NATIONAL ASSOCIATION OF REALTORS®

37TH EDITION
Effective June 5, 2025

INTERPRETATIONS OF THE CODE OF ETHICS

OF THE NATIONAL ASSOCIATION OF REALTORS®

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NOTE: All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor.

Preface to the Thirty Seventh Edition of *Interpretations of the Code of Ethics*

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® establishes a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR ASSOCIATE®s may be judged. Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR ASSOCIATE®s. In joining an Association of REALTORS®, REALTORS® signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® throughout the country.

Interpretations of the Code of Ethics has been developed by the Professional Standards Committee of the NATIONAL ASSOCIATION OF REALTORS® to help REALTORS® understand the ethical obligations created by the Code of Ethics, and as a reference work for Grievance Committees, ethics and arbitration Hearing Panels, and Boards of Directors.

Professional Standards Policy Statement 57, *Code of Ethics and Arbitration Manual,* provides as follows:

> **57. Case Interpretations are Official Policy**
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> *The Case Interpretation of the Code of Ethics approved by the National Association's Professional Standards Committee and published in Interpretation of the Code of Ethics illustrate and explain the principles articulated in the Articles and Standards of Practice. While a REALTOR® cannot be found in violation of a Standards of Practice or a Case Interpretation, both are official statements of National Association policy and are not merely advisory. Both can be cited by complainants in support of alleged violations of Articles and by hearing panels in support of decisions that an Article(s) has been violated.* (Adopted 11/10)

Interpretations of the Code of Ethics presents specific situations involving charges of alleged unethical conduct by REALTORS® which are reviewed by a peer panel of Association Members and in which decisions as to ethical conduct are reached. Each case provides the Hearing Panel's decision based on the facts and the rationale for the decision, but does not specify a specific sanction or discipline to be imposed. There are two reasons for this. First, any sanction imposed must always fit the offense and must involve every consideration of justice, equity, and propriety. Second, a Hearing Panel may base its recommendation for discipline on a Member's past record of ethics violations.

For this reason, the *Code of Ethics and Arbitration Manual* establishes that a Member Association may utilize a wide range of sanctions for ethics violations.

While Associations of REALTORS® have wide latitude in the sanctions which may be imposed for violations of the Code of Ethics, they must always act responsibly in the application of these sanctions, attempting to make the punishment commensurate with the offense. The mildest forms of sanction, a Letter of Warning or a Letter of Reprimand, would generally be the appropriate sanction for first offenses, except in cases involving gross or willful misconduct. Where ignorance of the Code of Ethics is involved, the Board may find that requiring the Member to attend a course or seminar reviewing the Code of Ethics and its interpretations to be the most appropriate sanction.

Interpretations of the Code of Ethics is formatted to provide the reader with information on each Article of the Code of Ethics and its interpretations in sequence. *Interpretations of the Code of Ethics* contains citations to Case Interpretations which were deleted, amended, or adopted as a result of the work of the Professional Standards Committee, providing a complete historical record for the reader. All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. *(Revised 5/17)*

CASE INTERPRETATIONS RELATED TO ARTICLE 1:

Case #1-1: Fidelity to Client

(Originally Case #7-1. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2022.)

Client A complained to an Association of REALTORS® that two of its members, REALTORS® B and his sales associate, REALTOR® C, had failed to represent the client's interests faithfully by proposing to various prospective buyers that a price less than the listed price of a house be offered. His complaint specified that REALTOR® B, in consultation with him, had agreed that $400,000 would be a fair price for the house, and it had been listed at that figure. The complaint also named three different prospective buyers who had told Client A that while looking at the property, REALTOR® C, representing REALTOR® B, when asked the price had said, "It's listed at $400,000, but I'm pretty sure that an offer of $360,000 will be accepted."

REALTOR® B and REALTOR® C were notified of the complaint and requested to be present at a hearing on the matter scheduled before a Hearing Panel of the Association's Professional Standards Committee.

During the hearing, REALTOR® B confirmed that he had agreed with Client A that $400,000 was a fair price for the house, and that it was listed at that figure. He added that he had asked for a 90 day listing contract as some time might be required in securing the full market value. Client A had agreed to do this but had indicated that he was interested in selling within a month even if it meant making some concession on the price. The discussion concluded with an agreement on listing at $400,000 and with REALTOR® B agreeing to make every effort to get that price for Client A.

REALTOR® C said in the hearing that REALTOR® B had repeated these comments of Client A and he, REALTOR® C, had interpreted them as meaning that an early offer of about 10 percent less than the listed price would be acceptable to the seller, Client A. Questioning by the Hearing Panel established that neither REALTOR® B nor REALTOR® C had been authorized to quote a price other than $400,000.

It was the Hearing Panel's conclusion that REALTOR® B was not in violation of Article 1 since he had no reason to know of REALTOR® C's actions. The panel did find REALTOR® C in violation of Article 1 for divulging his knowledge that the client was desirous of a rapid sale even if it meant accepting less than the asking price. The panel noted that such a disclosure was not in the client's best interest and should never be made without the client's knowledge and consent.

Case #1-2: Honest Treatment of All Parties

(Originally Case #7-2. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-18. Revised May 2017 and November, 2022.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a public transportation stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the public transportation stop, was shown Client A's property, liked it, and made a deposit. Two days later, REALTOR® B read a notice that the transportation running near Client A's house was being discontinued. He informed Prospect C of this, and Prospect C responded that he was no longer interested in Client A's house since the availability of public transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Association of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new transportation route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Association's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a transportation stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a transportation stop. Thus, in his judgment, the change in routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

Case #1-3: Net Listing (Originally Case #7-3. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2022.)

Client A called REALTOR® B to list a small commercial property, explaining that he wanted to net at least $370,000 from its sale. He inquired about the brokerage commission and other selling costs. REALTOR® B's response was: "You have indicated that $370,000 net to you from the sale will be satisfactory. Suppose we just leave it at that and take all of the selling costs from the proceeds of the sale above $370,000." Client A agreed.

The property was sold to Buyer C for $420,000. After settlement, in which it was apparent that $50,000 would go to REALTOR® B as commission, Client A and Buyer C both complained to the Association of REALTORS® about REALTOR® B's conduct in the matter, and a hearing was scheduled before the Association's Professional Standards Committee.

REALTOR® B's defense was that he had performed the service that Client A engaged him for precisely in conformance with their agreement. Buyer C had considered the property a good buy at $420,000 and was happy with the transaction until he learned the amount of the commission.

The Hearing Panel found REALTOR® B in violation of Article 1 of the Code. The panel concluded that REALTOR® B had departed completely from his obligation to render a professional service in fidelity to his client's interest; that he had, in fact, been a speculator in his client's property; and that he had not dealt honestly with either party to the transaction.

Case #1-4: Fidelity to Client (Originally Case #7-5. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #4-5. Revised November, 2022.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about $150,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of $97,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of $97,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to $150,000 than $97,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at $165,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for $97,500.

Client A outlined the facts in a complaint to the Association of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Association's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property — the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

Case #1-5: Promotion of Client's Interests

(Originally Case #7-6. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2022.)

Client A gave an exclusive listing on a house to REALTOR® B, stating that he thought $399,000 would be a fair price for the property. REALTOR® B agreed and the house was listed at that price in a 90-day listing contract. REALTOR® B advertised the house without response, showing it to a few prospective buyers who lost interest when they learned the price. In a sales meeting in his office, REALTOR® B discussed the property, advised his associates that Client A had insisted on the list price and it was now clear that it was overpriced since there had been few showings and no offers.

After six weeks had gone by without a word from REALTOR® B, Client A called REALTOR® B's office without identifying himself, described the property, and asked if the firm was still offering it for sale. The response he received from one of REALTOR® B's nonmember associates was: "Yes it's still on the market." After some additional conversation, the associate told Client A that she had heard at a sales meeting that the price was too high so it wasn't getting much activity. The associate then asked if Client A would be interested in some other similar properties which were listed at lower prices.

Client A wrote to the Association of REALTORS® complaining of REALTOR® B's action, charging failure to promote and protect the client's interest by REALTOR® B's failure to advise the client of his judgment that the price agreed upon in the listing contract was excessive, and by REALTOR® B's failure to actively seek a buyer.

In a hearing on the complaint before a Hearing Panel of the Association's Professional Standards Committee, REALTOR® B's response was that Client A had emphatically insisted that he wanted $399,000 for the property; that by advertising and showing the property he had made a diligent effort to attract a buyer at that price; that in receiving almost no response to this effort he was obliged to conclude that the house would not sell at the listed price; that in view of the client's attitude at the time of listing, he felt it would be useless to attempt to get Client A's agreement to lower the listed price.

The Hearing Panel concluded that REALTOR® B was in violation of Article 1; that he had been unfaithful in his obligations in not advising his client of his conclusion that the property was overpriced, based on the response to his initial sales efforts; and in withholding his best efforts to bring about a sale of the property in the interests of his client.

Case #1-6: Fidelity to Client's Interests

(Originally Case #7-7. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

REALTOR® A managed an apartment building owned by Client B. In his capacity as property manager, REALTOR® A received a written offer to purchase the building from Buyer C. REALTOR® A responded that the building was not for sale. A few days later Buyer C met Client B and told him that he thought he had made an attractive offer through his agent, and indicated that he would be interested in knowing what price would interest Client B. Client B answered that he had received no offer through REALTOR® A and asked for the details.

Client B then filed a complaint against REALTOR® A with the local Association of REALTORS®, charging failure to represent and promote his interests. His complaint specified that while REALTOR® A had been engaged as a property manager, he had at no time told him not to submit any offers to buy, and that in the absence of any discussion whatever on this point, he felt that REALTOR® A should have recognized a professional obligation to acquaint him with Buyer C's offer which, he stated in the complaint, was definitely attractive to him.

REALTOR® A was notified of the complaint and directed to appear before a panel of the Association's Professional Standards Committee. In his defense, REALTOR® A stated that his only relationship with Client B was a property manager under the terms of a management contract; that he had not been engaged as a broker; that at no time had the client ever indicated an interest in selling the building; that in advising Buyer C that the property was not on the market, he felt that he was protecting his client against an attempt to take his time in discussing a transaction which he felt sure would not interest him.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 1; that in the absence of any instructions not to submit offers, he should have recognized that fidelity to his client's interest, as required under Article 1 of the Code of Ethics, obligated him to acquaint his client with a definite offer to buy the property; and that any real estate investor would obviously wish to know of such an offer.

Case #1-7: Obligation to Protect Client's Interests

(Originally Case #7-8. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001 and November, 2022.)

Client A, an military officer, was transferred to a new duty assignment and listed his home for sale with REALTOR® B as the exclusive agent. He moved to his new assignment with the understanding that REALTOR® B, as the listing broker, would obtain a buyer as soon as possible. After six weeks, during which no word had come from REALTOR® B, the client made a weekend visit back to his former community to inspect his property. He learned that REALTOR® B had advertised the house: "Vacant — Owner transferred," and found an "open" sign on the house but no representative present. Upon inquiry, Client A found that REALTOR® B never had a representative at the property but continually kept an "open" sign in the yard. Client A discovered that the key was kept in a combination lockbox, and when REALTOR® B received calls from potential purchasers about the property, he simply gave callers the address, advised that the key was in the lockbox, gave them the combination, and told them to look through the house by themselves and to call him back if they needed other information or wanted to make an offer.

Client A filed a complaint with the Association of REALTORS® detailing these facts, and charging REALTOR® B with failure to protect and promote a client's interests by leaving Client A's property open to vandalism, and by not making appropriate efforts to obtain a buyer.

REALTOR® B's defense during the hearing was that his advertising of the property was evidence of his effort to sell it. He stated, without being specific, that leaving keys to vacant listed property in lockboxes and advising callers to inspect property on their own was a "common local practice."

The Hearing Panel concluded that REALTOR® B was in violation of Article 1 of the Code of Ethics because he had failed to act in a professional manner consistent with his obligations to protect and promote the interests of his client. REALTOR® B permitted and enabled buyers to access the property on terms other than authorized by the seller, as required by Standard of Practice 1-16.

Case #1-8: Knowledge of Essential Facts

(Originally Case #7-10. Reaffirmed May, 1988. Transferred to Article 1 November, 1994 and November, 2022.)

Client A listed a small house with REALTOR® B who obtained an offer to buy it and a deposit in the form of a check for $2,000. Client A agreed to accept the offer, then heard nothing from REALTOR® B, the listing broker, for three weeks. At that time REALTOR® B called him to say that the sale had fallen through and that the buyer's check had been returned by the bank marked "Non Sufficient Funds."

Client A complained to the local Association of REALTORS® against REALTOR® B charging him with dilatory and unprofessional conduct and apparent unfamiliarity with essential facts under laws governing procedures in real estate transactions.

At the hearing, it was established that two days after making the offer the buyer had refused to sign escrow instructions, and that REALTOR® B had not deposited the buyer's check until ten days after receiving it.

REALTOR® B's defense was that since the return of the check he had received numerous promises from the buyer that it would be made good, and that the buyer's reason for refusing to sign escrow instructions was to give the buyer's attorney time to read them. Questioning during the hearing established that the check had not been made good, the escrow instructions had not been signed, and that the delay had caused great inconvenience and possible loss to Client A.

The Hearing Panel concluded that REALTOR® B should have deposited the check immediately, in which event it would either have been accepted, or its NSF status could have been known and reported to the client at once; that REALTOR® B should have advised his client immediately of the buyer's refusal to sign escrow instructions; that in this negligence REALTOR® B reflected a lack of adequate knowledge of essential facts under laws governing real estate transactions, and was in violation of Article 1 of the Code of Ethics, having failed to protect the client's interests.

Case #1-9: Exclusive Listing During Term of Open Listing (Originally Case #7-11. Revised May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

During a Board of REALTORS® luncheon, REALTOR® A described to those at the table an old house in a commercial area which was open listed with him and invited the others to cooperate with him in selling the property. REALTORS® X and Y said they also had the property open listed but had found very little interest in it. REALTOR® B made no comment, but feeling he could find a buyer for it, went to the owner and discussed the advantages of an exclusive listing. The owner was persuaded and signed an exclusive listing agreement with REALTOR® B, telling him at the time that he had listed the property on an "open" basis for 30 more days with REALTORS® A, X, and Y. REALTOR® B's comment was, "Just don't renew those open listings when they expire."

A few days later, REALTOR® A brought the owner a signed offer to purchase the property at the asking price. The owner told REALTOR® A that he now had the property exclusively listed with REALTOR® B, and asked him to submit the offer through REALTOR® B. Before REALTOR® A could contact REALTOR® B, REALTOR® B had taken another offer to purchase the property at the asking price to the owner. Confronted with two identical offers, the owner found both REALTOR® A and REALTOR® B expected full commissions for performance under their respective existing listing agreements. The owner filed an ethics complaint with the Board of REALTORS® alleging violations of Article 1 of the Code of Ethics because of the difficult position he had been placed in by REALTOR® A and REALTOR® B. The owner alleged neither of them had warned him that he might be liable for payment of more than one commission.

A hearing before a panel of the Board's Professional Standards Committee established the facts to be as outlined above. In reviewing the actions of REALTOR® A, the Hearing Panel found that he was not at fault; that he had performed as requested under his listing agreement. On the other hand, it was the conclusion of the Hearing Panel that REALTOR® B had violated Article 1 by failing to advise the owner of his potential commission obligation to the other listing brokers when the client told him other listing agreements were in force.

The Hearing Panel pointed out that because of REALTOR® B's omission his client, through no fault of his own, may have incurred legal liability to pay two commissions; that REALTOR® B should have advised the owner of his potential liability for multiple commissions; and that by not doing so REALTOR® B had failed to protect his client's interests as required by Article 1.

Case #1-10: Obligations Under Exclusive Listing (Originally Case #7-12. Reaffirmed May, 1988. Transferred to Article 1 November, 1994. Revised November, 2001.)

At the time Client A signed an exclusive listing agreement with REALTOR® B, they discussed market conditions and prevailing prices, and agreed on listing at $156,900. After six weeks with no apparent interest in the house, Client A called REALTOR® B to learn why his property was receiving scant attention from prospective buyers. REALTOR® B said, "It's not hard to diagnose the trouble. Your property is overpriced. That was clear to me by the time we had it listed for ten days. In this market, it would take a really interested buyer to go as high as $149,000 for it. That's why it hasn't been possible for us to push it." "When you reached that conclusion, why didn't you tell me?" asked Client A. "Because," said REALTOR® B, "it wouldn't have done any good. I know from experience that sellers can't be convinced that they are overpricing their property until they get tired of waiting for an offer that will never come. Now that the market has taught you something that you would not take as advice, let's reduce the price to $148,900 and push it."

Client A complained about REALTOR® B to the Board of REALTORS®, detailing these circumstances, strongly insisting that REALTOR® B had fully agreed with him on the price at which the property was originally listed.

Client A reiterated this point strongly at the hearing of his complaint which was held before a Hearing Panel of the Board's Professional Standards Committee. REALTOR® B did not contest this, taking the position that at the time of the listing it was his judgment that a price of $156,900 was fair and obtainable in the market. He stated that a strong immediate sales effort had convinced him that the listed price was excessive, and he defended his action of reducing his sales effort as he had done in his discussion with the client. He said that many years of experience as a broker had convinced him that once a seller decides on a definite price for his property, no argument or analysis will shake his insistence on getting that price; that only inaction in the market is convincing to the sellers.

The Hearing Panel concluded that REALTOR® B's conduct had violated Article 1 of the Code of Ethics, which requires REALTORS® to protect and promote their clients' interests. The panel also found that since REALTOR® B honestly felt the original listing price of $156,900 was the fair market value at the time he listed it, REALTOR® B had not violated the Code of Ethics by suggesting that the price be lowered. However, since REALTOR® B later concluded the property was overpriced, he should have immediately notified Client A of his conclusion and not waited for Client A to call him six weeks later.

Case #1-11: Responsibilities of Cooperating Broker (Originally Case #7-13. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #16-4. Deleted November, 2001.)

Case #1-12: Presentation of Subsequent Offers After an Offer to Purchase Had Been Accepted by the Seller (Adopted November, 1987 as Case #7-16. Transferred to Article 1 November, 1994.)

REALTOR® A, the listing broker, presented an offer to purchase to his client, Seller X, which was $20,000 less than the property's listed price. The property had been on the market for several months and had not generated much interest. In his presentation, REALTOR® A told Seller X that, in his opinion, the offer was a good one and Seller X should consider accepting it. "With interest rates on their way up again," said REALTOR® A, "properties are just not moving the way they did six months ago." Seller X decided to accept the offer and the transaction closed. Several months after the sale, Seller X filed a complaint against REALTOR® A alleging a violation of Article 1, as interpreted by Standard of Practice 1-7. It had come to Seller X's attention that a second offer had been made on the property after Seller X had accepted the first offer but prior to closing. This second offer, alleged Seller X, had not been submitted to him by REALTOR® A and was for $2,500 more than the first offer. Seller X's complaint stated that by not presenting the second offer to him, REALTOR® A had not acted in his (the seller's) best interest, as required by Article 1.

At the hearing, REALTOR® A produced a copy of the listing contract, which contained a provision reading: "Seller agrees that Broker's responsibility to present offers to purchase to Seller for his consideration terminates with Seller's acceptance of an offer." REALTOR® A told the Hearing Panel that he had explained this provision to Seller X at the listing presentation and that Seller X had agreed to it, as indicated by Seller X's signature on the listing contract.

Seller X admitted that he had understood and agreed to the provision at the time he listed the property, but he felt that REALTOR® A should have advised him of the second, higher offer nonetheless.

The Hearing Panel found REALTOR® A not in violation of Article 1. In their decision, the panel noted that REALTOR® A had explained the contract provision relieving him of the obligation to submit subsequent offers to Seller X; that Seller X had agreed to the provision and had signed the listing contract; and that, while it was unfortunate that Seller X had received less than full price for the property, REALTOR® A had fulfilled his obligations under the listing contract once the first offer to purchase had been accepted by Seller X.

Case #1-13: Obligation to Present Subsequent Offers After an Offer to Purchase Has Been Accepted by the Seller (Adopted November, 1987 as Case #7-17. Transferred to Article 1 November, 1994.)

REALTOR® A had a 90-day exclusive listing on Seller X's property. Seller X instructed REALTOR® A to list the property at $150,000 based upon the sales price of a neighbor's house, which had sold a month earlier.

REALTOR® A aggressively marketed the property, filing the listing with the Board's MLS, running a series of advertisements in the local newspaper, holding several "Open Houses," and distributing flyers on the property at local supermarkets. REALTOR® A, whose listing contract was nearing expiration, held another "Open House" on the property, which resulted in an offer to purchase from Buyer Y at $15,000 less than the listed price. REALTOR® A, convinced that this was the best offer Seller X was likely to obtain, persuaded Seller X to accept the offer. Seller X expressed dissatisfaction with REALTOR® A's failure to obtain a full price offer, but signed the purchase agreement nonetheless.

The next day, REALTOR® B, a cooperating broker, delivered to REALTOR® A a full price offer on Seller X's property from Buyer Z. Buyer Z had attended an earlier "Open House" and was very enthusiastic about the home's location, stating that it would be perfect for his mother.

REALTOR® A advised REALTOR® B and Buyer Z that an offer had already been accepted by Seller X and that he, REALTOR® A, would not present Buyer Z's offer. REALTOR® B and Buyer Z then promptly filed a complaint with the Board charging REALTOR® A with a violation of Article 1, as interpreted by Standard of Practice 1-7.

At the hearing, REALTOR® A stated that he felt he was under no obligation to present Buyer Z's offer, since the listing agreement did not specifically provide that subsequent offers would be presented to the seller. Further, REALTOR® A felt that such a practice could only lead to controversy between buyers and sellers, as well as result in breached contracts. "Why get everyone in an uproar," said REALTOR® A, "by presenting offers after one has been accepted? And what would I do if Seller X wanted to back out of the first purchase contract and accept Buyer Z's offer?"

The Hearing Panel found REALTOR® A in violation of Article 1. In their "Findings of Fact and Conclusions," the Hearing Panel cited REALTOR® A's lack of understanding of the requirements of Article 1, as interpreted by Standard of Practice 1-7. The panel noted that state law did not prohibit the presentation of offers after an offer had been accepted by the seller; that the fact that the listing contract was silent on whether subsequent offers would be presented did not relieve REALTOR® A from the obligation to present such offers; that as the agent of the seller, REALTOR® A must always act in the seller's best interest and advise the seller of all offers submitted; and that should the seller wish to consider accepting a subsequent offer, REALTOR® A must advise the seller to seek the advice of legal counsel.

Case #1-14: Conditioning Submission of Purchase Offer on Execution of a Prelisting Agreement

(Adopted May, 1988 as Case #7-18. Transferred to Article 1 November, 1994. Revised November, 2001.)

Owner A listed his home with REALTOR® B on an exclusive listing which was disseminated through the Multiple Listing Service.

Mr. C, a recent transferee to the city, was represented by REALTOR® D, who showed Mr. and Mrs. C a number of properties. Of the properties they had seen, Mr. and Mrs. C decided that Owner A's home was the only one that suited their needs. They told REALTOR® D they were prepared to make a full price offer to maximize their chances of purchasing the home.

REALTOR® D agreed to write the offer, but first produced a prelisting agreement which, if signed, would obligate Mr. and Mrs. C to give REALTOR® D or his assigns the exclusive right to sell the property for 90 days should they ever decide to list the property for sale.

Mr. and Mrs. C objected to committing to a future listing, but REALTOR® D insisted he would not prepare or submit their offer to REALTOR® B and Owner A unless the C's signed the prelisting agreement. Mr. and Mrs. C left without making an offer or signing the prelisting agreement. The next morning they called REALTOR® D stating that if the property was still available they would enter into the prelisting agreement since they still wanted to purchase the house. The prelisting agreement and the purchase offer were signed, their offer was accepted by Owner A, and the sale subsequently closed. After the closing, Mr. and Mrs. C filed an ethics complaint with the local Board of REALTORS®, alleging a violation of Article 1 on the part of REALTOR® D.

At the hearing, REALTOR® D defended his actions arguing that his conduct in no way had injured the buyers or sellers. He noted that Owner A's home had sold at the full price, and Mr. and Mrs. C purchased the home they wanted at a price they were willing to pay. In addition, REALTOR® D was prepared to put forth his best efforts to sell Mr. and Mrs. C's home if they ever decided to sell.

After hearing the evidence and testimony, the Hearing Panel concluded that REALTOR® D had violated Article 1. By entering into a principal/client relationship, REALTOR® D was obligated to protect and promote his clients' interests. The Hearing Panel concluded that by conditioning submission of his clients' offer on their signing a prelisting agreement, REALTOR® D had placed his financial gain ahead of his clients' interests, which is prohibited under Article 1.

Case #1-15: Obligation to Advise Client on Market Value

(Originally Case #2-1. Revised and transferred to Article 7 as Case #7-19 May, 1988. Transferred to Article 1 November, 1994.)

Client A went from his hotel to REALTOR® B's office and advised that he formerly lived in the community, and had kept his home as an income property after he moved away. The house had been vacant for several months and he had decided to sell it. He asked if REALTOR® B could drive him to look at it. As they inspected it, Client A stated that he would be happy to get $80,000 for it. REALTOR® B listed it at that price and after a few days it was sold to Buyer C.

Six months later, Client A was in town again. Hoping to recover a box of old photographs he had left in the attic, he called on Buyer C, whom he had met at settlement. When he arrived he found that Buyer D then lived in the house. He expressed some surprise that Buyer C had sold it so soon, and learned that Buyer D paid $140,000 for it. Astonished, Client A then made some inquiries as to market values and learned that he had grossly under priced his house when listing it with REALTOR® B. He went to the Board of REALTORS® office and filed a complaint against REALTOR® B charging him with unethical conduct in not having advised him as to the property's fair market value.

At the hearing, REALTOR® B's defense was that he had not been asked to put a price on the house, but had accepted agency on the basis of a price set by the client; that the client had stated he "would be happy" to get $80,000 for it; that he was glad to get a listing that would move quickly in the market; that he had done nothing unethical since he had not bought it himself; and that while he had honestly pointed out to the buyer that the house was a bargain, he had made no effort to induce relatives or business associates to buy it.

On questioning, he conceded that after looking at the house with Client A, he realized the property was being listed at about half its fair market value, but insisted that was his client's business; that different owners have different reasons for selling and pricing their property, but acknowledged that Client A had not indicated that he needed a quick sale or that he would make any price concession.

The Hearing Panel pointed out that brokers have no hesitation in advising clients that properties are overpriced when this is the case, and they are obligated to be equally candid in providing their best judgment to clients when properties being offered for sale are obviously underpriced.

The panel concluded that in view of the wide discrepancy between the owner's asking price and the property's market value, which REALTOR® B conceded was apparent to him, it was REALTOR® B's obligation as an agent to advise his client that the house was worth considerably more, especially since it was apparent that Client A had been away from the community for years and was out of touch with local values. The Hearing Panel found REALTOR® B in violation of Article 1.

Case #1-16: Obligation to Advise Client of Market Value

(Originally Case #2-2. Revised and transferred to Article 7 as Case #7-20 May, 1988. Transferred to Article 1 November, 1994.)

REALTOR® A listed Client B's house at $136,000. The house was sold to Buyer C, who met Client B at a cocktail party a month later and told him that he had just been offered $148,000 for the house but declined the offer feeling that if he decided to sell, he could do considerably better.

On the basis of this information, Client B charged REALTOR® A with unethical conduct in not having advised him as to fair market value and pointing out that the offering price was considerably below market value. The Board's Grievance Committee referred the complaint to the Professional Standards Committee for hearing.

The Hearing Panel reviewed the facts. At the time the listing contract was signed, REALTOR® A advised his client that he had not recently been active in the part of the city where the house was located and that before fixing the price definitely it might be well to have an appraisal made, but the client declined saying that he felt $136,000 was a fair price.

REALTOR® A's defense was that he had indicated the desirability of an appraisal to determine a fair asking price; that he had indicated he was not active in the neighborhood where the home was located; and that while he had a feeling that the client might be placing a low price on his property, he felt his professional obligation to the client was discharged when he suggested having an appraisal made.

It was the finding of the Hearing Panel that REALTOR® A's defense was valid and that he was not in violation of Article 1.

Case #1-17: Listing Property at Excessive Price

(Originally Case #2-3. Revised and transferred to Article 7 as Case #7-21 May, 1988. Transferred to Article 1 November, 1994.)

Mr. A was about to retire and move to a warmer climate, and had discussed the sale of his house with a number of brokers. He dropped in on REALTOR® B to discuss the matter and said that various brokers had told him he should expect to sell the property at from $150,000 to $158,000. "Oh, that sounds low to me," said REALTOR® B, "property moves well in that neighborhood and I recall that your house is in good shape and well landscaped. Give us an exclusive on it at $168,000 and we'll make a strong effort to get you what your property is really worth." REALTOR® B got the listing.

He advertised the property, held it open on weekends, had many inquiries about it, and showed numerous prospective buyers through it for a few weeks, but received no offers. When activity slowed, and the client became concerned, REALTOR® B was reassuring. "We'll just keep plugging till the right buyer comes along," he said. When the 90-day exclusive expired, REALTOR® B asked for a renewal. He told the client that new houses coming on the market were adversely affecting the market on resales of existing houses, and recommended lowering the price to $158,900. Client A ruefully agreed, but the lowered price did not materially increase buyer interest in the property. As the term of the 90-day extension of the listing neared, REALTOR® B brought Client A an offer of $150,000 and strongly recommended that it be accepted. But the client objected. "You told me it was worth about $168,000 and sooner or later the right buyer would pay that price. Meanwhile similar houses in the neighborhood have been selling within 30 to 60 days at around $156,000."

"I know," REALTOR® B said, "but six months ago we had a stronger market and were at the most favorable time of the year and $168,000 was not an out-of-line price at that time. But now we're in the slow time of the year and the market is off. All things considered, I think the $150,000 offer in hand is a good one. I doubt that a better one will come along."

Client A accepted the offer and complained against REALTOR® B to the local Board of REALTORS®, charging REALTOR® B with misinforming him as to fair market value apparently as a means of obtaining the listing of his property.

At the hearing, the facts as set out above were not disputed. Questioning developed the additional fact that at the time of the original listing REALTOR® B had not gone through the house to make a systematic appraisal of opinion of value, and that his recommended offering price was not based on a systematic review of sales in the neighborhood. Members of the Hearing Panel pointed out that the neighborhood in question was a development of houses, basically the same in size and quality, that had been put on the market about 10 years earlier at prices varying from $145,000 to $150,000; that good location and land development practices had maintained a good market for resales, but there was no indication that any property in the immediate neighborhood had been resold for as high as $160,000. When told that circumstances tended to bear out the complainant's charge that REALTOR® B's recommended price was a stratagem to obtain the listing, REALTOR® B's defense was that he felt he had a right to take an optimistic view of the market.

It was concluded that REALTOR® B was in violation of Article 1 of the Code of Ethics.

Case #1-18: REALTOR® Not Responsible for Legal Advice

(Originally Case #2-4. Revised and transferred to Article 7 as Case #7-22 May, 1988. Transferred to Article 1 November, 1994.)

Client A listed a commercial property with REALTOR® B who sold it. Following the sale, Client A learned that his total tax position would have been more favorable if he had disposed of the property in a trade. He complained to the Association of REALTORS® against REALTOR® B stating that in connection with his listing of the property he had discussed his total tax position with REALTOR® B, and that REALTOR® B, in spite of his obligation under Article 1 of the Code of Ethics to "be informed regarding laws" had failed to advise him that a trade would be more to his advantage than a sale.

At the hearing, REALTOR® B defended his actions by stating that it was true that Client A had briefly outlined his total tax situation at the time he listed the property for sale. REALTOR® B advised that he had told Client A that sale of the listed property might result in unfavorable tax consequences and suggested that Client A consult an attorney. The client had not taken this advice.

After several weeks of advertising and showing the property, in the absence of a change of instructions from the client, the property was sold in accordance with the terms of the listing contract.

The Hearing Panel concluded that advising the client to consult an attorney had demonstrated REALTOR® B's attempt to protect the best interest of his client; that in giving this advice REALTOR® B had fully discharged his obligation under Article 1; that a REALTOR® is not responsible for rendering legal advice beyond the advice that legal advice be sought when the client's interest requires it; and that REALTOR® B was not in violation of Article 1.

Case #1-19: Knowledge of Proposed Legislation

(Originally Case #2-5. Revised and transferred to Article 7 as Case #7-23 May, 1988. Transferred to Article 1 November, 1994.)

REALTOR® A received a letter from the ABC College in another city stating that one of its old graduates in REALTOR® A's city had willed a vacant property in that community to the college. The letter explained that the college had no use for the property, and wanted REALTOR® A to sell it at its fair market value. The proceeds would go to the endowment fund of the college. REALTOR® A suggested a price for the property, an exclusive listing contract was executed, and in less than a month the lot was sold and settlement made with the college. Two weeks later, a trustee of the college, who handled its investments, filed a complaint against REALTOR® A charging negligence in knowledge of proposed local legislation which had resulted in sale of the property at approximately one-eighth of its fair market value. The Grievance Committee referred it for hearing before a panel of the Professional Standards Committee.

The Professional Standards Committee scheduled a hearing and notified Realtor A and the college trustee to be present. The hearing developed these facts:

(1) The client's property was in an area which had been approved for rezoning from residential to commercial use in a general revision of the local zoning map and ordinance that was in preparation. (2) Although specific sections of the revisions, including the section involving the lot in question, had been tentatively approved, final approval had not been given to the complete revision at the time of the sale, but this action had been taken a few days following the sale. For several months prior to the sale there had been a public notice of the proposal to rezone affixed to a sign near one corner of the property. (3) In his one inspection of the property, REALTOR® A had not noticed the sign. (4) Other sales in the rezoned area substantiated the client's belief that the shift to commercial zoning supported a value at approximately eight times the price received for the lot.

REALTOR® A's defense was that the ordinance putting the rezoning into effect had not been enacted at the date of his sale of the client's property, and that he had no knowledge at the time of the rezoning proposal.

The Hearing Panel's conclusion was that REALTOR® A had violated Article 1 and was definitely deficient in his professional obligations in this instance; that before suggesting a price to his client he should have checked the property carefully enough to have seen the notice concerning a proposal for rezoning; and that as a REALTOR® active in the area he should have been aware of the extensive changes that were being proposed in his city's zoning ordinance. Such knowledge was within his obligation under Article 1 to protect the best interests of his client.

Case #1-20: REALTORS® Buying and Selling to One Another are Still Considered REALTORS®

(Originally Case #7-24. Revised May, 1988. Transferred to Article 1 November, 1994. Cross-reference Case #2-13. Revised May, 2017 and November, 2022)

REALTOR® A owned a home which he listed through his own brokerage firm. The property listing was filed with the Multiple Listing Service of the Board. REALTOR® B called REALTOR® A and told him of his interest in purchasing the home for himself. REALTOR® A suggested a meeting to discuss the matter. The two agreed upon terms and conditions and the property was sold by REALTOR® A to REALTOR® B.

A few months later, during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof. The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

REALTOR® B then contacted REALTOR® A and requested that he pay for the new roof. REALTOR® A refused, stating that REALTOR® B had had a full opportunity to look at it and inspect it. REALTOR® B had then charged REALTOR® A with violation of Articles 1 and 2 of the Code of Ethics by not having disclosed that the roof had defects known to REALTOR® A prior to the time the purchase agreement was executed.

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor REALTOR® B had employed after the leak occurred told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the way the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.

REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property, he accepts the same obligation to properly represent its condition to members of the public, including REALTORS® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

The panel concluded that REALTOR® A was in violation of Articles 1 and 2 of the Code.

Case #1-21: REALTOR®'s Purchase of Property Listed with the Firm (Adopted May, 1989 as Case #7-25. Transferred to Article 1 November, 1994. Revised November, 2001 and November, 2022.)

Mr. and Mrs. A visited REALTOR® B's office and explained they had owned a four-bedroom ranch house nearby for thirty years but since their children were grown and Mr. A was retiring, they wanted to sell their home and tour the country in their motor home.

REALTOR® B and Mr. and Mrs. A entered into an exclusive listing agreement. REALTOR® B conducted an open house, advertised in the local paper, and took other steps to actively promote the sale.

Four weeks after the property went on the market, REALTOR® B received a call from REALTOR® Z, a broker affiliated with the same firm who worked out of the firm's principal office downtown. REALTOR® Z explained that she had seen information regarding Mr. and Mrs. A's home in the MLS and was interested in the property as an investment. She indicated she was sending an offer to purchase via electronic mail to REALTOR® B.

When REALTOR® B met with Mr. and Mrs. A to present REALTOR® Z's offer, he carefully explained and presented a written disclosure that REALTOR® Z was a member of the same firm although he was not personally acquainted with her. Mr. and Mrs. A, being satisfied with the terms and conditions of the purchase offer, signed it and several weeks later the sale closed and a commission was paid to REALTOR® B.

Several weeks later, REALTOR® B received a letter from Attorney T, representing Mr. and Mrs. A. Attorney T's letter indicated that since a member of REALTOR® B's firm had purchased the property, in Attorney T's opinion, REALTOR® B was not entitled to a commission. The letter went on to demand that REALTOR® B refund the commission that had been paid by Mr. and Mrs. A.

REALTOR® B politely, but firmly, refused to refund the commission.

Mr. and Mrs. A filed a complaint with the Association of REALTORS® alleging that REALTOR® B's refusal to refund the commission constituted a violation of Article 1 of the Code of Ethics.

REALTOR® B, in his response, agreed with the facts as stated in Mr. and Mrs. A's complaint but indicated that he had faithfully represented the best interests of Mr. and Mrs. A and had no obligation to refund the commission.

The Grievance Committee concluded that the matter should be referred to a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, Mr. and Mrs. A repeated the facts as set forth in their written complaint and, in response to REALTOR® B's cross-examination, acknowledged that REALTOR® Z had not influenced their decision to list the property with REALTOR® B or their decision as to the asking price. They also agreed that REALTOR® B had carefully disclosed that REALTOR® Z was a member of the same firm; and that REALTOR® B had represented their best interests throughout the transaction. Their only disagreement with REALTOR® B, they stated, was that since their home had been purchased by a member of REALTOR® B's firm, they should not have been obligated to pay a commission and REALTOR® B's refusal to refund the commission violated Article 1.

The Hearing Panel concluded that REALTOR® B had promoted Mr. and Mrs. A's interests; and had carefully disclosed that REALTOR® Z was a member of the same firm; and that REALTOR® B's refusal to refund commission did not constitute a violation of Article 1.

Case #1-22: REALTOR®'s Offer to Buy Property He has Listed

(Adopted May, 1989 as Case #7-26. Transferred to Article 1 November, 1994. Revised November, 2001 and November, 2022.)

Doctor A, a surgeon in a major city, inherited a summer house and several wooded acres on the shores of a lake over a thousand miles from Doctor A's home. Being an extremely busy individual, Doctor A paid little attention to his inheritance for almost two years. Then, planning a vacation trip, Doctor A and his wife decided to visit their property since it was located in a part of the country that they had never seen. Doctor A and his wife spent a week in the house during which they concluded that it was too far from their home town to use on any regular basis. Consequently, Doctor A decided to sell the property and made an appointment with REALTOR® B whose office was located in a town nearby.

Doctor A explained that he had inherited the summer house two years earlier and wanted to sell it since it was impractical to keep for his personal use. Doctor A mentioned that he had no idea what the property was worth since it had not previously changed hands in forty years and that he was not familiar with local property values.

REALTOR® B explained that sales of vacation homes had been slow for a number of months and recommended a listing price of $175,000. When Doctor A commented that the price seemed low given that the house was located on a lake and included several wooded acres, REALTOR® B responded by asking Doctor A what he thought the property was worth. Doctor A repeated that he really had no idea what it was worth since he was completely unfamiliar with the area and concluded that he would have to rely on REALTOR® B's judgment. Doctor A and REALTOR® B executed an exclusive listing on the property and two days later Doctor A and his wife returned home.

Three weeks later, Doctor A received a purchase contract for $175,000 from REALTOR® B less the amount of the listing commission signed by REALTOR® B as the purchaser. REALTOR® B's letter indicated his belief that Doctor A should not expect any other offers on the property due to the slow market and that REALTOR® B's "full price" offer was made to "take the property off Doctor A's hands."

Doctor A immediately called REALTOR® B and advised him that while he might agree to sell the vacation house to REALTOR® B, he would not do so until he could have the property appraised by an independent appraiser. Under no circumstances, continued Doctor A, would he recognize REALTOR® B as his agent and pay a commission if REALTOR® B purchased the house.

REALTOR® B responded that there was no reason to obtain an independent appraisal since Doctor A had little choice in the matter. In REALTOR® B's opinion Doctor A could either sell the property to REALTOR® B for $175,000 less the amount of the commission or, should Doctor A refuse REALTOR® B's offer, REALTOR® B would be entitled to a commission pursuant to the listing agreement.

Believing that he had no choice, Doctor A signed the purchase agreement and returned it to REALTOR® B. Shortly thereafter, the transaction closed.

Several weeks later, Doctor A learned that Associations of REALTORS® had Professional Standards Committees that considered charges of unethical conduct by REALTORS®. He filed a complaint to REALTOR® B's Association spelling out all of the details of the sale of his summer house. In his complaint, Doctor A indicated that he had no problem with REALTOR® B offering to purchase the property but rather his unhappiness resulted from REALTOR® B's insistence on being compensated as Doctor A's agent even though he had become a principal in the transaction. Doctor A quoted Article 1 questioning how REALTOR® B's duty to promote Doctor A's interests could have been served when REALTOR® B had taken an essentially adversarial role in the transaction. Finally, Doctor A commented, REALTOR® B's "take it or leave it" attitude had certainly seemed less than honest.

The Association's Professional Standards Administrator referred Doctor A's complaint to the Grievance Committee which concluded that a hearing should be held. At the hearing before a panel of the Association's Professional Standards Committee, both Doctor A and REALTOR® B told their sides of the story. After all of the evidence and testimony was heard, the Hearing Panel went into executive session and concluded that while the Code of Ethics did not prohibit REALTOR® B's offering to purchase property listed by him, REALTOR® B had stepped out of his role as agent and had become a principal in the transaction. Article 1 of the Code of Ethics requires the REALTOR® to "protect and promote the interests of the client." Once REALTOR® B expressed his interest in purchasing the property, he could no longer act as Doctor A's agent except with Doctor A's knowledgeable consent. This consent had not been granted by Doctor A. Further, REALTOR® B's advice that Doctor A had no choice but to view REALTOR® B as his agent and to compensate him accordingly had been incorrect and had been a decisive factor in Doctor A's decision to sell to REALTOR® B. The Hearing Panel also found that REALTOR® B had significantly influenced Doctor A's decision as to the listing price, perhaps with knowledge that he (REALTOR® B) would like to purchase the property for himself. Consequently, the Hearing Panel found REALTOR® B in violation of Article 1.

Case #1-23: Claims of Guaranteed Savings

(Adopted November, 1993 as Case #7-27. Revised April, 1994. Transferred to Article 1 November, 1994. Revised November, 2022.)

In response to REALTOR® A's advertisement, "Guaranteed Savings! Don't purchase without representation," Mr. and Mrs. B signed an exclusive buyer representation contract with REALTOR® A. After viewing several homes accompanied by REALTOR® A, Mr. and Mrs. B decided to make an offer on 1234 Hickory. The seller did not accept the offer. The listing broker explained to REALTOR® A that the sellers were well-situated, spent much of their time at their vacation home, and had determined not to accept anything other than the listed price. REALTOR® A, in turn, explained that to Mr. and Mrs. B. In response to their questions, he indicated that there appeared to be little point in making anything other than a full price offer but that he would be happy to continue to show them other properties. Mr. and Mrs. B responded that they were not interested in other properties and had decided to make a full price offer on the Hickory Street residence. They did and their offer was accepted.

Following closing, and after discussing their transaction with friends, they wrote a letter to the Association of REALTORS® indicating that while they were pleased with the service provided by REALTOR® A, they thought that his claim of "guaranteed savings" was an exaggeration. After obtaining and reviewing a copy of the Code of Ethics, they filed a formal complaint alleging that Article 1, as interpreted by Standard of Practice 1-4, had been violated.

At the hearing, REALTOR® A argued he was able to aggressively negotiate purchase agreements on behalf of his clients whereas the listing broker or subagents, with their loyalty to the seller, could not. He also indicated that, in many instances, his buyer clients paid less, often substantially less, than buyers dealing through listing brokers, subagents, or even through other buyer agents. However, in response to questioning by Mr. B's attorney, REALTOR® A acknowledged that, while savings were not uncommon, they were not ensured in every instance, particularly in cases where the seller was determined to receive full price. "But I offered to show them other properties and, if we looked long enough, I am sure I could have found them a bargain," offered REALTOR® A in his defense.

The Hearing Panel disagreed with REALTOR® A's reasoning, concluding that while savings might be possible, REALTOR® A had been unable to demonstrate them in every instance and that this guarantee of savings was misleading. Consequently, his advertisement was in violation of Article 1.

Case #1-24: Advantage Gained Through Deception of Client

(Originally Case #4-3. Revised and transferred to Article 6 as Case #6-5 May, 1988. Revised November, 1993. Transferred to Article 1 November, 1994. Revised November, 1997.)

Client X listed his unique parcel of land on a lake exclusively with REALTOR® A, who worked diligently for months to sell Client X's property. Finally, REALTOR® A came up with the idea of selling the property to the county for a park, and made arrangements for its presentation at a special meeting.

Client X went before the County Commissioners with his attorney. REALTOR® A, the listing broker, was in the audience. REALTOR® A commented about the property and told the County Commissioners that if the County purchased the property he, REALTOR® A, would receive a real estate commission. The County Commissioners agreed to take the matter under advisement.

REALTOR® B, a member of the County Commission, approached Client X and suggested that if the property were listed with REALTOR® B exclusively, and REALTOR® B then cooperated with REALTOR® A so that the real estate commission would be split between them, the County would probably purchase the property from Client X. Otherwise, REALTOR® B indicated, the County would not purchase it. Unknown to Client X, the County Commissioners had already voted to buy the land. Worried that he might not sell the land, Client X immediately signed a second written exclusive listing with REALTOR® B. Thereafter, a sales contract was executed which provided that the real estate commission was to be divided equally between REALTOR® A and REALTOR® B. Unknown to REALTOR® B, Client X had told REALTOR® A the entire story about REALTOR® B's approach to and conversation with Client X.

REALTOR® A filed a complaint against REALTOR® B alleging violations of Article 1 and Article 16. The Grievance Committee found enough evidence of REALTOR® B's alleged violations of the Code to warrant a hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B defended himself, indicating that he had been instrumental in influencing the County Commission to vote to buy Client X's land, and had voted for it himself. Accordingly, REALTOR® B felt it was appropriate for him to receive a commission.

It was the Hearing Panel's conclusion that REALTOR® B had used his official position as County Commissioner to deceive Client X with respect to the prospects of the County purchasing his property, and had coerced Client X into executing an exclusive listing while the property was already listed exclusively with REALTOR® A. The Hearing Panel found REALTOR® B in violation of Article 1 for having advised Client X dishonestly and Article 16 for having acted inconsistently with the exclusive relationship that existed between Client X and REALTOR® A.

Case #1-25: Disclosure of Latent Defects

(Adopted November, 2000. Revised November, 2022.)

REALTOR® A had listed Seller S's vintage home. Buyer B made a purchase offer that was contingent on a home inspection. The home inspection disclosed that the gas furnace needed replacement because unacceptable levels of carbon monoxide were being emitted.

Based on the home inspector's report, Buyer B chose not to proceed with the purchase.

REALTOR® A told Seller S that the condition of the furnace and the risk that it posed to the home's inhabitants would need to be disclosed to other potential purchasers. Seller S disagreed and instructed REALTOR® A not to say anything about the furnace to other potential purchasers. REALTOR® A replied that was an instruction he could not follow so REALTOR® A and Seller S terminated the listing agreement.

Three months later, REALTOR® A noticed that Seller S's home was back on the market, this time listed with REALTOR® Z. His curiosity piqued, REALTOR® A phoned REALTOR® Z and asked whether there was a new furnace in the home. "Why no," said REALTOR® Z. "Why do you ask?" REALTOR® A told REALTOR® Z about the home inspector's earlier findings and suggested that REALTOR® Z check with the seller to see if repairs had been made.

When REALTOR® Z raised the question with Seller S, Seller S was irate. "That's none of his business," said Seller S who became even angrier when REALTOR® Z advised him that potential purchasers would have to be told about the condition of the furnace since it posed a serious potential health risk.

Seller S filed an ethics complaint against REALTOR® A alleging that the physical condition of his property was confidential; that REALTOR® A had an ongoing duty to respect confidential information gained in the course of their relationship; and that REALTOR® A had breached Seller S's confidence by sharing information about the furnace with REALTOR® Z.

The Hearing Panel disagreed with Seller S's contentions. It noted that while REALTORS® do, in fact, have an obligation to preserve confidential information gained in the course of any relationship with the client, Standard of Practice 1-9 specifically provides that latent material defects are not considered "confidential information" under the Code of Ethics. Consequently, REALTOR® A's disclosure did not violate Article 1 of the Code of Ethics.

Case #1-26: Subordination of Client's Interests to REALTOR®'s Personal Gain (Adopted May, 2001.)

REALTOR® B was a sales associate with XYZ, REALTORS®. To promote XYZ's in-house listings, the firm's principals offered $1,000 bonuses to the company's sales associates at time of closing on each of XYZ's listings they sold.

Dr. Z, a recent transferee to the town, entered into a buyer representation agreement with XYZ through REALTOR® B.

Dr. Z explained he had specific needs, foremost of which was any home he purchased be convenient for and readily accessible by Dr. Z's spouse who was physically challenged. "Part of my wife's physical conditioning program is swimming," said Dr. Z, "so in addition to everything else, I am looking for a home with a pool or room to build a pool."

REALTOR® B knew there were a number of homes for sale meeting most of Dr. Z's general specifications, several of which were listed with XYZ.

Over the next few days, REALTOR® B showed Dr. Z several properties in the Blackacre subdivision, all of which were listed with XYZ, including one with an outdoor swimming pool. Not included among the properties shown to Dr. Z were several similar properties in Blackacre listed with other firms, including one with an indoor pool.

After considering the properties shown to him by REALTOR® B, Dr. Z made an offer on the home with the outdoor pool. His offer was accepted and the transaction closed shortly thereafter.

Several months later, REALTOR® B received notice of an ethics complaint filed against him by Dr. Z. Dr. Z had learned about the home with the indoor pool from a colleague at the hospital who lived on the same block. The complaint alleged that REALTOR® B had put his interests, and those of his firm, ahead of Dr. Z's by promoting XYZ's listings exclusively and by not telling Dr. Z about a similarly-priced property with an indoor pool, which suited his family's needs better than the property he had purchased. The complaint went on to indicate that REALTOR® B had received a bonus for selling one of XYZ's listings and that Dr. Z suspected that REALTOR® B's failure to tell him about the home with the indoor pool was motivated by the opportunity to receive a bonus.

At the hearing, REALTOR® B defended his actions stating that properties rarely meet all of potential purchasers desires; that he had made Dr. Z aware of several properties that met most of his requirements, including one with an outdoor pool; and that Dr. Z must have been satisfied with REALTOR® B's service since he had purchased a home.

Upon questioning by Dr. Z's attorney, REALTOR® B acknowledged that he knew about but had not shown the house with the indoor pool to Dr. Z. He conceded that a pool that could be used year round was better suited to the family's needs than one that could be used only four months each year. He also admitted his failure to tell Dr. Z about the house with the indoor pool had at least in part been motivated by the bonus offered by his firm. "But," he argued, "aside from the indoor pool, that house was no different than the one Dr. Z bought."

The Hearing Panel concluded that REALTOR® B had been fully aware that one of Dr. Z's prime concerns was his wife's ongoing physical conditioning needs and REALTOR® B's decision to show Dr. Z only properties listed with XYZ and to not tell him about the home with the indoor pool had been motivated by the possibility of earning an in-house bonus. The Hearing Panel determined that REALTOR® B had placed his interests ahead of those of his client and had violated Article 1.

Case #1-27: Appraisal Fee as Percentage of Valuation

(Originally Case #11-7. Revised November, 2001. Transferred to Article 1 November, 2001. Revised November, 2022.)

REALTOR® A, a licensed or certified appraiser, was approached by Client B who engaged him to make an appraisal of an apartment building located in a proposed public redevelopment area. Client B explained that he had recently inherited the property and recognized that it was in a neglected condition. Client B also explained that he wanted the appraisal performed in order to have a definite idea of the property's value before discussing its possible sale with negotiators for the redevelopment project. REALTOR® A and Client B entered into a contractual relationship whereby REALTOR® A promised to perform the appraisal of Client B's property. Client B, at REALTOR® A's suggestion, agreed to compensate REALTOR® A for his appraisal services based on a percentage of the amount of the appraised value to be determined.

Several months later, Client B complained to the Association of REALTORS® against REALTOR® A, specifying that he had been overcharged for the appraisal. Client B explained that the appraisal fee he had agreed upon with REALTOR® A was based on a percentage of the valuation shown in the appraisal report. Client B's letter to the Association stated that his attempt to negotiate with the redevelopment agency on the basis of REALTOR® A's appraisal had broken down and that the redevelopment agency had gone into court, under eminent domain proceedings, and that the award made by the court was approximately one-fourth of the amount of REALTOR® A's appraisal. Client B contended that by making his valuation so unrealistically high, REALTOR® A had grossly overcharged him. He added that the experience had been embarrassing to him, since in his attempts to negotiate with the redevelopment agency it had not been his intention to seek an unreasonably high price. By relying on REALTOR® A's appraisal, he had been placed in a position of seeming to have sought an excessive price for his apartment building. Client B said that it was his opinion that REALTOR® A had overvalued the property to obtain a higher fee.

Client B's complaint was considered by the Association's Grievance Committee which, upon review, referred it to the Association's Professional Standards Administrator to be scheduled for a hearing before a Hearing Panel of the Association's Professional Standards Committee. The appropriate notices were sent out and a hearing was scheduled.

At the hearing, REALTOR® A defended his actions stating that he was unaware of any prohibition in the Code of Ethics prohibiting a REALTOR® from charging a percentage of the valuation of a property as an appraisal fee. REALTOR® A stated that the client had freely agreed to the arrangement; that he felt that his appraisal was a fair one; and that he was not shaken in this view by the award made by the court since he felt that the court's award was unreasonably low.

After considering all of the evidence submitted by both parties, the Hearing Panel did not accept REALTOR® A's argument that he was unaware of the Code's prohibition of charging an appraisal fee contingent upon the value as determined by the appraisal. The panel concluded that REALTOR® A, by basing his fee on the amount of valuation, had violated Article 1 of the Code of Ethics as interpreted by Standard of Practice 1-14.

Case #1-28: Disclosure of Existence of Offers to Prospective Purchasers (Adopted November, 2002. Revised November, 2022)

Seller S listed her home for sale with REALTOR® B. The property was priced reasonably and REALTOR® B was confident it would sell quickly. The listing agreement included the seller's authorization for publication in the MLS and authority to disclose the existence of offers to prospective purchasers.

Within days, REALTOR® B had shown the property to several prospective purchasers and one of them, Buyer Z, wrote a purchase offer at close to the asking price.

REALTOR® B called Seller S to make an appointment to present the offer. After hanging up with Seller S, REALTOR® B received another call, this time from REALTOR® A. REALTOR® A explained that he represented a buyer who was interested in making an offer on Seller S's property. REALTOR® A explained that while his buyer-client was quite interested in the property, price was also a concern. He asked REALTOR® B if there were other offers on the property, indicating that his buyer-client would likely make a higher offer if there were competing offers on the table. REALTOR® B responded telling REALTOR® A, "That's confidential information. Please tell your client to make his best offer."

Taken aback by REALTOR® B's comments, REALTOR® A shared them with his buyer-client, who chose not to make an offer and instead pursued other properties.

Buyer Z's offer was accepted by Seller S later that evening and, sometime later, the transaction closed.

Several months afterward, Seller S and REALTOR® A met at a social event. REALTOR® A related his conversation with REALTOR® B. Seller S asked REALTOR® A if he thought that REALTOR® A's buyer-client would have made an offer on Seller S's home absent REALTOR® B's refusal to disclose whether there were other offers pending. REALTOR® A responded that it was impossible to tell for certain, but his buyer-client had certainly not been favorably impressed by REALTOR® B's response to a seemingly routine question.

Seller S subsequently filed an ethics complaint against REALTOR® B alleging violation of Article 1 as interpreted by Standard of Practice 1-15. He noted that he had clearly authorized REALTOR® B to disclose to buyers and cooperating brokers the existence of pending offers and that REALTOR® B's arbitrary refusal to share information he was authorized to share could have been the reason, or part of the reason, why REALTOR® A's client had chosen not to make an offer on Seller S's home.

REALTOR® B defended his actions indicating that while he agreed that he had an obligation to promote Seller S's interests, his obligation to REALTOR® A and to REALTOR® A's buyer-client was simply to be honest. He had not, in any fashion, misrepresented the availability of Seller S's property. Rather, he had simply told REALTOR® A to encourage his client to make her best offer. "I'm not required to turn every sale into an auction, am I?" he asked rhetorically. "I feel that I treated all parties honestly," he concluded.

The Hearing Panel did not agree with REALTOR® B's reasoning, indicating that he had violated Article 1 as interpreted by Standard of Practice 1-15. They noted that Standard of Practice 1-15 requires REALTORS®, if they have the seller's approval, to divulge the existence of offers to purchase on listed property in response to inquiries from either potential buyers or from cooperating brokers. REALTOR® B had not met that obligation and, consequently, the Hearing Panel concluded that REALTOR® B had violated Article 1.

Case #1-29: Multiple Offers to be Presented Objectively (Adopted November, 2002.)

REALTOR® A listed Seller S's house. He filed the listing with the MLS and conducted advertising intended to interest prospective purchasers. Seller S's house was priced reasonably and attracted the attention of several potential purchasers.

Buyer B learned about Seller S's property from REALTOR® A's website, called REALTOR® A for information, and was shown the property by REALTOR® A several times.

Buyer X, looking for property in the area, engaged the services of REALTOR® R as a buyer representative. Seller S's property was one of several REALTOR® R introduced to Buyer X.

After the third showing, Buyer B was ready to make an offer and requested REALTOR® A's assistance in writing a purchase offer. REALTOR® A helped Buyer B prepare an offer and then called Seller S to make an appointment to present the offer that evening.

Later that same afternoon, REALTOR® R called REALTOR® A and told him that he was bringing a purchase offer to REALTOR® A's office for REALTOR® A to present to Seller S. REALTOR® A responded that he would present Buyer X's offer that evening.

That evening, REALTOR® A presented both offers to Seller S for his consideration. Seller S noted that both offers were for the full price and there seemed to be little difference between them. REALTOR® A responded, "I'm not telling you what to do, but you might consider that I have carefully pre-qualified Buyer B. There's no question but that she'll get the mortgage she'll need to buy your house. Frankly, I don't know what, if anything, REALTOR® R has done to pre-qualify his client. I hope he'll be able to get a mortgage, but you never can tell." REALTOR® A added, "Things can get complicated when a buyer representative gets involved. They make all sorts of demands for their clients and closings can be delayed. You don't want that, do you? Things are almost always simpler when I sell my own listings," he concluded.

Seller S, agreeing with REALTOR® A's reasoning, accepted Buyer B's offer and the transaction closed shortly thereafter.

Upset that his purchase offer hadn't been accepted, Buyer X called Seller S directly and asked, "Just to satisfy my curiosity, why didn't you accept my full price offer to buy your house?" Seller S explained that he had accepted another full price offer, had been concerned about Buyer X being able to obtain the necessary financing, and had been concerned about delays in closing if a buyer representative were involved in the transaction.

Buyer X shared Seller S's comments with REALTOR® R the next day. REALTOR® R, in turn, filed an ethics complaint alleging that REALTOR® A's comments had intentionally cast Buyer X's offer in an unflattering light, that his comments about buyer representatives hindering the closing process had been inaccurate and unfounded, and that REALTOR® A's presentation of the offer had been subjective and biased and in violation of Article 1 as interpreted by Standard of Practice 1-6.

At the hearing, REALTOR® A tried to justify his comments, noting that although he had no personal knowledge of Buyer X's financial wherewithal and while he hadn't had a bad experience dealing with represented buyers, it was conceivable that an overzealous buyer representative could raise obstacles that might delay a closing. In response to REALTOR® R's questions, REALTOR® A acknowledged that his comments to Seller S about Buyer X's ability to obtain financing and the delays that might ensue if a buyer representative were involved were essentially speculation and not based on fact.

The Hearing Panel concluded that REALTOR® A's comments and overall presentation had not been objective as required by Standard of Practice 1-6 and found REALTOR® A in violation of Article 1.

Case #1-30: Multiple Offers Where Listing Broker Agrees to Reduce Listing Broker's Commission (Adopted November, 2002, Revised May, 2019)

REALTOR® A listed Seller S's house. He filed the listing with the MLS and advertised to interest prospective purchasers. Seller S's house was priced reasonably and attracted the attention of several potential purchasers.

Buyer B learned about Seller S's property from REALTOR® A's website, called REALTOR® A for information, and was shown the property by REALTOR® A several times.

Buyer X, looking for property in the area, engaged the services of REALTOR® R as a buyer representative. Seller S's property was one of several REALTOR® R introduced to Buyer X.

After the third showing, Buyer B was ready to make an offer and requested REALTOR® A's assistance in writing a purchase offer. REALTOR® A helped Buyer B prepare an offer and then called Seller S to make an appointment to present the offer that evening.

Later that same afternoon, REALTOR® R called REALTOR® A and told him that he was bringing a purchase offer to REALTOR® A's office for REALTOR® A to present to Seller S. REALTOR® A responded that he would present Buyer X's offer that evening.

That evening, REALTOR® A presented both offers to Seller S for his consideration. Seller S noted that both offers were for the full price and there seemed to be little difference between them. REALTOR® A responded, "They're both good offers and they'll both net you the same amount." Seller S asked about the feasibility of countering one or both of the offers. REALTOR® A agreed that was a possibility, but noted that countering a full price offer could result in the buyer walking away from the table. Besides, he reminded Seller S, production of a full price offer triggered REALTOR® A's entitlement to a commission under the terms of their listing agreement. Seller S acknowledged that obligation but expressed regret that, faced with two full price offers, there was no way to increase the proceeds he would realize from the sale of his property. "I'll tell you what," said Seller S, "if you'll reduce your commission, I'll accept the offer you procured. While you'll get a little less than we'd agreed in the listing contract, you'll still have more than if you had to pay the other buyer's broker."

Seeing the logic of Seller S's proposal, and realizing that he and the seller were free to renegotiate the terms of their agreement, REALTOR® A agreed to reduce his commission by one percent. Seller S, in turn, accepted Buyer B's offer and the transaction closed shortly thereafter.

Upset that his purchase offer hadn't been accepted, Buyer X called Seller S directly and asked, "Just to satisfy my curiosity, why didn't you accept my full price offer to buy your house?" Seller S explained that he had accepted a full price offer produced by REALTOR® A because of REALTOR® A's willingness to reduce his commission by one percent.

Buyer X shared Seller S's comments with REALTOR® R the next day. REALTOR® R, in turn, filed an ethics complaint alleging that REALTOR® A's commission reduction had induced Seller S to accept the offer REALTOR® A had produced, that REALTOR® A's commission reduction made his presentation of the competing offer less than objective and violated Article 1, as interpreted by Standard of Practice 1-6, and that REALTOR® A's failure to inform him of the change in his (REALTOR® A's) commission arrangement violated Article 3, as interpreted by Standard of Practice 3-4.

At the hearing, REALTOR® A defended his actions stating that he had said nothing inaccurate, untruthful, or misleading about either of the offers and that he understood that his fiduciary duties were owed to his client, Seller S, and that he and Seller S were free to renegotiate the terms of their listing agreement at any time. REALTOR® A acknowledged that by reducing his commission with respect to an offer he produced, he might arguably have created a dual or variable rate commission arrangement of the type addressed in Standard of Practice 3-4. He pointed out that if that commission arrangement had been a term of their agreement when the listing agreement was entered into, or at some point other than Seller S's deciding which offer he would accept, then he would have taken appropriate steps to disclose the existence of the modified arrangement. He noted that Standard of Practice 3-4 requires disclosure of variable rate commission arrangements "as soon as practical" and stated that he saw nothing in the Standard that required him and his client to call "time-out" while the existence of their renegotiated agreement was disclosed to other brokers whose buyers had offers on the table—or to all other participants in the MLS. He acknowledged that if the accepted offer had subsequently fallen through and Seller S's property had gone back on the market with a variable rate commission arrangement in effect (where one hadn't existed before), then the existence of the variable rate commission arrangement would have had to have been disclosed. But, he concluded, the accepted offer hadn't fallen through so disclosure was not feasible or required under the circumstances.

The Hearing Panel agreed with REALTOR® A's reasoning and concluded that he had not violated either Article 1 or Article 3, regardless of whether he or the seller had suggested the reduction of REALTOR® A's commission.

Case #1-31: Protecting Client's Interest in Auction Advertised as "Absolute" (Adopted May, 2005. Cross-referenced with Case #12-18. Revised November, 2022.)

Seller T, a widowed elementary school teacher in the Midwest inherited a choice parcel of waterfront property on one of the Hawaiian islands from a distant relative. Having limited financial resources, and her children's' college educations to pay for, she concluded that she would likely never have the means to build on or otherwise enjoy the property. Consequently, she decided to sell it and use the proceeds to pay tuition and fund her retirement.

Seller T corresponded via the Internet with several real estate brokers, including REALTOR® Q whose website prominently featured his real estate auction services. An exchange of email followed. REALTOR® Q proposed an absolute auction as the best way of attracting qualified buyers and ensuring the highest possible price for Seller T. Seller T found the concept had certain appeal but she also had reservations. "How do I know the property will sell for a good price?" she e-mailed REALTOR® Q. REALTOR® Q responded "You have a choice piece of beachfront. They aren't making any more of that, you know. It will easily bring at least a million five hundred thousand dollars." Seller T acquiesced and REALTOR® Q sent her the necessary contracts which Seller T executed and returned.

Several days prior to the scheduled auction, Seller T decided to take her children to Hawaii on vacation. The trip would also afford her the chance to view the auction and see, firsthand, her future financial security being realized.

On the morning of the auction only a handful of people were present. Seller T chatted with them and, in casual conversation, learned that the only two potential bidders felt the property would likely sell for far less than the $1,500,000 REALTOR® Q had assured her it would bring. One potential buyer disclosed he planned to bid no more than $250,000. The other buyer wouldn't disclose an exact limit but said he was expecting a "fire sale."

Seller T panicked. She rushed to REALTOR® Q seeking reassurance that her property would sell for $1,500,000. REALTOR® Q responded, "This is an auction. The high bidder gets the property." Faced with this dire prospect, Seller T insisted that the auction be cancelled. REALTOR® Q reluctantly agreed and advised the sparse audience that the seller had cancelled the auction.

Within days, two ethics complaints were filed against REALTOR® Q. Seller T's complaint alleged that REALTOR® Q had misled her by repeatedly assuring her—essentially guaranteeing her—that her property would sell for at least $1,500,000. By convincing her she would realize that price—and by not clearly explaining that if the auction had proceeded the high bidder—at whatever price—would take the property, Seller T claimed her interests had not been adequately protected, and she had been lied to. This, Seller T concluded, violated Article 1.

The second complaint, from Buyer B, related to REALTOR® Q's pre-auction advertising. REALTOR® Q's ad specifically stated "Absolute Auction on July 1." Nowhere in the ad did it mention that the auction could be cancelled or the property sold beforehand. "I came to bid at an auction," wrote Buyer B, "and there was no auction nor any mention that it could be cancelled." This advertising, Buyer B's complaint concluded, violated Article 12's "true picture" requirement.

Both complaints were forwarded by the Grievance Committee for hearing. At the hearing, REALTOR® Q defended his actions by noting that comparable sales supported his conclusion that Seller T's property was worth $1,500,000. "That price was reasonable and realistic when we entered the auction contract, and it's still reasonable today. I never used the word 'guarantee;' rather I told her the chances of getting a bid of $1,500,000 or more were very good." "But everyone knows," he added, "that anything can happen at an auction." If Seller T was concerned about realizing a minimum net return from the sale, she could have asked that a reserve price be established.

Turning to Buyer B's claim of deceptive advertising, REALTOR® Q argued that his ad had been clear and accurate. There was, he stated, an auction scheduled for July 1 and it was intended to be an absolute auction. "The fact that it was advertised as 'absolute' doesn't mean the property can't be sold beforehand—or that the seller can choose not to sell and cancel the auction. Ads can't discuss every possibility. It might have rained that day. Should my ad have cautioned bidders to bring umbrellas?" he asked rhetorically.

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $1,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the risks of an absolute auction to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid— would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

Turning to the ad, the Hearing Panel agreed with REALTOR® Q's position. There had been an absolute auction scheduled—as REALTOR® Q had advertised—and there was no question but that REALTOR® Q had no choice but to cancel the auction when he had been instructed to do so by his client. Consequently, the panel concluded REALTOR® Q had not violated Article 12.

Case #1-32: Manipulation of Comparables for REALTOR®'s Personal Gain (Adopted May, 2023)

The Respondent, REALTOR® A, was the listing agent for a property owned by the Complainant, Client A, located at 123 King Street (the "property"). Client A and REALTOR® A met for an initial consultation and during that meeting, REALTOR® A provided Client A with real estate comparables in the $500,000 to $525,000 range. REALTOR® A suggested listing the property at $500,000. Client A entered into an exclusive listing agreement with REALTOR® A's brokerage and agreed to list the property at $510,000.

Prior to the listing going live in the MLS, REALTOR® A contacted Client A and offered $525,000 to purchase the property. After speaking with REALTOR® A, Client A found that two similar properties located in his neighborhood had sold earlier that month for $583,000 and $575,000, respectively. Neither of these properties were included in the real estate comparables that REALTOR® A had provided to Client A in their initial consultation. Client A terminated the listing agreement with REALTOR® A's brokerage and met with an alternate REALTOR® who suggested an initial listing price of $570,000. The property sold for $578,000 one week after it was listed.

At the hearing, REALTOR® A stated that he had reviewed the higher-priced comparables prior to his initial consultation with Client A, but because he believed the comparables he originally shared with Client A provided a more realistic expectation of a possible sales price for the property, he decided not to include them in his report.

The Hearing Panel found that the list price encouraged by REALTOR® A was well below market value, as evidenced by the final sales prices of both the property and the comparable properties discovered by Client A. The Hearing Panel found that REALTOR® A's actions showed a conflict of interest which prevented him from protecting and promoting the best interests of Client A, as demonstrated by REALTOR® A's own offer to purchase the property at a price which was also significantly below the market value combined with his decision to not show Client A the higher-priced comparables.

REALTOR® A was found in violation of Article 1.

CASE INTERPRETATIONS RELATED TO ARTICLE 2

Case #2-1: Disclosure of Pertinent Facts (Revised Case #9-4 May, 1988. Transferred to Article 2 November, 1994. Revised November, 2022.)

REALTOR® A, acting as a property manager, offered a vacant house for rent to a prospective tenant, stating to the prospect that the house was in good condition. Shortly after the tenant entered into a lease and moved into the house, he filed a complaint against REALTOR® A with his Association of REALTORS®, charging misrepresentation, since a clogged sewer line and a defective heater had been discovered, contrary to REALTOR® A's statement that the house was in good condition.

At the hearing, it was established that REALTOR® A had stated that the house was in good condition; that the tenant had reported the clogged sewer line and defective heater to REALTOR® A on the day after he moved into the house; that REALTOR® A responded immediately by engaging a plumber and a repairman for the heater; that REALTOR® A had no prior knowledge of these defects; that he had acted promptly and responsibly to correct the defects, and that he had made an honest and sincere effort to render satisfactory service. It was the Hearing Panel's decision that REALTOR® A was, therefore, not in violation of Article 2.

Case #2-2: Responsibility for Sales Associate's Error (Revised Case #9-5 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a REALTOR® principal, was asked to list a neglected house that obviously needed a wide range of repairs. He strongly advised the owner that it would be to his advantage to put the house in good repair before offering it for sale, but the owner wanted it sold at once on an "as is" basis. REALTOR® A wrote a novel advertisement offering a "clunker" in poor condition as a challenge to an ambitious do-it-yourself hobbyist.

A few days later, Sales Associate B, who was not a Board member, from REALTOR® A's office showed the house to a retired couple who liked the location and general features, and who had been attracted by the ad because the husband was looking forward to applying his "fix-up" hobby to improving a home. The sale was made. Shortly thereafter, REALTOR® A was charged by the buyer with having misrepresented the condition of the property.

REALTOR® A accompanied Sales Associate B to the hearing, armed with a copy of his candid advertisement. The hearing established that the buyer fully understood that the house was represented to be generally in poor condition, but that while inspecting the house with a view to needed repairs, Sales Associate B had commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and his belief that the statement was correct. However, after the sale was made, the buyer ripped out a sill to replace it and found it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thought was well grounded.

REALTOR® A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B's failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely. It was the Hearing Panel's view that while REALTOR® A's actions were commendable, and would be taken into account by the Hearing Panel, REALTOR® A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR® A was in violation of Article 2.

Case #2-3: Obligation to Disclose Defects

(Revised Case #9-9 May, 1988. Transferred to Article 2 November, 1994.)

Seller A came to REALTOR® B's office explaining that his company was transferring him to another city and he wished to sell his home. In executing the listing contract, Seller A specified that the house had hardwood floors throughout and that the selling price would include the shutters and draperies that had been custom made for the house. Seller A said that he would like to continue to occupy the house for 90 days while his wife looked for another home at his new location, and agreed that REALTOR® B could show the house during this time without making a special appointment for each visit. Accordingly, REALTOR® B advertised the house, showed it to a number of prospective buyers, and obtained a purchase contract from Buyer C. Settlement was completed and at the expiration of the 90-day period from the date of listing, Seller A moved out and Buyer C moved in.

On the day that Buyer C moved in, seeing the house for the first time in its unfurnished condition, he quickly observed that hardwood flooring existed only on the outer rim of the floor in each room that had been visible beyond the edges of rugs when he inspected the house, and that the areas that had been previously covered by rugs in each room were of subflooring material. He complained that REALTOR® B, the listing broker, had misrepresented the house in his advertisements and in the description included in his listing form which had specified "hardwood floors throughout." Buyer C complained to REALTOR® B, who immediately contacted Seller A. REALTOR® B pointed out that the house had been fully furnished when it was listed and Seller A had said that the house had hardwood floors throughout. Seller A acknowledged that he had so described the floors, but said the error was inadvertent since he had lived in the house for ten years since it had been custom built for him. He explained that in discussing the plans and specifications with the contractor who had built the house, the contractor had pointed out various methods of reducing construction costs, including limiting the use of hardwood flooring to the outer rim of each room's floor. Since Seller A had planned to use rugs in each room, he had agreed, and after ten years of living in the house with the subflooring covered by rugs, he had "simply forgotten about it."

REALTOR® B explained, however, that Seller A's description, which he had accepted, had resulted in misrepresentation to the buyer. "But it's a small point," said Seller A. "He'll probably use rugs too, so it really doesn't make any difference." After further pressure from REALTOR® B for some kind of adjustment for Buyer C, Seller A concluded, "It was an honest mistake. It's not important. I'm not going to do anything about it. If Buyer C thinks this is a serious matter, let him sue me."

REALTOR® B explained Seller A's attitude to Buyer C, saying that he regretted it very much, but under the circumstances could do nothing more about it. It was at this point that Buyer C filed a complaint with REALTOR® B's Association.

At the hearing before a Hearing Panel of the Professional Standards Committee of REALTOR® B's Association, during which all of these facts were brought out, the panel found that REALTOR® B had acted in good faith in accepting Seller A's description of the property. While Article 2 prohibits concealment of pertinent facts, exaggeration, and misrepresentation, REALTOR® B had faithfully represented to Buyer C information given to him by Seller A. There were no obvious reasons to suspect that hardwood floors were not present throughout as Seller A had advised. REALTOR® B was found not in violation of Article 2.

Case #2-4: Obligation to Ascertain Pertinent Facts

(Revised Case #9-10 May, 1988. Transferred to Article 2 November, 1994.)

Shortly after REALTOR® A, the listing broker, closed the sale of a home to Buyer B, a complaint was received by the Association charging REALTOR® A with an alleged violation of Article 2 in that he had failed to disclose a substantial fact concerning the property. The charge indicated that the house was not connected to the city sanitary sewage system, but rather had a septic tank.

In a statement to the Association's Grievance Committee, Buyer B stated that the subject was not discussed during his various conversations with REALTOR® A about the house. However, he pointed out that his own independent inquiries had revealed that the street on which the house was located was "sewered" and he naturally assumed the house was connected. He had since determined that every other house on the street for several blocks in both directions was connected. He stated that REALTOR® A, in not having disclosed this exceptional situation, had failed to disclose a pertinent fact.

REALTOR® A's defense in a hearing before a Hearing Panel of the Professional Standards Committee was:

(1) that he did not know this particular house was not connected with the sewer;

(2) that in advertising the house, he had not represented it as being connected;

(3) that at no time, as Buyer B conceded, had he orally stated that the house was connected;

(4) that it was common knowledge that most, if not all, of the houses in the area were connected to the sewer; and

(5) that the seller, in response to REALTOR® A's questions at the time the listing was entered into, had stated that the house was connected to the sewer.

The panel determined that the absence of a sewer connection in an area where other houses were connected was a substantial and pertinent fact in the transaction; but that the fact that the house was not connected to the sewer was not possible to determine in the course of a visual inspection and, further, that REALTOR® A had made appropriate inquiries of the seller and was entitled to rely on the representations of the seller The panel concluded that REALTOR® A was not in violation of Article 2.

Case #2-5: Ascertainment and Disclosure of Pertinent Facts (Revised Case #9-11 May, 1988. Transferred to Article 2 November, 1994.)

Mrs. A, a retired college professor, came to the office of REALTOR® B, a cooperating broker, in search of a large house in which she could occupy a small apartment, using the remainder of the building to operate a residential club for graduate students. What she had in mind was a deluxe "rooming house" in which the tenants would have use of a parlor, dining room, kitchen, and laundry. She felt confident, from previous experience in the community, that she could obtain from 10 to 16 "roomers", and indicated that she would be guided in her charges to the tenants by the amount of mortgage payments she would have to make.

Most of the large houses on the market were inadequate. Finally, REALTOR® B located a massive old mansion listed with REALTOR® C that appealed to Buyer A. After repeated visits to the house and after discussing financing with a local lending institution, Buyer A said she was interested in the house if it could accommodate as many as 11 tenants. REALTOR® B accompanied her for another inspection to check on this point.

By planning double occupancy of the large bedrooms she found she could accommodate eight roomers. In addition, there were three small rooms upstairs that had been used for storage which REALTOR® B suggested might make acceptable single rooms. Buyer A agreed, and the sale was made.

Two months later, the buyer filed a complaint with the local Board, charging REALTOR® B with failing to disclose pertinent facts. The complaint alleged that REALTOR® B knew the buyer was taking on a substantial obligation with the expectation of housing 11 persons in the structure; that REALTOR® B had suggested that three rooms might make acceptable single rooms; and that she had been subsequently advised by the building department that these rooms could not be used as dwelling rooms since the windows were too small to meet code requirements. She had been advised that it would cost $1,480 to replace the windows. She charged REALTOR® B with negligence in not advising her of this deficiency. After reviewing the complaint, the Grievance Committee referred it for hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® B acknowledged the facts set out in Buyer A's complaint, but advised that the complaint did not state all of the relevant facts. With respect to the house in question, as with many other houses shown to Buyer A, he had made a special check at city hall as to zoning regulations to be sure that the kind of occupancy intended by the buyer would be lawful; that the buyer's specifications were unusual and that in attempting to meet them, he had devoted an unusual amount of time and effort to help her realize her objective; and that he had acted in good faith and had not deliberately failed to disclose any pertinent fact but had, in fact, urged the buyer to consult with an engineer and to check with the zoning authorities prior to making an offer to ensure that the property could be utilized as a residential club.

The Hearing Panel found that REALTOR® B had satisfied his duty to the buyer by recommending that the advice of experts be sought out and considered by the buyer prior to making an offer to purchase.

REALTOR® B was found not in violation of Article 2.

Case #2-6: Misrepresentation (Reaffirmed Case #9-12 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a cooperating broker, had shown four houses to Buyer B, and Buyer B's wife had asked to see one of them a second time. There was a third inspection, and a fourth. They seemed at the point of decision but said they would like to "sleep on it." When there was no word the next day, REALTOR® A called. Buyer B said he was a bit hesitant on the price; that some transfers of executives in his company had been rumored; that this could affect him within the year; that he hesitated to buy at a price that might mean taking a loss if he should be transferred within a year.

REALTOR® A tried to reassure the prospect by telephone. Then he dictated a letter stating that the house was an exceptional bargain at the asking price and "our office guarantees to get your money out of it for you any time in the next year if you should need to sell." Buyer B came in and signed the contract.

Six months later, Buyer B came to REALTOR® A as a seller. He was being transferred. He would need to get his equity out of the house to be able to afford a purchase in the new community. REALTOR® A listed the house at the price Buyer B had paid for it. After a month there had been no offers. Buyer B reminded REALTOR® A of his written assurance that his office had guaranteed he would get his money out of the house within the year.

REALTOR® A explained that the market had become much less active and that Buyer B might have to reduce his price by $10,000 to $15,000 to attract a buyer. Whereupon, Buyer B filed a complaint with the Board of REALTORS® charging REALTOR® A with misrepresentation, exaggeration, and failure to make good a commitment. After examination of the complaint, the Grievance Committee referred it to the Professional Standards Committee for a hearing.

In response to questioning by the Hearing Panel, REALTOR® A admitted that he had written the letter to Buyer B in good faith and, at the time the letter was written, he had been certain that his office could obtain a price for the property that would ensure Buyer B was "getting his money out of the house." However, REALTOR® A explained that although he had held such an opinion in good faith, the market had softened and now the circumstances were different. The Hearing Panel reminded REALTOR® A that the pertinent fact being considered was not his opinion at the time of the previous sale as compared to his opinion now, but rather his written "guarantee" to Buyer B and his current failure to make good his written commitment. It was the conclusion of the Hearing Panel that REALTOR® A had engaged in misrepresentation and was in violation of Article 2.

Case #2-7: Obligation to Determine Pertinent Facts (Revised Case #9-13 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A, a home builder, showed one of his newly constructed houses to Buyer B. In discussion, the buyer observed that some kind of construction was beginning nearby. He asked REALTOR® A what it was. "I really don't know," said REALTOR® A, "but I believe it's the attractive new shopping center that has been planned for this area." Following the purchase, Buyer B learned that the new construction was to be a bottling plant and that the adjacent area was zoned industrial.

Charging that the proximity of the bottling plant would have caused him to reject purchase of the home, Buyer B filed a complaint with the Association of REALTORS® charging REALTOR® A with unethical conduct for failing to disclose a pertinent fact. The Grievance Committee referred the complaint for a hearing before a Hearing Panel of the Professional Standards Committee.

During the hearing, REALTOR® A's defense was that he had given an honest answer to Buyer B's question. At the time he had no positive knowledge about the new construction. He knew that other developers were planning an extensive shopping center in the general area, and had simply ventured a guess. He pointed out, as indicated in Buyer B's testimony, that he had prefaced his response by saying he didn't know the answer to this question.

The Hearing Panel concluded that Buyer B's question had related to a pertinent fact; that REALTOR® A's competence required that REALTOR® A know the answer or, if he didn't know the answer, he should not have ventured a guess, but should have made a commitment to get the answer. The Hearing Panel also noted that although REALTOR® A had prefaced his response with "I don't know," he had nonetheless proceeded to respond and Buyer B was justified in relying on his response. REALTOR® A was found to have violated Article 2.

Case #2-8: Misrepresentation (Reaffirmed Case #9-14 May, 1988. Transferred to Article 2 November, 1994.)

REALTOR® A listed a motel for sale and prepared a sales prospectus setting out figures reporting the operating experience of the owner in the preceding year. The prospectus contained small type at the bottom of the page stating that the facts contained therein, while not guaranteed as to accuracy, were "accurate to the best of our knowledge and belief," and carried the name of REALTOR® A as the broker.

Buyer B received the prospectus, inspected the property, discussed the operating figures in the prospectus and other features with REALTOR® A, and signed a contract.

Six months after taking possession, Buyer B ran across some old records that showed discrepancies when compared with the figures in REALTOR® A's prospectus. Buyer B had not had as profitable an operating experience as had been indicated for the previous owner in the prospectus, and the difference could be substantially accounted for by these figures. He filed a charge of misrepresentation against REALTOR® A with REALTOR® A's Association.

At the hearing, REALTOR® A took responsibility for the prospectus, acknowledging that he had worked with the former owner in its preparation. The former owner had built the motel and operated it for five years. REALTOR® A explained that he had advised him that $10,000 in annual advertising expenses during these years could reasonably be considered promotional expenses in establishing the business, and need not be shown as annually recurring items. Maid service, he also advised, need not be an expense item for a subsequent owner if the owner and his family did the work themselves. REALTOR® A cited his disclaimer of a guarantee of accuracy. Buyer B testified that he had found maid service a necessity to maintain the motel, and it was apparent that the advertising was essential to successful operation. He protested that the margin of net income alleged in the prospectus could not be attained as he had been led to believe by REALTOR® A.

The Hearing Panel concluded that REALTOR® A had engaged in misrepresentation in omitting from the prospectus information which he reasonably should have known to be relevant and significant and that the disclaimer did not, in any respect, avoid his obligation of full disclosure.

REALTOR® A was found in violation of Article 2.

Case #2-9: REALTOR®'s Responsibility for REALTOR ASSOCIATE®'s Statement (Reaffirmed Case #9-15 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2022)

Case #2-10: Use of State Revenue Stamps to Mislead

(Reaffirmed Case #9-16 May, 1988. Transferred to Article 2 November, 1994. Revised November, 2001 and November, 2022.)

REALTOR® A, the listing broker, had shown a house to Buyer B on several occasions. It was an old house in a desirable location in which Buyer B had become interested for extensive modernization. It was listed at $420,000. Buyer B had offered $375,000, but the owner had held firm to his asking price. While negotiations were at this point, REALTOR® A received a call from the owner saying that because of a sudden death in the family a number of family plans were being rapidly changed, and if a signed offer was presented within 24 hours, the price of $375,000 would be accepted. REALTOR® A called on Buyer B, obtained a written offer, and closed the transaction.

Buyer B then continued his discussion with REALTOR® A concerning financing for the modernization of the house that he contemplated. In this connection, REALTOR® A advised him that state revenue stamps in the amount of $5.00 per thousand of the price paid for the house would have to be affixed to the deed when it was filed, and suggested that Buyer B spend an extra $225 for stamps to give the appearance of a $420,000 purchase price for the house. This, he pointed out, would be to his advantage in obtaining a liberal mortgage, should it be checked by the financing institution when Buyer B applied for a mortgage loan to finance his modernization program.

An official of a local mortgage company learned from Buyer B of this advice given by REALTOR® A, and made a formal complaint to the Association of REALTORS® that REALTOR® A had violated Article 2 of the Code by making this suggestion. He pointed out that mortgage finance institutions in the locality generally regarded the state revenue stamps as an indication of selling price.

At the hearing, REALTOR® A's defense was that he had not been a party to the naming of any false consideration in a document; that the deed in this case stated that the consideration was "ten dollars and other consideration"— a nominal consideration expressly permitted by the Code of Ethics; that the state revenue stamps are not required as a means of indicating prices paid for property, but as a means of deriving state revenue; that while a buyer may not lawfully place less in such revenue stamps on a deed than $5.00 per thousand in price paid, there was nothing illegal or unethical in placing a greater amount in stamps on the deed than the minimum required.

It was the finding of the Hearing Panel that the circumstances under which REALTOR® A gave his advice to Buyer B respecting state revenue stamps made his action tantamount to urging a false consideration of a document, since it obviously showed intent to mislead and deceive a financing institution which, in keeping with general practice, might check the deed and the stamps affixed to it as a factor in appraising the property for mortgage loan purposes. The panel's decision pointed out that Buyer B's comments had shown he so interpreted the intent of REALTOR® A's advice. It stated that while use of an excessive amount of state revenue stamps is, in itself, not necessarily unethical, the circumstances and intent can make such action unethical.

REALTOR® A was found in violation of Article 2 of the Code of Ethics.

Case #2-11: False Consideration in a Deed

(Revised Case #9-17 May, 1988. Transferred to Article 2 November, 1994. Revised May, 2017.)

Commissioner B, a member of a state conservation commission, filed a complaint with an association of REALTORS® charging that REALTOR® A had been a party to the naming of a false consideration in a deed.

In his response, REALTOR® A denied the charge and protested that all of his actions had been clearly necessary in his client's interest and justifiable in view of the unusual circumstances.

At the hearing, Commissioner B, the complainant, produced a copy of a deed to 300 acres of undeveloped land with the consideration stated to be $10,000 an acre; an affidavit from Seller C, who had deeded the land to the XYZ Development Company, affirming that the price actually paid for the land by the company was $6,000 an acre; and a letter from the president of the XYZ Development Company stating that the deed was prepared in consultation with, and upon advice of, REALTOR® A, upon whom the company depended in its land acquisition and home selling activities.

REALTOR® A explained that he had assisted XYZ Development Company over a period of several years in working out a long-range building program, and that in keeping with this plan the company would need 300 acres of undeveloped land in that area before the end of the year. At the time he began negotiations, a news story emanating from the state conservation commission announced that it would acquire extensive tracts of undeveloped land. The story had indicated that this acquisition would take place in five counties, including the county where the property under discussion was located. The story had also indicated that the commission would be limited in its acquisitions to land that would be purchased for not more than $8,000 an acre.

REALTOR® A had advised his clients that suitable land for their proposed development could probably be purchased for $5,000 an acre. He recommended, however, that he be authorized to offer $6,000 per acre. This authority was given and REALTOR® A negotiated purchase from Seller C of the 300 acre tract on behalf of the Development Company for $6,000 an acre.

REALTOR® A expressed concern that the state conservation commission might undertake to acquire the property from the company, since the price at which it was bought was below the commission per acre limit. An officer suggested asking Seller C to deed the property for "ONE DOLLAR AND OTHER CONSIDERATIONS" and then placing revenue stamps indicative of a $10,000 per acre price on the deed.

REALTOR® A pointed out that it was unlikely that a $10,000 per acre value could be supported by revenue stamps alone. He suggested that Seller C be asked to agree to a deed that would state the consideration to have been at a rate of $10,000 per acre.

Commissioner B testified that he had reviewed recorded deeds in recent sales, had visited the property in question, and had called on the sellers because of the high price at which it apparently had been sold. He had commented on the very favorable price to Seller C, who had inadvertently let it slip that the price shown on the deed was not the price paid. He later confirmed this in an affidavit that was presented at the hearing. The Hearing Panel found REALTOR® A in violation of Article 2 of the Code of Ethics by becoming a party to the naming of a false consideration.

Case #2-12: Implied Membership in Institute, Society, or Council of National Association

(Revised Case #9-19 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

Case #2-13: REALTOR® Buying and Selling to One Another are Still Considered REALTORS®

(Revised Case #9-23 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-20. Revised May, 2017 and November, 2022.)

REALTOR® A owned a home which he listed through his own brokerage firm. The property listing was filed with the MLS of the Association. REALTOR® B called REALTOR® A and told him of his interest in purchasing the home for himself. REALTOR® A suggested a meeting to discuss the matter. The two agreed upon terms and conditions and the property was sold by REALTOR® A to REALTOR® B.

A few months later during hard rains, leakage of the roof occurred with resultant water damage to the interior ceilings and side walls. REALTOR® B had a roofing contractor inspect the roof. The roofing contractor advised REALTOR® B that the roof was defective and advised that only a new roof would prevent future water damage.

REALTOR® B then contacted REALTOR® A and requested that he pay for the new roof. REALTOR® A refused, stating that REALTOR® B had a full opportunity to look at it and inspect it. REALTOR® B then charged REALTOR® A with violation of Articles 1 and 2 of the Code of Ethics by not having disclosed that the roof had defects known to REALTOR® A prior to the time the purchase agreement was executed.

At the subsequent hearing, REALTOR® B outlined his complaint and told the Hearing Panel that at no time during the inspection of the property, or during the negotiations which followed, did REALTOR® A disclose any defect in the roof. REALTOR® B acknowledged that he had walked around the property and had looked at the roof. He had commented to REALTOR® A that the roof looked reasonably good, and REALTOR® A had made no comment. The roofing contractor, REALTOR® B had employed after the leak occurred, told him that there was a basic defect in the way the shingles were laid in the cap of the roof and in the way the metal flashing on the roof had been installed. It was the roofing contractor's opinion that the home's former occupant could not have been unaware of the defective roof or the leakage that would occur during hard rains.

REALTOR® A told the panel that he was participating only to prove that he was not subject to the Code of Ethics while acting as a principal as compared with his acts as an agent on behalf of others. He pointed out that he owned the property and was a principal, and that REALTOR® B had purchased the property for himself as a principal. The panel concluded that the facts showed clearly that REALTOR® A, the seller, did have knowledge that the roof was defective, and had not disclosed it to REALTOR® B, the buyer. Even though a REALTOR® is the owner of a property, when he undertakes to sell that property, he accepts the same obligation to properly represent its condition to members of the public, including REALTORS® who are purchasers in their own name, as he would have if he were acting as the agent of a seller.

The panel concluded that REALTOR® A was in violation of Articles 1 and 2 of the Code.

Case #2-14: Time at Which Modification to Cooperative Compensation is Communicated is a Determining Factor

(Revised Case #9-26 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #3-7. Revised May, 2017.)

REALTOR® A listed Seller X's home and entered the listing into the MLS. The relevant MLS data field indicated the compensation REALTOR® A was offering to the other Participants if they were successful in finding a buyer for Seller X's home.

During the next few weeks, REALTOR® A authorized several Participants of the MLS, including REALTOR® C, to show Seller X's home to potential buyers. Although several showings were made, no offers to purchase were forthcoming. REALTOR® A and Seller X, in discussing possible means of making the property more salable, agreed to reduce the listed price. REALTOR® A also agreed to lower his commission. REALTOR® A changed his compensation offer in the field in the MLS and then called the MLS Participants who had shown Seller X's property to advise them that he was modifying his offer of compensation to cooperating brokers. Upon receiving the call, REALTOR® C responded that he was working with Prospect Z who appeared to be very interested in purchasing the property and who would probably make an offer to purchase in the next day or two. REALTOR® C indicated that he would expect to receive the compensation that had been published originally in the MLS and not the reduced amount now being offered to him, since he had already shown the property to Prospect Z and expected an offer to purchase would be made shortly. REALTOR® A responded that since Prospect Z had not signed an offer to purchase and no offer had been submitted the modified offer of compensation would be applicable.

The following day, REALTOR® C wrote an offer to purchase for Prospect Z. The offer was submitted to the Seller by REALTOR® A and was accepted. At the closing, commissions were dispersed reflecting the modified offer communicated to REALTOR® C by phone. REALTOR® C refused to accept the check indicating that he felt REALTOR® A's actions were in violation of the Code of Ethics. REALTOR® C filed a complaint with the Association's Grievance Committee alleging violation of Articles 2 and 3 on the part of REALTOR® A citing Standard of Practice 3-2 in support of the charge.

During the hearing, REALTOR® C stated that REALTOR® A's modification of the compensation constituted a misrepresentation through concealment of pertinent facts since he had not provided REALTOR® C with specific written notification of the modification prior to the time REALTOR® C began his efforts to interest the purchaser in the listed property. REALTOR® A defended his actions by indicating that timely notice of the modification of compensation offered had been provided to REALTOR® C by telephone prior to REALTOR® C submitting a signed offer to purchase. REALTOR® A also indicated that his modified offer of compensation had been noticed to all Participants, including REALTOR® C, through the MLS in accordance with Standard of Practice 3-2 prior to the time that REALTOR® C had submitted the signed offer to purchase. REALTOR® A also commented that had REALTOR® C submitted the signed offer to purchase prior to REALTOR® A communicating the modified offer, then REALTOR® A would have willingly paid the amount originally offered.

Based on the evidence presented to it, the Hearing Panel concluded that REALTOR® A had acted in accordance with the obligation expressed in Standard of Practice 3-2 based on changing the offer of cooperative compensation in the MLS alone, even without the courtesy phone calls, and there had been no concealment of a pertinent fact relating to the transaction, and consequently was not in violation of Articles 2 or 3.

Case #2-15: Refusal to Divulge Source of Fraudulent Information

(Originally Case #3-1. Revised and transferred to Article 9 as Case #9-27 May, 1988. Transferred to Article 2 November, 1994. Revised May, 2017.)

An official of the Federal Housing Administration (FHA) called on REALTOR® A to enlist his cooperation in solving a problem. As the official explained, FHA had reason to believe that there had been a number of "dual contract" transactions in the area involving FHA mortgage insurance. In a typical instance, a prospective buyer was induced by a broker to sign an offer to purchase a house at a figure several tens of thousands of dollars higher than the listed price of the house, so that the signed offer might be used as an evidence of value in obtaining a mortgage loan higher than would be available if the true selling price of the property was stated in the offer. In this procedure, the broker, after having thus fraudulently arranged for a mortgage loan, executed another contract, stating the true price offered, for presentation to the seller of the property.

The FHA official further explained that such conduct involved misrepresentation and law violations, and distorted FHA's market data. FHA lacked documentation, but believed that this type of procedure had been used by some brokers, builders, and to some extent had been condoned by persons approving mortgage loan applications.

He asked for REALTOR® A's assistance in documenting specific instances. REALTOR® A replied that persons in the real estate business had "common knowledge" that such practices were in use; that through business activities he knew of specific persons who had practiced it and had in his files legal evidence of fraudulent offers that were used to obtain mortgage loans in two instances. However, he took the position that much as he deplored such unethical conduct, he had no inclination to play the role of informer and did not believe he should be asked to. He refused to divulge information that he acknowledged he had in his possession.

It came to the attention of the Grievance Committee of REALTOR® A's Association that he had refused to cooperate with the FHA in bringing instances of alleged fraud and unethical conduct to light. The function of the Grievance Committee includes review of undocumented or hearsay reports of unethical conduct, and if definite evidence were found, making the evidence the subject of a complaint before the Association's Professional Standards Committee.

Fulfilling its duty, the Grievance Committee called in REALTOR® A and requested that he divulge the information in his possession to the Committee. REALTOR® A refused, and upon his refusal and statement of his position, the Grievance Committee referred the matter to the Professional Standards Committee of the Association for hearing charging REALTOR® A with having violated Article 2.

After hearing REALTOR® A restate his position, the Hearing Panel pointed out that Article 2 obligates a REALTOR® to "avoid misrepresentation or concealment of pertinent facts relating to a property or a transaction;" that his reluctance to avoid the role of informer was understandable, but that he could have discharged his obligation by divulging the factual information in his possession to the Association's Grievance Committee.

Because REALTOR® A had refused and continued in his refusal to divulge information to the Grievance Committee, a Hearing Panel of the Professional Standards Committee found him in violation of Article 2.

Case #2-16: Falsification of Credit Information (Adopted as Case #9-29 May, 1988. Transferred to Article 2 November, 1994. Revised May, 2017.)

REALTOR® A, a property manager had an agreement to manage Owner O's 24 unit apartment building. During the course of their negotiations, Owner O had repeatedly emphasized that Realtor A was expected to use great care in screening the financial backgrounds of potential tenants.

Several months later, REALTOR® A received an application for a lease from prospective Tenant T. Following his usual procedure, REALTOR® A obtained a credit report that indicated that Tenant T had a generally satisfactory credit history but included several derogatory marks indicating that Tenant T was months in arrears on various store credit accounts. REALTOR® A, anxious to rent the vacant apartment but recognizing that his management agreement with Owner O precluded rentals to individuals with questionable credit histories, edited his saved copy of the credit report to remove references to the past due accounts. Tenant T made a security deposit equal to one month's rent, signed a one year lease, and moved into the apartment.

Early the following month, REALTOR® A noted that Tenant T had not mailed his rent check. A call to Tenant T's apartment revealed that his phone had been disconnected. REALTOR® A drove to the property, rang Tenant T's bell and, getting no response, let himself into Tenant T's apartment with a master key. It became quickly apparent that extensive damage had been done to the apartment since Tenant T had taken possession. Additional phone calls made it clear that Tenant T had moved out of state leaving no forwarding address and that Tenant T's security deposit would only cover a small part of the damage. Owner O, realizing that he would have to pay for most of the repairs, instructed his attorney to try to locate Tenant T. The attorney, in turn, asked REALTOR® A to provide all materials concerning Tenant T. REALTOR® A instructed his office manager to deliver the file on Tenant T to the attorney's office.

The attorney, in reviewing the documents, noted that the credit report appeared to have been edited. After running Tenant T's credit again online, it became clear that the report in REALTOR® A's file had been altered. The attorney shared this information with his client, Owner O, who filed a complaint against REALTOR® A alleging that Article 2 had been violated.

At the hearing, REALTOR® A admitted that he had altered the credit report but defended his action on the basis that Tenant T's credit history had been generally satisfactory except for the delinquent store credit accounts. Further, REALTOR® A indicated that in his opinion Owner O's insistence that any potential tenant have an unblemished credit history was unwarranted, made REALTOR® A's role in identifying potential tenants needlessly difficult, and could ultimately result in a large number of vacancies, a result not in Owner O's best interest.

The Hearing Panel concluded that REALTOR® A's defense was unfounded and that in altering the credit report he had knowingly misrepresented a pertinent fact in an attempt to circumvent specific instructions from his principal. REALTOR® A was found to have violated Article 2.

Case #2-17: Obligations of REALTORS® in Referral (Adopted as Case #9-30 May, 1988. Transferred to Article 2 November, 1994. Deleted November, 2001.)

Case #2-18: Honest Treatment of All Parties

(Revised Case #9-31 May, 1988. Transferred to Article 2 November, 1994. Cross-reference Case #1-2. Revised May, 2017 and November, 2022.)

As the exclusive agent of Client A, REALTOR® B offered Client A's house for sale, advertising it as being located near a public transportation stop. Prospect C, who explained that his daily schedule made it necessary for him to have a house near the public transportation stop, was shown Client A's property, liked it, and made an offer. Two days later REALTOR® B read a notice that the public transportation running near Client A's house was being discontinued. He informed Prospect C of this and Prospect C responded that he was no longer interested in Client C's house since the availability of public transportation was essential to him. REALTOR® B informed Client A and recommended that Prospect C's earnest money deposit be returned.

Client A reluctantly complied with REALTOR® B's recommendation, but then complained to the Association of REALTORS® that REALTOR® B had not faithfully protected and promoted his interests; that after Prospect C had expressed his willingness to buy, REALTOR® B should not have made a disclosure that killed the sale since the point actually was not of major importance. The new transportation route, he showed, would put a stop within six blocks of the property.

In a hearing before a Hearing Panel of the Association's Professional Standards Committee, REALTOR® B explained that in advertising Client A's property, the fact that a transportation stop was less than a block from the property had been prominently featured. He also made the point that Prospect C, in consulting with him, had emphasized that Prospect C's physical disability necessitated a home near a transportation stop. Thus, in his judgment the change in routing materially changed the characteristics of the property in the eyes of the prospective buyer, and he felt under his obligation to give honest treatment to all parties in the transaction, that he should inform Prospect C, and that in so doing he was not violating his obligation to his client.

The Hearing Panel concluded that REALTOR® B had not violated Article 1, but had acted properly under both the spirit and the letter of the Code of Ethics. The panel noted that the decision to refund Prospect C's earnest money deposit was made by the seller, Client A, even though the listing broker, REALTOR® B, had suggested that it was only fair due to the change in circumstances.

Case #2-19: Deceptive Information in MLS Database (Adopted May, 2004. Revised May, 2017.)

REALTOR® R searched the MLS database of current listings on behalf of his client, Dr. Z, who had recently completed his residency and was returning home to take a position on the staff of the community hospital. REALTOR® R's search returned several listings that satisfied Dr. Z's requirements, including a two-story residence listed with REALTOR® B that showed, in the "Remarks" section, "Pay your mortgage with rent from the apartment upstairs."

REALTOR® R sent the listings he'd identified in an an e-mail to Dr. Z. A day later, REALTOR® R received a call from Dr. Z who told him there was something about REALTOR® B's listing that struck him as odd. "That house is in the neighborhood I grew up in," said Dr. Z, "I also remember our neighbors having a problem with the Building Department when they added a kitchen on the second floor so their grandmother could have her own apartment."

REALTOR® R assured Dr. Z that he would make the necessary inquiries and get back to him promptly. His call to the Building Department confirmed Dr. Z's suspicion that the home was zoned single family.

Feeling embarrassed and misled by REALTOR® B's apparent misrepresentation, REALTOR® R filed a complaint with the local association of REALTORS® alleging misrepresentation on the part of REALTOR® B for publishing inaccurate information in the MLS.

At the hearing convened to consider REALTOR® R's complaint, REALTOR® B acknowledged the seller had told him that the conversion had been made to code but without the necessary permits, and the apartment had never been rented. "I assumed the new owners could get a variance from the Building Department," he said.

The Hearing Panel did not agree with REALTOR® B's defense or rationale and concluded that showing a single family home as having income-producing potential from an upstairs apartment which had never been rented was a misrepresentation that violated Article 2.

CASE INTERPRETATIONS RELATED TO ARTICLE 3:

Case #3-1: Rules of MLS May Not Circumvent Code

(Revised Case #22-1 May, 1988. Transferred to Article 3 November, 1994. Revised May, 2017.)

REALTOR® A complained to his Association of REALTORS® that procedures in the Association's Multiple Listing Service permitted REALTORS® participating in the Service to evade their obligations under Article 3 of the Code of Ethics. His specific complaint was that, as exclusive agent of Client B, he had filed the client's property in the Multiple Listing Service. Other REALTORS® participating in the Multiple Listing Service had contacted Client B directly to make appointments to show the property and to transmit offers to purchase it, without his, REALTOR® A's, knowledge or consent. When he objected to this conduct, the officers of the Multiple Listing Service had cited the MLS rule that held that placing property in the Service had the effect of listing the property with the MLS, and authorized the MLS to refer it to other Participants as subagents, who were then free to transmit offers directly to the client. REALTOR® A's complaint emphasized that his objection was primarily to the rule of the Multiple Listing Service.

The complaint was referred to the Directors of the Association of REALTORS® which asked the Chairperson of the Association's Multiple Listing Committee to attend a special Directors' meeting on the subject. At the meeting, it was pointed out that the contested rule of the Multiple Listing Service, which had not been submitted to the Board of Directors for approval, was in conflict with Article 3 of the Code of Ethics, and with the nature and purpose of the MLS itself, since the MLS did not provide brokerage services and could not function as an agent of sellers. The Multiple Listing Service was directed to rescind all procedural rules that permitted the Service or any of its Participants to intrude upon the agency status of any REALTOR® holding an exclusive listing.

Case #3-2: Assumed Consent for Direct Contact

(Reaffirmed Case #22-2 May, 1988. Transferred to Article 3 November, 1994. Transferred to Article 16 as Case #16-18, November, 2001.)

Case #3-3: Arbitrary Refusal to Cooperate

(Revised Case #22-3 May, 1988. Transferred to Article 3 November, 1994. Deleted November, 2001.)

Case #3-4: Cooperation Not Mandatory

(Reaffirmed Case #22-4 May, 1988. Transferred to Article 3 November, 1994. Revised May, 2017.)

Client A called on REALTOR® B to list a small commercial property. In stipulating the price at which he wished to list the property, Client A explained that he was aware that it was a relatively low price, but he wanted a quick sale and, he added, a higher price could benefit very little at that time because of certain tax considerations. He told REALTOR® B that a number of prospective buyers had spoken to him about the property within the past year. He gave their names to REALTOR® B and said he felt sure that among them there would be a ready buyer at the price. He told REALTOR® B that he wanted the property submitted to them first.

The next day, REALTOR® C, who had unsuccessfully solicited the listing and learned that the property was listed exclusively with REALTOR® B, called REALTOR® B to ask that he be accepted as a cooperating broker. REALTOR® B told REALTOR® C that because of unusual circumstances the best service to his client did not require cooperation; that a prospective buyer was at that time seriously considering the property; and that under the circumstances he preferred not to invite cooperation.

REALTOR® C complained to the Association of REALTORS® charging REALTOR® B with a violation of Article 3 by refusing to cooperate. Pursuant to the complaint a hearing was scheduled before a Hearing Panel of the Association's Professional Standards Committee.

During the hearing, REALTOR® B outlined fully the circumstances under which the property had been listed by him, and maintained that the interest of Client A would not be advanced by acceptance of cooperation by REALTOR® C.

The panel concluded that REALTOR® B's reasons for not accepting cooperation in this instance were valid and that his action did not constitute a violation of Article 3.

Case #3-5: Refusal to Extend Cooperation in Sale of New Homes

(Reaffirmed Case #22-5 May, 1988. Transferred to Article 3 November, 1994. Revised November, 2001. Revised May, 2017.)

REALTOR® A, who operated a brokerage business in many areas of the city, was also a home builder. For the homes he built, he maintained a separate sales force and consistently refused to permit other REALTORS® to show his new homes.

This practice came to the attention of an officer of the Association of REALTORS® who made a complaint which was referred to the Professional Standards Committee by the Grievance Committee.

At the hearing, the Hearing Panel asked REALTOR® A to answer charges that his policy violated Article 3 of the Code of Ethics.

REALTOR® A's defense was that Article 3 requires REALTORS® to cooperate with other brokers "except when cooperation is not in the client's best interest." He contended that in selling his own new homes there was no client; that he was not acting in the capacity of a broker, but as owner-seller; and that, under the circumstances, Article 3 did not apply to his marketing the houses he built.

The Hearing Panel concluded REALTOR® A's defense was valid; that he was a principal; that Article 3 permitted him, as the builder-owner, to decide what marketing procedure would be in his best interest; and that although other REALTORS® might disagree with his decision, he was not in violation of Article 3.

Case #3-6: Arbitrary Refusal to Extend Cooperation

(Reaffirmed Case #22-6 May, 1988. Transferred to Article 3 November, 1994. Deleted November, 2001.)

Case #3-7: Time at Which Modification to Offer of Compensation is Communicated is a Determining Factor

(Revised Case #22-7 May, 1988. Transferred to Article 3 November, 1994. Cross-reference Case #2-14. Revised November, 2001. Revised May, 2017, Deleted effective June 5, 2025.)

Case #3-8: REALTOR®'s Obligation to Disclose Dual Commission Arrangements

(Deleted Case #9-25 May, 1988. Revised and reinstated November, 1988 and subsequently revised May, 1989. Reaffirmed April, 1991. Transferred to Article 3 November, 1994. Revised November, 2001. Revised May, 2017.)

REALTORS® A and B were members of the same Association and Participants in the MLS. REALTOR® A, cooperating with REALTOR® B on REALTOR® B's listing, submitted an offer to purchase signed by buyers offering the listed price, and a check for earnest money. The only contingency was a financing contingency, and REALTOR® A shared with REALTOR® B the buyers' loan prequalification letter. The following day, REALTOR® B emailed the offer back to REALTOR® A with "REJECTED" written on it and initialed by the seller, and explained that the seller had accepted another offer secured by one of REALTOR® B's sales associates. REALTOR® A inquired about the seller's reason for rejecting the full price offer with only a mortgage contingency, and what had caused the seller to accept the other offer. REALTOR® B responded that he did not know, but with equal offers, he supposed the seller would favor the offer secured by the listing broker.

Later, REALTOR® A saw the seller at a dinner party. The seller thanked him for his efforts in connection with the recent sale of the seller's home. The seller hoped REALTOR® A understood there was nothing personal in his decision, adding that the money he saved through his "special agreement" with REALTOR® B had been the deciding factor. When REALTOR® A asked about the "special agreement," the seller explained he had signed a listing agreement for the sale of his property which authorized the submission of the listing to the Multiple Listing Service and specified a certain amount of compensation. However, the seller stated that he had also signed an addendum to the listing agreement specifying that if REALTOR® B sold the listing through his own office, a percentage of the agreed compensation would be discounted to the seller's credit, resulting in a lower commission payable by the seller.

REALTOR® A filed a complaint with the Association of REALTORS® against REALTOR® B, alleging a violation of Article 3. After its review of the complaint, the Grievance Committee requested that an ethics hearing be arranged.

REALTOR® A, in restating his complaint to the Hearing Panel, said that REALTOR® B's failure to disclose the actual terms and conditions of the compensation offered through the MLS resulted in concealment and misrepresentation of pertinent facts to REALTOR® A and to the prospective buyers served by REALTOR® A who had, in good faith, offered to purchase the property at the listed price with only a mortgage contingency. REALTOR® A told the Hearing Panel that if he had known the facts which were not disclosed by REALTOR® B, he could have fully and accurately informed the buyers who could have taken those facts into consideration when making their offer. As it was, said REALTOR® A, the buyers acting in good faith were deceived by facts unknown to them because they were unknown to REALTOR® A. Further, REALTOR® A said that REALTOR® B's failure to fully disclose the true terms and conditions relating to compensation made it impossible to have a responsible relationship with REALTOR® B and make proper value judgments as to accepting the offer of compensation.

REALTOR® B stated that it was his business what he charged and the Association or MLS could not regulate his charges for his services. If he wished to establish a dual commission charge by agreement with his client, that was his right, and there was no need or right of the Association or MLS to interfere.

The Hearing Panel agreed that it was REALTOR® B's right to establish his fees and charges as he saw fit, and that the Association or MLS could not and would not interfere. However, the Hearing Panel noted that his complete freedom to establish charges for his services did not relieve him of his obligation to fully disclose the real terms and conditions of the compensation offered to the other Participants of the Multiple Listing Service, and did not justify his failure to disclose the dual commission arrangement. In the case of a dual commission arrangement, the listing broker must disclose not only the existence of the "special arrangement" but also must disclose, in response to an inquiry from a potential cooperating broker, the differential that would result in the total commission in a cooperative transaction. The Hearing Panel concluded that by submitting a listing to the MLS indicating that he was offering a certain amount of compensation to cooperating brokers while other relevant terms and conditions were not disclosed to the other MLS Participants, he had concealed and misrepresented real facts and was in violation of Article 3 of the Code of Ethics.

Case #3-9: REALTOR®'s Obligation to Disclose True Nature of Listing Agreement (Adopted as Case #9-32 April, 1992. Transferred to Article 3 November, 1994. Revised May, 2017.)

REALTOR® A listed the home of Seller X and entered it in the MLS as an exclusive right to sell listing. REALTOR® A did not disclose that there was a variable rate commission arrangement on this listing, even though the listing contract provided that, should the seller be the procuring cause of sale, the listing broker would receive a commission of $1,000, an amount intended to compensate REALTOR® A for his photography and marketing costs.

REALTOR® B, a cooperating broker, showed the property several times. Eventually, REALTOR® B submitted a signed purchase agreement to REALTOR® A. REALTOR® A returned the purchase agreement the next day, informing REALTOR® B that the seller had rejected the offer. Several weeks later, REALTOR® B learned that the property had been sold, and that the buyer was Seller X's nephew.

Several months later, REALTOR® B met Seller X at a fund-raising event. Seller X thanked her for her efforts, and told her that, under "normal circumstances," he might have seriously considered the offer she had produced. When asked why the circumstances surrounding this transaction were "unusual," Seller X responded telling her of his agreement "with REALTOR® A to pay a $1,000.00 commission if Seller X found the buyer. And when my nephew decided to buy the house, I jumped at the chance to save some money."

When REALTOR® B learned of this arrangement, she filed a complaint with the Association of REALTORS® alleging that REALTOR® A had violated Article 3 of the Code of Ethics. The Professional Standards Administrator of the Association referred the complaint to the Grievance Committee, and, after its review, the Grievance Committee referred the complaint for hearing.

At the hearing, REALTOR® B, in stating her complaint to the Hearing Panel, said that REALTOR® A's failure to disclose the actual terms and conditions of his listing with Seller X was a misrepresentation. She explained that, had she been aware of this arrangement, she might have decided not to accept REALTOR® A's offer of cooperation, since it might put potential purchasers she would produce in a possibly unfair position.

REALTOR® A, speaking in his own defense, stated no commission differential would have resulted if the buyer had been procured by either the listing broker or a cooperating broker so whatever other arrangements he had with Seller X were personal and, as listing broker, it was his right to establish the terms and conditions of his relationship with his client.

After careful deliberation, the Hearing Panel concluded that while it was REALTOR® A's right to establish the terms and conditions of the listing contract, the existence of his "special" arrangement with Seller X should have been disclosed as a dual or variable rate commission, since without knowledge of it, cooperating brokers would be unable to make knowledgeable decisions regarding acceptance of the listing broker's offer to cooperate.

The Hearing Panel concluded that REALTOR A had in fact concealed and misrepresented the real facts of the transaction and was in violation of Article 3 of the Code of Ethics as interpreted by Standard of Practice 3-4.

Case #3-10: Disclose Accepted Offers with Unresolved Contingencies (Adopted May, 2004. Revised May, 2017.)

REALTOR® A listed Seller S's house and entered the listing in the MLS. Within a matter of days, REALTOR® X procured a full price offer from Buyer B. The offer specified that Buyer B's offer was contingent on the sale of Buyer B's current home. Seller S, anxious to sell, accepted Buyer B's offer but instructed REALTOR® A to continue marketing the property in hope that an offer that was not contingent on the sale of an existing home would be made.

A week later, REALTOR® Q, another cooperating broker working with an out-of-state transferee on a company-paid visit, contacted REALTOR® A to arrange a showing of Seller S's house for Buyer T. REALTOR® A contacted Seller S to advise him of the showing and then called REALTOR® Q to confirm that he and Buyer T could visit the property that evening. REALTOR® A said nothing about the previously-accepted purchase offer.

REALTOR® Q showed the property to Buyer T that evening and Buyer T signed a purchase offer for the full listed price. REALTOR® Q sent the purchase offer to REALTOR® A.

REALTOR® A informed Seller S about this second offer. At Seller S's instruction, Buyer B was informed of the second offer, and Buyer B waived the contingency in his purchase offer. REALTOR® A then informed REALTOR® Q that Seller S and Buyer B intended to close on their contract and the property was not available for purchase by Buyer T.

REALTOR® Q, believing that REALTOR® A's failure to disclose the existence of the accepted offer between Seller S and Buyer B at the time REALTOR® Q contacted REALTOR® A was in violation of Article 3 of the Code of Ethics, as interpreted by Standard of Practice 3-6, filed an ethics complaint with the Association of REALTORS®.

At the hearing called to consider the complaint, REALTOR® A defended his actions noting that while Buyer B's offer had been accepted by Seller S, it had been contingent on the sale of Buyer B's current home. It was possible that Buyer B, if faced with a second offer, could have elected to withdraw from the contract. REALTOR® A argued that continuing to market the property and not making other brokers aware that the property was under contract promoted his client's best interests by continuing to attract potential buyers.

The Hearing Panel disagreed with REALTOR® A's justification, pointing to the specific wording of Standard of Practice 3-6 which requires disclosure of accepted offers, including those with unresolved contingencies. REALTOR® A was found in violation of Article 3.

Case #3-11: Confidentiality of Cooperating REALTOR®'s Participation (Revised Case #21-5 May, 1988. Transferred to Article 16 November, 1994. Revised and transferred to Article 3 November, 2018.)

When Client A listed his home for sale with REALTOR® B, he explained that he wanted the sale handled without advertising and without attracting any more attention than was absolutely necessary. He said he understood that he would have to have some contacts with prospective buyers and possibly with other REALTORS®, but that he did not want the property filed with the MLS, advertised, or in any way publicly announced as being on the market. He asked REALTOR® B to impress the same restrictions on any other REALTORS® who might become involved in the transaction.

REALTOR® B, having reason to think that REALTOR® C was in touch with prospective buyers to whom the property would appeal, approached REALTOR® C to invite his cooperation, and explained fully the Client's instructions. REALTOR® B required REALTOR® C to sign a confidentiality agreement that specified the terms and conditions of REALTOR® B's offer to cooperate. REALTOR® B discussed the matter with no other REALTOR® and refrained from any kind of advertising of the property. But a few days later, REALTOR® B learned that REALTOR® D was discussing the property with prospective buyers, knew that REALTOR® C was working on it, knew the price at which the property had been listed, and other details about it. Questioning revealed that REALTOR® C had told REALTOR® D that he was working on the sale of the property.

On the basis of the information from REALTOR® D, REALTOR® B charged REALTOR® C with unethical conduct in a complaint to the Association of REALTORS®, specifying that REALTOR® C's breach of the terms of his confidentiality agreement with REALTOR® B violated Article 3.

The complaint was referred to the Association's Professional Standards Committee, a hearing was scheduled, and REALTOR® C was directed to answer the charge of unethical conduct in violation of Article 3.

At the hearing, REALTOR® B detailed the instructions of the client and the fact that REALTOR® C was required to sign a confidentiality agreement as a condition of REALTOR® B inviting his cooperation. REALTOR® D told the Hearing Panel that REALTOR® C had discussed the listing with him. REALTOR® C defended himself against the charge of violating Article 3 by saying that while he had discussed the matter briefly with REALTOR® D, he had not violated the terms of his confidentiality agreement so egregiously as to warrant finding him in violation of the Code.

At the conclusion of the hearing, the panel held that REALTOR® B's complaint was valid; that Standard of Practice 3-1 allowed REALTORS®, acting as exclusive agents or brokers of sellers/landlords, to establish the terms and conditions of offers to cooperate. The panel noted that the terms of the confidentiality agreement between REALTOR® B and REALTOR® C were clear, and that REALTOR® C's discussion of the matter with REALTOR® D violated the terms of the agreement and REALTOR® B's offer to cooperate. The panel therefore found REALTOR® C in violation of Article 3.

Case #3-12: Confidentiality of Cooperating REALTOR®'s Participation (Adopted November, 2018.)

When Client A listed his home for sale with REALTOR® B, he explained that he wanted the sale handled without advertising and without attracting any more attention than was absolutely necessary. He said he understood that he would have to have some contacts with prospective buyers and possibly with other REALTORS®, but that he did not want the property filed with the MLS, advertised, or in any way publicly announced as being on the market. He asked REALTOR® B to impress the same restrictions on any other REALTORS® who might become involved in the transaction.

REALTOR® B, having reason to think that REALTOR® C was in touch with prospective buyers to whom the property would appeal, approached REALTOR® C to invite his cooperation, and explained fully the client's instructions. REALTOR® B discussed the matter with no other REALTOR® and refrained from any kind of advertising of the property. But a few days later, REALTOR® B learned that REALTOR® D was discussing the property with prospective buyers, knew that REALTOR® C was working on it, knew the price at which the property had been listed, and other details about it.

On the basis of this information, REALTOR® B charged REALTOR® C with unethical conduct in a complaint to the Association of REALTORS®, alleging REALTOR® C had violated Article 3 by breaching the terms of the conditions of REALTOR® B's offer to cooperate.

The complaint was referred to the Association's Professional Standards Committee, a hearing was scheduled, and REALTOR® C was directed to answer the charge of unethical conduct in violation of Article 3.

At the hearing, REALTOR® B detailed the instructions of the client as a condition of REALTOR® B inviting his cooperation. REALTOR® C defended himself against the charge of violating Article 3 by saying that he had not discussed the property directly with REALTOR® D; and that his clients and REALTOR® D's clients were close friends. REALTOR® C's clients testified that they didn't know the seller was so secretive about the property, so didn't see the harm in mentioning it to REALTOR® D's clients as they knew the home would be a perfect fit for them. Further testimony from REALTOR® D confirmed that he had learned about the property from his clients, and not from REALTOR® C directly.

At the conclusion of the hearing, the panel agreed with REALTOR® B that Standard of Practice 3-1 allowed REALTORS®, acting as exclusive agents or brokers of sellers/landlords, to establish the terms and conditions of offers to cooperate. The panel also noted that REALTOR® C had not violated the terms and conditions of REALTOR® B's offer to cooperate; rather, it was his clients, who were not subject to confidentiality as a condition of the offer to cooperate, that had spoken to REALTOR® D's clients about the home. The panel, therefore, did not find REALTOR® C in violation of Article 3.

Case #3-13: Timing of Commission Negotiations (Adopted November, 2019, Revised and effective June 5, 2025.)

REALTOR® A signs a listing agreement with Seller B for the sale of her home. The home is priced at $1,000,000.

REALTOR® C sees the listing and knows it would be a perfect fit for her buyers, but unfortunately it's out of their price range. She discusses it with them, and they ask her to submit an offer for $900,000. REALTOR® C explains the risks in submitting an offer so far below asking price, but the buyers are in love with the home and ask her to submit the offer anyway.

REALTOR® C calls REALTOR® A, and REALTOR® A communicates the cooperative brokerage compensation being offered. REALTOR® C submits the offer to REALTOR® A, who discusses it with Seller B. Seller B is concerned about accepting an offer so far below the home's asking price, so REALTOR® A offers to reduce her commission, as articulated in the listing agreement, by 1% if Seller B wants to accept the offer of $900,000 and ensure a quick sale. Seller B agrees to accept the offer and reduce the commission she pays to REALTOR® A by 1%.

REALTOR® A informs REALTOR® C that their offer was accepted, but that REALTOR® A is now being paid 1% less in commission. "Listen," she explains to REALTOR® C, "it seems like both of our clients are happy with the price if it means the sale moves quickly. Would you be willing to split the difference on my reduced commission and I pay you 0.5% less in cooperative compensation than I agreed to in the original compensation agreement?"

REALTOR® C agrees to accept 0.5% less than the commission offered, and a new compensation agreement is signed. After closing, REALTOR® C files an ethics complaint against REALTOR® A, alleging a violation of Article 3, as illustrated by Standard of Practice 3-2.

At the hearing on the matter, REALTOR® C argued that by asking her to accept 0.5% less in cooperative compensation after the offer was submitted, REALTOR® A was unilaterally modifying the compensation with regard to that transaction. The Hearing Panel disagreed and found no violation of Article 3, noting that Standard of Practice 3-3 specifically authorizes listing and cooperating brokers to enter into an agreement to change the compensation for a transaction at any time, and that the Code of Ethics would never interfere with the negotiation of commissions between listing and cooperating brokers. The Panel also noted that REALTOR® C could have said no to the reduced commission, and in that instance REALTOR® A would have been obligated to pay the commission stated in the original compensation agreement.

CASE INTERPRETATIONS RELATED TO ARTICLE 4:

Case #4-1: Disclosure when Buying on Own Account (Reaffirmed Case #13-1 May, 1988. Transferred to Article 4 November, 1994. Revised May, 2017.)

Client A consulted REALTOR® B about the value of a lot zoned for commercial use, saying that he would soon be leaving town and would probably want to sell it. REALTOR® B suggested an independent appraisal, which was arranged, and which resulted in a valuation of $390,000. The property was listed with REALTOR® B at that price. Shortly thereafter, REALTOR® B received an offer of $366,000 which he submitted to Client A, who rejected it. After the passage of four months, during which no further offers were received, Client A asked REALTOR® B if he would be willing to buy the lot himself. REALTOR® B on his own behalf, made an offer of $354,000, which the client accepted. Months later Client A, on a return visit to the city, discovered that REALTOR® B had sold the lot for $375,000 only three weeks after he had purchased it for $354,000.

Client A complained to the Association of REALTOR®S charging that REALTOR® B had taken advantage of him; that he had sought REALTOR® B's professional guidance and had depended on it; that he could not understand REALTOR® B's inability to obtain an offer of more than $366,000 during a period of four months, in view of his obvious ability to obtain one at $375,000 only three weeks after he became the owner of the lot; that possibly REALTOR® B had the $375,000 offer at the time he bought the lot himself at $354,000.

At the hearing, REALTOR® B introduced several e-mails from prospects that had been written while the property was listed with him, all expressing the opinion that the lot was overpriced. The buyer who purchased the lot for $375,000 appeared at the hearing as a witness and affirmed that he never met REALTOR® B or discussed the lot with him prior to the date of REALTOR® B's purchase of the lot from Client A. Questioning by members of the Hearing Panel established that REALTOR® B had made it clear that his offer of $354,000 in response to his client's proposal, was entirely on his own account.

The panel concluded that since REALTOR® B's own purchase was clearly understood by the client to be a purchase on his own account, and since the client's suspicions of duplicity were proven to be unfounded, REALTOR® B had not violated Article 4 of the Code of Ethics.

Case #4-2: Indirect Interest in Buyer (Reaffirmed Case #13-3 May, 1988. Transferred to Article 4 November, 1994. Revised May, 2017.)

REALTOR® A had taken two offers to buy a commercial property listed with him to the owner, Client B. Both offers had been considerably below the listed price, and on REALTOR® A's advice, Client B had rejected both. REALTOR® C submitted a contract to REALTOR® A from a prospective buyer, a bank, offering more than the previous proposals, but still 10 percent less than the listed price. REALTOR® A took the offer to Client B and again advised him not to accept an offer at less than the full listed price. Again, the client acted on REALTOR® A's advice. The bank revised its offer, proposing to pay the listed price. This offer was accepted by Client B, the owner.

About a month after the closing, the Association of REALTORS® received a complaint from a director of the bank that had purchased Client B's property, charging REALTOR® A and REALTOR® C with unethical conduct and duplicity which had resulted in the bank's paying an excessive price for the property. The complaint stated that REALTOR® C was a stockholder in a corporation, one of whose officers was a director of the bank; that REALTOR® C, in a transaction that was handled through REALTOR® A, had evidently used his connection with the bank to induce the bank to buy at a price higher than the market; and that neither of the two REALTOR®S had disclosed to the other officers of the bank the connection that existed between them and one officer of the bank.

At the hearing, REALTOR® A defended his actions by stating that he knew nothing of any business relationship between REALTOR® C, the cooperating broker and the buyer; that he had acted wholly in accordance with the best interests of his client, the seller. REALTOR® C demonstrated that he had negotiated solely with the president of the bank; that the director of the bank who happened to be an officer of a corporation in which he, REALTOR® C, held stock was at no time contacted during the negotiations; that the matter had never been discussed with that individual.

It was the conclusion of the Hearing Panel that the indirect relationship between REALTOR® C and the buyer was not of a nature to require a formal disclosure; that REALTOR® C could not be held to be in violation of Article 4.

Case #4-3: Disclosure of Family Interest (Revised Case #13-4 May, 1988. Transferred to Article 4 November, 1994.)

REALTOR® A listed Client B's home and subsequently advised him to accept an offer from Buyer C at less than the listed price. Client B later filed a complaint against REALTOR® A with the Board stating that REALTOR® A had not disclosed that Buyer C was REALTOR® A's father-in-law; that REALTOR® A's strong urging had convinced Client B, the seller, to accept an offer below the listed price; and that REALTOR® A had acted more in the interests of the buyer than in the best interests of the seller.

At the hearing, REALTOR® A defended his actions stating that Article 4 of the Code requires disclosure when the purchaser is a member of the REALTOR®'s immediate family, and that his father-in-law was not a member of REALTOR® A's immediate family. REALTOR® A also demonstrated that he had presented two other offers to Client B, both lower than Buyer C's offer, and stated that, in his opinion, the price paid by Buyer C had been the fair market price.

REALTOR® A's defense was found by the Hearing Panel to be inadequate. The panel concluded that Article 4 forbids a REALTOR® to "acquire an interest in" property listed with him unless the interest is disclosed to the seller or the seller's agent; that the possibility, even remote, of REALTOR® A's acquiring an interest in the property from his father-in-law by inheritance gave the REALTOR® a potential interest in it; that REALTOR® A's conduct was clearly contrary to the intent of Article 4, since interest in property created through a family relationship can be closer and more tangible than through a corporate relationship which is cited in the Code as an interest requiring disclosure. REALTOR® A was found to have violated Article 4 for failing to disclose to Client B that the buyer was his father-in-law.

Case #4-4: Responsibility for Subordinates (Revised Case #13-6 May, 1988. Transferred to Article 4 November, 1994. Revised November, 2001 and November, 2017.)

REALTOR® B, a sales associate in REALTOR® A's office, exclusively listed a suburban house and subsequently convinced the seller to accept $60,000 less than the listed price. Several weeks after the transfer of title, the seller filed a written complaint with the Association, charging REALTOR® B with a violation of Article 4 in that REALTOR® B had sold the property to his mother without disclosing this relationship to his client, the seller, and that REALTOR® B got the price reduced for his mother's benefit.

The complaint was reviewed by the Grievance Committee which, with the complainant's concurrence, named REALTOR® A as an additional respondent.

At the hearing, REALTOR® B stated that he saw nothing wrong in selling the property to his mother and that the seller would have accepted the contract at the reduced price, even if the buyer had not been REALTOR® B's mother. REALTOR® A stated that REALTOR® B was an independent contractor licensed with him. REALTOR® A acknowledged that he was accountable under the Code for the actions of other REALTORS® and associated with him but shared with the panel information on his firm's orientation program. He noted that he required each licensee joining his firm to complete association-sponsored Code training. In addition, he required everyone in his firm to read *Professionalism in Real Estate Practice*, and produced a form signed by REALTOR® B stating that he had carefully read and understood his personal obligation under the Code of Ethics.

The panel found that REALTOR® B should have made his relationship to the buyer, his mother, unmistakably clear to the seller. He should have disclosed in writing that the buyer was his mother so there would have been no misunderstanding.

The Hearing Panel found REALTOR® B in violation of Article 4.

The Hearing Panel noted that REALTORS® are not presumed to be in violation of the Code of Ethics in cases where REALTORS® associated with them are found in violation. Rather, their culpability, if any, must be determined from the facts and circumstances of the case in question. It was the conclusion of the Hearing Panel that REALTOR® A had made reasonable efforts to ensure that REALTOR® B was familiar with the Code and its obligations, and that it would have been unreasonable to expect REALTOR® A to have known the purchaser was REALTOR® B's mother. Consequently, REALTOR® A was found not to have violated Article 4.

Case #4-5: Fidelity to Client (Revised Case #13-7 May, 1988. Transferred to Article 4 November, 1994. Cross-reference Case #1-4. Revised May, 2017 and November, 2022.)

Client A contacted REALTOR® B to list a vacant lot. Client A said he had heard that similar lots in the vicinity had sold for about $150,000 and thought he should be able to get a similar price. REALTOR® B stressed some minor disadvantages in location and grade of the lot, and said that the market for vacant lots was sluggish. He suggested listing at a price of $97,500 and the client agreed.

In two weeks, REALTOR® B came to Client A with an offer at the listed price of $97,500. The client raised some questions about it, pointing out that the offer had come in just two weeks after the property had been placed on the market which could be an indication that the lot was worth closer to $150,000 than $97,500. REALTOR® B strongly urged him to accept the offer, stating that because of the sluggish market, another offer might not develop for months and that the offer in hand simply vindicated REALTOR® B's own judgment as to pricing the lot. Client A finally agreed and the sale was made to Buyer C.

Two months later, Client A discovered the lot was no longer owned by Buyer C, but had been purchased by Buyer D at $165,000. He investigated and found that Buyer C was a brother-in-law of REALTOR® B, and that Buyer C had acted on behalf of REALTOR® B in buying the property for $97,500.

Client A outlined the facts in a complaint to the Association of REALTORS®, charging REALTOR® B with collusion in betrayal of a client's confidence and interests, and with failing to disclose that he was buying the property on his own behalf.

At a hearing before a panel of the Association's Professional Standards Committee, REALTOR® B's defense was that in his observation of real estate transactions there can be two legitimate prices of property — the price that a seller is willing to take in order to liquidate his investment, and the price that a buyer is willing to pay to acquire a property in which he is particularly interested. His position was that he saw no harm in bringing about a transaction to his own advantage in which the seller received a price that he was willing to take and the buyer paid a price that he was willing to pay.

The Hearing Panel concluded that REALTOR® B had deceitfully used the guise of rendering professional service to a client in acting as a speculator; that he had been unfaithful to the most basic principles of agency and allegiance to his client's interest; and that he had violated Articles 1 and 4 of the Code of Ethics.

Case 4-6: Disclosure of Secured Interest in Listed Property (Adopted May, 1999.)

Buyer X was interested in purchasing a home listed with REALTOR® B but lacked the down payment. REALTOR® B offered to lend Buyer X money for the down payment in return for Buyer X's promissory note secured by a mortgage on the property. The purchase transaction was subsequently completed, though REALTOR® B did not record the promissory note or the mortgage instrument.

Within months Buyer X returned to REALTOR® B to list the property because Buyer X was unexpectedly being transferred to another state. REALTOR® B listed the property, which was subsequently sold to Purchaser P. The title search conducted by Purchaser P's lender did not disclose the existence of the mortgage held by REALTOR® B since it had not been recorded, nor did REALTOR® B disclose the existence of the mortgage to Purchaser P. The proceeds of the sale enabled Buyer X to satisfy the first mortgage on the property, and he and REALTOR® B agreed that he would continue to repay REALTOR® B's loan.

Following the closing, REALTOR® B recorded both the promissory note and the mortgage instrument. When Purchaser P learned of this, he filed an ethics complaint alleging that REALTOR® B had violated Article 4 by selling property in which she had a secured interest without revealing that interest to the purchaser.

The Hearing Panel agreed with Purchaser P and concluded that REALTOR® B's interest in the property should have been disclosed to Purchaser P or Purchaser P's representative in writing.

CASE INTERPRETATIONS RELATED TO ARTICLE 5:

Case #5-1: Contemplated Interest in Property Appraised (Reaffirmed Case #12-2 May, 1988. Transferred to Article 5 November, 1994. Revised May, 2018)

Seller A and Buyer B were negotiating the sale of an apartment building, but couldn't agree on the price. Finally, they agreed that each would engage an appraiser and they would accept the average of the two appraisals as a fair price. Seller A hired REALTOR® C, a licensed appraiser, and Buyer B hired REALTOR® D. Both REALTORS® were informed of the agreement of the principals. The two appraisal reports were submitted. The principals averaged the two valuations and made the transaction at the price determined.

Six months later, it came to the attention of Seller A that REALTOR® C was managing the building that he had appraised. Upon making further inquiries he learned that REALTOR® C for several years had managed five other buildings owned by Buyer B, and that he had been Buyer B's property manager at the time he accepted the appraisal assignment from Seller A.

At this point Seller A engaged REALTOR® E to make an appraisal of the building he had sold to Buyer B. REALTOR® E's valuation was approximately 30% higher than that arrived at six months earlier by REALTOR® C.

These facts were set out in a complaint against REALTOR® C made by Seller A to the local Board of REALTORS®. The complaint charged that since REALTOR® C was an agent of Buyer B; since he managed all of Buyer B's properties; since he had become manager of the property he had appraised for Seller A in connection with a sale to Buyer B; and since he had not disclosed his relationship to Buyer B, he had acted unethically, and in the interest of his major client had placed an excessively low valuation on the property he had appraised for Seller A.

At the hearing, Seller A also brought in a witness who stated that he had heard Buyer B say that he had made a good buy in purchasing Seller A's building because Seller A's appraiser was his (Buyer B's) property manager.

Buyer B, appearing as a witness for REALTOR® C, disputed this and protested that he had paid a fair price. He substantiated REALTOR® C's statement that management of the building formerly owned by Seller A was never discussed between them until after it had been purchased by Buyer B.

It was concluded by the Hearing Panel that whether or not management of the building was discussed between Buyer B and REALTOR® C prior to its purchase by Buyer B, REALTOR® C had a logically contemplated interest in it as a property manager in view of the fact that he had served as property manager for all other properties owned by Buyer B. In view of this contemplated interest, he was bound by the terms of Article 5 to disclose this interest to his appraisal client, Seller A. He had failed to do this, and so was found in violation of Article 5 of the Code of Ethics.

CASE INTERPRETATIONS RELATED TO ARTICLE 6:

Case #6-1: Profit on Supplies Used in Property Management (Reaffirmed Case #16-1 May, 1988. Transferred to Article 6 November, 1994. Revised May, 2017.)

REALTOR® A, a property manager, bought at wholesale prices, janitorial supplies used in cleaning and maintenance of an office building which he managed for his client, Owner B. In his statements to Owner B, he billed these supplies at retail prices.

REALTOR® A's practice came to the attention of Owner B who filed a complaint with the local Association of REALTORS®, charging REALTOR® A with unethical conduct in violation of Article 6 of the Code of Ethics.

In questioning during the hearing called by the Association's Professional Standards Committee, REALTOR® A's defense was that the prices at which he billed these supplies to his client were no higher than the prices which Owner B had been paying prior to putting the property under REALTOR® A's management. It was clearly established that no disclosure of this profit or supplies used in property management had been made, and also that in proposing the management contract, REALTOR® A had held out to Owner B the inducement of attainable economies in operation.

REALTOR® A was found by the Hearing Panel to be in violation of Article 6.

Case #6-2: Manager's Use of Client's Property for Vending Machines (Reaffirmed Case #16-2 May, 1988. Transferred to Article 6 November, 1994. Revised May, 2017.)

REALTOR® A managed Client B's large apartment building, and made an arrangement under which vending machines were placed in the basement of the building.

Six months after the machines were installed, Client B noticed them and raised a question to the propriety of REALTOR® A's action in installing them, and deriving revenue from them, without Client B's knowledge and consent. REALTOR® A's response was that he had considered the machines a service to the tenants which in no way affected Client B's interests. He told Client B that he did derive a small amount of revenue from them, which had not been remitted to Client B because he felt that this revenue compensated him for his time and effort in arranging for installation of the machines and maintaining contact with the firm that operated them. He suggested that if Client B was unhappy he could seek a formal ruling by submitting the matter to the Professional Standards Committee of the Association of REALTORS®.

Accordingly, Client B did just that. At a hearing on the matter it was established that REALTOR® A had not consulted his client at the time he authorized installation of the machines; that revenue derived from operation of the machines had been retained by REALTOR® A; and that Client B had been furnished no information whatever in the matter until he observed the machines in his own periodic inspection of the building.

It was the conclusion of the Hearing Panel that, whether or not the presence of the machines was a service for the tenants, the giving of authority for their installation was in effect a rental of the space they occupied; and that, in the absence of any disclosure to the owner, REALTOR® A was in violation of Article 6 of the Code of Ethics.

Case #6-3: Management Responsibility in Relation to Manager's Enterprises (Reaffirmed Case #16-3 May, 1988. Transferred to Article 6 November, 1994. Revised May, 2017.)

REALTOR® A managed a large apartment building for his client, Owner B. After the building had been under his management for two years, REALTOR® A acquired a vacant site adjacent to the building and developed it as an automobile parking lot with monthly rates set at $150. REALTOR® A advised Owner B of this action, feeling that it would be advantageous to the building, and Owner B indicated that he, too, felt this development was favorable to him.

Six months after opening his parking lot, REALTOR® A raised the monthly rate to $200. When this came to the attention of Owner B, he filed a complaint against REALTOR® A with the Association of REALTORs charging that the parking rate increase represented an unethical attempt on the part of REALTOR® A to profit by Owner B's investment in the apartment building; that REALTOR® A should have raised rents in the building but had instead substituted the rent increase with an increased rate in his parking lot.

A hearing was called on the complaint before the Association's Professional Standards Committee. At the hearing, REALTOR® A presented data tabulating monthly parking rates in the general area of his enterprise, which showed that $200 was the average prevailing rate for similar facilities in the area. He also presented information which showed that the rent charged in Owner B's building was relatively high in comparison with similar apartments in the area.

After careful review of this data, the Hearing Panel concluded that REALTOR® A's parking lot enterprise had involved no expenditure of Owner B's funds; that his action in establishing this business had met with Owner B's approval at the outset; that REALTOR® A's exhibits demonstrated that there was no merit to Owner B's contention that a justified rent increase had been shunted into an increase in parking rates; that Owner B's interests had in no sense been betrayed; that the proximity of the parking area continued to be an asset to Owner B's building; and that REALTOR® A was not in violation of Article 6.

Case #6-4: Acceptance of Rebates from Contractors (Revised Case #16-4 May, 1988. Transferred to Article 6 November, 1994. Revised May, 2017.)

REALTOR® A, who managed a 30-year-old apartment building for Client B, proposed a complete modernization plan for the building, obtained Client B's approval, and carried out the work. Shortly after completion of the work, Client B filed a complaint with the Association of REALTORS® charging REALTOR® A with unethical conduct for receiving rebates or "kickbacks" from the contractors who did the work.

At the hearing, Client B presented written statements from the contractors to substantiate his charges.

REALTOR® A defended himself by stating that he had carried out all work involving the preparation of specifications, solicitation of bids, negotiations with the contractors, scheduling work, and supervising the improvement program; that he had presented all bids to the owner who had authorized acceptance of the most favorable bids; and that he and Client B had agreed on an appropriate fee for this service.

REALTOR® A also presented comparative data to show that Client B had received good value for his money.

After all of the contracts were signed and the work was under way, REALTOR® A found that his fee was inadequate for the time the work required; that he needed additional compensation but didn't want to add to his client's costs; and that when he explained his predicament to the contractors and asked for moderate rebates, they agreed.

Questioning by panel members revealed that the contractors felt that since they were being asked for rebates by the man who would supervise their work, they felt that they had no choice but to agree.

The Hearing Panel concluded that REALTOR® A was in violation of Article 6 of the Code of Ethics and that if he had miscalculated his fee with Client B, his only legitimate recourse would have been to renegotiate this fee with Client B.

Case #6-5: Advertising Real Estate-Related Products and Services (Adopted November, 2006. Revised November, 2017.)

REALTOR® X, a principal broker in the firm XY&Z, developed a robust, interactive website that he used both to publicize his firm and to serve the firm's clients and customers electronically. REALTOR® X maintained positive business relationships with providers of real estate-related products and services including financial institutions, title insurance companies, home inspectors, mortgage brokers, insurance agencies, appraisers, exterminators, decorators, landscapers, moving companies, and others. Given the volume of business REALTOR® X's firm handled, several of these companies purchased banner advertisements on the XY&Z website and some, including the Third National Bank, included links in their banner ads to their own websites.

Buyer B, who had earlier entered into an exclusive buyer representation agreement with XY&Z, received frequent e-mail reports from REALTOR® X about new properties coming onto the market. Hoping to purchase a home in the near future, he explored REALTOR® X's website to learn more about the home buying process and familiarize himself with the real estate-related products and services advertised there. Understanding that pre-qualifying for a mortgage would ensure he presented the strongest offer, Buyer B went to REALTOR® X's website and clicked on the Third National Bank's link. Once at the bank's website, he found a mortgage to his liking, completed the application process, and learned in a matter of days that he was qualified for a mortgage loan.

In the meantime, Buyer B's property search proved fruitful. REALTOR® X and Buyer B visited a new listing on Hickory Street several times. Buyer B decided it met his needs and made an offer which was accepted by the seller.

A few weeks after the closing, Buyer B hosted a housewarming attended by his friend D, a website designer who had, coincidentally, been instrumental in developing REALTOR® X's website. Buyer B told D how helpful the information from REALTOR® X's website had been. "You know, don't you, that each time a visitor to REALTOR® X's website clicks on some of those links, REALTOR® X is paid a fee?", asked D. "I didn't know that," said Buyer B, "I thought the links were to products and services REALTOR® X was recommending."

Buyer B filed an ethics complaint against REALTOR® X alleging a violation of Article 6 for having recommended real estate products and services without disclosing the financial benefit or fee that REALTOR® X would receive for making the recommendation. At the hearing, REALTOR® X defended himself and his website, indicating that the advertisements for real estate-related products and services on his website were simply that, advertisements, and not recommendations or endorsements. He acknowledged that he collected a fee each time a visitor to his website clicked on certain links, regardless of whether the visitor chose to do business with the "linked to" entity or not. "In some instances I do recommend products and services to clients and to customers. In some instances I receive a financial benefit; in others I don't. But in any instance where I recommend a real estate-related product or service, I go out of my way to make it absolutely clear I am making a recommendation, and I spell out the basis for my recommendation. I also disclose, as required by the Code, the financial benefit or fee that I might receive. Those banner advertisements on my website are simply that, advertisements."

The hearing panel agreed with REALTOR® X's rationale, concluding that the mere presence of real estate-related advertisements on REALTOR® X's website did not constitute a "recommendation" or "endorsement" of those products or services, and that the "click through" fee that REALTOR® X earned when visitors to his website linked to certain advertisers' sites was not the type of financial benefit or fee that must be disclosed under Article 6.

Case #6-6: Disclose Affiliated Business Relationships Prior to Recommending Real Estate-Related Products or Services (Adopted November, 2006. Revised November, 2017.)

REALTOR® Z, a broker and sole proprietor, had invested considerable resources into developing her website. Seeking to recoup some of her costs, she approached virtually every provider of real estate-related products and services in her area, including financial institutions, title insurance companies, home inspectors, mortgage brokers, insurance agencies, appraisers, exterminators, decorators, landscapers, furniture and appliance dealers, rug and carpet dealers, moving companies, and others about purchasing banner advertisement space on her website. As a condition of having a link to their own sites appear on her home page, REALTOR® Z required that a fee be paid to her each time a consumer "clicked through" from her site to an advertiser's.

Ads for providers of real estate-related products and services who agreed to REALTOR® Z's terms appeared on her home page under the heading "Preferred Providers." Immediately under that heading read: "These vendors provide quality goods and services. Please patronize them."

Buyer A frequented REALTOR® Z's website seeking information about available properties. Using that website, he became aware of a property on Elm Street that he made an offer on through REALTOR® Z, which was accepted by the seller. The sale closed shortly afterwards.

Buyer A was an avid remodeler and, using REALTOR® Z's website, linked to the Real Rug company website, among others. Interested by what he found there, he subsequently visited their showroom in person and purchased wall-to-wall carpeting and several expensive area rugs.

Given the size of Buyer A's order, one of the owners of Real Rug came to oversee the delivery and installation. In the course of conversation with Buyer A, he commented favorably on the amount of referral business received from REALTOR® Z's website. "And to think I only pay a small fee for each customer who's referred to me by REALTOR® Z," he added.

Buyer A was somewhat surprised that REALTOR® Z would receive money for referring clients and customers to providers of real estate-related products and services and contacted the local association of REALTORS®. The association provided him with a copy of the Code of Ethics. Reading it carefully, Buyer A concluded that REALTOR® Z's actions might have violated Article 6, and he filed an ethics complaint against REALTOR® Z.

At the hearing, REALTOR® Z defended herself and her website, stating that the advertisements for real estate-related products and services on her website were simply that, only advertisements and not recommendations or endorsements of the products and services found there. She acknowledged she collected a fee each time a visitor to her website clicked on the links found under "Preferred Providers" but claimed that simply referring to those advertisers as "preferred" did not constitute a recommendation or endorsement of the products and/or the services offered.

The hearing panel disagreed with REALTOR® Z's reasoning, pointing out that a reasonable consumer would certainly conclude that referring to a provider of real estate-related products or services as being "preferred" by a REALTOR® constituted a recommendation or endorsement. Further, since REALTOR® Z received a fee each time a consumer "clicked through" to one of REALTOR® Z's "Preferred Providers," REALTOR® Z received a referral fee, and disclosure of that fee was required under Article 6. REALTOR® Z was found in violation of Article 6.

CASE INTERPRETATIONS RELATED TO ARTICLE 7:

Case #7-1: Acceptance of Compensation from Buyer and Seller (Adopted as Case #8-3 May, 1988. Transferred to Article 7 November, 1994. Revised May, 2017.)

Buyer A engaged REALTOR® B to locate a small commercial property. Buyer A explained his exact specifications, indicating that he did not wish to compromise. They agreed that if REALTOR® B could locate such a property within Buyer A's price range, he—the buyer—would pay a finder's fee to REALTOR® B.

Two weeks later, REALTOR® B called Buyer A to advise that Seller C had just listed a property with him that met all of Buyer A's specifications except that the listed price was a bit higher than Buyer A wanted to pay. Buyer A inspected the property and liked it, but said he would adhere to his original price range. REALTOR® B called Buyer A three days later to say that Seller C had agreed to sell at Buyer A's price. The sale was made and REALTOR® B collected a commission from Seller C and a finder's fee from Buyer A which was not disclosed to Seller C, REALTOR® B's client.

Several weeks later, Seller C learned about the finder's fee that REALTOR® B had collected from Buyer A and filed a complaint with the Association of REALTORS® charging REALTOR® B with unprofessional conduct. The complaint specified that when REALTOR® B had presented Buyer A's offer at less than the listed price, he, the seller, was reluctant to accept it, but REALTOR® B had convinced him that the offer was a fair one and not likely to be improved upon in the current market; and that REALTOR® B had dwelt at length on certain disadvantageous features of the property in an attempt to promote acceptance of the offer. The complaint charged that REALTOR® B had actually been the agent of the buyer while holding himself out as the agent of the seller. Further, Seller C asserted that REALTOR® B had never mentioned that he was representing the buyer or intended to be compensated by the buyer.

At the hearing, REALTOR® B's defense was that he had served both buyer and seller faithfully; that he had not accepted Seller C's listing until after he had agreed to assist Buyer A in locating a property; and that in his judgment the listed price was excessive and the price actually paid was a fair price.

A Hearing Panel of the Association's Professional Standards Committee, which heard the complaint, concluded that REALTOR® B had acted in violation of Article 7 of the Code of Ethics. His efforts to represent the buyer and the seller at the same time, and the fact that he intended to be compensated by both parties, should have been fully disclosed to all parties in advance.

CASE INTERPRETATIONS RELATED TO ARTICLE 8:

Case #8-1: Failure to Put Deposit in Separate Account

(Revised Case #18-1 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001. Revised May, 2017.)

REALTOR® A, a listing broker, obtained a signed offer to purchase, together with Buyer C's check for $10,000 as an earnest money deposit. Buyer C's offer was subject to the sale of his current residence. REALTOR® A presented the offer to Seller B who accepted it. REALTOR® A then inadvertently deposited the earnest money check in his personal checking account. Since Buyer C's offer was contingent on the sale of his current home, Seller B's house remained on the market. A week later, REALTOR® A received another offer to purchase Seller B's house from another broker and presented it to the seller as a back-up offer. Buyer C was informed about this new offer and reluctantly concluded that he would be unable to waive the sale contingency in order to proceed with the purchase of Seller B's house. He then asked REALTOR® A for his $10,000 check back. REALTOR® A explained that he had mistakenly deposited Buyer C's check in his personal bank account which had been attached since he received Buyer C's offer, and he was temporarily unable to refund the deposit to Buyer C.

Buyer C filed a complaint with the Association of REALTORS®, which was received by the Grievance Committee. The Grievance Committee concluded that the complaint warranted a hearing and referred it to the Professional Standards Committee. At hearing, REALTOR® A explained that his bank account had been unexpectedly attached following the loss of a civil suit which he was appealing; that his deposit of Buyer C's check in his personal account was a simple error; that he was arranging for the prompt release of his account; and that everything would be straightened out in three or four days, which should not be of great inconvenience to Buyer C.

It was the conclusion of the Hearing Panel that REALTOR® A was in violation of Article 8 of the Code of Ethics for having failed to put Buyer C's earnest money deposit in a special account separate from his personal funds.

Case #8-2: Request for Investigation Filed by Association with the State Real Estate Commission

(Originally Case #15-7. Revised and transferred to Article 18 as Case #18-4 May, 1988. Transferred to Article 8 November, 1994. Revised November, 2001 and May, 2017.)

REALTOR® A listed Client B's residential property and sold it to Buyer C, who made a substantial deposit subject only to Buyer C's obtaining a mortgage on terms and conditions not exceeding a specified rate of interest within 60 days.

REALTOR® A assisted Buyer C by recommending a lending institution, and after processing of his application for a mortgage, a written mortgage commitment was made by the lending institution which met the terms and conditions of the sales agreement. However, shortly after the mortgage commitment was received by Buyer C, REALTOR® A received a certified, return receipt requested letter from Buyer C, advising that Buyer C had changed his mind and would not go through with the sale. REALTOR® A discussed the matter by phone, but Buyer C said he would rather forfeit his deposit and definitely would not complete the sale, even at the risk of the seller suing for specific performance.

REALTOR® A then advised Client B of Buyer C's refusal to go through with the sale and Client B told REALTOR® A that he did not wish to sue Buyer C, but would just accept a portion of the forfeited deposit as specified in the listing agreement between Client B and REALTOR® A.

REALTOR® A then obtained a written release from the sale from Client B and Buyer C, and promised to send Client B a check for the portion of the forfeited deposit due to Client B as specified in the listing agreement. However, REALTOR® A failed to send Client B a check and Client B filed a complaint with the Professional Standards Administrator of the Association alleging a violation of Article 8 of the Code of Ethics.

At the hearing, Client B stated that he had no complaint about REALTOR® A's services to him except REALTOR® A's failure to provide Client B with the portion of the forfeited deposit due him, and that after several telephone calls and letters, REALTOR® A had told Client B that he would provide the forfeited monies due Client B "just as soon as he could." Client B said REALTOR® A told him he had some unexpected expenses and therefore Client B would have to wait until REALTOR® A obtained other funds which he expected to receive shortly.

REALTOR® A admitted the facts as related and further admitted that he had not placed the deposit received from Buyer C into an escrow account, but had placed it in his general funds. He said that unexpected expenditures had caused a deficit balance in these funds, and he would pay Client B as soon as he could.

The Hearing Panel concluded that REALTOR® A was in violation of Article 8 of the Code of Ethics and recommended that the decision, when final, be forwarded to the State Real Estate Commission as a possible violation of the public trust.

The Board of Directors affirmed the decision of the Hearing Panel; ordered implementation of the recommended sanction; and requested that the President forward, with advice of Board legal counsel, the final decision to the State Real Estate Commission as a possible violation of the public trust.

CASE INTERPRETATIONS RELATED TO ARTICLE 9:

None currently existing.

CASE INTERPRETATIONS RELATED TO ARTICLE 10:

Case #10-1: Equal Professional Services by the REALTOR® (Reaffirmed May, 1988. Revised May, 2017.)

A minority couple called on REALTOR® A and expressed interest in purchasing a home in the $390,000 to $435,000 price range with at least three bedrooms, a large lot, and located in the Cedar Ridge area of town. Being familiar with Cedar Ridge through handling of numerous listings in that area, REALTOR® A explained that houses in Cedar Ridge generally sold in the price range from $540,000 to $660,000. The couple thereafter indicated that they would then like to see "what was available" within their budget. After further discussion with the couple concerning their financial circumstances and the maximum price range they could afford, REALTOR® A concluded that the couple could not afford more than $412,500 as an absolute maximum. The couple was then shown homes which met the criteria they had described to REALTOR® A. However, although REALTOR® A discussed with the couple the amenities and assets of each of the properties shown to them, they expressed no interest in any of the properties shown. A few days later, the minority couple filed charges with the Professional Standards Administrator of the Association, charging REALTOR® A with a violation of Article 10 of the Code Ethics, alleging that REALTOR® A had violated the Article by an alleged act of racial steering in his service to the minority couple.

The Professional Standards Administrator promptly referred the complaint to the Grievance Committee, which conducted a preliminary review and referred the complaint for a hearing. REALTOR® A was duly noticed and provided with an opportunity to make his response to the complaint.

At the hearing, the complainants elaborated upon their charge of the alleged racial steering by REALTOR® A, telling the Hearing Panel that they had specifically expressed an interest in purchasing a home in the Cedar Ridge area, but were not shown any homes in Cedar Ridge. REALTOR® A responded by producing e-mail records documenting the housing preference of the couple as they had described it to him, including price range and demonstrating that he had shown them a number of listings that met the requirements as expressed by them, although admittedly none of the properties shown were located in Cedar Ridge. However, REALTOR® A explained that he had advised the couple that there were no listings available in Cedar Ridge falling within their budget. Further, REALTOR® A produced listing and sales information concerning numerous homes in Cedar Ridge which confirmed an average sales price of $540,000 to $660,000. REALTOR® A told the Hearing Panel that he had, in fact, offered equal professional service to the minority couple by showing them properties which met the criteria they had presented to him. He pointed out to the Hearing Panel that the couple was charging him with "racial steering" which presumably they were relating to the denial of equal professional service. REALTOR® A stated, "If there were listings in Cedar Ridge in the $390,000 to $435,000 price range with at least three bedrooms and a large lot, and I had refused to show them such listings, then they might have a point in their charge. But there are no such listings available now, nor have there been at any time since the original development of the Cedar Ridge area five years ago. I could not show them what did not and does not exist."

The Hearing Panel concluded that REALTOR® A had properly met his obligation to offer equal professional service and was not in violation of Article 10.

Case #10-2: Denial of Equal Professional Service (Revised May, 1988. Revised November, 2001. Revised May, 2017.)

On a Saturday morning, REALTOR® B, a salesperson affiliated with REALTOR® A, answered an e-mail from Prospect C, a recent college graduate who was moving into the city to take his first teaching job at Northwest High School. Prospect C was married, had two young children, and was a veteran.

After working with Prospect C to determine his family could afford a three-bedroom home in the $240,000 range, REALTOR® B described available properties near Northwest High School and set up appointments to show houses to Prospect C. That afternoon, REALTOR® B showed Prospect C and his wife three houses in neighborhoods near the high school.

On Monday, at a faculty meeting, Prospect C met Prospect D, who was also moving into the city to take a teaching position at the same high school and who was also in the market for a home. Prospect D was married with two young children and was also a veteran.

Prospect C told Prospect D of REALTOR® B's knowledge of the market and VA financing and how helpful he had been. Prospect D called REALTOR® A's office that afternoon and asked for REALTOR® B.

REALTOR® B met Prospect D and determined Prospect D could also afford a home in the $240,000 range. Prospect D told REALTOR® B that he was also a new teacher at Northwest High School and had been referred by Prospect C. Prospect D was black.

REALTOR® B showed Prospect D houses in several neighborhoods undergoing racial transition but did not show Prospect D homes in neighborhoods near the high school.

Prospect D asked about houses closer to Northwest High School. REALTOR® B replied that he had no knowledge of any homes in that area for which Prospect D could qualify. The next day, Prospect D, while visiting Prospect C, related his problems in finding a home near the high school and learned that REALTOR® B had shown Prospect C several homes near the high school. Prospect D filed a complaint with the Association of REALTORS® claiming that REALTOR® B had discriminated against him and his family by not offering equal professional services.

The complaint was reviewed by the Grievance Committee. REALTOR® B was charged with an alleged violation of Article 10, and the complaint was referred to a Hearing Panel of the Association's Professional Standards Committee for hearing.

At the hearing, REALTOR® B admitted that he did not use the same efforts to show Prospect D properties in neighborhoods near the high school as he did with Prospect C because he felt Prospect D and his family would feel more comfortable living in a racially integrated neighborhood.

The Hearing Panel found REALTOR® B in violation of Article 10 of the Code of Ethics.

Case #10-3: Equal Professional Services by the REALTOR® (Revised November, 2001. Revised May, 2017.)

REALTOR® A was contacted by Prospect C, a female head of household, concerning a home for sale which was advertised. When informed by REALTOR® A that the home in question had already been sold, Prospect C asked to be shown homes in the $240,000 to $270,000 price range with three bedrooms and located near schools and playgrounds. REALTOR® A proceeded to show Prospect C a number of homes which met her stated criteria for price range, size, and location, but Prospect C was interested in none of them.

Shortly thereafter, Prospect C filed a complaint with the Association of REALTORS® against REALTOR® A, complaining that he had violated Article 10 of the Code of Ethics by failing to offer equal professional service to her because she was a woman. Prospect C contended that she did not receive the same professional service from REALTOR® A that would have been afforded to a male head of household and home seeker with the same criteria for price range, size, and location.

At the hearing, Prospect C expressed her complaint and concluded by saying, "It was obvious to me that REALTOR® A discriminated against me because I am a woman. In my opinion, he showed little interest in helping me to find a home."

REALTOR® A responded that he was sorry that Prospect C had that opinion, but that certainly he held no such attitude as charged. REALTOR® A advised the Hearing Panel that he routinely utilized a contact report for each prospect which includes identification information on the clients, provides data on the price range, type of house and location preferred by the prospect, and records the homes shown to the prospect with information on the price, type, and location of each home shown. REALTOR® A presented several such reports from his files including the report pertaining to Prospect C. Prospect C's report showed that several homes shown to her met the data as supplied by her.

The Hearing Panel concluded that REALTOR® A's documented evidence did, in fact, establish a clear position in which equal professional service had been offered and that no violation of Article 10 had occurred.

Case #10-4: Use of "Choose Your Neighbor" Marketing Letters (Adopted November, 1987. Revised November, 2013 and November, 2017 and November, 2022.)

REALTOR® A listed a property in a new subdivision. At the instruction of his client, Seller X, REALTOR® A did not enter the listing in the MLS, did not place a "For Sale" sign on the property and did not advertise the property online. Seller X had told REALTOR® A that he wanted the sale handled quietly, with the new purchasers being people who would "fit into the neighborhood — people with the same socioeconomic background" as the other residents of the subdivision.

Based on his conversation with Seller X, REALTOR® A's only marketing effort was mailing a letter to the other residents of the subdivision, inviting them ". . . to play a part in the decision of who your next neighbor will be. If you know of someone who you would like to live in the neighborhood, please let them know of the availability of this home, or call me and I will be happy to contact them and arrange a private showing."

REALTOR® A's marketing strategy came to the attention of REALTOR® B, whose mother lived in the subdivision. REALTOR® B filed a complaint charging REALTOR® A with a violation of Article 10 of the Code of Ethics.

At the hearing, REALTOR® B told the Hearing Panel of receiving a copy of the marketing letter from his mother, who had recently moved to the subdivision. REALTOR® B advised the panel that he had checked the MLS for information on the property, had driven past the house to look for a "For Sale" sign and had searched online for any information on the property. Finding nothing, REALTOR® B concluded that REALTOR® A's marketing strategy was to limit access to the property to individuals preselected by the current residents. "In my mind," said REALTOR® B, "this could only mean one thing. REALTOR® A was deliberately discriminating against home buyers from other areas, or those with different backgrounds, who would never have the opportunity to learn about the house's availability. Obviously, REALTOR® A was directing all of his marketing energies into finding purchasers who would not disrupt the ethnic and economic character of the neighborhood."

REALTOR® A defended his actions by advising the panel that he was acting on Seller X's instructions. Seller X appeared as a witness for REALTOR® A and confirmed this fact, adding that he and the other residents of his block had an informal agreement that they would try to find "suitable" purchasers for their homes if they ever decided to sell. Seller X felt that by broadening the marketing campaign to include all residents of the subdivision he had increased the chances of finding such potential purchasers.

The Hearing Panel found REALTOR® A in violation of Article 10 of the Code of Ethics. In their decision, the panel advised REALTOR® A that no instruction from a client could absolve a REALTOR® from the obligation to market properties without regard to race, color, religion, sex, disability, familial status, country of national origin, sexual orientation, or gender identity, as expressed in Article 10.

There was no doubt, in the panel's opinion, that the exclusive use of "Choose Your Neighbor" letters to market the property was designed to circumvent the requirements of Article 10.

Case #10-5: Use of "Choose Your Neighbor" Form Letters as Part of a Marketing Campaign

(Adopted November, 1987. Revised November, 2013, May, 2017, November, 2022.)

The ABC Association of REALTORS® received a complaint from a local fair housing group alleging that REALTOR® A was using discriminatory marketing techniques, in violation of Article 10 of the Code of Ethics, as the listing broker for a property in a new subdivision.

In support of their complaint, the fair housing group provided copies of "Choose Your Neighbor" form letters sent by REALTOR® A to current neighborhood residents. The letters announced that the property was on the market and invited neighborhood residents to contact REALTOR® A if they knew of anyone who they thought might be interested in purchasing the home.

At the hearing, REALTOR® A defended his use of "Choose Your Neighbor" form letters by demonstrating that they were just one element of his marketing campaign, and were not an attempt to restrict access to the property on the basis of race, color, religion, sex, disability, familial status, country of national origin, sexual orientation, or gender identity, as prohibited by Article 10. REALTOR® A produced copies of banner advertisements run on several websites, "OPEN HOUSE" information provided on Realtor.com, and a copy of the property's MLS listing. REALTOR® A remarked, "In my experience, the current residents of a neighborhood often have friends or relatives who have said that they would love to live in the neighborhood. It just makes sense to me to include contacting these folks in any marketing campaign!"

The Hearing Panel found REALTOR® A not in violation of Article 10. In their "Findings of Fact and Conclusions," the panel noted that the use of "Choose Your Neighbor" letters is not a per se violation of Article 10, but cautioned that such letters could be used in a manner inconsistent with the intent of Article 10. If used in conjunction with other marketing techniques and not as a means of limiting or restricting access to property on the basis of race, color, sex, disability, familial status, country of national origin, sexual orientation, or gender identity, "Choose Your Neighbor" letters were another method of announcing a property's availability and attracting potential purchasers.

Case #10-6: Use of Hate Speech and Slurs on the Basis of Race

(Adopted May, 2021, Deleted effective June 5, 2025.)

Case #10-7: Use of Harassing Speech on the Basis of Political Affiliation

(Adopted May, 2021, Deleted effective June 5, 2025.)

Case #10-8: Use of Harassing Speech against Protestors

(Adopted May, 2021, Deleted effective June 5, 2025.)

Case #10-9: Use of Speech or Ideas included in Religious Doctrine

(Adopted May, 2021, Deleted effective June 5, 2025.)

Case #10-10: Use of Speech or Ideas Included in Religious Doctrine

(Adopted November, 2021, Deleted effective June 5, 2025.)

Case #10-11: Display of Symbols

(Adopted November, 2021, Deleted effective June 5, 2025.)

CASE INTERPRETATIONS RELATED TO ARTICLE 11:

Case #11-1: Appraiser's Competence for Assignment (Revised May, 1988.)

REALTOR® A sold a light industrial property to Buyer B, a laundry operator. Several months later, Buyer B engaged REALTOR® A's services to appraise the property and to supply an appraisal report for use in possible merger with another laundry. REALTOR® A carried out this appraisal assignment and submitted his report. Buyer (now Client) B was dissatisfied with the report feeling that the valuation, in comparison with the market price that he had paid was excessively low. Client B then engaged an appraiser specializing in industrial property, and after receiving the second appraisal report, filed a complaint with the Board of REALTORS® charging REALTOR® A with incompetent and unprofessional service as an appraiser.

At the hearing, questioning established that REALTOR® A could cite no other industrial property appraisal he had made, and that his appraisal experience had been limited exclusively to residential property. The hearing also established that when the client proposed the appraisal, REALTOR® A had readily accepted the assignment and that he had at no time disclosed the extent and limitations of this appraisal experience with his client.

REALTOR® A was found by the Hearing Panel to be in violation of Article 11.

Case #11-2: Obligation to Disclose Assistance in Appraisal (Revised November, 2001 and May, 2017.)

REALTOR® A completed an appraisal of a large house for Client B and submitted an appraisal report. In connection with a mortgage loan application, the appraisal report came to the attention of three other REALTORS®. One of them, REALTOR® C, filed a complaint with the local Association of REALTORS®, charging REALTOR® A with violation of Article 11 of the Code of Ethics. The complaint stated that REALTOR® A, while engaged in appraising Client B's property had called REALTOR® C and asked for information concerning residential property values in the area where Client B's property was located; that REALTOR® C had answered the questions; and that REALTOR® A's appraisal report had failed to acknowledge this assistance provided by REALTOR® C.

At the hearing, REALTOR® A protested that REALTOR® C was misreading Article 11, which is concerned entirely with conditions that must be met when a REALTOR® undertakes an appraisal that is outside the field of his experience. REALTOR® A established the fact that he had many years of successful experience as an appraiser of residential property in the area; that he specialized in that category of appraisal; that he had called a number of REALTORS® and officers of mortgage lending institutions to ask general questions about current residential values in the particular neighborhood in keeping with his usual practice; that he did not consider the courtesy of responding to general questions of this kind as constituting formal assistance in making an appraisal that is required to be identified under the terms of Article 11.

The Hearing Panel concluded that REALTOR® A's defense was valid, and that his action did not violate Article 11.

Case #11-3: Identification of Contributor to Appraisal (Revised November, 2001 and May, 2017.)

REALTOR® A, who had made a number of residential and farm appraisals for Client B, a bank, was asked to appraise the real property of a corporation that operated two extensive industrial parks. REALTOR® A made his appraisal of open land belonging to the corporation for future development. With respect to specialized industrial structures included in the assignment, he engaged the XYZ firm of industrial engineers to make a study of obsolescence and of current reproduction costs leading to conclusions. The report on this study was incorporated into REALTOR A's appraisal report to Client B, without identifying the XYZ firm as a contributor to the report.

Sometime after the submission of the report, Engineer C, a member of the XYZ firm, was invited to speak on an appraisal panel arranged by the local Association of REALTORS®. During his talk he used as an illustration some of the industrial properties that had figured in REALTOR® A's appraisal report. Following the program, in informal conversation with Engineer C, REALTOR® B learned of REALTOR® A's action in incorporating the engineering firm's conclusions into his own appraisal without identification of the firm and its contributions to the assignment. REALTOR® B then filed a complaint against REALTOR® A alleging violation of Article 11 of the Code of Ethics. After examining the facts as set out above, the complaint was referred by the Grievance Committee for hearing before a panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® A took the position that he had not violated Article 11 because the essence of the appraisal assignment had been to exercise his judgment as an appraiser, and that he had not engaged any other person to exercise judgment in connection with the assignment. He had simply employed the XYZ engineering firm, he said, to make certain conclusions as to the extent of obsolescence in properties and as to the current cost of reproducing them. Conceding that he had incorporated the XYZ firm's report into his own appraisal report, REALTOR® A contended that this material was only incidental, and that the essential appraisal function of arriving at a valuation was entirely his own work. He stated further that he had paid the XYZ firm for its services and felt that relieved him of any obligation to identify the firm in his appraisal report.

During the hearing it was established that REALTOR® A had no previous experience in appraisal of industrial property, and that he had not disclosed this to Client B at the time he accepted the assignment.

The Hearing Panel concluded that REALTOR® A's defense was insufficient; that the appraisal process includes the findings and calculations that support judgment; that the XYZ firm's conclusions had constituted a major element of the appraisal report; that under the requirements of Article 11, REALTOR® A should have identified the firm and its contribution.

REALTOR® A was found in violation of Article 11.

Case #11-4: Disclosure of Limited Appraisal Experience (Reaffirmed May, 1988. Revised May, 2017.)

REALTOR® A was asked by Client B, an officer of a bank, to appraise an office building. In discussing the matter, REALTOR® A pointed out that while he was an experienced appraiser, he had never appraised an office building. Client B expressed his confidence in REALTOR® A, based on years of satisfactory service in appraising residential property, and said that notwithstanding REALTOR® A's lack of previous experience in appraising an office building, the bank wanted his judgment and asked him to accept the assignment to appraise the office building.

Accordingly, REALTOR® A undertook the assignment, and completed his appraisal report. The report later came to the attention of REALTOR® C, who complained to the Association of REALTORS® that REALTOR® A had violated Article 11 of the Code of Ethics by taking an appraisal assignment outside the field of his experience without obtaining the assistance of an authority on office buildings.

At the hearing, Client B appeared as a witness for REALTOR® A and stated that the assignment had been given to REALTOR® A after he had disclosed his lack of previous experience in appraising office buildings, and that the client was entirely satisfied by the manner in which REALTOR® A had completed his assignment.

The Hearing Panel concluded that Client B's statement completely exonerated REALTOR® A of any violation of Article 11, since it was clear that he had disclosed his lack of previous experience in appraising the type of property in question, and that he had been given the assignment after this disclosure was made to the client.

Case #11-5: Appraiser's Competence to Assignment (Revised November, 2001. Deleted November, 2017.)

Case #11-6: Appraiser's Obligation to Consider All Factors of Value (Revised November, 2001. Deleted November, 2017.)

Case #11-7: Appraisal Fee as Percentage of Valuation (Transferred to Article 1 November, 2001.)

Case #11-8: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

Case #11-9: REALTOR®'s Obligation to Comply with USPAP (Adopted November, 1995. Deleted November, 2000.)

Case #11-10: REALTOR®'s Obligation to Disclose Interest (Adopted May, 1997. Revised November, 2000 and May, 2017.)

Client A, an owner, needed to sell a property. She approached REALTOR® B to list the property. They agreed to the terms of the listing and the property was listed.

An offer was made and was accepted by Client A. After the prospective purchaser completed the loan application, REALTOR® B was contacted to appraise the property. When the lender was preparing the closing statement, the lender became aware that the listing broker was also the appraiser and filed a complaint with the Board of REALTORS® alleging that REALTOR® B had failed to disclose in the appraisal that he had an interest in the property, specifically seeing that the sale closed. The complaint was referred by the Grievance Committee for hearing before a panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B protested that the lender was misreading Article 11, as interpreted by Standard of Practice 11-1, claiming that "disclosure of whether the REALTOR® has any conflicts of interest" referred only to an ownership interest. REALTOR® B concluded that the listing commission had been earned when a ready, willing, and able purchaser contracted to purchase the property and that the appraisal process was separate and distinct from the brokerage process.

The Hearing Panel concluded that REALTOR® B's defense was specious and because he was the listing agent REALTOR® B was biased in favor of Client A since a successful transaction would benefit REALTOR® B in the form of a commission.

REALTOR® B was found in violation of Article 11.

Case #11-11: REALTOR®'s Obligation to Disclose Present or Contemplated Interest (Adopted May, 1997. Revised November, 2000.)

Owner A was considering refinancing a property. Client B, a lender, ordered an appraisal from REALTOR® C. The appraisal report was completed and later Owner A decided to sell the property instead of refinancing it. Owner A contacted REALTOR® C who listed the property. An offer was made that was accepted by Owner A.

At the loan application, the prospective purchaser told the lender, Client B, that a recent appraisal on the property had been done for Client B. When the lender became aware that the listing broker was also the appraiser, the lender filed a complaint with the Association of REALTORS® alleging that REALTOR® C had not disclosed her "present or contemplated interest" in the property as required by Article 11, as interpreted by Standard of Practice 11-1. The complaint was referred by the Grievance Committee for hearing before a panel of the Association's Professional Standards Committee.

At the hearing, a written statement from Owner A containing all the facts above was entered into evidence. REALTOR® C stated that the appraisal had been completed in accordance with Standard of Practice 11-1 and it was only after Owner A decided to sell, rather than refinance, that there were any discussions about REALTOR® C representing the owner in the sale of the property.

REALTOR® C stated that the owner had been appreciative of the time that she had spent discussing the subject's neighborhood and existing market conditions, and that the owner had decided that he wanted someone really knowledgeable to represent him in the sale of his property.

Because REALTOR® C's disclosures regarding present and contemplated interests were true at the time they were made in connection with the appraisal, the Hearing Panel concluded that REALTOR® C was not in violation of Article 11.

CASE INTERPRETATIONS RELATED TO ARTICLE 12:

Case #12-1: Absence of Name on Sign

(Reaffirmed Case #19-3 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001 and May, 2017.)

Prospect A observed a sign on a vacant lot reading: "For Sale — Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR® B in REALTOR® A's office.

Prospect A filed a complaint against REALTOR® A and REALTOR® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR® B to put up the sign. REALTOR® B's defense was that the sign was not a "formal" advertisement, such as an online advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR® B were in violation of Article 12.

Case #12-2: Exaggeration in Advertising

(Reaffirmed Case #19-4 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001 and May, 2017.)

Prospect A noted REALTOR® B's advertisement on his website describing a home with five acres "about 20 miles from the city" giving directions to the "modern 3-bedroom home, well maintained, and set in a charmingly landscaped site."

After visiting the property, Prospect A filed a complaint with the Association of REALTORS® complaining of the gross exaggeration contained in the advertisement, which had induced him to waste time and money in inspecting the property. The property, he said, was actually 36 miles from the city limits. Its wood-lath support for plaster, which was visible in many large breaks in the walls, indicated it to be 80 years old or more. There was no evidence of painting in recent years. Several windows were broken, half of the back steps were missing. The house was located at the end of a crude dirt road in a small cleared area that had become densely overgrown in weeds — a picture of extreme neglect.

REALTOR® B was notified of the charge of misleading advertising, and a hearing was held. REALTOR® B criticized the complainant for bringing the matter to the Association, pointing out that Prospect A had failed to mention that the property was priced at only $90,000; that at such a price it was an exceptionally good buy to anyone looking for a small place with a few acres; that to get attention to such properties it was necessary to do a bit of "puffing" to attract attention in advertising; that as a matter of fact the general lines of the house were similar to many of modern design; that the house had been well enough maintained to be salvageable by anyone who would do a reasonable amount of work on it; and that, in his opinion, the site was truly "charming" in its rugged simplicity.

The Hearing Panel concluded that REALTOR® B had used gross exaggeration in his advertisement and was found in violation of Article 12 of the Code of Ethics.

Case #12-3: Exaggeration in Advertising

(Reaffirmed Case #19-5 May, 1988. Transferred to Article 12 November, 1994. Revised April, 1998 and November, 2017.)

In his efforts to sell a furnished apartment building, REALTOR® A, the listing broker, used advertising describing the property, including such phrases as "modern updates . . . most units have new appliances . . . excellent earnings record." Buyer B saw the ad, called REALTOR® A, was shown three nicely appointed units on the property, signed an offer to buy, and wrote a check for a deposit. A few days later, he made a more careful inspection of the property and its earnings statements, and filed a complaint against REALTOR® A with the Association of REALTORS® charging misleading and exaggerated advertising.

The complaint was referred to the Grievance Committee which, after its review and evaluation, referred it to the Professional Standards Administrator directing that a hearing be scheduled before a Hearing Panel of the Professional Standards Committee.

At the hearing, Buyer B explained that he had been looking for just such an investment property in the general location, that the price appealed to him, and that he had only a very limited time available on the day he was shown the property. The three apartments which he was shown were in excellent condition, so he had thought it advisable to make an offer, feeling that he could place full reliance on REALTOR® A's representation of the property both in his oral statements and his advertising.

His second, and more thorough, inspection revealed that the three apartments shown to him were the only apartments in the building that were updated; the other nine were badly in need of renovation. Moreover, he said, the earnings record of the building, which by ordinary standards was satisfactory for the two years immediately preceding, had shown high vacancy and a loss in two of the ten years of the building's life, had shown a definitely low return in three years, and had never shown an earnings record that could be described as "excellent".

Responding to Buyer B's specifics, REALTOR® A pointed out that the complaint did not charge him with misrepresenting anything in his oral statements to Buyer B; that the complaint, therefore, was based solely on his advertisement which he felt did not depart from accepted standards in advertising. Since the building was about ten years old, he felt free to say that all of its units were "modern", and that when he stated "most units have new appliances," he based that, too, on the fact that the building was about ten years old. Finally, in his opinion, the earnings record of the building for its entire operating life, since it had shown a loss in only two of its ten years, could reasonably be described as "excellent".

Questioning of REALTOR® A revealed that the three apartments shown to Buyer B were, in fact, the only renovated units in the building, and that these three were the only apartments in which the original appliances had been replaced. REALTOR® A's comment on this was, "Naturally, in showing the building, I directed attention to the most attractive features. This is just ordinary competence in selling."

It was the conclusion of the Hearing Panel that REALTOR® A's advertising used exaggeration and had not presented a true picture in his representations to the buyer. REALTOR® A was found in violation of Article 12.

Case #12-4: True Picture in Advertising

(Reaffirmed Case #19-6 May, 1988. Transferred to Article 12 November, 1994 and May, 2017.)

REALTOR® A was the exclusive marketing agent for a home building organization in Redtown, a suburban community within a metropolitan area that also contained the communities of Whitetown and Bluetown. As part of his sales effort, he posted the following on his blog:

Greenwood
In Redtown
STARTLING NEWS

On an identical house bought at "Greenwood" in Redtown, we have found that the difference in tax rates allows you to get $15,000 more house free than if you bought the same house in Whitetown or Bluetown. We have been doing some figuring, and here's what we came up with:

Plan A — built in Whitetown
Taxes approximately . . . $3,600

Plan B — built in Bluetown
Taxes approximately . . . $3,150

Plan C — built in Redtown
Taxes approximately . . . $1,950

This means that in Redtown your monthly payments for the same house would be approximately $137 less than in Whitetown, and $100 less than in Bluetown. Since principal and interest are the same, you get $15,000 or more house FREE when you buy in Greenwood.

REALTOR® B objected to the post and forwarded it with a complaint to the Professional Standards Administrator of his Association, charging that the blog post was misleading. A Hearing Panel of the Professional Standards Committee considered the matter in a hearing attended by REALTORS® A and B.

It was the panel's opinion that it is not unethical to point out the current tax differentials of various municipal jurisdictions, but that the final paragraph of the advertisement in question constituted an attempt to capitalize on a tax differential that is not predictable. To offer $15,000 or more house "free" based upon indefinite continuation of a current tax situation, which is not certain, is misleading. Therefore, the Hearing Panel concluded, the ad violated Article 12 of the Code of Ethics in that it did not present a true picture that could be assured by REALTOR® A.

Case #12-5: True Picture in Use of "Sold" Sign

(Revised Case #19-7 May, 1988. Transferred to Article 12 November, 1994. Revised May, 2017.)

REALTOR® A, the listing broker, was charged by REALTOR® B with giving a false picture in his advertising by putting up a "sold" sign on property that had not been sold. REALTOR® A was notified of the complaint and of the date of a hearing on it scheduled before a Hearing Panel of his Association's Professional Standards Committee.

Undisputed testimony offered during the hearing revealed that REALTOR® A was an exclusive agent, offering Client C's home for sale. An offer to buy was obtained from Prospect D and a counter proposal by Client C was accepted. An earnest money deposit was made, and a date for settlement was agreed upon. At that point, REALTOR® A put up his "sold" sign. Several days later, Prospect D received an unexpected notice from his employer that he was to be transferred to another city. Prospect D immediately contacted REALTOR® A and Client C about his predicament. In an amicable discussion it was agreed that everyone had acted in good faith; that the property was readily marketable; that the earnest money deposit would be refunded; and that REALTOR® A would put the property on the market again. A week later, when REALTOR® B was showing a number of houses to a prospective buyer, they drove by Client C's property, and the prospect casually said that she didn't understand the "sold" sign, since she had been taken to see the house that morning by REALTOR® A.

REALTOR® B contended that a "sold" sign is a measure of a REALTOR®'s advertising, and that it cannot give a true picture if it is put up prior to the settlement and actual transfer of ownership.

The Hearing Panel's decision agreed with REALTOR® B's contention that the use of a "sold" sign constitutes advertising by a REALTOR® but did not agree that a "sold" sign could be put up only after the actual settlement and transfer of ownership. The decision indicated that after the client's acceptance of a bona fide offer, REALTOR® A could consider that he had brought about a sale and would not be in violation of the requirement to give a "true picture" by putting up a "sold" sign. However, once it was clear that the sale had fallen through, the "sold" sign should have been immediately removed since allowing the sign to remain in place no longer provided a "true picture."

REALTOR® A was found by the panel to have violated Article 12.

Case #12-6: Misleading Advertising (Reaffirmed Case #19-8 May, 1988. Transferred to Article 12 November, 1994 and May, 2017.)

REALTOR® A's business included real estate brokerage, property management, and home building. In one of his advertisements of his home building activities, in which he identified himself as a REALTOR®, there was prominently featured the words, "Buy Direct and Save." REALTOR® B forwarded a link to the advertisement to the Association of REALTORS® as the basis of a complaint that REALTOR® A in his advertising was, through use of the quoted phrase, seeking to take unfair advantage of other REALTORS®.

At the hearing, it was brought out that REALTOR® A's properties had been listed with his real estate firm and entered into the MLS. He defended his advertising by asserting that it was reasonable for him to seek the sale of houses in his subdivision through his own brokerage office to the greatest extent possible. He was not able to show the Hearing Panel any instances of reduced prices on direct sales even though several such sales had occurred.

It was the conclusion of the panel that REALTOR® A had violated Article 12. The panel's decision indicated that just because he engaged in home building, he could not be exempted from the standards that apply to REALTORS® generally; and that the phrase "Buy Direct and Save" in his advertising was an attempt to convince prospective buyers that a lower price would be offered those purchasing direct rather than through cooperating brokers when, in fact, he had maintained the same prices and there was no saving by buying direct.

Case #12-7: REALTOR® Advertising Free Market Analysis (Reaffirmed Case #19-9 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001, May, 2017 and November, 2019.)

REALTOR® A advertised on his website as follows: "Free Market Analysis With No Obligation."

A property owner complained about REALTOR® A's attempts to solicit the listing, and the complaint was referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, ". . . with no obligation. . ." as claimed in REALTOR® A's ads. However, the property owner said that when he and REALTOR® A spoke, he explained that he would be glad to provide the market analysis, but said, "I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you." The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called "practically every single day" soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A's office reminded him that REALTOR® A had provided a "valuable free service and we feel that you owe us the listing of the property."

REALTOR® A responded that he had provided the "free market analysis" as represented in his advertising, and had provided it ". . . with no obligation." He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as "free" is not prohibited by the Code of Ethics.

While REALTOR® A was free to advertise "free market analysis with no obligation," such a representation was not a "true picture" if the terms and conditions of the offer were not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the "free market analysis" that it was "presumed" the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent "reminders" by sales representatives of REALTOR® A about the "expectation" made the representation less than a "true picture." The panel noted that the property owner did not have a clear, thorough, advance understanding of what would occur at the time of the offer was made. The panel concluded that REALTOR® A was in violation of Article 12.

Case #12-8: REALTOR® to Disclose Status as Real Estate Broker or Salesperson Even When Advertising Property Owned by the REALTOR®

(Revised Case #19-11 May, 1988. Transferred to Article 12 November, 1994. Revised May, 2017.)

REALTOR® A decided to sell a residential investment property he owned in the city. He did not list the property with his firm, but rather advertised it for sale under the heading "For Sale By Owner," giving only his name and home telephone number. Mr. X responded to the ad, purchased the property, and took occupancy.

Shortly after moving into the property, Mr. X filed a complaint with the Association, alleging that REALTOR® A had violated Article 12 of the Code of Ethics by not disclosing that he was a real estate broker in his advertising or in negotiations for the property.

The Grievance Committee determined that the matter should be heard and referred it to the Professional Standards Committee for hearing. After following the Association's prescribed professional standards procedures, including proper notice to parties, a Hearing Panel was convened to hear the matter.

Mr. X testified that he had purchased the property without knowledge that REALTOR® A was a real estate broker. If he had known this, said Mr. X, he might have decided not to purchase the property or might have decided to have an independent appraisal of the property made before agreeing to purchase. In any event, he said, REALTOR® A's special knowledge and expertise placed him at a disadvantage.

REALTOR® A testified that the obligations imposed by Article 12 relate only to listed properties, where the REALTOR® acts as agent for the seller. He told the panel that he believed he had complied with the "true picture" test of Article 12 by advertising the property as a "For Sale By Owner," because it had not been listed with his firm and there was no agency relationship to disclose.

"Besides," explained REALTOR® A, "there was no need to disclose my licensure status in the advertisement, because my name is well known in the community as a real estate broker."

The Hearing Panel disagreed with REALTOR® A's reasoning and indicated in its decision that Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR® A's name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that REALTOR® A was obliged to disclose his licensure status in the advertisement, since this knowledge might well have affected Mr. X's negotiations on the property as well as his eventual decision to purchase.

REALTOR® A was found in violation of Article 12 of the Code of Ethics.

Case #12-9: Unethical Advertising

(Originally Case #9-2. Revised and transferred to Article 19 as Case #19-12 May, 1988. Transferred to Article 12 November, 1994. Revised May, 2017.)

REALTOR® A posted an ad on his website soliciting $15,000 investments in a "sure thing." The ad explained that he was seeking only ten investors at $15,000 each; that each investor would receive $18,000 for his investment in 30 days; or, if he chose to invest for a longer period, could receive $24,000 in 90 days. The ad stated that REALTOR® A personally guaranteed this investment experience to the first ten investors who responded to the ad.

A member of REALTOR® A's Association saw the ad and was concerned. He filed an ethics complaint, and in the subsequent hearing, REALTOR® A was asked to demonstrate that he had put liquid assets in escrow to back up his published guarantee. REALTOR® A was at first evasive, and then explained that there was no possibility of any one losing any money as a result of his ad because he had simply been using ingenuity to develop a list of prospects interested in small real estate investments.

REALTOR® A explained that he had told those who inquired that the opportunity was no longer available, but that he would take their names and addresses for future investment opportunities that might arise. He explained that in this case any guarantee he would make in a tangible transaction would, of course, be fully protected by liquid assets put in escrow.

The Hearing Panel concluded that REALTOR® A had not provided a "true picture" in his advertisement, and was in violation of Article 12.

Case #12-10: REALTOR® Advertising Free Market Analysis

(Originally Case #9-21. Revised and transferred to Article 19 as Case #19-13 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001 and May, 2017.)

REALTOR® A advertised on his website as follows: "Free Market Analysis With No Obligation." REALTOR® B presented a written complaint to the Professional Standards Administrator of the Association filing a charge against REALTOR® A of an alleged violation of Article 12 of the Code of Ethics.

The matter was referred to the Grievance Committee which concluded the matter should be considered by a panel of the Professional Standards Committee. A hearing was convened with both REALTOR® A and REALTOR® B present.

REALTOR® A advised the Hearing Panel that he had placed the advertisement on his website and in good faith. He stated he felt his ad did present a "true picture," and was not unethical. When the panel asked if his offering of a "free market analysis" was contingent upon his obtaining a listing or commission, REALTOR® A answered in the negative. He pointed out that he charged no fee for the service and provided it as represented on his website.

In the absence of any evidence indicating that the advertising by REALTOR® A was misleading, the Hearing Panel concluded that such advertising by REALTOR® A is not prohibited by the Code of Ethics nor can such advertising be prohibited by an Association of REALTORS® unless it presents less than a "true picture." However, if a charge is filed against a REALTOR® alleging violation of Article 12 and there is a hearing before the Professional Standards Committee, determination may properly be made of the truth of any representations made.

The Hearing Panel concluded that REALTOR® A had demonstrated that his ads presented a "true picture" and that he was not in violation of Article 12.

Case #12-11: Advertisements by Individuals Other Than the Listing Broker

(Adopted as Case #19-14 May, 1988. Transferred to Article 12 November, 1994. Revised November, 1995, November, 1996 and May, 2017.)

REALTOR® A purchased a banner ad on the website of his local newspaper. In the body of the ad were pictures of several homes and their addresses. At the top of the ad was the following: "We've sold these — we can sell yours, too."

The following week three complaints were received from other Association Members alleging that REALTOR® A's banner ad was in violation of Article 12. Each of the complaints noted that REALTOR® A had participated in the transaction as the successful cooperating broker who had located the eventual purchasers, but the complaints also claimed that REALTOR® A's claim to have "sold" these properties was false and misleading since none of the properties had been listed with him and, in one instance, the sale had yet to close.

Since all the complaints involved the same advertisement, they were consolidated to be heard at the same hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® A defended his actions on the basis that although the properties had been listed with other brokers, he had been the "selling" or "cooperating" broker and was entitled to advertise his role in the transactions.

The Hearing Panel agreed with REALTOR® A's reasoning in their decision, pointing out that Article 12 as interpreted by Standard of Practice 12-7, provides that cooperating brokers (selling brokers) may claim to have "sold" the property and that such claims may be made by either the listing broker or the cooperating broker or by both of them upon acceptance of a purchase offer by the seller. The panel also noted that REALTOR® A could have shown that he had "participated in" or had "cooperated in" these transactions and also met his ethical obligations.

The panel's decision also indicated that during the existence of any listing, the cooperating broker's rights to advertise and market flow from the listing broker. However, claims of this nature were not advertisements of the properties but rather were advertisements of the broker's services. The only limitation on the ability of a cooperating broker to claim or to represent that a property had been "sold" was that the listing broker's consent would be required before a "sold" sign could physically be placed on the seller's property prior to closing.

Case #12-12: Advertising in the Guise of News (Adopted April, 1994. Revised November, 1995 and May, 2017.)

Shortly after e-mailing his "Homeowners Neighborhood Newsletter" to local residents, several complaints were filed against REALTOR® B claiming that he had engaged in deceptive advertising in violation of Article 12's "true picture" directive. These complaints were reviewed by the Grievance Committee which determined that a hearing should be held and that all of the related complaints would be consolidated in a single hearing. The appropriate notices were sent and the hearing was convened.

REALTOR® A, one of the complainants, introduced REALTOR® B's "Homeowners Neighborhood Newsletter" into evidence pointing out that REALTOR® B had prominently shown pictures of, and addresses for, ten homes in an exclusive area of town labeling each as "Recently Sold." REALTOR® A, the listing broker for several of these properties, stated that, in his opinion, the average reader would readily conclude that REALTOR® B, by advertising this way, was claiming to have listed and sold the properties and that his claims violated Article 12, as interpreted by Standard of Practice 12-7. In response, REALTOR® B indicated that Article 12 was limited in scope to ". . . advertising and representations to the public" and that his "Homeowners Neighborhood Newsletter" was not, in fact, advertising but rather a well-intentioned effort to make homeowners aware of current market values. "Sale prices in our county become a matter of public record once a deed of sale is recorded," REALTOR® B argued, "and anyone who wants to find out about recent sales can get that information from the recorder's office." "All I am doing," he continued, "is reporting news — and saving residents the time and effort of retrieving this information on their own. If someone appreciates my efforts and later buys or sells through me, so much the better, but that is not the reason for my newsletter."

After hearing from the complainants and the respondent, and after reviewing the content of the newsletter, the Hearing Panel concluded that it did, in fact, violate Article 12 since, while the information regarding the properties themselves was accurate, its cumulative effect was to convey the impression that REALTOR® B had listed and/or sold the properties when he had not. The fact that he had been the cooperating broker in one of the transactions did not give him the right to claim, directly or indirectly, that he had "sold" any of the other properties because in no instance had he been the listing broker. The Hearing Panel did not accept REALTOR® B's claim that his newsletter was exempt from scrutiny under Article 12 in that he was disseminating news and not engaging in advertising. They noted that the name, e-mail address, and phone number of REALTOR® B's firm appeared prominently in several places; that a considerable portion of the newsletter was devoted to services available from REALTOR® B's firm and the advantages of doing business with REALTOR® B; and concluded that while the newsletter might, in fact, include an element of "news" a primary purpose of it was to advertise REALTOR® B and his firm and, consequently, that it was subject to scrutiny under Article 12.

Case #12-13: Advertising Including Information Based on Other Brokers' Transactions (Adopted November, 1994. Revised November, 1997 and May, 2017.)

Shortly after e-mailing his "Homeowners Neighborhood Newsletter" to local residents, a complaint was filed against REALTOR® B alleging he had engaged in deceptive advertising in violation of Article 12's "true picture" mandate. The complaint was reviewed by the Grievance Committee which determined that a hearing should be held. Appropriate notices were sent and a hearing was convened.

REALTOR® A, the complainant, provided panel members with copies of REALTOR® B's "Homeowners Neighborhood Newsletter" noting that REALTOR® B had compiled a list of 20 homes in an exclusive area of town, titling the list "Recently Sold." REALTOR® A, the listing broker for two of those properties, stated that he believed that readers could conclude that REALTOR® B, in advertising this way, had constructively claimed to have listed and sold all of the properties on the list and that such claims violated Article 12.

In his defense, REALTOR® B acknowledged that his "Homeowners Neighborhood Newsletter" was, in fact, primarily an advertising vehicle and that it did not have a regular publication schedule. While it included news and information, including tips on how to make residential property more readily saleable and information regarding products and services offered by REALTOR® B's firm, its primary purpose was to generate business for REALTOR® B's firm.

REALTOR® B defended inclusion of the "Recently Sold" list, pointing out that all of the properties on the list were the subject of recent sales transactions; that the period of time during which the transactions had closed was clearly stated; that the fact that the information was taken from local MLS sold data had been duly noted; that a footnote at the bottom of the e-mail clearly indicated that the properties on the list had been listed and sold by various Participants in the MLS; and that such use was consistent with the local MLS rules and regulations.

The Hearing Panel accepted REALTOR® B's defense, holding that reasonable readers would conclude that most newsletters were, in reality, promotional advertising pieces and, in any case, that REALTOR B's newsletter had included some items of "news". Moreover, they noted that if REALTOR® B had simply listed the 20 transactions, titling them as "recently sold" and had done nothing more, then a reasonable reader might have concluded that he was claiming to have listed and sold those properties. However, since REALTOR® B had included a footnote pointing out that the properties on the list had been listed and sold by various Participants in the MLS, the fact that REALTOR® B had not included the names of each listing broker could not be construed as REALTOR® B claiming to have been the listing broker in each instance or to have "sold" each of the properties.

Case #12-14: Advertising Property as "Offered Exclusively" (Adopted November, 1995. Deleted November, 2017.)

Case #12-15: Links to other Websites (Adopted April, 1998. Revised May, 2017.)

REALTOR® A, in building out her firm's Facebook page, decided to include a link to all the listings in her city on Realtor.com.

REALTOR® B, a competing broker in the same community, happened upon REALTOR® A's Facebook page, and discovered the link to Realtor.com which included REALTOR® B's listings.

REALTOR® B immediately filed an ethics complaint with the local Association of REALTORS® alleging that REALTOR® A had violated Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4. Following review by the Association's Grievance Committee, the complaint was scheduled for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® B argued that by providing a link to the listings on Realtor.com, REALTOR® A was advertising without authority all the listings in the local MLS on her firm's Facebook page.

REALTOR® A countered saying that links are merely a method of "pointing" or "referring" to another site; that the information had not been altered nor had any information been deleted; and that people who view links to websites understand that.

After hearing all relevant testimony, the Hearing Panel went into executive session and concluded that by linking to a website which contained other REALTORS®' listings, REALTOR® A had not engaged in unauthorized advertising and had not violated Article 12.

Case #12-16, Copying and Publishing other Brokers' Listings (Adopted April, 1998. Revised May, 2017.)

In developing his website, REALTOR® A decided he would offer two pages of listings: his own and some featured listings of his competitors. Being careful not to pr esent a misleading picture in his advertising, he was very careful to list the company name and phone number of the listing company with each of his competitors' listings.

When REALTOR® B found one of her listings on REALTOR® A's website, she filed an ethics complaint with the local Association of REALTORS® complaining that REALTOR® A had "blatantly and without authorization of any kind whatsoever advertised my listing on his website and in so doing was clearly in violation of Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4."

At their next meeting, the Grievance Committee decided that the alleged conduct, if taken at face value, could possibly violate Article 12 and directed the Association's Professional Standards Administrator to schedule an ethics hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B produced a printed copy of her listing which was on REALTOR® A's website. She produced a copy of her listing agreement and a photograph of the property, which matched the information in the listing. She testified that she had never been contacted by REALTOR® A for permission to advertise her listing.

When REALTOR® A presented his case, he showed the hearing panel several examples of REALTORS® providing links to sites with ads for other REALTORS®' listings. He said he saw no fundamental difference between providing such links and actually advertising other listings on his website, especially when he was very careful to also give the listing company's name and phone number. He went on to argue that REALTOR® B's clients would be hard pressed to understand REALTOR B's objection to giving their properties the additional exposure they received on REALTOR® A's website.

Upon the conclusion of all testimony and closing statements, the Hearing Panel met in executive session and decided that while providing a link to listings of other REALTORS® did not violate Article 12, by actually publishing REALTOR® B's listing on his website REALTOR® A was not linking, but instead was advertising (by copying, as opposed to simply providing a link) without authority. In their findings of fact, the Hearing Panel also noted that even if REALTOR® B's clients might not object to such advertising, the lack of objection could not be assumed and would not relieve REALTOR® A of the obligation to obtain REALTOR® B's specific authority and consent to advertise her listings.

The Hearing Panel found REALTOR® A in violation of Article 12 of the Code of Ethics.

Case #12-17: Use of Deceptive Domain Name/ URL (Adopted May, 2001. Revised May, 2017.)

REALTOR® X, a principal broker in the firm XYZ, was constantly looking for ways to promote his firm and drive additional traffic to his website.

REALTOR® X had registered, but not used, domain names that incorporated or played on the names of many of his competitors and their firms, including ABC, REALTORS®.

REALTOR® X and his information technology staff concluded that one way to drive traffic to the firm's website would be to take advantage of the search engines commonly used by potential buyers and sellers. When potential buyers or sellers searched on key words like "real estate" or "REALTORS®" or on similar words, lists of search hits would appear, and when consumers searched for ABC, REALTORS®, one of the domain names that might appear would be REALTOR® X's domain name, abcrealtors.com.

REALTOR® X decided to take advantage of the domain names that he had previously registered, and pointed several that used, in various ways, the names of his competitors, including "abcrealtors.com," to his site.

In a matter of days, REALTOR® X learned that he had been charged with a violation of Article 12 of the Code of Ethics by REALTOR® A, the owner of ABC, REALTORS® , alleging that his (REALTOR® X's) use of the domain name "abcrealtors.com" presented a false picture to potential buyers and sellers and others on the Internet.

At the hearing, REALTOR® X defended himself indicating that, in his opinion, use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. Moreover, "When consumers reach my home page, there is no question that it is my site since I clearly show XYZ's name and our status as REALTORS®," he continued.

The Hearing Panel disagreed with REALTOR® X's justification, indicating that while his use of a domain name that employed another firm's name might not be precluded by law or regulation, it did not comply with the Code's higher duty to present a "true picture."

REALTOR® X was found in violation of Article 12, presenting an untrue picture in his representation to the public.

Case #12-18: Protecting Client's Interest in Auction Advertised as "Absolute" (Adopted May, 2005. Revised May, 2017. Cross-referenced with Case #1-31.)

Seller T, a widowed elementary school teacher in the Midwest inherited a choice parcel of waterfront property on one of the Hawaiian islands from a distant relative. Having limited financial resources, and her children's' college educations to pay for, she concluded that she would likely never have the means to build on or otherwise enjoy the property. Consequently, she decided to sell it and use the proceeds to pay tuition and fund her retirement.

Seller T corresponded via e-mail with several real estate brokers, including REALTOR® Q whose website prominently featured his real estate auction services. REALTOR® Q proposed an absolute auction as the best way of attracting qualified buyers and ensuring the highest possible price for Seller T. Seller T found the concept had certain appeal but she also had reservations. "How do I know the property will sell for a good price," she asked? REALTOR® Q responded, "You have a choice piece of beachfront. It will easily bring at least four million five hundred thousand dollars." Seller T acquiesced and REALTOR® Q sent her the necessary contracts which Seller T executed and returned.

Several days prior to the scheduled auction, Seller T decided to take her children to Hawaii on vacation. The trip would also afford her the chance to view the auction and see, firsthand, her future financial security being realized.

On the morning of the auction only a handful of people were present. Seller T chatted with them and, in casual conversation, learned that the only two potential bidders felt the property would likely sell for far less than the $4,500,000 REALTOR® Q had assured her it would bring. One potential buyer disclosed he planned to bid no more than $750,000. The other buyer wouldn't disclose an exact limit but said he was expecting a "fire sale."

Seller T panicked. She rushed to REALTOR® Q seeking reassurance that her property would sell for $4,500,000. REALTOR® Q responded, "This is an auction. The high bidder gets the property." Faced with this dire prospect, Seller T insisted that the auction be cancelled. REALTOR® Q reluctantly agreed and advised the sparse audience that the seller had cancelled the auction.

Within days, two ethics complaints were filed against REALTOR® Q. Seller T's complaint alleged that REALTOR® Q had misled her by repeatedly assuring her—essentially guaranteeing her—that her property would sell for at least $4,500,000. By convincing her she would realize that price—and by not clearly explaining that if the auction had proceeded the high bidder—at whatever price—would take the property, Seller T claimed her interests had not been adequately protected, and she had been lied to. This, Seller T concluded, violated Article 1.

The second complaint, from Buyer B, related to REALTOR® Q's pre-auction advertising. REALTOR® Q's ad specifically stated "Absolute Auction on July 1." Nowhere in the ad did it mention that the auction could be cancelled or the property sold beforehand. "I came to bid at an auction," wrote Buyer B, "and there was no auction nor any mention that it could be cancelled." This advertising, Buyer B's complaint concluded, violated Article 12's "true picture" requirement.

Both complaints were forwarded by the Grievance Committee for hearing. At the hearing, REALTOR® Q defended his actions by noting that comparable sales supported his conclusion that Seller T's property was worth $4,500,000. "That price was reasonable and realistic when we entered the auction contract, and it's still reasonable today. I never used the word 'guarantee'; rather I told her the chances of getting a bid of $4,500,000 or more were very good." "But everyone knows," he added, "that anything can happen at an auction." If Seller T was concerned about realizing a minimum net return from the sale, she could have asked that a reserve price be established.

Turning to Buyer B's claim of deceptive advertising, REALTOR® Q argued that his ad had been clear and accurate. There was, he stated, an auction scheduled for July 1 and it was intended to be an absolute auction. "The fact that it was advertised as 'absolute' doesn't mean the property can't be sold beforehand—or that the seller can choose not to sell and cancel the auction. Ads can't discuss every possibility."

The Hearing Panel concluded that while REALTOR® Q had not expressly guaranteed Seller T her property would sell for $4,500,000, his statements had led her to that conclusion and after realizing Seller T was under that impression, REALTOR® Q had done nothing to disabuse her of that misperception. Moreover, REALTOR® Q had taken no steps to explain the auction process to Seller T, including making her aware that at an absolute auction the high bidder—regardless of the bid— would take the property. REALTOR® Q's actions and statements had clearly not protected his client's interests and, in the opinion of the Hearing Panel, violated Article 1.

Turning to the ad, the Hearing Panel agreed with REALTOR® Q's position. There had been an absolute auction scheduled—as REALTOR® Q had advertised—and there was no question but that REALTOR® Q had no choice but to cancel the auction when he had been instructed to do so by his client. Consequently, the panel concluded REALTOR® Q had not violated Article 12.

Case #12-19: Remove Information About Listings from Websites Once Authority to Advertise Ends (Adopted November, 2006. Revised May, 2017.)

REALTOR® A, a residential specialist in a major metropolitan area, spent several weeks each year in a cabin in the north woods he had inherited from a distant relative. Always on the lookout for investment opportunities, he paid careful attention to "for sale" signs, online ads, and local brokerage websites in the area.

Returning from the golf course one afternoon, REALTOR® A spotted a dilapidated "for sale" sign on an otherwise-attractive wooded lot. Getting out of his car, he was able to discern REALTOR® Z's name. Returning to his cabin, he looked online to locate REALTOR® Z and REALTOR® Z's company website. Visiting REALTOR® Z's website, he found detailed information about the lot he'd seen that afternoon.

He e-mailed REALTOR® Z and asked for information about the lot, including its dimensions and asking price. Several days later REALTOR® Z responded, advising simply, "That listing expired."

The following day REALTOR® A, hoping to learn whether the lot was still available, contacted REALTOR® X, another area real estate broker. "As it turns out, we have an exclusive listing on the property you're interested in," said REALTOR® X. In response to REALTOR® A's questions, REALTOR® X advised that he had had an exclusive listing on the property for almost six months. "That's funny," responded REALTOR® A, "REALTOR® Z has a 'for sale' sign on the property and information about it on her website. Looking at her website, I got the clear impression that she still had that property listed."

While the wooded lot proved to be out of REALTOR® A's price range, REALTOR® Z's "for sale" sign and website were still on his mind when he returned home. Ultimately, he contacted the local association of REALTORS® and filed an ethics complaint alleging that REALTOR® Z's "for sale" sign, coupled with her offering information on her website made it appear as if the wooded parcel was still listed with her firm, when that had not been the case for over six months. REALTOR® A noted that this conduct, in his opinion, violated Article 12 since REALTOR® Z was not presenting a "true picture" in her public representations and was, in fact, advertising without authority, a practice prohibited by Article 12, as interpreted by Standard of Practice 12-4.

At the hearing, REALTOR® Z claimed that failure to remove the "for sale" sign was simply an oversight, and if anyone was to blame, it was her personal assistant who was responsible for removing signs and lockboxes from expired and sold listings. Turning to the stale listing information on her website, REALTOR® Z acknowledged that information about her former listing had continued to appear for more than six months after the listing had expired. "REALTORS® have better things to do than constantly inspect their websites to make sure everything is absolutely, positively up-to-the-minute." "If we did that, none of us would have time to list or sell," she concluded.

The hearing panel disagreed with REALTOR® Z's reasoning. Information on REALTORS®' websites can be updated on a regular basis, and corrected if mistakes occur. The panel concluded that the continued presence of information about REALTOR® Z's former listing six months after expiration on her website, coupled with the continued presence of her "for sale" sign on the wooded lot, did not present the true picture required by Article 12, and was inconsistent with the obligation to have authority to advertise contemplated by Article 12 as interpreted by Standard of Practice 12-4. REALTOR® Z was found in violation of Article 12.

Case #12-20: Misleading Use of "MLS" in URL

(Adopted November, 2007. Revised May 2008 and May, 2017.)

REALTOR® A, a residential broker in a major metropolitan city, spent several weeks each year in his cabin in the north woods where he planned to retire one day. Even while at home in the city, REALTOR® A stayed abreast of local news, events, and especially the local real estate market by subscribing to the online editions of the local newspaper. He also bookmarked a number of north woods brokers' websites to stay current with the market and to watch for potential investment opportunities.

One evening while on the Internet, he came across a site he was unfamiliar with—northwoodsandlakesmls.com. REALTOR® A was pleased to see the MLS serving the area where he vacationed for so many years had created a publicly-accessible website. Clicking on the link, he was surprised to find that the website he was connected with was not an MLS's website, but instead was REALTOR® Z's company website. Having had prior dealings with REALTOR® Z, REALTOR® A spent some time carefully scrutinizing the website. He noted, among other things, that the name of REALTOR® Z's firm did not include the letters MLS.

REALTOR® A sent an e-mail to the association's Professional Standards Administrator asking whether REALTOR® Z had been authorized by the association to use the URL northwoodsandlakesmls.com and whether the association felt it presented a true picture as required by Article 12 of the Code of Ethics. The Professional Standards Administrator responded that their association did not assign, review, or approve URLs used by their members, but added that if REALTOR® A felt a possible violation of the Code of Ethics had occurred, the appropriate step was to file an ethics complaint. REALTOR® A did just that, alleging in his complaint that when he clicked on what appeared to be a real estate-related URL that included the letters "MLS" he expected to be connected with a website operated by a multiple listing service. He stated he felt that REALTOR® Z's URL was deceptive and did not meet Article 12's true picture test.

At the hearing, REALTOR® Z defended his URL on a number of grounds including the fact that he was a participant in good standing in the MLS and that he was authorized under the MLS's rules to display other participants' listings on his website. "If I used 'MLS' in the name of my firm, I could see how that might be perceived as something less than a true picture," he argued, "but by simply using MLS in my URL I am telling consumers that they can get MLS-provided information about properties in the north woods from me. What could be truer than that?"

The hearing panel disagreed with REALTOR® Z's reasoning. While REALTOR® Z's website included information about other participants' listings that the MLS had provided—and that REALTOR® Z was authorized to display—the fact remained that a real estate-related URL that includes the letters MLS will, in many cases, lead reasonable consumers to conclude that the website is an MLS's, and not a broker's website. That was the case with REALTOR® Z's URL and REALTOR® Z was found in violation of Article 12 as interpreted by Standard of Practice 12-10.

Case #12-21: Registration of URL Similar to Name of Subsequently-Established Firm

(Adopted November, 2008. Revised May, 2017.)

REALTOR® Z was a partner in the XYZ residential real estate firm in the north woods. She was also a former advertising executive who was constantly looking at new and innovative ways to position and market the XYZ firm. While her partners had consistently resisted her suggestions to change the firm's name to better reflect the locale they served, REALTOR® Z had, with their concurrence, registered a number of domain names based on firm names she had to date been unable to convince her partners to adopt. She felt this was a wise strategy since it was only a matter of time until she would convince her partners that a name change was beneficial. Among the domain names registered were northwoodsrealestate.com, woodsandlakesrealty.com, and upnorthrealestate.com. None of those names were, to the best of REALTOR® Z's knowledge, similar to the names of other area real estate brokerage companies.

Approximately a year later Sales Associate B received his broker's license, left the XYZ firm, and opened his own brokerage firm which he named Up North Real Estate. When he attempted to register the domain name upnorthrealestate.com he learned it had already been registered by REALTOR® Z. Upset with this turn of events, he filed an ethics complaints with the local association of REALTORS® charging REALTOR® Z and her partners with having violated Article 12 of the Code of Ethics, as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® Z defended her actions in registering the domain name upnorthrealestate.com on the grounds she had been actively lobbying her partners to change the firm's name to Up North Real Estate; that she had no intention of using the domain name upnorthrealestate.com until the firm's name was changed and that at the time she had registered the domain name no other firm that she was aware of had a similar, let alone identical, name. Moreover, she argued, a domain name does not have to mirror a firm's name, it merely has to present a "true picture." "The XYZ firm has listed and sold residential property in the north woods for many years. 'Up north' is traditionally used by residents and visitors to refer to our area," she continued. "While I hoped to convince my partners to change the name of our firm to 'Up North Real Estate' at some point, if the XYZ firm had used the domain name—which we haven't—it still would have satisfied Article 12's true picture requirement since it refers to a particular geographic locale, not to a competing real estate company."

The hearing panel agreed with REALTOR® Z's reasoning, concluding that at the time REALTOR® Z registered the domain name upnorthrealestate.com, it was not similar to the name of any other area real estate company. The panel also noted that if it had been used, the domain name would have satisfied Article 12's true picture requirement since it would have simply suggested to consumers that it was a source of property information in that geographic area.

Case #12-22: Registration of Domain Names Based on Competitors' Firms' Names (Adopted November, 2008.)

REALTOR® X was the principal broker of a small but growing real estate brokerage firm. REALTOR® X was constantly on the lookout for new and innovative ways to distinguish her firm from the competition and to increase its market share. Rather than simply relying on tried and true methods, REALTOR® X sought and often followed the advice of education, marketing and technology consultants.

Based on the advice of her technology expert, REALTOR® X created and registered domain names for her firm, for the licensees affiliated with her, and for herself. A somewhat more troubling recommendation was that she register domain names mirroring the names of the real estate brokerage firms in her area with the largest market shares. When she questioned the consultant, he responded, "There's no reason why not. Everyone does it. It's just competition — and aggressive marketing."

When REALTOR® A tried to register a domain name for his firm ABC REALTORS®, he learned that domain name had already been registered by REALTOR® X. Doing further research, he learned the names of several other large companies in the area had also been registered as domain names by REALTOR® X. REALTOR® A filed an ethics complaint with the local association of REALTORS® charging REALTOR® X with violating Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-12.

At the hearing, REALTOR® X defended her actions noting that Article 12 requires REALTORS® to "present a true picture in their advertising, marketing, and other representations." She pointed out that she had never used the registered domain name mirroring the name of REALTOR® A's firm, or those based on the names of other local firms. Since she had not used the domain names, she couldn't see how she had violated Article 12.

The hearing panel did not agree with REALTOR® X's reasoning. The panel based its decision that REALTOR® X had violated Article 12 on the wording of Standard of Practice 12-12 which bars REALTORS® from registering URLs or domain names which, if used, would present less than a true picture. The panel also noted that the very act of registering a URL or domain name which, if used, would present an untrue picture is all that is required to violate Article 12, as interpreted by Standard of Practice 12-12.

Case #12-23: Intentionally Misspelled Domain Names Based on Names of Competitors' Firms. (Adopted November, 2008. Revised May, 2017.)

REALTOR® V was the sole proprietor of a property management firm. REALTOR® V hoped to expand into residential brokerage and wanted to attract buyers and sellers to his website in order to enhance the growth of his firm's brokerage activity. REALTOR® V sought the advice of several website developers, each of whom had suggestions on how best to attract and hold visitors. One suggestion REALTOR® V found particularly interesting was to create domain names similar, but not identical, to the names of established brokerage firms in the area. REALTOR® V registered and began to use domain names that, while similar to the names of the five largest residential brokerage firms in the area, were each spelled slightly differently than those firms' actual names.

In short order, complaints were filed against REALTOR® V by REALTORS® from each of the five largest firms. The grievance committee concluded the complaints were related and consolidated them for consideration at one ethics hearing.

At the hearing, REALTOR® V acknowledged that Article 12 requires REALTORS® to be "honest and truthful in their real estate communications" and that REALTORS® must "present a true picture in their advertising, marketing, and other representations." "If I had used the actual names of any of these firms in my domain names, that would have been a misrepresentation," continued REALTOR® V, "but when I changed spellings, I constructively created meaningless domain names which aren't deceptive since they don't reflect the name of any actual real estate firm." The hearing panel did not agree with REALTOR® V's defense, finding that each of the "slightly misspelled" domain names were so similar to the names of REALTOR® V's competitors that reasonable consumers would readily conclude they would lead consumers to those firms' respective websites. As REALTOR® V's "misspelled" domain names would mislead reasonable consumers, REALTOR® V was found in violation of Article 12, as interpreted by Standard of Practice 12-12.

Case #12-24: Registration of Domain Name Based on Sales Associate's Name When Sales Associate Subsequently Leaves the Firm

(Adopted November, 2008.)

REALTOR® P was the current broker-owner of the real estate brokerage firm founded by her grandmother. Always on the lookout for ways to attract top sales associates, REALTOR® P offered comprehensive training and benefits, including state of the art technology tools, individual websites, and personalized domain names for each sales associate.

Sales Associate Q had enjoyed a long and productive relationship with REALTOR® P's firm but, having gained considerable experience and a broad client base, decided the time had come to start his own firm. The parting was amicable except for one thing—Sales Associate Q's domain name which, under the terms of his independent contractor agreement, remained the property of the firm. Attempts to negotiate a release of the domain name proved unsuccessful and, with no alternative available, Sales Associate Q filed an ethics complaint against REALTOR® P, alleging violation of Article 12 as interpreted by Standard of Practice 12-12. Sales Associate Q's complaint noted that the domain name included Q's first and last names and that any future use by REALTOR® P, now that Q was no longer a member of her firm, would present something less than the true picture required by Article 12.

At the hearing, REALTOR® P defended refusal to release the domain name on the grounds that at the time she had registered it, Sales Associate Q had, in fact, been a member of her firm, and that use of the domain name by a member of her firm had presented a true picture. Circumstances change, she noted, adding that at the time she had registered the domain name on behalf of both her firm and Sales Associate Q, her actions had been consistent with Article 12 as interpreted by Standard of Practice 12-12. "The fact that Sales Associate Q decided to start his own firm shouldn't result in me being found in violation of the Code of Ethics," she concluded.

The hearing panel concluded that REALTOR® P was not in violation of Article 12 as interpreted by Standard of Practice 12-12 because her registration of a domain name that used Sales Associate Q's name occurred with the knowledge and consent of Sales Associate Q; at the time of registration, use by REALTOR® P's firm satisfied Article 12's true picture requirement; and that REALTOR® P had ceased any use of the domain name at the time Sales Associate Q left the firm. The decision also noted that while the Code of Ethics did not require REALTOR® P to transfer the domain name to Sales Associate Q, domain name registrations must be renewed periodically and that a future renewal of the domain name by REALTOR® P would be a violation of Article 12 if that domain name does not reflect a "true picture" of REALTOR® P's business at the time of the renewal.

Case #12-25: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2009. Revised May, 2017.)

REALTOR® Q was a non-principal broker licensed with ABC REALTORS®. REALTOR® Q specialized in buyer representation. A prominent feature on her website carried the headline, "I sold these—and I can help you buy or sell, too!" Under the headline was a list of over a hundred street addresses of properties for which REALTOR® Q had found buyers.

For personal and professional reasons, REALTOR® Q chose to leave the ABC firm to affiliate with XYZ, REALTORS®. As she transitioned to her new firm, REALTOR® Q was careful to disclose the name of her new firm in a readily apparent manner on her website. Her website also continued to display the list of properties she had found buyers for during her time with the ABC firm.

REALTOR® Q's parting with ABC had been amicable, so she was surprised to receive a complaint brought by her former principal broker, REALTOR® C, alleging a violation of Article 12, as interpreted by Standard of Practice 12-7, based on her website's display of sales made while REALTOR® Q had been affiliated with ABC.

At the hearing, REALTOR® C, the complainant, noted that Standard of Practice 12-7 provides, in part, "Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have 'sold' the property. "It was ABC, REALTORS®," REALTOR® C added, "that was the selling broker in these transactions, not our former sales associate REALTOR® Q. Her advertising our sales under the umbrella of her new firm, XYZ, REALTORS®, is confusing at best, and potentially misleading to consumers who may get the impression the XYZ firm was involved in these transactions when that's not the case."

REALTOR® Q defended herself and her website, arguing that the fact that she had found the buyers for each of the properties listed on her website was still true, and that the only thing that had changed was her firm affiliation. "If it was true when I was licensed with ABC, then it's still true even though I'm now licensed with XYZ," she reasoned.

The hearing panel agreed that REALTOR® Q had, in fact, sold the properties, albeit while licensed with ABC. Her website, however, suggested that the sales were made while REALTOR® Q was licensed with XYZ, which was not the case. Consequently, REALTOR® Q was found in violation of Article 12.

Case #12-26: Advertising Role in Sales After Changing Firm Affiliation (Adopted May, 2010)

REALTOR® P was a non-principal broker licensed with XYZ, REALTORS® whose forte was listing residential property. Noted prominently on REALTOR® P's website was the banner: "Sold by REALTOR® P!" Under that banner were addresses of nearly a hundred properties REALTOR® P had listed, and which had been sold either through REALTOR® P's efforts or through the efforts of cooperating brokers.

Seeking new opportunities, REALTOR® P ended his relationship with XYZ and affiliated with ABC, REALTORS®. REALTOR® P promptly revised the information on his website to prominently display the name of his new firm in a readily apparent manner. He also continued to display the lengthy list of properties that he had listed, and which had sold, while REALTOR® P was affiliated with XYZ.

His departure from XYZ had been on good terms, so REALTOR® P was taken aback to receive a complaint brought by his former principal broker, REALTOR® D, alleging that REALTOR® P's website display of sold listings violated Article 12, as interpreted by Standard of Practice 12-7.

At the hearing, the complainant noted that Standard of Practice 12-7 provides, in relevant part, "Only REALTORS® who participated in the transaction as a listing broker or cooperating broker (selling broker) may claim to have 'sold' the property." "It was XYZ, REALTORS®," REALTOR® D added, "that was the listing broker in these transactions, not our former sales associate, REALTOR® P. His advertising of our listings and sales under the banner of his new firm ABC, REALTORS®, is unauthorized and misleading to consumers who will get the impression that ABC was involved in these transactions when that is simply not true."

REALTOR® P defended himself and his website pointing out that he had listed each of the properties displayed on his website, and the only thing that had changed was his firm affiliation. He directed the hearing panel's attention to the disclaimer at the end of the list of properties that read, "Each of these properties was listed by REALTOR® P over the past seven years. For much of that time, I was affiliated with another firm."

The hearing panel agreed with REALTOR® P's defense, noting that consumers would understand that some of the sales had occurred while REALTOR® P was affiliated with a different firm. Consequently, REALTOR® P was found not in violation of Article 12.

CASE INTERPRETATIONS RELATED TO ARTICLE 13:

Case #13-1: Preparation of Instrument Unrelated to Real Estate Transaction

(Reaffirmed Case #17-1 May, 1988. Transferred to Article 13 November, 1994. Revised November, 2001 and May, 2017.)

Client A dropped in to see his friend, REALTOR® B, who had recently provided professional services to Client A's company. Client A said the company was sending him on business to China; that the trip would involve a good deal of air travel in remote areas; and that he would like to leave a power of attorney with his wife while he was gone "just in case." He asked REALTOR® B if he would prepare a power of attorney for him and REALTOR® B said, "It's a simple document. I'll be glad to prepare one for you," and did.

This action came to the attention of the Grievance Committee of the Association of REALTORS®, which, after review, filed a complaint with the Association's Professional Standards Committee, charging REALTOR® B with a violation of Article 13 of the Code of Ethics.

REALTOR® B's defense was that he understood Client A's request to be essentially for a real estate service since from his general knowledge of Client A's personal affairs, he knew that Client A could have no reason for giving his wife a power of attorney except to put her in a position to act in real estate transactions. He contended that because his preparation of a legal document was directly related to real estate matters, he had rendered real estate, not legal, services to Client A.

It was the judgment of the Hearing Panel that REALTOR® B's defense was without merit; that by preparing the power of attorney, he had engaged in the practice of law in violation of Article 13 of the Code.

Case #13-2: Use of Standard Purchase Contract Form

(Reaffirmed Case #17-2 May, 1988. Transferred to Article 13 November, 1994. Revised May, 2017.)

REALTOR® A, as the exclusive agent of Seller B, sold a small commercial property to Buyer C, filling in the blanks in a standard purchase contract form. At the time REALTOR® A presented the contract for Buyer C's signature, he explained that the contract was prepared by attorneys and was commonly used in the area. He suggested that Buyer C have his attorney review it. Buyer C said he would read it over carefully, and if he had any questions he would consult an attorney about it. He subsequently signed the contract, saying it was clear and satisfactory to him.

At the closing, Buyer C professed to have been under some misunderstanding as to language in the contract regarding the date of possession of the property, and following the closing Seller B complained to the Association of REALTORS® that he had been greatly embarrassed by this circumstance at the closing and felt that REALTOR® A was at fault in preparing a contract without having an attorney participate in the drafting.

At the hearing, REALTOR® A reiterated the points that had been made in his written response to the complaint: that the contract he had used was the standard form, prepared by an attorney; that in keeping with Article 13 he had recommended that the buyer have the contract reviewed by his own attorney; and that no other parties present at the closing had found any lack of clarity in the clause in question.

The Hearing Panel concluded that REALTOR® A had acted in conformance with the Code; that he had not undertaken to practice law; and that he was not in violation of Article 13.

Case #13-3: REALTOR®'s Obligation to Recommend Counsel When Needed (Reaffirmed Case #17-3 May, 1988. Transferred to Article 13 November, 1994. Revised May, 2017.)

REALTOR® A was the listing broker for 25 acres of land owned by Client B. Shortly after REALTOR® A's sign was placed upon the property, Customer C called REALTOR® A and expressed interest in purchasing the property. After inspecting the property, Customer C made a full price offer. Surprised, Client B prepared a counter-offer at a higher price. REALTOR® A realized that he might have a legal claim for commission from Client B, but not wishing to jeopardize their relationship, agreed that he would go back to Customer C and attempt to negotiate a higher price. Upon being informed of the property owner's change of mind and his requested higher price for the property, Customer C became upset and indicated his intent to consult his attorney to determine if he could force the seller to go through with the sales transaction at the price for which it had been originally offered. At this point REALTOR® A advised Customer C that, in his opinion, litigation would be lengthy and expensive and that in the final analysis the sale could not be enforced. On the basis of REALTOR® A's advice Customer C agreed to the higher price, and the transaction was consummated. Shortly after, Customer C complained to the Association of REALTORS® that REALTOR® A had provided bad advice to him. The Professional Standards Administrator referred the complaint to the Grievance Committee, which determined that a hearing should be held and referred the matter back to the Administrator to arrange such a hearing.

At the hearing, Customer C outlined his complaint to the Hearing Panel of the Professional Standards Committee. He indicated that he had intended to consult his attorney, however, because of the persuasive personality of REALTOR® A and REALTOR® A's assurance that legal action would be an exercise in futility, he had not done so.

REALTOR® A advised the panel that he had told Customer C that he could consult his attorney, but that, in his opinion, it would be a waste of time. He defended what he had told Customer C stating that it was only his opinion, not intended as a conclusive statement of law, and, in fact, was a correct statement under the law of the state. The panel concluded that REALTOR® A, in pointing out the fact that legal action was likely to be time consuming and expensive, was stating a practical circumstance which Customer C should consider and was proper. The panel further concluded that the expression of an opinion as to the probable outcome of the case was not an "unauthorized practice of law" within the meaning of Article 13.

However, the panel noted that a REALTOR® is obligated to "recommend that legal counsel be obtained when the interest of any party to the transaction requires it."

In this case, REALTOR® A was aware that the interest of Customer C required a legal opinion as to whether Customer C could compel Client B to convey title to the property and did not intend his personal opinion to represent a "statement of law" upon which Customer C could rely. Accordingly, REALTOR® A was obligated to affirmatively recommend that Customer C consult his attorney to definitively establish the legal rights in question.

Having failed to make such a recommendation, REALTOR® A was in violation of Article 13.

CASE INTERPRETATIONS RELATED TO ARTICLE 14:

Case #14-1: Establishing Procedure to be Followed in Handling Complaints

(Revised Case #15-1 May, 1988. Transferred to Article 14 November, 1994. Revised November, 1996. Revised November, 2001. Deleted November, 2017.)

Case #14-2: Refusal to Submit Pertinent Facts

(Revised Case #15-2 May, 1988. Transferred to Article 14 November, 1994. Revised May, 2018.)

REALTOR® A was charged with a violation of the Code of Ethics. At the hearing, the complainant formally presented the charge and a considerable body of evidence to support it. Members of the panel questioned REALTOR® A on specific points. To each question he responded that he was not guilty of the charge, but that specific answers to the questions put to him could conceivably do him an injustice, and that he felt that he should not be required to answer questions in a situation that was unfair to him.

Further attempts to question REALTOR® A met with similar responses. The Chairperson reminded REALTOR® A that he was not before a court of law but a Committee of the Board in which his membership was based wholly upon his willingness to abide by it rules, which did not provide for a "Fifth Amendment" refuge from proper questions by members of the Hearing Panel. The Chairperson specifically directed REALTOR® A to respond to the hearing panel's questions, and REALTOR® A refused.

The Chairperson of the Hearing Panel advised REALTOR® A that, in light of his refusal to answer questions directed to him, the complaint was being amended to include a charge of a violation of Article 14. The Chairperson asked REALTOR® A if he wished to proceed with the hearing, or if he preferred to have the hearing postponed to a later date to provide him with an opportunity to prepare a defense against the additional charge. The Chairperson also asked if REALTOR® A agreed to go forward with the existing Hearing Panel or if he would ask for a new Hearing Panel. REALTOR® A requested a continuance to prepare his defense against the amended complaint that now included an alleged violation of Article 14, and agreed to go forward with the current Hearing Panel. The hearing was adjourned to a date certain to enable REALTOR® A to prepare his defense to the additional charge. The Chairperson advised REALTOR® A that he was required to attend the new hearing date and respond to questions put to him by the Hearing Panel.

One day prior to the new hearing date, REALTOR® A called the association and advised that he would not be attending the hearing because he objected to the nature of the Hearing Panel's questions and the fact that he was required to respond. The following day, the Chairperson noted REALTOR® A's absence, and the complainant was permitted to present their case. The hearing concluded and the Hearing Panel entered executive session.

In executive session, the Hearing Panel discussed REALTOR® A's behavior with respect to the alleged violation of Article 14. The Panel members discussed that respondents in ethics cases are not required to attend hearings, defend themselves, and answer questions absent a specific and direct request to do so in order to remain compliant with Article 14. In this instance, however, REALTOR® A had received a specific and direct request from the Panel to attend the new hearing date and answer questions, and his failure to do so constituted a violation of Article 14.

Case #14-3: Submission of Pertinent Facts

(Revised Case #15-3 May, 1988. Transferred to Article 14 November, 1994. Revised May, 2017.)

Buyer A filed a complaint against REALTOR® B, the listing broker, involving a property purchased earlier by Buyer A.

REALTOR® B was notified of the complaint, directed to be present at a hearing, and requested to present to a Hearing Panel of the Association's Professional Standards Committee all pertinent facts relating to the transaction. REALTOR® B's response was a statement that he would refuse to submit any information in the matter to a Hearing Panel and would not attend the scheduled hearing, on the grounds that the complaint itself was not justified.

Explaining his position, REALTOR® B stated that his participation in the transaction was exclusively as the agent of the seller; that he had not been representing the buyer; and hence, could not be subject to a complaint by the buyer for simply transmitting information on behalf of the seller.

All of his statements concerning the property, REALTOR® B said, were based on information supplied to him by his client, the seller. Any error in this information, he contended, might well provide the basis for a lawsuit between the buyer and seller. As the agent of the seller, he felt that he was not answerable to the buyer for having done no more than transmit information provided to him by the seller.

REALTOR® B was advised by the Association that his reasoning was incorrect; that he was obligated by Article 14 to submit pertinent facts to a Hearing Panel of the Association's Professional Standards Committee and to participate in the hearing. REALTOR® B agreed to comply, and a hearing on the complaint was held.

CASE INTERPRETATIONS RELATED TO ARTICLE 15:

Case #15-1: Knowing or Reckless False Statements About Competitors (Adopted Case #23-1 November, 1992. Transferred to Article 15 November, 1994. Revised May, 2017.)

REALTOR® A operated a residential brokerage firm in a highly competitive market area. He frequently used information from the MLS as the basis for comparative ads and to keep close track of his listing and sales activity as well as his competition.

One day, while reviewing MLS data and comparing it to a competitor's ad, REALTOR® A noticed that REALTOR® Z had used a diagram to demonstrate his market share, contrasting it with those of several other firms. The ad showed that REALTOR® A had listed 10% of the properties in the MLS over the past three months.

REALTOR® A thought this was low. His analysis of MLS data showed his market share was 11%. REALTOR® A filed an ethics complaint against REALTOR® Z citing Article 15 of the Code of Ethics in that REALTOR® Z's "obviously understated market share claim" was a "misleading statement about other real estate professionals." REALTOR® A's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing, REALTOR® Z testified he had always been truthful in his advertising and that all claims were based in fact. He produced an affidavit from the MLS administrator which indicated that a programming error had resulted in miscalculations and, after careful recomputation, REALTOR® A's market share over the past three months had been 10.9%. The administrator's statement noted that this was the first time that information related to REALTOR® A's listings or sales had been misstated on the system. "I relied on information from the MLS. It's always been accurate and I had no reason to even suspect it was wrong last month," said REALTOR® Z in his defense.

The Hearing Panel agreed with REALTOR® Z's logic, noting that a REALTOR® should be able to rely on generally accurate information from reliable sources. They reasoned that if, on the other hand, the MLS had shown REALTOR® A having, for example, 1% of the market, then REALTOR® Z's reliance on the information would have been "reckless" because REALTOR® A had generally had a 10–15% market share and a reasonable conclusion would have been that the information from the MLS was seriously flawed.

The Hearing Panel concluded that REALTOR® Z's comparison with other real estate professionals, while slightly inaccurate, was based on usually accurate and reliable information and had been made in good faith and while technically "misleading," had not been "knowing" or "reckless". REALTOR® Z was found not to have violated Article 15.

Case #15-2: Intentional Misrepresentation of a Competitor's Business Practices (Adopted Case #23-2 November, 1992. Transferred to Article 15 November, 1994. Revised November, 2001 and May, 2018.)

Following a round of golf early one morning, Homeowner A approached REALTOR® X. "We've outgrown our home and I want to list it with you," said Homeowner A. "I'm sorry," said REALTOR® X, "but I represent buyers exclusively." "Then how about REALTOR® Z?," asked Homeowner A, "I've heard good things about him." "I don't know if I would do that," said REALTOR® X, "while he does represent sellers, he doesn't cooperate with other brokers and, as a result, sellers don't get strong offers for their properties."

Later that day, Homeowner A repeated REALTOR® X's remarks to his wife who happened to be a close friend of REALTOR® Z's wife. Within hours, REALTOR® Z had been made aware of REALTOR® X's remarks to Homeowner A earlier in the day. REALTOR® Z filed a complaint against REALTOR® X charging him with making false and misleading statements. REALTOR® Z's complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing REALTOR® Z stated, "I have no idea what REALTOR® X was thinking about when he made his comments to Homeowner A. I always cooperate with other REALTORS®." REALTOR® X replied, "That's not so. Last year you had a listing in the MLS and I spent months working with the buyers that submitted a purchase offer. You didn't pay me the offer of compensation, though; you paid another broker who stole my clients from me at the last minute, and all he did was submit the purchase offer."

REALTOR® Z countered REALTOR® X's statements, indicating he had made a blanket offer of compensation in the MLS, and that his refusal to pay REALTOR® X had nothing to do with him not cooperating with other brokers, but the fact that there was a procuring cause dispute at the end of the transaction. Upon questioning by panel members, REALTOR® X admitted he had no personal knowledge of any instance in which REALTOR® Z had refused to cooperate with any other broker, but assumed that his failure to pay the compensation REALTOR® X felt he had earned was likely how REALTOR® Z treated other brokers.

The Hearing Panel, in its deliberations, noted that cooperation and compensation are not synonymous. In fact, Standard of Practice 3-10 provided that the duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. In that respect, the Hearing Panel felt REALTOR® Z had, in fact, cooperated with REALTOR® X. However, to characterize REALTOR® Z's refusal to pay requested compensation because of a genuine commission dispute as a "refusal to cooperate", and to make the assumption and subsequent statement that REALTOR® Z "did not cooperate with other brokers", was false, misleading, and not based on factual information. Consequently, REALTOR® X was found in violation of Article 15.

CASE INTERPRETATIONS RELATED TO ARTICLE 16:

Case #16-1: Confidentiality of Cooperating REALTOR®'s Participation

(Revised Case #21-5 May, 1988. Transferred to Article 16 November, 1994. Revised and transferred to Article 3 November, 2018.)

Case #16-2: Respect for Agency (Revised Case #21-6 May, 1988. Transferred to Article 16 November, 1994. Revised May, 2017.)

Client A gave a 180-day exclusive right to sell listing of a commercial property to REALTOR® B, specifying that no "for sale" sign was to be placed on the property. REALTOR® B and his sales associates started an intensive sales effort which, after three months, had produced no offer to buy, but it had called attention to the fact that Client A's property was for sale. When REALTOR® C heard of it, he called on Client A, saying that he understood that his property was, or soon would be, for sale, and that if Client A would list the property with him exclusively he felt confident that he could provide prompt action. Client A said the property was exclusively listed with REALTOR® B under a contract that still had about 90 days to run.

"In that case," said REALTOR® C, "you are bound for the next 90 days to REALTOR® B. I have a really outstanding organization, constantly in touch with active buyers interested in this class of property. I am in a position to render you an exceptional service, and I will plan to call you again in 90 days or so."

The property remained unsold during the term of REALTOR® B's listing contract. REALTOR® C called again on Client A, and obtained his assurance that he would sign an exclusive listing of the property upon expiration of the listing contract.

When REALTOR® B called on Client A on the last day of the listing contract to seek its renewal, Client A told him of REALTOR® C's two visits. "I was impressed by REALTOR® C's assurance of superior service" Client A told REALTOR® B, "and in view of the fact that my listing with you produced no definite offer in the 180-day period, I have decided to give REALTOR® C a listing tomorrow."

REALTOR® B filed a complaint with the Grievance Committee of the Association, outlined the facts, and charged that REALTOR® C's conduct had been inconsistent with Article 16 of the Code of Ethics.

The Grievance Committee referred the matter to the Professional Standards Committee.

At the conclusion of the hearing, the panel found that REALTOR® C had violated Article 16 by failing to respect the exclusive agency of REALTOR® B. The panel's decision advised that REALTOR® C's original contact with Client A, made at a time when he had no knowledge of REALTOR® B's exclusive listing, was not in itself unethical, but that as soon as he learned of REALTOR® B's status as the client's exclusive agent, he should have taken an attitude of respect for the agency of another REALTOR®, and refrained from any effort to get the listing until after the expiration date of the original contract.

REALTOR® C's attitude of regarding the client's relationship with REALTOR® B as a kind of misfortune, of presenting his own service as superior to REALTOR® B's, and of suggesting to the client that, having a better capacity to serve him, he could wait until REALTOR® B's listing had expired, was, the panel said, contrary to the respect for another REALTOR®'s exclusive agency required by Article 16.

The Hearing Panel's decision further advised REALTOR® C that he would have conducted himself in accord with Article 16 if, upon learning of REALTOR® B's status as exclusive agent, he had expressed his willingness to cooperate with REALTOR® B in the sale of Client A's property.

Case #16-3: Mass Media Solicitation Not a Violation of the Code

(Revised Case #21-8 May, 1988. Transferred to Article 16 November, 1994. Revised November 2017.)

REALTOR® A, a residential broker, worked in a market area that included an attractive suburb of a large city. At the time REALTOR® A launched a new advertising program, there were a number of houses for sale in the neighborhood listed exclusively with other REALTORS®, each having the respective listing broker's sign on its front lawn.

Working with his advertising agency, REALTOR® A developed a special e-mail solicitation describing the service of his offices. He employed a commercial e-mail distribution service to purchase the e-mails of every homeowner in REALTOR® A's market area.

The e-mail distribution service sent REALTOR® A's e-mail solicitation to all the homeowners in his market area, including houses that had other REALTORS®' signs in the front yard. Several of the REALTORS® whose clients received REALTOR® A's e-mails filed complaints with the Association against REALTOR® A. The Grievance Committee considered the complaints and referred them to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Professional Standards Committee at which time all of the complaints would be considered. The complaints charged REALTOR® A with unethical conduct in failing to respect the exclusive agency of other REALTORS®.

At the hearing, REALTOR® A defended his action by saying that the distribution of his e-mail solicitation was widespread in nature; that it had been carried out by a commercial distribution service; and that it was of the same nature as television or social media advertising that might come to the attention of some clients having exclusive listing contracts with other REALTORS®.

The Hearing Panel's decision noted that REALTOR® A, in designing his advertising campaign, did not direct his e-mail to property owners whose identity had come to REALTOR® A's attention through information disclosed by other REALTORS® consistent with their ethical obligation to cooperate with other brokers under Article 3 of the Code of Ethics; e.g., through a "for sale" sign or through information disseminated through a Multiple Listing Service. Rather, REALTOR® A's advertising campaign was directed in an indiscriminate manner to all property owners in a given geographical area. Furthermore, the medium REALTOR® A chose for his advertising campaign was an e-mail, which property owners could read or delete as they saw fit. The panel determined that this form of communication does not harass a property owner, as would telephone calls or direct personal contacts. The Hearing Panel, therefore, held that REALTOR® A's advertising campaign did not violate Article 16 of the Code of Ethics.

Case #16-4: Responsibilities of Cooperating Broker

(Revised Case #21-10 May, 1988. Transferred to Article 16 November, 1994. Cross-reference Case #1-11. Deleted November, 2001.)

Case #16-5: Solicitation of Expired Exclusive Listing

(Reaffirmed Case #21-11 May, 1988. Transferred to Article 16 November, 1994. Revised April, 1996 and May, 2017.)

A property was exclusively listed with REALTOR® A who advertised it widely and invited cooperation from other REALTORS®. The property was not sold during the term of REALTOR® A's listing, although both REALTOR® A and REALTOR® B, a buyer representative, had shown the property to prospects.

Sometime after the expiration of REALTOR® A's listing, the listing appeared on REALTOR® B's website. Shortly thereafter, the property was sold by REALTOR® B.

REALTOR® A confirmed that it was listed with REALTOR® B and then charged REALTOR® B in having failed to respect his exclusive representation status with the client by soliciting the listing. The Grievance Committee referred the complaint for hearing by a Hearing Panel of the Professional Standards Committee. Upon due notice to the parties, a hearing on the complaint was called with REALTORS® A and B present. REALTOR® A's specific charge was that REALTOR® B knew that the client had originally listed the property with him, REALTOR® A, because he had discussed the property with REALTOR® B during the term of the original listing contract; that during the term of REALTOR® A's listing, REALTOR® B had shown the property to the same individual who had now purchased the property through REALTOR® B; and that with this knowledge REALTOR® B's action in soliciting the listing, even after it had expired, was a violation of Article 16.

REALTOR® A told the Hearing Panel that when he had asked for an extension of the original exclusive listing, the client told him that because of a family problem he intended to take the property off the market for a few months, but would consider relisting at a later date.

REALTOR® B conceded that he had known of REALTOR® A's exclusive listing at the time the listing contract was current; that he had known the term of the listing contract and, hence, knew when it expired; and that he had shown the property to the individual who eventually purchased it. However, he explained, he had no continued contact with the prospect to whom he had originally shown the property. After the expiration date of REALTOR® A's listing, he was approached by the individual to whom he had originally shown the property and who was still actively interested in purchasing a home. In reviewing the purchaser's stated requirements and reviewing the market, the property in question seemed to correspond more closely than any other available properties. Knowing that the original listing with REALTOR® A had expired some time ago, REALTOR® B simply called the owner to ask if the property had been relisted with REALTOR® A. Upon learning that REALTOR® A's exclusive listing had not been extended, REALTOR® B told the owner of his prospective buyer, solicited the listing, and obtained it. REALTOR® B said he saw nothing unethical in having solicited the listing when it was no longer exclusively listed with another broker and felt that REALTOR® A was without grounds for complaint.

The panel concluded that it was not the intent of Article 16 to provide any extended or continuing claim to a client by a REALTOR® following the expiration of a listing agreement between the client and the REALTOR®. The panel concluded that REALTOR® A had not been successful in his efforts to sell the client's property and that neither the property owner nor other REALTORS® should be foreclosed from entering into a new listing agreement to sell the property.

The panel concluded that REALTOR® B was not in violation of Article 16 of the Code of Ethics.

Case #16-6: Cooperating Broker's Compensation Specified on Deposit Receipt

(Revised Case #21-12 May, 1988. Transferred to Article 16 November, 1994. Renumbered as Case #16-15 November, 2001.)

Case #16-7: REALTOR®'s Refusal to Disclose Nature and Current Status of Listing to Another REALTOR®

(Revised Case #21-13 May, 1988. Transferred to Article 16 November, 1994. Revised May, 2017.)

Client X listed his home with REALTOR® A under an exclusive right to sell listing agreement negotiated for a period of 90 days. During the first 75 days, REALTOR® A attempted various marketing strategies, but none were successful. Client X expressed disappointment and told REALTOR® A that he might seek another agency when the listing expired.

That same day, Client X expressed to a friend his dissatisfaction with REALTOR® A's lack of results, and mentioned that he might employ another agent. The friend, in turn, related this information to his friend, REALTOR® B, and suggested that REALTOR® B contact Client X. Aware that the property was currently listed with REALTOR® A, REALTOR® B called REALTOR® A, explained the information passed on to him, and inquired about the nature and current status of Client X's listing with REALTOR® A. Specifically, REALTOR® B asked REALTOR® A when the listing would expire and whether the listing was an "exclusive right to sell" or "open" listing. REALTOR® A responded that the listing was his and refused to discuss the matter further.

REALTOR® B then contacted Client X and explained that their mutual friend had informed him that Client X might be seeking another agent to sell his property. REALTOR® B told Client X that he did not wish to interfere in any way with Client X's present representation agreement with REALTOR® A, but that if Client X intended to seek another agent when his present listing agreement with REALTOR® A terminated, he would like to discuss the possibility of listing Client X's property. Client X invited REALTOR® B to his home that evening, and there they discussed the terms and conditions under which REALTOR® B would list the property upon termination of REALTOR® A's listing. REALTOR® B and Client X did not enter into any written agreement at that time. However, Client X requested REALTOR® B to meet with him the day following the expiration of REALTOR® A's listing, and Client X said that at that time he would execute a new listing agreement with REALTOR® B. The property did not sell before REALTOR® A's listing expired, and on the day following the expiration of REALTOR® A's listing, Client X listed the property with REALTOR® B. Upon learning of REALTOR® B's listing, REALTOR® A filed a complaint with the Association alleging that REALTOR® B violated Article 16 of the Code of Ethics.

At an ethics hearing duly noticed and convened after all due process procedures of the Association were followed, REALTOR® A presented his complaint that REALTOR® B had contacted REALTOR® A's client during the unexpired term of the client's listing agreement with REALTOR® A and had, therefore, violated Article 16 of the Code of Ethics.

REALTOR® B defended his action by pointing out that when he was informed that Client X was seeking another broker, he sought to respect the agency of REALTOR® A by calling him to inquire about the type and expiration date of the listing. He said he told REALTOR® A he would respect REALTOR® A's agency agreement, but that he needed to know this information to determine when, and under what circumstances, Client X would be free to list the property with another broker. REALTOR® A refused to discuss the listing status, stating that "it was none of his business." REALTOR® B cited Standard of Practice 16-4 in defense of his direct contact with Client X.

The Hearing Panel concluded that REALTOR® B had adequately respected the agency of REALTOR® A as interpreted by Standard of Practice 16-4. The panel's decision indicated that a listing broker should recognize that his refusal to disclose the type and expiration date of a listing to an inquiring broker frees the inquiring broker to contact the seller directly. If the contact with the seller is made under the provisions of Standard of Practice 16-4, the REALTOR® is also able to discuss the terms of a future listing on the property or may enter into a listing to become effective upon the expiration of the current listing.

The panel found REALTOR® B not in violation of Article 16.

Case #16-8: Unauthorized Use of Information Received from Listing Broker for the Purpose of Creating a Referral to a Third Broker or for Creating a Buyer Relationship (Reaffirmed Case #21-14 May, 1988. Transferred to Article 16 November, 1994. Revised May, 2017.)

REALTOR® A entered a listing with the Association MLS. In the "Remarks" portion of the listing, it was noted that the seller was moving out of state. Shortly thereafter, REALTOR® A received a call from REALTOR® B, requesting permission to show the property to a prospective purchaser. REALTOR® B's request was granted and the property was shown to the prospect. During the showing, REALTOR® B started a conversation with Seller X regarding his proposed move to another state. REALTOR® B told the seller that he was acquainted with a number of real estate brokers in the city to which Seller X was relocating and suggested that he be allowed to refer Seller X to one of these brokers. Seller X responded that REALTOR® A, the listing broker, had previously mentioned the possibility of a referral and that Seller X felt obligated to be referred by REALTOR® A, if by anyone.

Several days later, Seller X received a phone call from REALTOR® B who again asked permission to refer the seller to a broker in the city to which the seller was moving. The seller indicated that he was not interested in REALTOR® B's offer and that if he wished to be referred to another broker, he would do so through REALTOR® A. The seller then called REALTOR® A and asked if there was anything REALTOR® A could do to stop REALTOR® B from requesting that he be allowed to refer the seller to another broker. Upon learning of REALTOR® B's attempts to create a referral, REALTOR® A filed a complaint with the Grievance Committee of the Board alleging a violation of Article 16 of the Code of Ethics and cited Standard of Practice 16-18 in support of the allegations.

In accordance with the Association's established procedures, the Grievance Committee reviewed the complaint and referred it to a panel of the Professional Standards Committee for hearing. The appropriate notices were sent to all parties and a hearing was scheduled.

At the hearing, REALTOR® A produced a written statement from Seller X in support of his testimony and concluded that REALTOR® B had violated Article 16 of the Code of Ethics in attempting to use confidential information received through the Association's MLS to attempt to create a referral to a third broker.

REALTOR® B responded that he was attempting to promote the seller's best interest by referring the seller to a reputable broker whom he knew personally in the city to which the seller was going to relocate. REALTOR® B indicated that the seller had not accepted his offer of referral and, based on such refusal, REALTOR® B had not, in fact, made any referral and, therefore, had not acted in a manner inconsistent with his obligations as expressed in Standard of Practice 16-18.

After giving careful consideration to all the evidence, the Hearing Panel determined REALTOR® B to be in violation of Article 16 by his attempt to utilize confidential MLS information to create a referral to a third broker, contrary to the intent of Standard of Practice 16-18, even though his effort to obtain the seller's permission to do so had been unsuccessful. The Hearing Panel also commented that MLS information is confidential and to be utilized only in connection with the REALTOR®'s role as cooperating broker. The panel further commented that information received from a listing broker through the MLS should not be used to create a referral to a third broker or to create a buyer relationship unless such use is authorized by the listing broker.

Case #16-9: Mass Media Solicitation of Business Not a Violation of the Code (Reaffirmed Case #21-15 May, 1988. Transferred to Article 16 November, 1994. Revised May, 2018.)

REALTOR® A designed an advertising campaign to promote his new marketing program. Part of REALTOR® A's campaign included a number of advertisements in the local newspaper, and on mobile billboards that traveled around the city.

The message that appeared in REALTOR® A's advertisements and on his billboards was: "Attention: All homeowners whose properties are for sale. Do you want results? If so, contact REALTOR® A. He has a new marketing program that gets results."

In response to his advertisements, REALTOR® A received a number of calls from homeowners whose properties were currently listed with other REALTORS®. Several of the REALTORS® whose clients contacted REALTOR® A filed complaints with the Association, charging REALTOR® A with unethical conduct for failing to respect the exclusive agency of other REALTORS®. The Grievance Committee considered the complaints and referred them to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Professional Standards Committee.

At the hearing held by the Professional Standards Committee to consider the complaints, REALTOR® A defended his advertising campaign by saying that the campaign was undertaken through the mass media; that it was not directed toward any particular owner; that it was not an attempt to induce property owners to breach existing listing agreements; and, therefore, was not the type of solicitation prohibited by Article 16 of the Code of Ethics.

The Hearing Panel concurred with REALTOR® A on the grounds that REALTOR® A's solicitation was made through the mass media, and was not specifically directed toward property owners whose identity had come to REALTOR® A's attention through information disclosed by other REALTORS® consistent with their ethical obligation to cooperate with other brokers under Article 3 of the Code of Ethics. The panel, therefore, held that REALTOR® A's advertising campaign did not violate Article 16 of the Code of Ethics.

Case #16-10: Refusal to Disclose Nature and Expiration Date of Listing

(Originally Case #9-20. Revised and transferred to Article 21 as Case #21-16 May, 1988. Transferred to Article 16 November, 1994. Revised May, 2018.)

REALTOR® A, on his way to his office, noticed the deteriorated condition of a "For Sale" sign posted on an unimproved site bearing the name of REALTOR® B. He remembered that REALTOR® B's "For Sale" sign had been on that site for a considerable period of time. REALTOR® A decided to call REALTOR® B to determine the status of the property. In response to several questions, one of which was, "Do you have an exclusive listing on that property?" REALTOR® B replied that he was not obligated to disclose the nature, status, or the type of listing. After considerable conversation, REALTOR® A stated his intention to contact the property owners for this information, citing Standard of Practice 16-4 as the basis for his action. REALTOR® B warned REALTOR® A not to contact his sellers and refused to discuss the matter further. A few days later, REALTOR® B had a telephone conversation with the property owners and learned of their decision to list their property with REALTOR® A when their current listing with REALTOR® B expired the following week. REALTOR® B filed a complaint against REALTOR® A with the Association, stating that REALTOR® A's actions in contacting his client had been inconsistent with REALTOR® B's exclusive agreement with the sellers.

The Grievance Committee reviewed the complaint and the response to the complaint filed by REALTOR® B. The case was referred to the Professional Standards Administrator to schedule a hearing by a Hearing Panel of the Association's Professional Standards Committee.

During the hearing, REALTOR® B repeated his complaint and his conversation with REALTOR® A. He also advised the Hearing Panel of his telephone conversation with the property owners and of their decision, as a result of REALTOR® A's direct contact, not to relist the property with him, REALTOR® B. "Not only did REALTOR® A fail to respect my exclusive agreement with the property owners by contacting them directly," said REALTOR® B, "but he violated Article 16 by taking the opportunity to relist the property away from me!"

REALTOR® A defended his actions by stating that he had requested information on the nature and status of the listing from REALTOR® B, as required by Article 16, and that REALTOR® B had refused to divulge the information; and that he had contacted the property owners only after this refusal, citing as his authority the principle established in Standard of Practice 16-4. "The sellers were happy to discuss listing their property with me, once I described the services my firm could offer," said REALTOR® A. "They said they hadn't had an interested customer since the first week of their listing with REALTOR® B."

After giving careful consideration to all of the evidence and testimony, the Hearing Panel concluded that REALTOR® A's actions had not been inconsistent with the exclusive agreement of REALTOR® B. The panel advised that REALTOR® B's refusal to disclose the nature and status of his listing had freed REALTOR® A to contact the property owners.

The Hearing Panel's decision noted that Article 16 requires a REALTOR® to respect the exclusive agency of another REALTOR®. But, in order to respect the listing broker's agency, the REALTOR® must be able to determine if an exclusive listing really exists. If the listing broker refuses to disclose the existence, type, and duration of his listing, Standard of Practice 16-4 recognizes the REALTOR®'s right to contact the seller directly to get that information. Once the REALTOR® secures information on the type and duration of the listing, Standard of Practice 16-4 also permits him to discuss the terms of a future listing or to enter into a listing that becomes effective upon the expiration of the current listing. The panel's decision also indicated that REALTOR® B could have barred REALTOR® A's contact with the sellers by simply providing him with information on the nature and status of the listing.

The panel found REALTOR® A not in violation of Article 16 of the Code of Ethics.

Case #16-11: Buyer Agent's Demand that Listing Agent Reduce Commission (Adopted as Case #21-17 April, 1990. Transferred to Article 16 November, 1994. Renumbered as Case #16-16 November, 2001.)

Case #16-12: Buyer Conditions Purchase Offer on Seller's Agreement to Pay Buyer Agent's Fee (Adopted as Case #21-18 April, 1990. Transferred to Article 16 November, 1994. Renumbered as Case #16-17 November, 2001.)

Case #16-13: Dealings Initiated by Another Broker's Client (Adopted May, 1999.)

REALTOR® A, a residential broker, had recently listed a home. REALTOR® A's marketing campaign included open houses on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR® A introduced herself to Buyer B and asked whether Buyer B was working with another broker. Buyer B responded that he was, in fact, exclusively represented but went on to add that he was quite familiar with the property as it had been previously owned by a close personal friend. REALTOR® A told Buyer B that she would be happy to show Buyer B through the home but reminded Buyer B that she represented the seller and not Buyer B.

After viewing the home, Buyer B indicated that he had pressing business travel plans, was seriously interested in the property, and requested REALTOR® A's assistance in preparing a purchase offer. REALTOR® A assisted Buyer B in filling out a standard form purchase contract and later that day presented the offer to the seller who accepted it.

REALTOR® A was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

At the hearing, REALTOR® A defended her actions noting that she had told Buyer B that she was the seller's exclusive agent and, as such, would not and could not represent Buyer B's interests. She pointed out that it was only after Buyer B had insisted on writing a purchase offer without the assistance of his exclusive representative that REALTOR® A had agreed to do so. She concluded her defense noting that Standard of Practice 16-13 authorizes dealings with the client of another broker in cases where those dealings are initiated by the client.

The Hearing Panel agreed with REALTOR® A that she was the seller's exclusive representative and had not represented the buyer and concluded that her conduct had not violated Article 16, as interpreted by Standard of Practice 16-13.

Case #16-14: Dealings Initiated by Another Broker's Client (Adopted May, 1999.)

REALTOR® X, a residential broker, had recently listed a home. REALTOR® X's marketing campaign included open houses on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR® X introduced herself to Buyer B and asked whether Buyer B was working with another broker. Buyer B responded that he was, in fact, exclusively represented but went on to add that he was quite familiar with the property as it had been previously owned by a close personal friend. REALTOR® X told Buyer B that she would be happy to show Buyer B through the home and answer any questions he might have, but added that she represented the seller and not Buyer B.

After viewing the home, Buyer B indicated that he was seriously interested in the property and intended to discuss a possible purchase offer with his buyer representative. REALTOR® X responded that there were several other buyers interested in the property and that it would likely sell quickly. "I can't tell you what to do, but if it were me, I would make an offer today," REALTOR® X told Buyer B, "You can go back and discuss this with your broker if you like or I can help you write a purchase contract. It's your choice." With REALTOR® X's words in mind, Buyer B decided to make an offer. REALTOR® X assisted Buyer B in filling out a standard form purchase contract which was accepted by the seller later that day.

REALTOR® X was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR®.

At the hearing, REALTOR® X defended her actions noting that she had told Buyer B that she was the seller's exclusive agent and, as such, would not and could not represent Buyer B's interests. She pointed out that Buyer B had asked for her help in writing a purchase offer and had not sought the counsel and assistance of his exclusive representative. She concluded her defense noting that Standard of Practice 16-13 authorizes dealings with the client of another broker when those dealings are initiated by the client.

The Hearing Panel disagreed with REALTOR® X's reasoning. They concluded that REALTOR® X's inducement of Buyer B by emphasizing that the property might sell quickly (which might well have been true), coupled with her offer to prepare a purchase contract on Buyer B's behalf, constituted an initiation of dealings on the property by REALTOR® X, not by Buyer B. As a result, REALTOR® X was found in violation of Article 16.

Case #16-15: Cooperating Broker's Compensation Specified on Deposit Receipt (Revised Case #21-12 May, 1988. Transferred to Article 16 November, 1994 as Case #16-6. Renumbered November, 2001. Revised November, 2018, Deleted effective June 5, 2025.)

Case #16-16: Buyer Agent's Demand that Listing Agent Reduce Commission (Adopted as Case #21-17 April, 1990. Transferred to Article 16 November, 1994 as Case #16-11. Renumbered November, 2001, Deleted effective June 5, 2025.)

Case #16-17: Buyer Conditions Purchase Offer on Seller's Agreement to Pay Buyer Agent's Fee (Adopted as Case #21-18 April, 1990. Transferred to Article 16 November, 1994 as Case #16-12. Renumbered November, 2001, Deleted effective June 5, 2025.)

Case #16-18: Assumed Consent for Direct Contact

(Reaffirmed Case #22-2 May, 1988. Transferred to Article 3 November, 1994. Transferred to Article 16 November, 2001.)

REALTOR® A, who held an exclusive listing of Client B's property, invited REALTOR® C to cooperate with him. When REALTOR® C, shortly thereafter, received an offer to purchase the property and took it to REALTOR® A, the latter took REALTOR® C with him to present the offer to Client B, and negotiations for the sale were started. The next day, REALTOR® C called on Client B alone, recommended that he accept the offer which was at less than the listed price, and Client B agreed. The contract was signed and the sale was made.

These facts were detailed in a complaint by REALTOR® A to the Association of REALTORS® charging REALTOR® C with unethical conduct in violation of Article 16, having made his second contact with the client without his, REALTOR® A's, consent.

At the subsequent hearing, REALTOR® C defended his actions on the basis that since he had been invited to cooperate with REALTOR® A, and particularly since REALTOR® A had invited him to be present when his offer was presented to the seller, REALTOR® C had assumed that he had REALTOR® A's consent for subsequent direct contacts with Client B. He stated further that he had a good reason for going alone because in his first visit to the client, REALTOR® A had undertaken to present his, REALTOR® C's, offer without fully understanding it and had made an inept presentation. Questioning by members of the Hearing Panel revealed that there had been some important considerations that REALTOR® A had not understood or explained to the client.

The conclusion of the panel was that the consent of the listing broker required by Article 16, as interpreted by Standard of Practice 16-13, cannot be assumed, but must be expressed; and that REALTOR® C had violated Article 16 by negotiating directly with REALTOR® A's client without REALTOR® A's consent.

Case #16-19: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011)

After a decades-long career as a noted researcher and teacher, Professor Y decided to sell his home near the university campus in anticipation of his retirement to the northwoods. Having lived in the home for over thirty years and realizing that the proceeds from its sale would constitute a significant part of his retirement funds, Professor Y made appointments with several potential listing brokers, including REALTOR® P and REALTOR® Q. During each appointment, Professor Y asked extensive questions hoping to get a clear idea of his property's market value and each broker's proposed marketing strategies.

REALTOR® Q was familiar with Professor Y's home, having grown up on the same block and having gone to elementary and high school with Professor Y's children. Consequently, REALTOR® Q was not surprised when she received a call asking for a meeting to discuss a possible listing of Professor Y's home. The appointment had gone well and REALTOR® Q was confident she would get the listing. To her surprise, just three days later the property came onto the market listed with REALTOR® P. REALTOR® Q was taken aback and spent considerable time pondering what she had done or said – or failed to do or say – that had led Professor Y to choose to list with REALTOR® P. Several times she was tempted to call Professor Y and ask why she hadn't been chosen, but she never made that call.

Several weeks later Professor Y's son and daughter-in-law hosted a retirement party for Professor Y. Their friend REALTOR® Q was among the invited guests. At the party, Professor Y approached REALTOR® Q and, after exchanging pleasantries, commented, "You're probably wondering why I didn't list my home with you." "The thought crossed my mind," admitted REALTOR® Q, "but you made a good choice with REALTOR® P. I'm certain he'll do a fine job and get a fair price for you." Then, since Professor Y had raised the issue, REALTOR® Q asked, "Why didn't you give me the listing?" Professor Y explained that while he thought highly of REALTOR®® Q, he had been very impressed with REALTOR® P's marketing strategies, and his choice was a business decision and not one influenced by friendships. REALTOR® Q accepted Professor Y's explanation and their conversation turned to other topics. A month later, REALTOR® Q was surprised to receive notice from the local association of REALTORS® advising she had been named in an ethics complaint alleging that her conversation with Professor Y, after Professor Y had listed his home with REALTOR® P, had violated Article 16 of the Code of Ethics.

At the hearing, REALTOR® Q had acknowledged she had been surprised – and disappointed – when Professor Y listed his home with REALTOR® P instead of with her. She also acknowledged she discussed Professor Y's choice of listing broker with him at the party. In her defense, she called Professor Y as a witness. Professor Y testified that he had in fact told REALTOR® P, his listing broker, about his conversation with REALTOR® Q, adding that he had no idea that REALTOR® P would file an ethics complaint. He also noted he – and not REALTOR® Q – had raised the subject of why he had chosen to list with REALTOR® P. "REALTOR® Q is a longtime friend of my family and I felt I owed her an explanation about why I listed with REALTOR® P instead of with her."

REALTOR® Q concluded her defense noting that while Standard of Practice 16-13 requires REALTORS® to conduct dealings related to exclusively listed property with the client's agent, there is an exception in cases where dealings are initiated by an exclusively-represented client. She pointed out that her conversation with Professor Y could fairly be characterized as a "dealing" related to Professor Y's exclusively listed home, and that her conversation with Professor Y, since it was initiated by Professor Y, did not violate Article 16 of the Code of Ethics.

The Hearing Panel concurred with REALTOR® Q's defense, and found no violation of Article 16.

Case #16-20: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011, Revised November, 2019)

At the conclusion of a detailed listing presentation, REALTOR® B asked the sellers whether they had any questions. "No," said Seller Z. "Your presentation was professional and complete and we very much appreciate your time. We have appointments with two other firms and after we talk to them we'll make our decision." REALTOR® B thanked the sellers and encouraged them to contact him with any questions they might have. "I really look forward to being your broker," he added.

Several days later, REALTOR® B noticed that Seller Z's property had come on the market, listed with REALTOR® A. REALTOR® B and REALTOR® A were friends, but were also quite competitive, both frequently pursuing the same potential seller-clients. "I wonder why Seller Z decided to list with REALTOR® A," mused REALTOR® B, "it won't matter if I just call and ask why they decided to list with my friend REALTOR® A instead of me." REALTOR® B called the sellers and left a message on their voicemail asking for a return call at their convenience.

That evening, Seller Z returned REALTOR® B's phone call. REALTOR® B started the conversation by thanking Seller Z and his wife for their time. "What I'd like to know is why you chose to give your listing to REALTOR® A instead of me?" he then asked. "Don't get me wrong, REALTOR® A is a good broker and will do a good job for you. I'm not suggesting you cancel your listing with REALTOR® A but if your listing expires and REALTOR® A hasn't sold it, I'd be pleased to talk to you about listing with me."

Seller Z did not follow up on REALTOR® B's offer and the following weekend at REALTOR® A's open house Seller Z and his wife recounted REALTOR® B's follow-up phone call. Over the next few days REALTOR® A debated filing an ethics complaint. He weighed his friendship with REALTOR® B against what he saw as his duty to bring potentially unethical conduct to the attention of the association of REALTORS®. Somewhat reluctantly, he filed an ethics complaint alleging a violation of Article 16, as interpreted by Standard of Practice 16-13.

At the hearing, REALTOR® A called Seller Z as a witness. Seller Z faithfully recounted the substance of REALTOR® B's conversation with Seller Z and his wife, commenting that while REALTOR® B had said he was only trying to understand why he hadn't been given the listing, it appeared to Seller Z that REALTOR® B wanted Seller Z to cancel his listing with REALTOR® A. Then REALTOR® B testified in his own defense. He acknowledged he had been aware that REALTOR® A had already exclusively listed the property when he contacted Seller Z and asked for a follow-up appointment. He defended his actions stating he was not trying to induce Seller Z to cancel the listing, he was simply trying to find out what he had said – or failed to say – that led Seller Z to list with REALTOR® A instead of with him, and wanted Seller Z and his wife to be fully aware of the services he would provide if their listing with REALTOR® A expired.

The Hearing Panel did not agree with REALTOR® B's defense, noting that REALTOR® B's curiosity or desire to enhance his listing presentation skills did not justify continued contact with a potential seller-client after that seller had entered into an exclusive representation agreement with another broker. REALTOR® B was found in violation of Article 16 as interpreted by Standard of Practice 16-13.

Case #16-21: Continued Contact With Potential Seller Who Enters Into an Exclusive Listing With Another REALTOR® (Adopted November, 2011. Revised May 2017.)

REALTOR® P and Ms. Q had been members of the church choir for several years and had become social friends. One evening after choir practice Ms. Q mentioned that now that her children were grown and out of the family home, she and her husband were seriously considering downsizing. "I'm sure I can help you with that," said REALTOR® P, "I'm going away for the weekend but I'll get in touch with you early next week."

The following Monday evening REALTOR® P called Ms. Q. After exchanging pleasantries, REALTOR® P turned the conversation toward business. "I've identified some comparable sales to show you and I'd like to come over and visit with you and your husband to discuss listing your home," she said. After a lengthy pause, Ms. Q shared with REALTOR® P that her husband had been very anxious to get started and over the weekend they had visited several local real estate brokerages and had listed their home with REALTOR® B. "I hope you understand," said Ms. Q, "my husband was very impressed with REALTOR® B and his plans for selling our house." REALTOR® P responded positively telling Ms. Q, "I know REALTOR® B. He'll do a fine job for you. If there is ever anything I can do for you in the future, never hesitate to call me." On that note, REALTOR® P and Ms. Q ended their conversation.

The next afternoon REALTOR® B was at the Q's home placing his "For Sale" sign on their front lawn. Ms. Q invited REALTOR® B into the house for coffee. During their conversation, she mentioned her conversation the evening before with REALTOR® P, commenting, "I was so relieved that REALTOR® P wasn't upset that I didn't list with her. She was very gracious and even suggested that I should call her if she could be of assistance to us in the future." REALTOR® B said nothing about Ms. Q's remark, but after returning to his office filled out the paperwork necessary to file an ethics complaint against REALTOR® P, charging her with violating Article 16, as interpreted by Standard of Practice 16-13.

At the hearing convened to consider the complaint, REALTOR® B testified that REALTOR® P had directly contacted his exclusive client, Ms. Q, and after Ms. Q had shared with REALTOR® P the fact that the Q's home had been listed by REALTOR® B, had not immediately terminated their telephone conversation. "Even worse," said REALTOR® B, "REALTOR® P told Ms. Q that she should call her if there was ever anything she could do for her. REALTOR® P's offer to be of assistance 'at any time in the future' was simply a thinly-veiled attempt to convince the Q's to cancel their listing with me and to list with her.

REALTOR® P, testifying in her defense, noted that she did not know the Q's property had been listed by REALTOR® B when she called Ms. Q; that when Ms. Q informed her they had listed their property with REALTOR® B she had responded courteously, professionally, and positively, assuring Ms. Q that REALTOR® B would do a good job for the Qs; and that her offer was simply to be of assistance in future real estate transactions, possibly the purchase of a new home or condominium. "Once I learned that REALTOR® B had listed the Q's property, I ended our telephone conversation as quickly and as politely as I could," concluded REALTOR® P, "I certainly was not trying to interfere in REALTOR® B's exclusive contract with the Qs."

After giving careful consideration to the testimony of both parties, the Hearing Panel concluded that REALTOR® P had not violated Article 16 as interpreted by Standard of Practice 16-13, and that her offer to be of assistance in the future was simply a polite way to end the conversation.

Case #16-22: Ascertaining Whether a Consumer is Subject to an Exclusive Representation Agreement (Adopted May, 2019.)

REALTOR® A was holding an open house for their client's home, which had been on the market for several months, so REALTOR® A was thrilled to see Buyer C approach the home after two hours with no visitors. REALTOR® A gave her a tour of the space, but Buyer C indicated she was looking for more of a "fixer upper", as she had almost single-handedly completed some significant renovation projects in her previous homes, and was looking for the perfect next project.

REALTOR® A had another listing that she knew was perfect for Buyer C, and hadn't been listed in the MLS yet as the client had just signed their agreement earlier that morning. REALTOR® A described the home to Buyer C, and offered to show it to her. Buyer C replied, "Oh, thank you, I am actually working with someone. I should probably ask them about it." REALTOR® A responded, "that's fine, but to be honest, I'm not sure if your agent will even get a chance to see it. At the price at which it's listed, I'm confident it will sell before I can even get it in the MLS." Somewhat reluctantly, Buyer C agreed to let REALTOR® A show her the second home. REALTOR® A drafted an offer, which was accepted, and the parties completed a quick close.

Proud of a job well done for her client, REALTOR® A was shocked when she received notice of an ethics complaint filed against her by REALTOR® B, alleging a violation of Article 16 for interfering with his exclusive relationship with Buyer C. At the hearing, REALTOR® B provided the hearing panel with copies of this exclusive buyer agency agreement with Buyer C, and Buyer C testified that she did tell REALTOR® A she was working with someone, but felt pressured to tour and submit an offer with REALTOR® A or risk losing the house.

REALTOR® A defended her actions, stating, "Listen, if I had known that Buyer C had an *exclusive* agreement with someone, I would have backed off. But she never said that she was working with someone *exclusively;* just that she was working with someone. It's not my responsibility to fill in the gaps on what she told me or hammer her with questions and drive away a potential buyer just to determine what sort of relationship she has. That doesn't serve my client well."

The Hearing Panel decided that REALTOR® A had violated Article 16, as Standard of Practice 16-9 provides, "REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service." As REALTOR® A had made no affirmative effort to ascertain whether Buyer C's relationship with another agent was exclusive or not, the Hearing Panel concluded she had made no reasonable efforts to determine the nature of the relationship as required by Article 16.

CASE INTERPRETATIONS RELATED TO ARTICLE 17:

Case #17-1: Obligation to Submit to Arbitration

(Revised Case #14-2 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995. Revised November, 2001 and May, 2017.)

REALTOR® A and REALTOR® B had been engaged in a cooperative transaction that resulted in a dispute regarding entitlement to compensation. Rather than requesting arbitration before the Association of REALTORS®, REALTOR® A filed suit against REALTOR® B for payment of the compensation he felt REALTOR® B owed him. Upon receiving notification of the lawsuit, REALTOR® B filed a request for arbitration with the Association, which was reviewed by the Grievance Committee and found to be a mandatory arbitration situation. REALTOR® A was advised of the Grievance Committee's decision, but refused to withdraw the lawsuit. Thereupon, REALTOR® B filed a complaint with the Board charging a violation of Article 17 as supported by Standard of Practice 17-1.

REALTOR® A was directed to be present at a hearing on the complaint before the Board of Directors. Evidence that REALTOR® B had sought REALTOR®R A's agreement to submit the dispute to arbitration was presented at the hearing. REALTOR® A defended his action in filing the suit and refusing to submit to arbitration by asserting that under laws of the state, the Association of REALTORS® had no authority to bar his access to the courts or to require him to arbitrate his dispute with REALTOR® B.

The Board of Directors concluded that REALTOR® A was correct as to his legal right and as to the Association's lack of any right to prevent him from filing a suit. It was pointed out to REALTOR® A, however, that the Association of REALTORS® is a voluntary organization, whose members accept certain specified obligations with respect to their relations with other REALTORS®, and that if he wished to continue as a member of the Association, he would be obliged to adhere to the Association's requirements as to arbitration.

Because REALTOR® A would not withdraw the litigation, the Board of Directors concluded that REALTOR® A was in violation of Article 17 for refusing to arbitrate in a mandatory arbitration situation. However, it was noted that if REALTOR® A had filed litigation against REALTOR® B, and had REALTOR® B then requested arbitration with the Grievance Committee determining that an arbitrable issue of a mandatory nature existed, REALTOR® B might have successfully petitioned the court to remand the matter to the Association for arbitration, and there would have been no finding of a violation of Article 17 since the Association's arbitration process would have been ultimately complied with.

Case #17-2: Dispute Between REALTORS® in Different Boards

(Revised Case #14-6 May, 1988. Transferred to Article 17 November, 1994. Revised November, 1995.)

REALTOR® A cooperated in the sale of a commercial property with REALTOR® B, the listing broker. REALTOR® A is a member of the XYZ Board of REALTORS®, and his office is located in the XYZ Board. Both the property and REALTOR® B's office are located within the jurisdiction of the ABC Board of REALTORS® where REALTOR® B is a member. A dispute arose between REALTORS® A and B over the division of the commission.

REALTOR® A filed a request for arbitration with the Professional Standards Committee of his Board. The President of the Board, when advised of the contractual dispute, subsequent to the Grievance Committee finding the matter arbitrable and of a mandatory nature, notified the President of REALTOR® B's Board and requested inter board arbitration in accordance with Article 17 of the Code of Ethics. The arbitration request was brought before the Grievance Committee of REALTOR® B's Board which also determined that the dispute was arbitrable and of a mandatory nature.

One week before being notified of his Grievance Committee's decision, REALTOR® B filed suit against REALTOR® A. The Board of Directors of the ABC Board notified REALTOR® B to appear and answer to a charge of violation of Article 17 when REALTOR® B did not withdraw the suit subsequent to being informed that both Grievance Committees had found the issue arbitrable and mandatory.

REALTOR® B described his contractual dispute to the Directors and stated that he knew REALTOR® A had requested arbitration because he had received a copy of the request. REALTOR® B maintained that he had filed suit because REALTOR® A was in another Board's jurisdiction and he did not think anything would come of the request since he, REALTOR® B, was not a member of the XYZ Board.

REALTOR® B was advised that since both Grievance Committees had determined the matter was arbitrable and mandatory that inter board arbitration was being scheduled to hear the dispute. The Board of Directors concluded that his action in filing suit was not in itself in violation of Article 17 but advised REALTOR® B that if he failed to withdraw from the suit and participate in the inter board arbitration, he could be found in violation of Article 17.

Case #17-3: Dispute Between REALTORS® of Different Boards (Reaffirmed Case #14-7 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker and a member of the X Board of REALTORS®, and REALTOR® B, the cooperating broker and a member of the Y Board of REALTORS®, disagreed as to whether REALTOR® B should participate in a commission on a sale. The property was located within the jurisdiction of REALTOR® A's Board, and REALTOR® A proposed that the dispute be submitted for arbitration within his Board, the X Board of REALTORS®. REALTOR® B agreed, and appeared before an arbitration panel of the Professional Standards Committee of the X Board of REALTORS® to present evidence in support of his view that he was entitled to participate in the commission. The arbitration panel of the X Board of REALTORS® found in favor of REALTOR® A.

REALTOR® B then requested his Board, the Y Board of REALTORS®, to contact the X Board of REALTORS® for the purpose of arranging interboard arbitration as provided for in Article 17 of the Code of Ethics. The Y Board of REALTORS® refused, pointing out that REALTOR® B had voluntarily accepted the proposal to have the matter arbitrated by the X Board of REALTORS®; that he had agreed to be bound by the Hearing Panel's decision; had participated in the arbitration proceeding; and having done so, he was not, following an adverse decision, entitled to initiate another arbitration hearing.

Case #17-4: Dispute Involving REALTOR® Holding Membership in Two Boards (Revised Case #14-8 May, 1988. Revised and transferred to Article 17 November, 1994.)

REALTORS® A and B, disputants in an arbitrable issue, both belonged to the X Board of REALTORS®, a large Board in the central city of a metropolitan area. REALTOR® B also maintained a branch office in a nearby suburb and was also a member of the Board having jurisdiction in that area, the Y Board of REALTORS®.

REALTOR® A filed a written request with the X Board of REALTORS® for arbitration. REALTOR® B was notified and advised of the date of the hearing.

REALTOR® B replied that because he considered himself primarily a member of the Y Board of REALTORS®, he would proceed through the Y Board of REALTORS® and would request inter board arbitration as provided for in Article 17 of the Code of Ethics.

Upon consideration by the Board of Directors of the X Board of REALTORS®, the request for inter board arbitration was refused. Regardless of which of the two Boards REALTOR® B considered to be his primary Board, he was a member of the X Board. Since both parties to the dispute were members of the X Board, there was no need for inter board arbitration and the matter was arbitrated by the X Board.

Case #17-5: Time of Dispute a Determining Factor as to Arbitration (Revised Case #14-10 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A belonged to an All-REALTOR® Board (one in which all non principal brokers and salespersons as well as principals are eligible for REALTOR® membership). Salesperson B had been a REALTOR® for a number of years and had been associated as an independent contractor with REALTOR® A during that time. Salesman B showed a property to Prospect C, who subsequently purchased the property through Salesman D, who also was affiliated with REALTOR® A. Salesman D was also a REALTOR® Member of the Board.

There was considerable dispute over the facts of the situation, but REALTOR® A finally paid the sales commission to Salesman D but admitted that the written office policies did not precisely cover the circumstances. Salesman B demanded a share of the commission and, upon REALTOR® A's refusal to pay it to him, transferred his license to REALTOR® E's firm.

REALTOR® E and Salesman B joined in a request for arbitration of the dispute with REALTOR® A stating that Article 17 required the arbitration of disputes between REALTORS® associated with different firms.

REALTOR® A refused to arbitrate on the basis that the dispute had arisen while he and Salesman B were associated with the same firm and that it was an internal matter which he was not required to arbitrate.

The matter was referred to the Board of Directors, consistent with the Board's Code of Ethics and Arbitration Manual. After a hearing, the Board of Directors ruled that the deciding factor was the relationship between the REALTORS® at the time the dispute arose rather than at the time the demand for arbitration was made. Therefore, REALTOR® A was not required to arbitrate the matter and was not in violation of Article 17.

Case #17-6: Request for Arbitration Expenses (Reaffirmed Case #14-11 May, 1988. Transferred to Article 17 November, 1994.)

REALTOR® A, the listing broker, and REALTOR® B, a cooperating broker, engaged in a heated dispute as to which REALTOR® was the procuring cause of a sale and, therefore, entitled to the commission. Finding that they could not resolve the matter themselves, they agreed to arbitrate in accordance with Article 17 of the Code of Ethics.

REALTOR® A initiated the request for arbitration with a letter to the Board; the letter was received and reviewed by the Grievance Committee which agreed that it was an arbitrable matter. The case was sent on to the Professional Standards Committee for a hearing.

The President of the Board, consistent with the Board's Code of Ethics and Arbitration Manual, appointed a five-member Hearing Panel to hear the case. The proper forms agreeing to the arbitration were sent to both REALTORS®, each signed his agreement and returned it to the Professional Standards Administrator. Prior to the date set for the hearing, REALTOR® A learned that REALTOR® B had practiced law before he entered the real estate business. REALTOR® A then decided that he would be at a disadvantage in presenting his case to the Hearing Panel without an attorney due to the legal background of REALTOR® B. REALTOR® A sent in an amended arbitration request in which he asked that he be awarded the commission and attorney's fees and any other administrative expenses that he might incur in the presentation of his case before the Hearing Panel. The Chairperson accepted the amended complaint as part of the case and mailed REALTOR® B a copy.

The case was set and a hearing was held at which REALTOR® A appeared with his attorney and a court reporter. REALTOR® B acted as his own attorney. The Hearing Panel had the Board's attorney and a Professional Standards Administrator with a tape recorder present. After giving both parties the opportunity to present their case, the Hearing Panel adjourned the hearing and went into executive session to reach a decision.

It was the opinion of the Hearing Panel that the arbitration process is provided to all REALTORS® and REALTOR ASSOCIATE®S by the Board to avoid any unnecessary expenses. The hiring of an attorney was REALTOR® A's own decision, not required by Article 17 of the Code of Ethics, the Hearing Panel, the Code of Ethics and Arbitration Manual, or the Board of REALTORS®. The Hearing Panel decided the commission dispute based strictly on the merits of the case presented. The Hearing Panel disallowed the request by REALTOR® A that he be awarded attorney's fees or other administrative expenses.

Case #17-7: REALTOR® Not Precluded from Filing Complaint with State Real Estate Regulatory Agency (Revised Case #14-12 May, 1988. Transferred to Article 17 November, 1994. Revised May, 2002.)

REALTOR® A, a cooperating broker, filed a request for arbitration with REALTOR® B, the listing broker, in a dispute concerning entitlement to cooperative compensation in a real estate transaction. The complaint was referred to the Grievance Committee which concluded that a properly arbitrable matter existed and referred it to an arbitration hearing panel.

Shortly afterward REALTOR® B was notified that he was under investigation by the State Real Estate Commission for an alleged violation of the real estate regulations, based on a complaint filed by REALTOR® A.

REALTOR® B immediately filed an ethics complaint alleging violation of Article 17 by REALTOR® A for filing the complaint against REALTOR® B with the Commission. The complaint was referred to the Grievance Committee which concluded that since the ethics complaint and the arbitration request, while arising out of the same transaction, were clearly distinguishable the arbitration hearing should proceed as scheduled; and the ethics complaint should be dismissed, noting that while Article 17 requires REALTORS® to arbitrate contractual and specified non-contractual disputes, alleged violations of the Code and violations of law or regulations do not fall within its scope.

Case #17-8: Attempted Use of Corporate Veil to Avoid Obligation to Arbitrate (Revised Case #14-14 April, 1992. Transferred to Article 17 November, 1994. Revised November, 1995. Revised November, 2001.)

REALTORS® A and B, principals in different firms, were both members of the same Board. A disagreement arose between them concerning entitlement to a commission in a real estate transaction. After initial efforts to resolve the dispute proved fruitless, REALTOR® A filed a request for arbitration with the Board which was reviewed by the Grievance Committee which concluded that an arbitrable issue existed. Instead of agreeing to arbitration through the Board, REALTOR® B filed a lawsuit against REALTOR® A. Receiving notice of the suit, REALTOR® A filed a charge with the Board alleging REALTOR® B had violated Article 17 of the Code of Ethics.

REALTOR® B, in his presentation to the Board of Directors indicated that, in his opinion, he was not subject to any ethics charge, since it was his corporation, and not REALTOR® B individually, that had filed suit against the corporation of REALTOR® A, not against REALTOR® A himself.

REALTOR® A told the Board of Directors that immediately upon occurrence of the dispute, he had suggested to REALTOR® B that the matter be arbitrated by the Board, and REALTOR® B said he would think about it. REALTOR® A then proceeded to file his request for arbitration with the Board. However, REALTOR® B did not respond to the arbitration notice and, shortly thereafter, REALTOR® A received notice of the suit filed by REALTOR® B's corporation against the corporation of REALTOR® A. He said he then called REALTOR® B and again discussed the obligation of Article 17 with him. However, REALTOR® B advised him that his corporation was not subject to the requirements of the Code and stated his intent to pursue the litigation.

REALTOR® B acknowledged that the facts as related by REALTOR® A were correct and that his corporation had filed suit upon the advice of the corporation's legal counsel. REALTOR® B said that membership in a Board of REALTORS® is individual and that personal responsibility disappears when a matter of corporate business is involved. He pointed out that he was not the only principal or officer in his corporation and that the decision to file litigation was not made by him alone, but by all of the corporate officers.

The Board of Directors, in reaching its decision, did not agree with REALTOR® B's position. The Directors' noted that the membership requirement in a Board of REALTORS® has, as its purpose, the assurance of commitment by the principals in the firm to the Code of Ethics. This commitment addresses the conduct and activities of all persons affiliated with the REALTOR®'s firm whether a sole proprietorship, partnership, or corporation. Moreover, the Directors pointed out that Article 17 obligates REALTORS® to ". . . cause their firms to arbitrate and be bound by an award."

REALTOR® B was advised to withdraw the litigation and submit to arbitration by a date certain or his membership in the Board would be terminated. REALTOR® B accepted the decision, withdrew the suit against REALTOR® A, and submitted to arbitration.

Case #17-9: REALTOR® Not to be Denied Arbitration (Adopted Case #14-15 May, 1988. Transferred to Article 17 November, 1994. Deleted November, 2001.)

Case #17-10: Board's Use of State Association Arbitration Panel (Adopted Case #14-16 May, 1988. Transferred to Article 17 November, 1994.)

A dispute arose between REALTOR® A and REALTOR® B, two of the 15 members of the X Board of REALTORS®. Both members requested that the matter be arbitrated by the Board's Professional Standards Committee. The Grievance Committee concluded that an arbitrable matter existed but expressed reservations about the Board's ability to provide an objective and impartial hearing since most of the other Board Members were either employed by or affiliated with REALTOR® A or REALTOR® B, or were frequently involved in transactions with them.

At a specially called meeting of the Board of Directors, it was determined that the Board was incapable of providing an impartial panel for an arbitration hearing. The Board President was authorized to refer the request to the State Association for a hearing by a Hearing Panel of the State Association's Professional Standards Committee.

Pursuant to the Board's request, a Hearing Panel was convened by the State Association which rendered an award on behalf of REALTOR® A. REALTOR® B refused to abide by the decision on the grounds that the dispute had not been heard by a panel of his Board as required by Article 17.

Both the State Association and the local Board advised REALTOR® A to seek judicial enforcement of the award in a court of competent jurisdiction noting that REALTOR® B had participated in the arbitration; that the State Association is also charged with the responsibility for enforcing the Code of Ethics; that the Board was within its rights in referring the matter to the State Association, due to its inability to provide an impartial panel; and that representatives of the State Association and local Board would be available to appear in support of the request for judicial enforcement.

Case #17-11: Appeal of Grievance Committee Decision (Adopted Case #14-17 May, 1988. Transferred to Article 17 November, 1994.)

REALTORS® A and B were partners in a building company. They both held membership in the XYZ Board of REALTORS® and were Participants in the Board's Multiple Listing Service. After many successful years, they decided to terminate their partnership with REALTOR® A continuing the building business and REALTOR® B forming a new residential brokerage company. As part of their termination agreement, REALTOR® B agreed not to build new homes in the XYZ Board's jurisdiction for a period of twelve months.

Six months later, REALTOR® A filed a written request for arbitration with the Professional Standards Administrator of the XYZ Board of REALTORS®. In his request, REALTOR® A outlined the terms of their partnership termination agreement pointing out that REALTOR® B had continued to build new homes in violation of their agreement. REALTOR® A demanded that the Board take action to enforce the agreement and compel REALTOR® B to refrain from any further construction.

The Professional Standards Administrator forwarded the arbitration request to the Grievance Committee for review. After review, the Grievance Committee found the matter not properly arbitrable.

REALTOR® A was upset with the Grievance Committee's decision and appealed to the Board of Directors. The Board of Directors noted that Article 17 of the Code of Ethics requires arbitration of disputes " . . . between REALTORS® associated with different firms arising out of their relationship as REALTORS®."

If REALTOR® A were requesting arbitration of a dispute arising out of a real estate transaction (such as a dispute concerning entitlement to commissions or subagency compensation), this would be a properly arbitrable matter. However, the Directors noted that the dispute in question related to the provisions of a partnership termination agreement which the Board had no authority to enforce. The Directors advised that while the Board's arbitration facilities were available to settle disputes between members, buyers, and sellers related to real estate transactions, the Board's authority did not extend to ordering performance of contracts since this was properly the privilege of the courts.

Case 17-12: Arbitration when a REALTOR® acts Exclusively as a Principal in a Transaction

(Adopted November, 1995. Revised May, 2017.)

REALTOR® A, a residential specialist in a major metropolitan area, inherited a cabin in the North woods from a distant relative. After spending a week of vacation there with her family, REALTOR® A decided that the fact that the cabin was over five hundred miles from her home made it likely that her use of the cabin would be infrequent, at best. Consequently, she decided to list and sell the cabin. REALTOR® A described her situation to REALTOR® B, who claimed to be experienced in the sale of vacation properties in the area and who told REALTOR® A that a quick sale should be "no problem." Based of the REALTOR® B's assurances, REALTOR® A signed a listing agreement with REALTOR® B.

REALTOR® B showed the property several times over the following months but to no avail. REALTORS® A and B spoke by long distance several times and ultimately concluded that a significant reduction in the listed price was called for.

A month later, REALTOR® B called REALTOR® A and advised that she had received an offer but disclosed that the offer was from REALTOR® B's daughter and son-in-law. REALTOR® A thanked REALTOR® B for disclosing her relationship to the purchasers but went on to indicate that, as she felt that REALTOR® B had been overly optimistic in recommending an asking price in the first place, and that even after a significant price reduction the only offer produced by REALTOR® B had been from a member of her family, and that it was an "in-house" sale, REALTOR® A thought it was only fair that REALTOR® B would reduce her commission. REALTOR® B disagreed and sent the purchase offer to REALTOR® A. REALTOR® A accepted the offer but at the closing, which was handled in escrow, REALTOR® B was surprised to learn that REALTOR® A had instructed the closing officer to disburse to REALTOR® B only half of the commission called for in the listing contract. REALTOR® B filed an inter board arbitration request against REALTOR® A claiming the balance of her commission. REALTOR® A refused to arbitrate on the grounds that she had been the seller in the transaction and had not acted within the scope of her real estate license and that there had been no "relationship as REALTORS®" between her and REALTOR® B as referenced in Article 17 of the Code of Ethics. REALTOR® A's refusal to arbitrate was referred to the Board of Directors of REALTOR® A's primary Association and, in response to questions put to her, she repeated her claim that she had acted exclusively as a principal in the transaction and not as a real estate professional. The Directors concurred with her reasoning noting that the operant words in Article 17 refer to contractual disputes between REALTORS® in different firms "arising out of their relationship as REALTORS®." They noted that if it had been the desire of REALTOR® A and B to bind themselves to resolve any contractual dispute that might arise out of their principal/agent relationship, that could have been accomplished through insertion of an appropriate arbitration clause in the listing agreement. Absent that, there was no obligation for REALTOR® A to arbitrate with REALTOR® B.

Case 17-13: Arbitration Involving a REALTOR® Selling her Own Property (Adopted November, 1995. Revised May, 2017.)

REALTOR® B was a real estate broker and property manager who, in addition to managing property for others, frequently bought and sold income property for her own account. Needing capital for another project, REALTOR® B decided to sell a three-flat building in which she had a strong equity position and which she thought would move quickly, given the current market conditions. To maximize market exposure, she listed the property with her firm and entered the listing into the MLS. She put a sign in front of the property indicating that it was for sale "by owner." Her ads in the local newspapers indicated that the seller was a "broker-owner."

REALTOR® A, who lived near the building, saw the "for sale" sign and called REALTOR® B. Introducing himself as a broker and as a REALTOR®, REALTOR® A asked what the asking price was and whether REALTOR® B was interested in listing her property. REALTOR® B did not indicate that she had listed her own property nor did she disclose that she was a broker or a REALTOR®. She did indicate that she would pay a commission to REALTOR® A if he procured a purchaser for the property but added that she preferred not to enter into an exclusive relationship with any broker and didn't want to put anything into writing.

REALTOR® A thought the property might interest Dr. X, REALTOR® A's chiropractor, and contacted him. Dr. X was in fact interested and, after several visits to the property, made an offer to purchase which was subsequently accepted by REALTOR® B.

At the closing, REALTOR® A learned several things, among them, that REALTOR® B, the seller, was also a REALTOR® and, more importantly, that REALTOR® B had instructed that only half of the previously agreed on commission was to be disbursed to REALTOR® A. When REALTOR® A protested the shortfall, REALTOR® B responded that her property was highly desirable, had "practically sold itself," and, in any event, REALTOR® A had expended minimal efforts in bringing about the quick sale. REALTOR® A disagreed with REALTOR® B's reasoning and, after appeals to REALTOR® B's sense of fairness went unheeded, filed an arbitration request with the Association of REALTORS®. Faced with the request to arbitrate, REALTOR® B declined, referring to Article 17 of the Code of Ethics and noting that it relates to disputes between REALTORS® "...arising out of their relationship as REALTORS® ..." whereas she had been the seller.

REALTOR® B's refusal to arbitrate was referred to the Board of Directors for their consideration. REALTOR® B repeated her defense that, as the seller, she was not obligated to arbitrate a dispute with another REALTOR® who had been acting within the scope of his broker's license absent a specific arbitration agreement. REALTOR® B pointed out that the agreement between them was oral and, in response to REALTOR® B's question, REALTOR® A admitted that the question of arbitration had never even been discussed. REALTOR® A noted the property had appeared in the MLS, and REALTOR® B responded that inclusion of information in the MLS had been a "technicality" and that she had "listed with herself" merely to comply with MLS rules and that she had considered herself the seller, first and foremost. The Directors agreed with REALTOR® B that she obviously had been a principal in the sale of her own property but went on to conclude that by listing the property, albeit with herself, she no longer was exclusively a principal in the transaction but had also acted within the scope of her broker's license. As such, she had become embroiled in a contractual dispute with another REALTOR® "...arising out of their relationship as REALTORS®..." and had become obligated to arbitrate.

Case #17-14: Arbitration in Non-Contractual Disputes (Adopted November, 2022, Amended and effective June 5, 2025.)

REALTOR® A entered into an exclusive buyer representation agreement with a client (referred to herein as "Prospective Buyer"), showing her several homes over a period of time. The Prospective Buyer made offers on two homes with REALTOR® A, both of which were not accepted.

REALTOR® A then presented the Prospective Buyer with a property recently back on the market, listed by REALTOR® B. REALTOR® A and REALTOR® B were REALTOR® principals in different firms, and were both members of the same MLS. The Prospective Buyer told REALTOR® A that she had seen the property with REALTOR® C, a REALTOR® principal of a different firm, when it came on the market several weeks earlier. She also told REALTOR® A that she had written an offer on the property with REALTOR® C that was not accepted because of multiple offers being submitted.

The Prospective Buyer said she wanted to write a new offer on the property with REALTOR® A and did not want to go back to REALTOR® C since it had been a while and she wanted to start fresh with a different REALTOR®. REALTOR® A suggested that the Prospective Buyer could compensate REALTOR® A directly under the terms of the buyer representation agreement and REALTOR® A would reject the offer of compensation from the listing broker, REALTOR® B. The Prospective Buyer agreed, REALTOR® A rejected the offer of compensation from the listing broker and the offer was submitted. REALTOR® B agreed to reduce his compensation by the amount that was offered and rejected by REALTOR® A. The seller accepted the Buyer's offer with the reduced compensation offered by REALTOR® B and the transaction closed.

REALTOR® C learned that the Buyer had purchased the property and believed that she was the procuring cause of the sale based on the previous work she had done with the Buyer and the offer she had previously written for her on the property. REALTOR® C was a REALTOR® principal in the same MLS as listing broker, REALTOR® B. REALTOR® C filed an arbitration request against the listing broker, REALTOR® B for the amount offered. After receiving the request, REALTOR® B then filed an arbitration request against REALTOR® A for the amount offered and requested that the two arbitration requests be consolidated into one hearing.

The Grievance Committee reviewed REALTOR® C's request and found it to be a contractual dispute under Article 17 in that REALTOR® C's claim was that she was the procuring cause of the sale and thus had accepted the offer of compensation made by REALTOR® B. The Grievance Committee also found that it was a mandatory arbitration under Article 17 for the amount requested.

In reviewing REALTOR® B's arbitration request against REALTOR® A, the Grievance Committee noted that there was no contractual dispute under Article 17 because REALTOR® A had rejected listing broker REALTOR® B's offer of compensation. However, the Grievance Committee found that REALTOR® B's request was a noncontractual dispute within Standard of Practice 17-4 (3) in that REALTOR® B filed the request against REALTOR® A as a third-party respondent. The request was found to be a mandatory arbitration matter for the amount requested.

The Grievance Committee also discussed that REALTOR® C could have filed an arbitration request directly against REALTOR® A as a noncontractual dispute under Standard of Practice 17-4 (3) for the amount offered. In its discussion, the Grievance Committee further noted that Standard of Practice 17-4 (3) does not include any limitation as to the amount received by the cooperating broker or paid by the seller as exists in Standard of Practice 17-4 (1) and (2).

Case #17-15: Arbitration in Non-Contractual Disputes (Adopted November, 2022, Amended and effective June 5, 2025.)

REALTOR® A, a REALTOR® principal, worked with his client (referred to herein as "Buyer") on several properties. The Buyer wanted to write an offer on an expensive property that would generate (based on the offer price and the amount offered by the listing broker a $40,000 commission for REALTOR® A and his firm. When writing the offer, The Buyer explained that she wanted REALTOR® A to reduce his portion of the commission by half (by $20,000) to make the price of their offer attractive to the seller. REALTOR® A refused to reduce his commission as requested and the Buyer then refused to write the offer with REALTOR® A.

The Buyer then approached REALTOR® B to view the property again. The Buyer did not disclose that she had seen the property or attempted to write an offer on the property with REALTOR® A. When the Buyer asked to write the offer, she suggested that REALTOR® B reduce the compensation offered to $20,000 so that her offer price was more attractive to the seller. REALTOR® B agreed to accept the reduced compensation. REALTOR® B presented the offer to the listing broker, REALTOR® C, and explained the reduced compensation. REALTOR® C presented the offer to the seller and agreed to reduce the total commission by $20,000. The seller accepted the offer and the transaction closed.

After learning that the Buyer had purchased the property through REALTOR® B, REALTOR® A filed an arbitration request against the listing broker, REALTOR® C for the amount offered, or $40,000. REALTOR® A's request stated that he was the procuring cause of the sale and thus had accepted REALTOR® C's offer of compensation. REALTOR® C then filed an arbitration request against REALTOR® B for $40,000, requesting that the two cases be consolidated for one hearing. REALTORS® A, B and C are each REALTOR® principals, are all associated with different firms, and are members of the same MLS.

After reviewing REALTOR® A's arbitration request against REALTOR® C, the Grievance Committee determined that the matter was a mandatory arbitration as a contractual dispute under Article 17 for the amount offered ($40,000) based on REALTOR® A's claim that he was the procuring cause of the sale. Likewise, the Grievance Committee determined that REALTOR® C's request against REALTOR® B was also a mandatory arbitration as a contractual dispute under Article 17. However, since the alleged contractual matter between REALTOR® C and REALTOR® B was for an amount of $20,000, REALTOR® C's claim against REALTOR® B was limited to $20,000.

The Grievance Committee also discussed that REALTOR® A could have filed an arbitration request directly against REALTOR® B as a noncontractual dispute under Standard of Practice 17-4 (1) for the amount REALTOR® B received ($20,000) per the terms of Standard of Practice 17-4 (1) providing that "…the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker…"

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REALTOR® C listed a property that was shown by REALTOR® A to REALTOR® A's client, referred to herein as "Prospective Buyer". REALTOR® C and REALTOR® A were REALTOR® principals in different firms. REALTOR® A was required to go out of town on a family emergency and had REALTOR® B in her firm take over for her, communicating that fact to the Prospective Buyer.

Prospective Buyer asked REALTOR® B to show the same listing to him again. REALTOR® B showed the listing to the Prospective Buyer. The Prospective Buyer did not like REALTOR® B's conduct during the showing. The Prospective Buyer wanted to write an offer on the property but did not want to write the offer with REALTOR® B and did not want to wait for REALTOR® A to return.

The Prospective Buyer then contacted REALTOR® D, an agent with a different firm who was recommended, to write an offer on the property, telling REALTOR® D that he had seen it with REALTORS® A and B, but would not work with REALTOR® B and could not wait for REALTOR® A to return.

REALTOR® D suggested writing an offer in which the Prospective Buyer agreed to pay REALTOR® D directly. The Prospective Buyer agreed on condition that REALTOR® D reduced her compensation by a certain percentage from what was offered. REALTOR® D agreed. REALTOR® D presented the offer, rejecting the offer of compensation. Listing broker REALTOR® C and the seller agreed to the compensation reduction. The offer was accepted, and the transaction closed.

REALTOR® A learned that the Buyer had purchased the Property through REALTOR® D. REALTOR® A filed an arbitration request against listing broker REALTOR® C for the amount offered. REALTOR® C then filed an arbitration request against REALTOR® D for the amount offered, requesting the cases to be consolidated into one hearing.

The Grievance Committee reviewed REALTOR® A's request and found it to be a contractual dispute under Article 17 in that REALTOR® A's claim was that she was the procuring cause of the sale and thus had accepted the offer of compensation made by REALTOR® C. The Grievance Committee also found that it was a mandatory arbitration under Article 17 for the amount requested.

In reviewing REALTOR® C's arbitration request against REALTOR® D, the Grievance Committee noted that there was no contractual dispute under Article 17 because REALTOR® D had rejected listing broker REALTOR® C's offer of compensation. However, the Grievance Committee found that REALTOR® C's request was a noncontractual dispute within Standard of Practice 17-4 (3) in that REALTOR® C filed the request against REALTOR® D as a third-party respondent. The request was found to be a mandatory arbitration for the amount requested.

The Grievance Committee also discussed that REALTOR® A could have filed an arbitration request directly against REALTOR® D as a noncontractual dispute under Standard of Practice 17-4 (3) for the amount offered. In its discussion, the Grievance Committee further noted that Standard of Practice 17-4 (3) does not include any limitation as to the amount received by the cooperating broker or paid by the seller as exists in Standard of Practice 17-4 (1) and (2).

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