

NATIONAL ASSOCIATION OF REALTORS®
Code of Ethics Video Series

From *Professionalism in Real Estate Practice* – Article 16

(A narrative explanation of Article 16 with synthesis of related Standards of Practice and Case Interpretations)

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.

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Competition among brokers to provide appraising, brokerage, managing, leasing, syndicating, or counseling services is extremely intense until the prospective client enters into a binding agreement for such services. When an exclusive relationship is created, the competition shifts to the search for buyers or to otherwise fulfill the agreement. At this point Article 16 comes into play.

Once clients have selected a particular broker to serve their interests, the competition that prevailed earlier ceases and cooperation takes its place. Cooperation between REALTORS® is the normal professional practice that is contemplated when it is in the best interest of the client. Generally, cooperation exists in great measure, since it benefits the clients and customers in virtually every case. REALTORS® must carefully avoid taking any action inconsistent with the exclusive relationship between the seller and the listing broker and avoid any action that could be construed to induce a breach of the contractual agreement made with the client. The client has made a decision and is entitled to the benefit of his or her bargain. This includes relief for the duration of the relationship from direct overtures of other REALTORS® seeking to interest the seller or lessor in the services they provide. This limited protection from direct solicitation does not preclude general advertising efforts by other REALTORS®, but does prohibit efforts to induce the breach of an existing contract so that another REALTOR® can substitute himself in the place of the current listing broker.

In the case of an exclusive listing, to respect the exclusivity of the listing broker's relationship, other REALTORS® must be able to determine with certainty that an exclusive listing exists. If the listing broker refuses to disclose the nature (type) and duration of a listing, Article 16 recognizes the REALTOR®'s right to contact the seller or lessor directly to obtain this essential information. Under these circumstances, the REALTOR® may also 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.

Article 16 also acknowledges the right of property owners whose properties are listed exclusively to contact other REALTORS® if they are not satisfied with the listing broker's performance. A REALTOR® is free to discuss the terms of a future listing on the property and may enter into a listing to become effective upon the expiration of the current listing if the discussion and contact were initiated by the property owners.

Actions inconsistent with the exclusive relationship of the listing broker can occur when a REALTOR® provides unauthorized information to a prospective purchaser or tenant. It can occur when a cooperating broker fails to obtain permission to show the property from the listing broker, but contacts the owner directly. It can occur when a cooperating broker takes an offer directly to the client without the knowledge and consent of the listing broker. It can occur when a cooperating broker uses the showing of a property as an opportunity to make unsolicited, derogatory remarks about the listing broker that are untrue.

REALTORS® are obligated to respect the exclusive representation or exclusive brokerage relationship agreements of other REALTORS® and to work through them as long as the exclusive relationship remains in effect. Professionalism, integrity, and courtesy require it and buyers/ tenants and sellers/lessors benefit from it.

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Aggressive, innovative marketing practices are not inherently unethical, but any business practice must comply with the other requirements imposed by the Code. (Refer to Standard of Practice 16-1)

Recognize that Article 16 does not prohibit general advertising, including telephone canvassing, mailings, or distributions to all property owners in a given area or to all members of a class, organization, or group, even though one or more of the recipients may currently be party to an exclusive listing agreement. (Refer to Standard of Practice 16-2 and Case Interpretations #16-3 and #16-9)

A REALTOR® is not prohibited from offering to provide unrelated services to the client of another REALTOR® or from offering the same type of service for property not subject to other brokers' exclusive agreements. (Refer to Standard of Practice 16-3)

When another REALTOR® requests information from you concerning one of your listings, you are encouraged to disclose the type of listing you have and its expiration date so that the other REALTOR® can avoid an inadvertent interference in your relationship with your client. If, for any reason, you choose not to share that information, you should be aware that your refusal will entitle the other REALTOR® to obtain it directly from your client and to discuss the terms of a future listing with the client or to take a listing to become effective upon the expiration of any current listing. (Refer to Standard of Practice 16-4 and Case Interpretations #16-7 and #16-10)

When another REALTOR® requests information from you concerning one of your buyers/tenants who is subject to an exclusive buyer/tenant agreement, you are encouraged to disclose the type of agreement you have and its expiration date so that the other REALTOR® can avoid an inadvertent interference in your relationship with your client. If you choose not to share that information, you should be aware that your refusal will entitle the other REALTOR® to directly obtain the information from your client and discuss the terms of any future buyer/tenant agreement to become effective upon expiration of any existing exclusive buyer/tenant agreement. (Refer to Standard of Practice 16-5)

Recognize that if the discussion is initiated by the property owner, a REALTOR® may discuss taking a future listing on a property currently listed exclusively with another REALTOR® and may take a listing to become effective upon the expiration of the current listing. (Refer to Standard of Practice 16-6)

Be aware that a prospect's prior selection and use of a REALTOR® in previous transactions cannot prevent other REALTORS® from trying to obtain that individual's future business. (Refer to Standard of Practice 16-7)

Understand that once a listing has expired, other REALTORS® are free to solicit the listing. (Refer to Standard of Practice 16-8 and Case Interpretation #16-5)

Before accepting a listing, use your best efforts to make sure the property is not already currently listed on an exclusive basis with another broker. (Refer to Standard of Practice 16-9)

If you are acting as the buyer or tenant representative or broker, you must disclose that fact to the listing broker the first time you contact the listing broker, such as when making an appointment to show the property. (Refer to Standard of Practice 16-10)

Advise the seller or landlord at your first contact if you are acting as a buyer's or tenant's representative or broker and the property is unlisted. (Refer to Standard Practice 16-11)

At the first practical opportunity, disclose to buyers/tenants that you are acting on behalf of the seller/landlord or subagent of the listing broker. (Refer to Standard of Practice 16-12)

When you are aware that a principal has retained an exclusive representative or broker, deal through that representative or broker, and not directly with the principal except when the representative or broker has authorized direct contact unless the client has initiated dealings with you. Ask prospects if they are party to an exclusive representation agreement before providing substantive services. (Refer to Standard of Practice 16-13 and Case Interpretations #16-13 and #16-14)

Before you exclusively list or lease a property which is not currently listed or leased with another broker on an exclusive basis, you have an obligation to advise the client of the potential liability for multiple commissions. (Refer to Standard of Practice 16-14)

Be aware of your obligation to compensate the cooperating broker (principal) in a cooperative transaction rather than any sales licensees affiliated with the cooperating broker without the prior express knowledge and consent of the cooperating broker. (Refer to Standard of Practice 16-15)

Do not use the terms of an offer to purchase or lease, or the threat of withholding an executed offer to purchase or lease, to attempt to obtain additional compensation from the listing broker. (Refer to Standard of Practice 16-16)

Obtain permission from the listing broker before giving information on the broker's listings to another broker. (Refer to Standard of Practice 16-17)

Obtain the listing broker's consent before using information about the listing broker's listing to create a referral prospect or a buyer prospect. (Refer to Standard of Practice 16-18 and Case Interpretation #16-8)

Obtain the client's consent before placing signs for sale, rent, or lease on property. (Refer to Standard of Practice 16-19)

Prior to or after your relationship with your current firm is terminated, do not induce clients of that firm to cancel exclusive contractual agreements between the client and that firm. (Refer to Standard of Practice 16-20)

Avoid inviting cooperation by a third broker without the consent of the listing broker. (Refer to Case Interpretation #16-1)

While unintentional contact with another REALTOR®'s client is not unethical, subsequent contacts prior to the expiration of the other REALTOR®'s listing can be unethical. (Refer to Case Interpretation #16-2)

Don't put your interest in a brokerage commission ahead of your responsibilities to your clients, even if the sale is made to a customer to whom you have shown the property but were unable to negotiate a sale. (Refer to Case Interpretation #16-4)

Be aware that general advertisements by other REALTORS® do not violate the exclusive relationship of the listing broker when not directed towards the owner of the particular property listed. (Refer to Case Interpretation #16-9)

Determine the amount of subagency compensation being offered before commencing your efforts as a subagent. Do not try to modify the amount offered by making the subagency compensation an integral term of an offer to purchase. (Refer to Case Interpretation #16-15)

When acting as the agent or broker of a buyer, do not suggest or recommend that the buyer use the terms of a purchase offer to attempt to modify the terms and conditions of the listing broker's contract with the seller. (Refer to Case Interpretation #16-16)

As the buyer's agent or broker, you can suggest or recommended that your client ask the seller to pay some or all of your commission. (Refer to Case Interpretation #16-17)

As a subagent, do not negotiate directly with the listing broker's client unless you have been authorized to do so by the listing broker. (Refer to Case Interpretation #16-18)

Continued contact with a potential seller-client who then enters into an exclusive listing with another REALTOR® is generally prohibited. (Refer to Standard of Practice 16-13 and Case Interpretations #16-19, #16-20, and #16-21).