

# NATIONAL ASSOCIATION OF REALTORS®

## Code of Ethics Video Series

### Case Interpretations Related to Article 16

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

**Case #16-1: Confidentiality of Cooperating REALTOR®'s Participation** (Revised Case #21-5 May, 1988. Transferred to Article 16 November, 1994.)

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. 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 Board of REALTORS® specifying that REALTOR® C's breach of confidence under the circumstances was a failure to respect his, REALTOR® B's, exclusive agency, and that this action had jeopardized his relationship with his client.

The complaint was referred to the Board's Professional Standards Committee, a hearing was scheduled, and REALTOR® C was directed to answer the charge of unethical conduct in violation of Article 16.

At the hearing, REALTOR® B detailed the instructions of the client and the manner in which he had conveyed them to REALTOR® C in 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 16 by saying that while he had discussed the matter briefly with REALTOR® D, he had not expressly invited his cooperation, and, therefore, had not violated Article 16.

At the conclusion of the hearing, the panel held that REALTOR® B's complaint was valid; that proper respect for his exclusive agency and the circumstances under which it existed required REALTOR® C to observe the confidence entrusted to him and that REALTOR® C's discussion of the matter with REALTOR® D was in violation of Article 16.

**Case #16-2: Respect for Agency** (Revised Case #21-6 May, 1988. Transferred to Article 16 November, 1994.)

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 Board, 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<sup>®</sup> C that he would have conducted himself in accord with Article 16 if, upon learning of REALTOR<sup>®</sup> B's status as exclusive agent, he had expressed his willingness to cooperate with REALTOR<sup>®</sup> 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.)

REALTOR<sup>®</sup> A, a residential broker, worked in a market area that included an attractive suburb of a large city. At the time REALTOR<sup>®</sup> A launched a new advertising program, there were a number of houses for sale in the neighborhood listed exclusively with other REALTORS<sup>®</sup>, each having the respective listing broker's sign on its front lawn.

Working with his advertising agency, REALTOR<sup>®</sup> A developed a special brochure describing the service of his offices and soliciting clients. The format of the brochure was designed so that it could be hung over a door knob, and a commercial distribution service was employed to hang one of these brochures on homes in REALTOR<sup>®</sup> A's market area.

In the course of distributing REALTOR<sup>®</sup> A's brochures, the commercial distribution service placed a brochure on the front door of every house in REALTOR<sup>®</sup> A's market area, including houses that had other REALTORS<sup>®</sup>' signs in the front yard. Several of the REALTORS<sup>®</sup> whose clients received REALTOR<sup>®</sup> A's brochures filed complaints with the Board against REALTOR<sup>®</sup> A. The Grievance Committee considered the complaints and referred them to the Secretary 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<sup>®</sup> A with unethical conduct in failing to respect the exclusive agency of other REALTORS<sup>®</sup>.

At the hearing, REALTOR<sup>®</sup> A defended his action by saying that the distribution of his advertising brochures was widespread in nature; that it had been carried out by a commercial distribution service; and that it was of the same nature as radio or television advertising or a general mailing that might come to the attention of some clients having exclusive listing contracts with other REALTORS<sup>®</sup>.

The Hearing Panel's decision noted that REALTOR<sup>®</sup> A, in designing his advertising campaign, did not direct his brochures to property owners whose identity had come to REALTOR<sup>®</sup> A's attention through information disclosed by other REALTORS<sup>®</sup> 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<sup>®</sup> A's advertising campaign was directed in an indiscriminate manner to all property owners in a given geographical area. Furthermore, the medium REALTOR<sup>®</sup> A chose for his advertising campaign was a written brochure, which property owners could examine or discard 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<sup>®</sup> 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.)

A property was exclusively listed with REALTOR<sup>®</sup> A who advertised it widely and invited cooperation from other REALTORS<sup>®</sup>. The property was not sold during the term of REALTOR<sup>®</sup> A's listing, although both REALTOR<sup>®</sup> A and REALTOR<sup>®</sup> B, a cooperating broker, had shown the property to prospects.

Sometime after the expiration of REALTOR<sup>®</sup> A's listing, newspaper advertisements appeared indicating that the property was exclusively listed with REALTOR<sup>®</sup> B. Shortly thereafter, the property was sold by REALTOR<sup>®</sup> B.

REALTOR<sup>®</sup> A confirmed that it was listed with REALTOR<sup>®</sup> B and then charged REALTOR<sup>®</sup> B in having failed to respect his exclusive agency 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<sup>®</sup> A and B present. REALTOR<sup>®</sup> A's specific charge was that REALTOR<sup>®</sup> B knew that the client had originally listed the property with him, REALTOR<sup>®</sup> A, because he had discussed the property with REALTOR<sup>®</sup> B during the term of the original listing contract; that during the term of REALTOR<sup>®</sup> A's listing, REALTOR<sup>®</sup> B had shown the property to the same individual who had now purchased the property through REALTOR<sup>®</sup> B; and that with this knowledge REALTOR<sup>®</sup> B's action in soliciting the listing, even after it had expired, was a violation of Article 16.

REALTOR<sup>®</sup> 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<sup>®</sup> B conceded that he had known of REALTOR<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> A had expired some time ago, REALTOR<sup>®</sup> B simply called the owner to ask if the property had been relisted with REALTOR<sup>®</sup> A. Upon learning that REALTOR<sup>®</sup> A's exclusive listing had not been extended, REALTOR<sup>®</sup> B told the owner of his prospective buyer, solicited the listing, and obtained it. REALTOR<sup>®</sup> 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.)

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 agency 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 Board 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 Board 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 Prospect to a Third Broker or for Creating a Buyer Prospect** (Reaffirmed Case #21-14 May, 1988. Transferred to Article 16 November, 1994.)

REALTOR® A filed a listing with the Board MLS which bulletined the information to all Participants. In the "Remarks" portion of the property data form, 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 prospect, 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 Board'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 Board's MLS to attempt to create a referral prospect to a third broker.

REALTOR® B responded that, as a subagent of the listing broker, 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 prospect 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 prospect to a third broker or to create a buyer prospect 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.)

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 billboards placed at various well-traveled intersections 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 Board, 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 Secretary 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.)

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 "cross his sign" 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 Board, stating that REALTOR® A's actions in contacting his client had been inconsistent with REALTOR® B's agency.

The Grievance Committee reviewed the complaint and the response to the complaint filed by REALTOR® B. The case was referred to the Secretary to schedule a hearing by a Hearing Panel of the Board'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 agency 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 agency 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 agency of another REALTOR®. But, in order to respect the listing broker's agency, the REALTOR® must be able to determine if a 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<sup>®</sup> A, a residential broker, had recently listed a home. REALTOR<sup>®</sup> A's marketing campaign included "open houses" on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> A's assistance in preparing a purchase offer. REALTOR<sup>®</sup> 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<sup>®</sup> A was subsequently charged with violating Article 16 for dealing and negotiating with a party who had an exclusive relationship with another REALTOR<sup>®</sup>.

At the hearing, REALTOR<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> X, a residential broker, had recently listed a home. REALTOR<sup>®</sup> X's marketing campaign included "open houses" on several consecutive weekends.

One Sunday afternoon Buyer B came to the open house. REALTOR<sup>®</sup> 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<sup>®</sup> 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<sup>®</sup> 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.)

REALTOR® A filed a written complaint against REALTOR® B, alleging violation of Article 16 of the Code of Ethics. It was referred to the Grievance Committee and after preliminary review, the Grievance Committee referred it to the Executive Officer with instructions to arrange a hearing before a Hearing Panel of the Professional Standards Committee. After following required procedures, including timely notices to all parties, a Hearing Panel was convened.

REALTOR® A stated to the Hearing Panel that he and REALTOR® B were both members of the Board MLS and that, as an MLS Participant, he was required to specify the amount of compensation he was offering on listings filed with the MLS. However, REALTOR® B had ignored this information as published by the MLS and had, on two separate occasions, brought REALTOR® A purchase agreements with copies of deposit receipts that provided for a different amount of subagency compensation to be payable to REALTOR® B. In following this practice, REALTOR® B was, in effect, presenting a demand for a subagency compensation greater than that which REALTOR® A, as the listing broker, had specified in the information filed with the Board's Multiple Listing Service.

REALTOR® A also complained that the language of the deposit receipt was so phrased as to make presentation of the offer conditioned upon REALTOR® A's agreement to pay a larger subagency

commission than he had offered through the MLS. REALTOR® A said this practice by REALTOR® B created a dilemma for him as the listing broker of either not submitting the offer to the client or, alternatively, paying an amount of subagency compensation greater than he had offered through the MLS.

REALTOR® B responded that he had a right to negotiate with REALTOR® A as to the subagency compensation he would receive for his work, and the amount he had put on the deposit receipt was the compensation for which he was willing to work. REALTOR® B said that REALTOR® A would have to make his own decision as to whether he would present the offer or not.

The Hearing Panel's decision noted that REALTOR® B was indeed entitled to negotiate with REALTOR® A concerning subagency compensation but that such negotiation should be completed prior to the showing of the property by REALTOR® B. The decision indicated that REALTOR® B was entitled to show property listed by REALTOR® A on the basis of the subagency agreement between them. If there was no agreement on the essential terms and conditions of such subagency, including compensation, there was no authority for REALTOR B to show the property or to procure an offer to purchase.

The panel's decision further advised that it was improper for REALTOR® B to follow a procedure of inserting the amount of subagency compensation to be paid by the listing broker on any document provided to a buyer or a seller, because this is properly a matter to be decided by the listing and cooperating brokers at the time the offer of subagency is offered and accepted; and that preconditioning an offer to purchase on the listing broker's acceptance of a subagency commission greater than he had offered was a practice inconsistent with respect for the agency of the listing broker.

REALTOR® B was found in violation of Article 16.

**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.)**

REALTOR® B contacted REALTOR® A, the listing broker, and notified her that he was a buyer's agent and was interested in showing one of her listings to his client, a prospective purchaser. REALTOR® A made an appointment for REALTOR® B and his client to view the property. Shortly thereafter, REALTOR® B presented REALTOR® A with a signed offer to purchase from his client which was contingent on REALTOR® A's willingness to reduce her commission by the amount she had offered through the MLS to subagents and on the seller's willingness to compensate the buyer for the commission the buyer owed to REALTOR® B, his agent. REALTOR® A presented the offer to her client, the seller, explaining that she would not agree to reduce the previously agreed commission as specified in their listing contract.

REALTOR® A then filed a complaint with the local Board charging REALTOR® B with violating Article 16 as interpreted by Standard of Practice 16-16. In her complaint, REALTOR® A stated that REALTOR® B had interfered in her agency relationship with the seller by encouraging the

buyer to condition acceptance of his offer on the renegotiation of REALTOR® A's commission arrangement with her client, the seller.

REALTOR® B defended his action arguing that REALTOR® A's refusal to reduce her commission by an amount equal to what she had offered other brokers for subagency services would have placed the seller in the position of having to pay an excessive amount of commission if he had accepted the offer agreeing to contribute to the buyer broker's compensation. In addition, REALTOR® B felt that it was his duty to his client to get the best price for the property by encouraging the buyer to reduce the costs of sale wherever practical. The Hearing Panel concluded that REALTOR® B's actions to encourage his buyer-client to pressure the seller to try to modify the listing agreement with REALTOR® A was an unwarranted interference in their contractual relationship.

The Hearing Panel noted that Article 16, as interpreted by Standard of Practice 16-16, required REALTOR® B to determine, prior to presenting an offer to REALTOR® A and her seller-client, whether REALTOR® A was willing to contribute to REALTOR® B's commission, either directly or by reducing the commission as agreed to in the listing contract and, if so, the terms and amount of such contributions. It was the decision of the Hearing Panel that REALTOR® B had violated Article 16.

**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.)

REALTOR® A filed a listed property with his local MLS offering to pay a fee for subagency services. REALTOR® B called REALTOR® A, identified himself as a buyer's agent, and asked if REALTOR® A would arrange a showing of the property to his client and himself. REALTOR® A agreed. The following day, REALTOR® B presented REALTOR® A with an offer to purchase that was contingent on the seller's agreement to pay REALTOR® B's commission. The seller accepted the offer and the sale closed shortly afterward.

REALTOR® A then filed a complaint against REALTOR® B citing Article 16 of the Code of Ethics as interpreted by Standard of Practice 16-16. He stated that REALTOR® B had interfered in REALTOR® A's relationship with his seller-client by attempting to negotiate a separate commission agreement with the seller. REALTOR® B responded that since the request that the seller pay his commission was made by REALTOR® B's client, the buyer, directly of the seller and not of the listing broker, no violation of the Code of Ethics had occurred.

In their decision, the Hearing Panel noted that if REALTOR® B, or if his client at REALTOR® B's urging, had demanded that a portion of REALTOR® A's commission be paid to REALTOR® B, there would have been a valid basis for REALTOR® A's position. Since the request for payment of REALTOR® B's fee was made directly to the seller, REALTOR® B was not in violation of Article 16.

**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 Board 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)**

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 realty 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 answering machine 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)**

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 makes all of our business decisions and he 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.