



CODE OF ETHICS & BUSINESS PRACTICE

Approved - August 17, 2007
Reviewed – July 12, 2021

PREFACE:

YBAA member brokerage firms, and their brokers, agree to fully comply with the following YBAA Code of Ethics & Business Practice, as a condition of membership and in furtherance of their commitment to maintain the highest industry professional standards.

YBAA strongly recommends that all members utilize YBAA's copyrighted, standardized contractual Forms, which are provided as a free member benefit, designed to simplify the transaction process and to enhance customer satisfaction. Forms include: *Central Listing Agreement*; *Open Listing Agreement*; *Purchase & Sale Agreement*; and *Acceptance of Vessel*; and *Amendment to the Purchase & Sales Agreement* and are available in U.S. and Canadian versions. Use of the forms is strictly limited to current members, without alteration or edits. Members will use the current dated version of each Form. Forms are updated annually.

Member firms and brokers are encouraged to use the YBAA member logo in their advertising and promotions and on company web sites, letterhead and business cards.

YBAA also strongly encourages eligible member brokers to earn their *Certified Professional Yacht Broker (CPYB)* designation. CPYB brokers exemplify industry professionalism, having met the established criteria for experience, knowledge and commitment and having successfully passed a three-hour written certification exam. The CPYB program is a cooperative venture among the nation's leading yacht broker associations. Full details are available at www.cpyb.net.

SECTION 1. RELATIONS WITH THE PUBLIC

1.1 The Broker will maintain in a special bank account, separated from his/her own, or the brokerage firms, operating funds or monies coming into his/her possession in trust for other persons. If the Broker is handling escrow funds or deposits, these funds will be released and distributed expeditiously once the terms of a contract or escrow agreement have been satisfied or if the parties agree not to proceed with the purchase. Escrow or deposit funds will never be used as operating funds until a sale is complete or the Broker/escrow agent has been instructed otherwise in writing by all parties involved in the original agreement.

1.2 It is the duty of the Broker to be well informed on current market conditions in order to be in a position to advise his/her clients as to the fair market value of any vessel under consideration.

1.3 It is the duty of the Broker to protect the public, to the best of his/her ability, against fraud, misrepresentation, and unethical practices.

1.4 The Broker will endeavor to ascertain all pertinent facts concerning all vessels for which he/she accepts listings, so that he/she may present a fair and honest description of the vessel.

1.5 The Broker will not be party to the naming of any false consideration in any document.

1.6 The Broker in his/her advertising will be especially careful to present a true picture of the vessel and/or its condition and will not advertise without disclosing his/her name, nor permit his/her salespeople to use the individual's name or telephone numbers, unless the sales person's connection with the Broker is obvious in the advertisement.

1.7 The Broker, for the protection of all parties with whom he/she deals, will see that financial obligations and commitments regarding yacht transactions are in writing, expressing the exact agreement of the parties and that copies of such agreements, at the time they are executed, are placed into the hands of all parties involved.

1.8 Process for public complaints brought against YBAA Broker:

1.8.a. Complaints from the public concerning any YBAA member broker will only be initiated by a written submission from the complainant to the YBAA office, clearly denoting the nature of the complaint and the desired resolution or remedy. The YBAA office will then request written response from the Broker. Failure by the Broker to respond within 30 days of the request and/or to abide by the procedures noted herein may result in suspension of their YBAA membership privileges, with notification of such suspension to the YBAA membership. If the Broker is CPYB certified, notification will also be forwarded to the CPYB Certification Advisory Council.

1.8.b. The YBAA Office will then forward all related correspondence to the YBAA Professional Standards & Ethics Committee, maintaining records of all such correspondence in the YBAA files.

1.8.c. The YBAA Professional Standards & Ethics Committee will review the case, in order to render a decision and/or recommendation on the matter within four weeks of the original complaint date. The committee will forward, in writing, copies of its final decision and/or recommendation to the complainant, the Broker and the YBAA office.

1.8.d. If the Broker is found to have been in violation of the YBAA Code of Ethics, the decision will be forwarded to the member brokerage firm principal with whom the broker is employed or contracted. The principal will be asked to respond to the YBAA Professional Standards & Ethics Committee, acknowledging the problem and defining the actions they will take to ensure that no further such violation occurs. The decision will be kept on file in the YBAA office and, if the broker is CPYB certified, forwarded to the CPYB Certification Advisory Council.

1.8.e. If the same Broker is found guilty of a second violation of the Code of Ethics, the Broker, and their employing brokerage will be suspended from YBAA membership for one year, after which membership reinstatement will be considered upon request of the brokerage. The Professional Standards & Ethics Committee decision regarding the suspension may be published in YBAA's *Yacht Broker News* newsletter and/or referred to the CPYB

Certification Advisory Council. A record of all such actions will be maintained by the YBAA office.

1.8.f. If the same Broker is found guilty of any third violation of the Code of Ethics, the Broker will be permanently terminated from membership in YBAA. The broker's employing member firm will also be reviewed by the Professional Standards & Ethics Committee for possible suspension or termination. The loss of such memberships may be reported in the *Yacht Broker News*.

SECTION 2. RELATIONS WITH THE CLIENT

2.1 In accepting employment as an agent, the Broker pledges him/herself to protect and promote the interests of the clients. The obligation of absolute fidelity to the clients' interest is primary but does not relieve the Broker from the obligation of dealing fairly with all parties in this transaction.

2.2 The Broker will neither acquire an interest in, nor purchase for him/herself, for any member of his/her immediate family, for his/her firm or any member thereof, nor for any entity in which he/she has a substantial ownership interest, vessels listed with him/her or his/her firm, without making the true position known to the listing owner. In selling any vessels owned by him/her, or in which he/she has such interest, all such facts should be revealed to the purchaser.

2.3 The Broker will neither submit nor advertise vessels without authority. In any offering, the price quoted will not be other than that agreed upon with the Sellers as the offering price.

2.4 All offers received by the Listing Broker will be transmitted to the Seller in a timely fashion and with a timely response to the Co-Broker or Buyer. All information regarding an offer will be presented to the Seller without prejudice.

2.5 In the event that more than one offer on a specific vessel is made before the Seller has accepted an offer, all additional offers presented to the Broker, whether by a prospective purchaser or another Broker, will be transmitted to the Seller for his/her consideration. In the event that a Broker, brokerage house or central agent has received more than one offer prior to the acceptance of any offer, all offers will be presented to the Seller. The Broker will act on the instructions of the Seller as to which offer will be accepted and/or negotiated. If an offer is made after Seller has previously accepted an offer, the Seller will be made aware of its existence.

2.6 The following outline presents recommendations for Brokers to follow when several offers are presented at approximately the same time. The following procedures are endorsed as fair and reasonable, although not necessarily the only fair and reasonable procedures that can be followed.

2.6.a In the event that multiple offers are presented to the Seller the Listing Broker will follow the instructions of the Seller regarding the manner of continuing negotiations with multiple prospective Buyers. These instructions will not only address the method of determining which offer will be accepted but will also address whether the Seller wishes the existence of other current negotiations to be revealed to other Brokers and Buyers.

2.6.b Should the Seller seek the Listing Broker's advice for handling simultaneous negotiations, it is recommended that the existence of other negotiations be revealed, to minimize concerns by other Buyers and Brokers should they learn that another negotiation was in progress. Furthermore, it is usually in the Seller's best interest that each Buyer knows that the yacht in question is in high demand.

2.7 Recommended procedure for processing multiple offers - "The sealed Bid":

2.7.a. The Seller will instruct the Listing Broker to request, by a specified deadline, one final, best offer from all Buyers who have made offers. The Seller may also convey the minimum price he/she is willing to accept.

2.7.b. The Seller will, at the specified time, select the offer he/she considers most acceptable, if any, and will respond either by accepting that offer or by requesting more information upon which to base his/her decision. If more than one offer is equally acceptable, the acceptance will be given to the party whose deposit was first placed into escrow by the Broker who received the offer. The advantages of this procedure are:

2.7.b.1. It re-assures the prospective Buyers that they are not in a "bidding war" against an unseen competitor. They may submit sealed, final bids. Experience shows that this procedure lessens the likelihood that all or most of the Buyers will simply withdraw from negotiations when they discover that they are bidding against someone else.

2.7.b.2. It gives the Seller some chance that the final selling price will be higher than his/her counter- offer.

2.8 Alternative procedure - "First come, first served":

2.8.a. The Seller will instruct the Listing Broker to present a counteroffer to each prospective Buyer via the Broker who obtained the original offer, with the understanding that the Seller will accept the offer of the first Buyer to meet this price and his/her terms.

2.8.b. The counteroffer should be transmitted to all Buyers as quickly as possible and, should a Broker and/or Buyer not be immediately reachable, the process of transmitting the counter to the other Brokers and/or Buyers should continue without delay. If this procedure is followed, it is essential that a precise deadline be specified for *receipt* of all bids by the Listing Broker.

2.8.c. The advantage of this procedure is that it motivates all Buyers to be the first to meet the counteroffer without fear that they might pay more than the lowest price that the Seller will accept.

2.8.d. The procedure for handling any multiple-offer situations should be clearly discussed with the Seller. Ultimately, it is the Broker's obligation to act as the Seller desires and by whatever guidelines the Seller decides. All Buyers should be fully apprised of whatever solution is decided by the Seller.

SECTION 3. RELATIONS WITH HIS FELLOW BROKER

3.1 The Broker will not voluntarily disparage the business practice of a competitor, nor volunteer an opinion of a competitor's transaction. If his/her opinion is sought, it should be rendered with strict professional integrity and courtesy.

3.2 The Broker and/or Brokerage firm who holds a Central Listing will be respected. A Brokerage firm will not solicit a Central Listing from a Seller while that Seller has a Central Listing agreement with another Broker. A Broker cooperating with a listing Broker will not invite the cooperation of a third Broker without the consent of the listing Broker.

3.3 The Broker will cooperate with other Brokers on vessels listed by him/her on a Central Listing basis whenever it is in the interest of the Seller, sharing commissions on a previously agreed basis. Negotiations concerning vessels listed on a Central Listing basis will be carried on with the listing Broker, not with the Seller, except with the consent of the listing Broker.

3.4 When a Broker obtains a Central Listing, he/she will endeavor to distribute the listing to corresponding Brokers as quickly as possible. Central Listings and shared Open Listings are generally shared on a commission basis, agreed to beforehand as a matter of policy, or agreed upon by the cooperating parties negotiated on a particular sale. Should the central or loaning Broker show the boat or perform work above and beyond the customary effort of providing the listing and negotiating with the Seller, the commission arrangements should be reconsidered by the parties involved.

3.5 The selling Broker is the Broker who obtains a Purchase and Sale Agreement signed by both Buyer and Seller along with accompanying deposit. Deposits on brokerage transactions (in an amount acceptable to Seller) will be handled in accordance with the provisions of the YBAA Yacht Purchase and Sale Agreement and the YBAA Code of Ethics.

3.6 Appropriate Response When a Customer Elects to Switch Brokers After Attempting a Purchase:

3.6.a. Proper respect for one's fellow Broker requires that a Broker recommend to a prospective Buyer that the Buyer finalize negotiations with the Broker with whom negotiations were initiated. A listing Broker is not responsible for ensuring that a prospective Buyer completes the negotiation on the yacht with the Broker who first obtained the Buyer's offer.

3.6.b. A listing Broker should not permit a prospect to switch negotiations to any member of the listing Broker's firm unless he/she is prepared to pay the Broker who first initiated the negotiations the full commission that he/she would have received if that Broker had completed the sale in a normal manner, or unless alternative mutually satisfactory terms can be arranged by the Brokers involved.

3.6.c. Should a buyer attempt to continue negotiation with a member of the listing Broker's firm and should he/she insist that he/she is unwilling to work with a Broker to whom he/she submitted a previous offer, the appropriate response is to advise the Buyer that he/she may choose any firm other than the listing firm to continue negotiations. If he/she wishes, the listing firm may provide a list of YBAA members from which to choose another Broker.

3.6.d. For the purposes of this section "negotiations" are defined as when an offer is made, and an "offer" is defined as the transmittal of a Purchase and Sale Agreement (signed by the prospective Buyer) and a deposit (whether or not cashed by the receiving Broker) to a Broker who, in turn, forwards the offer to the listing Broker (even if only forwarded orally).

3.7 Binding Arbitration Procedure: When A Dispute Arises Between Two Brokers, The Brokers May Choose to Submit Their Case To Binding Arbitration As Follows:

3.7.a. Each Broker shall select one member at large from YBAA; these two members shall together agree on one other member. These three brokers shall comprise the Binding Arbitration Committee for the dispute. Brokers are advised to select their arbitrator based on the person's knowledge and experience in the business.

3.7.b. Each Broker shall submit a written statement of the case to the members of the Binding Arbitration Committee.

3.7.c. Each Broker shall then appear in person for a hearing before the Binding Arbitration Committee

3.7.d. The Binding Arbitration Committee shall render its decision, which shall be binding on both parties. A written report of their decisions shall be sent to the YBAA Executive Committee and to the chairman of the Professional Standards & Ethics Committee, and to both parties. In addition, if either broker is CPYB certified, the report will be sent to the CPYB Certification Advisory Council to take any action they deem is appropriate. The Professional Standards & Ethics Committee has the option of publishing the decision in the YBAA *Yacht Broker News* newsletter.

SECTION 4. RELATIONS WITH YACHT YARDS, MARINAS, YACHT CLUBS AND OTHER SUCH FACILITIES

4.1 Maintenance of good relations between yacht yards, marinas, yacht clubs and Brokers is mandatory. The Broker will be aware of, and adhere to, any rules, regulations and insurance requirements of yacht yards, marinas, yacht clubs and other such facilities regarding the requirements for subcontractors doing business in such facilities. Accordingly, the following procedures are recommended:

4.1.a. When a listing is received by a Broker, the Broker will ask the seller to inform the yacht yard that the Broker has permission to show the yacht.

4.1.b. The Broker will inform the seller that any agreement the seller has with the yard regarding commission fees will not affect the Brokerage commission.

4.1.c. When showing the yacht, the Broker will check in at the yard office, and show the boat without assistance, whenever possible. If assistance is required, the Broker will arrange payment for all necessary fees. The yacht should be left as it was found.

4.1.d. If the Broker is unable to show the yacht, the Broker may attempt to make arrangements with the yard to have them show it. The yard will then be advised of the

Broker's willingness to pay for the service and payment will be made promptly for such service, whether the yacht is sold or not.

4.1.e. The Broker will keep the yard informed with respect to a sale being negotiated.

4.1.f. If estimates or other services are required, the Broker or the Buyer, as appropriate, should be prepared to pay for them and do so promptly.

In summary, the Broker should do his job, not ask the yard to do it. Necessary services should be paid for promptly.