NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

Article 6 and Related Case Interpretations

Article 6

REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. (Amended 1/99)

• **Standard of Practice 6-1**
REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Case Interpretations for Article 6

Note: The following information is reprinted from the current NATIONAL ASSOCIATION OF REALTORS® *Code of Ethics and Arbitration Manual.*

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

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 Board 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 Board'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.)

REALTOR® A managed Client B's large apartment building, and made an arrangement under which coin operated 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 Board 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.)

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 $50. 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 $100. When this came to the attention of Owner B, he filed a complaint against REALTOR® A with the Board 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 Board'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 $100 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.)

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 Board 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)

REALTOR® X, a principal broker in the firm XY&Z, prided himself on his state of the art 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 advertised on the XY&Z home page and some of them, including the Third National Bank, included links to their own websites.

Buyer B, who had earlier entered into an exclusive buyer representation agreement with XY&Z,

received frequent, automated reports from REALTOR® X about new properties coming onto the market. Hoping to purchase a home in the near future, he took advantage of REALTOR® X's rich website to familiarize himself with the real estate-related products and services advertised there. Hoping to expedite his purchase experience by pre-qualifying for a mortgage loan, 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 on-line 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, guided both by REALTOR® X personally and through periodic updates from REALTOR® X's Web site, 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 advertisements on my website are simply that, advertisements, no different than classified ads run in the local newspaper."

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)

REALTOR® Z, a broker and sole proprietor, had invested considerable time, money and energy 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 advertising on her home page. 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.