

**Stellar MLS Broker Summit
Questions from Legal Summit**

These are the responses to the questions posted during the Legal Update at the Stellar MLS Broker Summit. All responses were provided by Joel Maxson, Associate General Counsel at Florida REALTORS®.

Please note that Stellar MLS is simply relaying the responses, per the request of several brokers in attendance. These responses are from a third party and not advice or recommendations from Stellar MLS.

Question (verbatim from webinar q&a)	Answer from Joel Maxson
Does criminal background apply in the same way to condos/hoa	<p>Yes, the Fair Housing Act applies to associations.</p> <p>As to the practical question of how often they're facing lawsuits based on this HUD memo's legal theory (if at all), I'm just not sure. The context of our conversation is that a couple of Florida law firms are specifically targeting real estate licensees and brokerage firms with this legal theory.</p>
Good morning, Is it acceptable to use the following statement " background and credit report required"	<p>That statement seems neutral, although I don't know precisely what statements catch the attention of a tester to flag for a follow-up phone call. The cases I've seen tended to have a statement like "no criminal background," or "no felonies."</p>
You say don't tell people who say they have a criminal record not to apply. But can you tell them to apply and then decline the application because they have a criminal record?	<p>The gist of the HUD memo's argument is that a consistent, thoughtful criminal background screening process is the key to avoid liability. If you want an overview of what a thoughtful process looks like, you may want to start with this short article https://www.floridarealtors.org/news-media/news-articles/2020/05/clean-criminal-background-ads-expect-be-sued.</p> <p>The HUD memo is a much more detailed source of information, although it contains dense legal language. https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF</p>
Who do we complain to as recipients of these unauthorized auto texting messages? We REALTORS get a lot of these!	<p>I believe the FCC is the right federal agency to go to with TCPA complaints: https://consumercomplaints.fcc.gov/hc/en-us/articles/205082880-Filing-a-Complaint-Questions-and-Answers#question_1.</p> <p>Additionally, there are law firms seeking clients who believe they've been contacted in violation of federal law. Those law firms are the ones I was mentioning that have, at least in the past, targeted Realtors when they discover violations.</p>
Sorry if you mentioned previously, but how do we "test" phone numbers against "do not call data base"? Seem like "LLC" for our real estate co's/entities is	<p>This FTC page may be a good place to start. https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr.</p> <p>There could be other resources. I believe I've heard about companies you can hire to help ensure compliance, so it's possible that could be a good resource for someone who makes many cold calls.</p>

<p>the way to go and what most experienced advisors are giving?</p>	<p>I'm not sure what the LLC question is, but you're welcome to reach out if you want to talk more: joelm@floridarealtors.org.</p>
<p>I have had situations where a buyer has visited a builders website and the agent has been told by the builder that they cannot receive a commission since the buyer contacted them through the website. Is this legal? I was told by the agent representing the builder that I could continue to represent the buyer, but I would not be compensated</p>	<p>Since there's no information about a commission agreement, offer of compensation, buyer broker agreement, referral agreement, or other agreement about compensation, I can't guess as to how strong the case might be against the builder (or possibly brokerage company representing the builder...or buyer, if buyer has agreed to pay commission).</p> <p>There is a Standard of Practice that could be in play IF you add one critical detail – there is an offer of compensation in the MLS. If that's the case, and if the listing broker attempts to unilaterally change it, that action could violate SOP 3-2.</p> <ul style="list-style-type: none"> Standard of Practice 3-2 Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. <i>(Amended 1/14)</i>
<p>Isn't the sharing of another offer a violation of confidentiality? Another agents customer information.</p>	<p>Unless there's a specific rule or scenario you're referencing, probably not. Here's a quote from NAR. We have a similar discussion in a Florida Realtors article, although this one is more detailed.</p> <ul style="list-style-type: none"> Purchase offers generally aren't confidential. In some cases sellers may make other buyers aware that your offer is in hand, or even disclose details about your offer to another buyer in hope of convincing that buyer to make a "better" offer. In some cases sellers will instruct their listing broker to disclose an offer to other buyers on their behalf. Listing brokers are required to follow lawful, ethical instructions from their clients in the same way that buyer-representatives must follow lawful, ethical instructions from their buyer-clients. While some REALTORS® may be reluctant to disclose terms of offers, even at the direction of their seller-clients, the Code of Ethics does not prohibit such disclosure. In some cases state law or real estate regulations may limit the ability of brokers to disclose the existence or terms of offers to third parties. You may want to discuss with your buyer-representative the possibility of making your offer confidential, or of establishing a confidentiality agreement between yourself and the seller prior to commencing negotiations

<p>If a property was listed on Monday and received multiple offers Monday and Tuesday and the Seller requested highest and best by Wed at 6PM. When, if at all does the Seller have to disclose or comment acceptance of escalation clause or Seller's ground rules for reviewing and accepting offer? Can Seller make the earnest money deposit "Hard" not refundable during the inspection period through closing as a counter in multiple offer situation?</p>	<p>Although Realtors have certain duties to one another (honesty, cooperation, MLS rules), it's ultimately up to a seller what to do with any offer or group of offers. Sellers can accept, reject, counter, or even ignore them.</p> <p>The contract is negotiable between a buyer and seller. The amount of deposit, and whether it's refundable is up to the parties.</p> <p>This question touches on a lot of different rules, though, so it would be worth reading through NAR's overview of multiple offers here: https://www.nar.realtor/code-of-ethics-and-arbitration-manual/part-4-appendix-ix-%E2%80%94-presenting-and-negotiating-multiple-offers, or something we put together here: https://www.floridarealtors.org/news-media/news-articles/2020/10/legal-hotline-how-should-i-field-multiple-offers.</p>
<p>What does SOP 1-7 stand for? Where can we find that in written?</p>	<p>The Realtor Code of Ethics has 17 Articles. Each Article can have Standards of Practice that give examples. This would be Article 1, Standard of Practice 1-7. Here's a link to the NAR Code of Ethics and Standards of Practice: https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2021-code-of-ethics-standards-of-practice.</p>
<p>Are we seeing issues with sellers choosing offers based on information provided by buyers in a personal letter that begs to some favorable condition they think may weigh on the seller's empathy or interest?</p>	<p>Have any issues, hotline calls, or actual cases been reported to Florida Realtors? Not that I'm aware of.</p> <p>That said, NAR has pointed out the potential for FHA liability, which you can read about here: https://www.nar.realtor/fair-housing-corner/love-letters-or-liability-letters.</p>