual telephone number or email address in an advertisement, as defined in Business Occupations and Professions Article, §17-527.2(a)(3), Annotated Code of Maryland, unless the identified telephone number of the broker or branch office manager also appears in the advertisement.
- H. For the protection of all parties with whom the licensee deals, the licensee shall see to it that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreement of the parties, and that copies of these agreements are placed in the hands of all parties involved within a reasonable time after the agreements are executed.
- I. All real estate documents shall be signed by a licensee in the licensee's own name, and may not be signed in the name of a group or team.
- J. If the licensee offers the name of a service provider, including, but not limited to, a mortgage lender or mortgage broker, a real estate appraiser, a home inspector, a home improvement contractor, a plumber, an electrician, or a heating/ventilation/air conditioning/cooling (HVAC) contractor, in the provision of real estate brokerage services, the licensee shall first verify that the provider's State license to perform those services is current. The licensee shall also give the person the electronic link to the licensing record information as well as the date on which the licensee last verified the information, so that the person may verify continued license status before entering into a contract with the provider.

09.11.02.02

.02 Relations to the Client.

A. In accepting employment as an agent, the licensee shall protect and promote the interests of the client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve the licensee from the statutory obligations towards the other parties to the transaction.

B. In justice to those who place their interests in the licensee's care, the licensee shall endeavor always to be informed regarding laws, proposed legislation, governmental orders, and other essential information and public policies which affect those interests.

C. A licensee may not accept compensation from more than one party to a transaction without the full knowledge of all the parties.

D. Disclosure Requirement for Licensees and Employees Buying, Selling, Leasing, and Renting Property.

(1) A licensee seeking to acquire an interest in real property must disclose the licensee's licensing status in writing to the seller or lessor of the property no later than the time that an offer is submitted.

(2) The disclosure requirement of §D(1) of this regulation also applies when the licensee is acting on behalf of or representing:

- (a) A member of the licensee's immediate family;
- (b) An entity in which the licensee has an ownership interest;
- (c) An employee of the real estate brokerage with which the licensee is affiliated; or
- (d) An employee of a team or group of which the licensee is a member.

(3) A licensee seeking to sell or lease real property owned by the licensee must disclose that ownership interest in writing at the time that the property is offered for sale or lease.

(4) The disclosure requirement of §D(3) of this regulation also applies when the licensee is acting on behalf of or representing:

- (a) A member of the licensee's immediate family;
- (b) An entity in which the licensee has an ownership interest;
- (c) An employee of the real estate brokerage with which the licensee is affiliated; or
- (d) An employee of a team or group of which the licensee is a member.

(5) Written notice required by §D(3) and (4) of this regulation may be given through the multiple list service and through any other written means effective in bringing the information to the attention of prospective buyers or lessees.

(6) The licensee's immediate family shall include the licensee's spouse or domestic partner, child, stepchild, child's spouse, stepchild's spouse, parent, sibling, grandparent, or grandchild.

E. When acting as agent in the management of property, the licensee may not accept any commission, rebate, or profit on expenditures made for an owner without the owner's knowledge and consent.

F. Competitive Market Analysis.

(1) A licensee may prepare a competitive market analysis of a specific property for a client, prospective client, or customer. The analysis shall include the following statement printed conspicuously and without change on the first page:

COMPETITIVE MARKET ANALYSIS DISCLOSURE

This analysis is not an appraisal. It is intended only for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property.

(2) If a licensee includes a property in which the licensee has an interest as one of the comparables, that fact shall be disclosed to the client, prospective client, or customer.

G. The licensee may not submit or advertise property without authority. In any offering, the price quoted may not be other than that agreed upon with the owners as the offering price.

H. If more than one formal written offer on a specific property is made before the owner has accepted an offer, all formal written offers presented to the licensee, whether by a prospective purchaser or another broker, shall be transmitted to the owner for a decision.

I. Unexcused failure to ensure that a prospective purchaser has the real property disclosure statement or disclaimer statement in hand before the submission of an offer to purchase may be considered a violation of the licensee's obligation to protect and promote the interests of the licensee's client when this failure could result in a contract becoming void or voidable.

09.11.02.03

.03 Relations to Fellow Licensees.

A. The agency of a licensee who holds an exclusive listing, shall be respected.

B. The licensee shall cooperate with other brokers on property listed by the licensee exclusively whenever it is in the interest of the client, and share commissions on a previously agreed basis. Negotiations concerning property listed exclusively with one broker shall be carried on solely with the listing broker.

C. Signs giving notice of property for sale, rent, lease, or exchange may not be placed on any property without the owner's prior consent.

PREDATORY LENDING / FRAUDULENT PRACTICES

PREDATORY LENDING

When a consumer encounters unethical and, in some instances, illegal practices, it is often referred to as "predatory lending". As predatory lending takes many forms, there is no single definition for it. In general, predatory lending involves practices that usually take advantage of the elderly, minorities, inexperienced consumers, and the uninformed.

Some of the practices associated with predatory lending include:

- Excessive Costs - charging interest rates and/or fees that far exceed reasonable compensation for a lender's costs or risks.
- Hidden or Undisclosed Payment Terms:
 - Negative amortization
 - Pre-payment penalties
 - Balloons payments
 - Mandatory arbitration
 - Financing of points and fees
- Equity Stripping - lending at a high interest rate, then repeatedly refinancing at a lower interest rate to strip the borrower's equity in order to pay new points and fees, also referred to as "churning".
- Credit insurance products that are financed upfront - including single premium credit insurance that is paid in a single premium or financed in the loan amount.
- Mortgage Servicing Abuses
 - The failure to report borrower credit information - limiting the ability of borrowers to obtain the lowest interest rate available based on the borrower's complete credit history.
 - Requiring the borrower to escrow for taxes and insurance after closing, when not a requirement when loan originated.
 - Charging late fees even though payments have been made on time.
 - Force-placing insurance at high cost to borrower when there is not justification.
 - Does not provide the consumer with an accounting of the charges due, and when the consumer requests a pay-off to refinance, the report is inaccurate or incomplete.
- Steering to Higher-cost Mortgages - referring borrowers to high-cost loans when they are eligible for lower cost financing.
- A conspiracy to fraudulently induce a homeowner to sign over the deed to their home.

Additionally, in some instances, a loan product or practice may not seem predatory on its face, but could become predatory if used to mislead or strip equity from borrowers.

MORTGAGE FRAUD

Mortgage fraud is usually caused by a material misstatement, misrepresentation or omission relied upon by the underwriter or lender to fund a purchase or secure the loan. There are generally two types of mortgage fraud:

- Fraud for Housing: About 20% of reported incidents

General Characteristics

1. Usually the borrower
2. Single loan
3. Few misrepresentations
4. Intends to repay the loan
5. Motivated by desire to own home and/or access a portion of loan proceeds
6. Usually assisted by industry professional

- Fraud for Profit

General Characteristics

1. At least one party is an industry professional
2. Involves multiple loans and lenders
3. Participants are usually paid for their role in the scheme
4. Borrower may **NOT** be aware of the scheme
5. Motive is strictly "Fraud for Profit"

- The Participants and/or "Usual Suspects"

1. Borrower
2. Seller
3. Loan Originator/Officer
4. Appraiser
5. Escrow Agent/Closing Attorney
6. Real Estate Agent
7. Builder/Developer

COMMON MORTGAGE FRAUD SCHEMES

- **Property Flipping** - Property title is repeatedly transferred between two or more related parties at increasingly higher prices in order to fraudulently inflate the value of the property. Property is used as collateral for loans based on the inflated sales price. When loan default occurs, the actual collateral value is insufficient to cover the outstanding loan balance.

General Characteristics

1. Property sold several times in a short period of time and always at a higher price
 2. A straw buyer is often used
 3. Kickback to the appraiser
 4. Fraudulent or forged appraisals
 5. Buyer pays more than the fair market value
 6. Lender approves loan in amount greater than the true market value
- **Straw Buyer** - True identity of the borrower is concealed through the use of a straw buyer/nominee, who allows a borrower to use their name and credit history for the loan origination.

General Characteristics

1. Straw buyer/nominee has no involvement in the loan
 2. Never intends to occupy the property
 3. Usually transfers the Deed to the true buyer
 4. If title is not transferred, the true buyer will still control the property
 5. Use of straw buyer is many times a component of a larger mortgage fraud scheme
- **Victim Borrower Scam** - Comes in various forms

Home Improvement: Involves home improvement contractors who persuade unsophisticated homeowners to sign loan applications to finance unnecessary home improvement. Contractor then disappears with the loan proceeds after performing incomplete or even no work on the financed project.

Building Bailout: Involves homeowners that are in foreclosure proceedings or at present risk of default. Misled into believing that homes can be saved from foreclosure and/or their history can be repaired.

- **Silent Second Deeds of Trust** - Down-payment for the loan is borrowed through the issuance of an undisclosed second mortgage that is a silent deed of trust.

General Characteristics

1. Seller and Buyer are co-conspirators
2. Seller gives the buyer a loan (second trust) for the required down-payment
3. Loan is **NOT** disclosed to the primary lender
4. Recording of second trust is delayed until after the first mortgage is recorded, is ever recorded

- **Loan Flipping** - The property owner refinances the same property with a series of lenders in a short time.

General Characteristics

1. Owner of property furnishes the false financial statement to qualify for the refinance.
 2. Appraisal is inflated to justify higher loan amount needed to pay off prior loan and additional closing costs.
 3. Monthly payments are rarely made.
- **Double Sold Loans** - The loan originator alters or forges his closing documents or a borrower is asked to sign multiple copies of the same document. The loan originator then uses duplicate sets of documents to sell the same loan to two or more lenders.
 - **Air Loans** - Occurs when the lender attempts to take possession of the underlying collateral on a defaulted loan only to find that the property is non-existent or is not even close to supporting the loan outstanding.